United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 116th CONGRESS, SECOND SESSION

Vol. 166 WASHINGTON, THURSDAY, JANUARY 30, 2020 *No. 20*

Senate

The Senate met at 1:05 p.m. and was called to order by the Chief Justice of the United States.

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

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

The Chaplain will lead us in prayer.

PRAYER

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

Let us pray.

Eternal Lord God, send Your Holy Spirit into this Chamber. Permit our Senators to feel Your presence during this impeachment trial. Illuminate their minds with the light of Your wisdom, exposing truth and resolving uncertainties. May they understand that You created them with cognitive capabilities and moral discernment to be used for Your glory. Grant that they will comprehend what really matters, separating the relevant from the irrelevant. Lord, keep them from fear, as they believe that Your truth will triumph through them. Eliminate discordant static with the music of Your wisdom.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

THE JOURNAL

The CHIEF JUSTICE. The Senators will please be seated.

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

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jennifer Hemingway, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep 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, the Senate will conduct another question and answer period today. We were able to get through nearly 100 questions yesterday. Senators posed constructive questions, and the parties were succinct and responsive. I would like to compliment all who participated yesterday.

We will again break every 2 to 3 hours and look to take a break for dinner around 6:30.

We have been respectful of the Chief Justice's unique position in reading our questions. I want to be able to continue to assure him that that level of consideration for him will continue.

The CHIEF JUSTICE. Thank you.

Mrs. MURRAY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Washington.

Mrs. MURRAY. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senator MURRAY asks the House managers:

Yesterday, when asked about why the House did not amend or reissue subpoenas after it passed its resolution authorizing its impeachment inquiry, the House Managers touched upon the House having the sole Power of Impeachment as specified by Article I of the Constitution. Could you further elaborate as to why that authority controls despite any arguments brought forth by members of the defense team contesting the validity of those subpoenas?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, that is a good question.

The answer is that these were validly issued subpoenas under the House rules. The White House argument to the contrary is wrong, and it would have profound negative implications for how Congress and our democracy function.

On January 9, 2019, the House adopted its rules, like we do every Congress, and these rules gave the committee the power to issue subpoenas. They are not ambiguous rules. Here is the relevant portion of rule XI on slide 55: The House's standing rules give each committee subpoena power ''for the purpose of carrying out any of its functions and duties'' as it considers necessary. This investigation began on September 9, before the Speaker's announcement on September 24 that it would become part of the impeachment inquiry umbrella.

The President doesn't dispute that the subpoenas issued by these committees were fully within their respective jurisdiction. The argument is that somehow, by declaring that this investigation also falls under an inquiry to consider Articles of Impeachment, which gives Congress actually greater authority, somehow it nullifies the traditional oversight authority. And this just doesn't make any sense.

The President counters that we have to take a full vote on impeachment first because that is what has been done in the past. In the Nixon inquiry, however, the Judiciary Committee needed a House resolution to delegate subpoena power, and that is different than the Committee's standing rules today.

The President actually compels the opposite conclusion. Several Federal judges have been investigated and impeached and convicted in the Senate without the House having ever taken an official vote to authorize the inquiry, and a Federal court recently confirmed there was no need for a formal vote of the full House to commence impeachment proceedings.

Even assuming a House vote was necessary, there was a vote. The text of H.

Res. 660 declared that the six investigative committees of the House were directed to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether there was sufficient grounds for the House of Representatives to exercise its constitutional power to impeach. And the committee report, which accompanies the resolution, specifically described the subpoenas that had been issued by the investigating committees and said ''all subpoenas to the executive branch remain in full force.''

So why didn't the House committee just reissue these subpoenas after the resolution? The short answer is they didn't need to. The subpoenas were already fully authorized.

In any event, even after the resolution passed, the committees issued subpoenas to Mick Mulvaney, Robert Blair, and four other witnesses, and the President continued to block those subpoenas. The argument about a full House vote really is just an excuse about President Trump's obstruction. The President refused to comply with the House subpoenas before the House vote and after the House vote. The only logical explanation is the one that President Trump gave us all along: He was determined to fight all the subpoenas because, in President Trump's view, according to what he said, he can do what he wants.

That is not what the constitutional Republic entrusted to us by the Founders had in mind. This argument doesn't just apply to impeachment. It would apply to ordinary oversight investigations. And it doesn't just apply to the House. It would also apply to the Senate.

By sanctioning the President's blanket obstruction, the Senate would be curtailing its own subpoena power in the future, as well as the House's, and the oversight obligation that we have, as we now know it, would be permanently altered.

I yield back.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. PAUL. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Kentucky.

Mr. PAUL. I have a question to present to the desk for the House Manager SCHIFF and for the President's counsel.

The CHIEF JUSTICE. Thank you.

The Presiding Officer declines to read the question as submitted.

The CHIEF JUSTICE. The Senator from Wisconsin.

Ms. BALDWIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator BALDWIN is addressed to the House managers:

Given that the White House Counsel couldn't answer Senator ROMNEY's question that asked for the exact date the President first ordered the hold on security assistance to Ukraine, what witness or witnesses could answer Senator ROMNEY's question?

Mr. Manager CROW. Thank you, Mr. Chief Justice. Thank you, Senator, for the question.

You are right. They were not able to directly answer that question, and we believe that there is a tremendous amount of material out there in the form of emails, text messages, conversation, and witness testimony that can shed additional light on that, including an email from last summer between Mr. Bolton and Mr. Blair, where we know from witness testimony this issue was discussed.

What we do know is from multiple witnesses. Ukrainian officials knew that President Trump had placed a hold on security assistance soon after it was ordered in July of 2019. So we know that not only did U.S. officials know about it and OMB communicated about it, Ukrainians knew about it as well.

We know from former Deputy Foreign Minister of Ukraine, Olena Zerkal—she stated publicly, in fact, that the Ukrainian officials knew about it and had found out about it in July. We also know from the testimony of Laura Cooper that her staff received two emails from the State Department on July 25 revealing that the Ukrainian Embassy was ''asking about security assistance'' and that ''the Hill knows about the FMS situation to an extent and so does the Ukrainian embassy.'' That was on July 25, the same day as President Trump's call with President Zelensky.

What we also know is that career diplomat, Catherine Croft, stated that she was ''very surprised at the effectiveness of my Ukrainian counterparts' diplomatic tradecraft, as in to say they found out very early on or much earlier than I expected them to.''

We also know that LTC Alexander Vindman testified that by mid-August he was getting questions from Ukrainians about the status of security assistance. So there is a lot of evidence surrounding it.

The administration continues to obstruct wholly our efforts to get the emails and correspondence that we have asked for. That obviously can be remedied by this body with the appropriate subpoenas; namely, a subpoena to Ambassador Bolton to testify and a subpoena to the State Department—the Department of State, the Department of Defense, and others to actually provide that material.

The last thing I would like to say is, last evening, counsel for the President was asked the question about why did the hold for Ukraine differ from holds in the Northern Triangle and other holds like Afghanistan. He provided an explanation that I am still trying to wrap my brain around because he seems to be the only person in the administration that actually has an explanation. As far as I could tell, the explanation was somewhere along the lines of one was public, trying to put public pressure on the countries in question, and one was not. It was a private conversation, a private effort to put pressure.

If that were true, then, of course, there would be plenty of evidence, plenty of emails, text messages, and other correspondence within the entire interagency process that we know is robust that would illustrate that to be the case, but they have failed to provide any evidence to corroborate that.

Let me finish with this. I happen to know that a lot of people in this Chamber, a lot of people in the Chamber on the other side of the Capitol, including me, have often described much consternation about redtape and bureaucracy and layers of government that run too slow. And I sometimes share that concern, right, that sometimes it takes a long time. There are memos for everything, emails for everything. There are paper trails for everything in this town. I think that is true with respect to this issue, and it is time that we actually see that information so we can get to the bottom of what actually happened. This body could get that information.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Pennsylvania.

Mr. TOOMEY. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators SASSE, MCSALLY, CRAPO, THUNE, YOUNG, ERNST, and BRAUN.

The CHIEF JUSTICE. The question from Senator TOOMEY and others is for counsel for the President:

Given that the election of the president is one of the most significant political acts in which we as citizens engage in our democratic system, how much weight should the Senate give to the fact that removing the president from office and disqualifying him from ever holding future federal office would undo that democratic decision and kick the President off the ballot in this year's election?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate.

One of the concerns that we have raised throughout this process over the last several months, going back to the time when the House was dealing with this in their various committees, is we are in an election year. There are some in this room that are days away from the Iowa caucuses taking place. So we are discussing the possible impeachment and removal of the President of the United States not only during election season, in the heart of the election season. And I think that this does a disservice to the American people.

Again, we think the basis upon which this has moved forward is irregular, to say the least. But I do think it complicates the matter for the American people that we are literally at the dawn of a new season of elections. I mean, we are at that season now, and yet we are talking about impeaching a President.

And I want to tie this into the urgency that was so prevalent in December with my colleagues, the managers. It was so urgent to move this forward that they had to do it by mid-December, before Christmas, because national security was at stake, and then they waited 33 days to bring it here. And now they are asking you to do all the

investigation, although they say they proved their case but still need more to prove it.

Whereas, we believe—and I want to be clear here—that their entire process was corrupt from the beginning, and they are just putting it on this body. But to do it while the American people are selecting candidates for nomination to be the head of their party, to run as President of the United States—some of you in this very room—and to talk about the removal of a President of the United States, I think that is all part and parcel of the same pattern and practice of irregularities that have taken place with this impeachment proceeding since the beginning. The Speaker allowed the articles to linger. It was such a nationally urgent matter that they could linger for a month.

So we think that this points to the exact problem of what is taking place here and that is, as my colleague Mr. Cipollone said, this is really taking the vote away from the American people.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Montana.

Mr. TESTER. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senator TESTER asks the House managers:

Yesterday Mr. Dershowitz stated, ''If a President does something which he believes will help him get elected in the public interest that cannot be the kind of quid pro quo that results in impeachment.'' Do you believe there is any limit to the type or scope of quid pro quo a sitting President could engage in with a foreign entity, as long as the intent of the sitting President is to get reelected in what he or she believes is in the public's best interest?

Mr. Manager SCHIFF. Mr. Chief Justice, Senator.

There is no limiting principle to the argument that we heard last night from the President's team; that is, if there is a quid pro quo that the President believes will help him get reelected and he believes his reelection is in the national interest, then it doesn't matter how corrupt that quid pro quo is. It is astonishing that on the floor of this body someone would make that argument.

Now, it didn't begin that way, in the beginning of the President's defense, but what we have seen over the last couple days is a descent into constitutional madness because that way madness lies. If we are to accept the premise that a President, essentially, can do whatever he wants, engage in whatever quid pro quo he wants—I will give you this if you will give me that to help me get elected. I will give you military dollars if you will give me help in my reelection, if you will give me illicit foreign interference in our election.

Now, the only reason you made that argument is because you know your client is guilty and dead to rights. That is an argument made of desperation.

Now, what is so striking to me is almost half a century ago we had a President who said: ''Well, when the President does it, that means it is not illegal.'' That, of course, was Richard Nixon. Watergate is now 40 to 50 years behind us. Have we learned nothing in the last half century? Have we learned nothing at all? It seems like we are back to where we were: The President says it is not illegal or Donald Trump's version under article II, ''I can do whatever I want,'' or Professor Dershowitz' point, if the President believes it helps his reelection, it is, therefore, in the national interest; he can do whatever he wants.

In fact, much as we thought that we progressed post-Watergate: We enacted Watergate reforms; and we tried to insulate the Justice Department from interference by the Presidency; we are trying to put an end to the political abuses of that Department—as much as we thought we enacted campaign finance reforms, we are right back to where we were a half century ago. And I would argue, we may be in a worse place because this time—this time that argument may succeed.

That argument—if the President says it, it can't be illegal—failed, and Richard Nixon was forced to resign. But that argument may succeed here now. That means we are not back to where we were; we are worse off than where we are. That is the normalization of lawlessness.

I would hope that every American would recognize that it is wrong to seek foreign help in an American election; that Americans should decide American elections. I would hope—and I believe that every American understands that, and every American understands that is true for Democratic Presidents and Republican ones. I would hope that we would understand it. I would hope that this trial would be one conducive of the truth.

The Senator asked what witnesses could shed light on when the President ordered the hold and why. Well, we know Mick Mulvaney would. That instruction came from OMB. You remember the testimony of Ambassador Taylor, the shock that went through the National Security Council and the shock he experienced in that video conference when it was first announced, and the instruction was, this comes through the President's Chief of Staff, OMB, but it is a direct order from the President.

Well, Mick Mulvaney knows when that order went into place and he knows why that order went into place and he made that statement publicly, which he now wishes to recant. I am sure he got an earful from the President after he did, but, apparently, it doesn't matter. None of that matters because if the President believes it is in his interest, it is OK.

Now, there was an argument also, what if it was a credible reason? Of course, there is no evidence that this was a credible reason to investigate the President's political rival, but let's say it was a credible reason; does that make it right?

What President is not going to think he has a credible reason to investigate his opponent? What President is going to think he doesn't have a credible reason or wouldn't be able to articulate one or come up with some fig leaf?

They compounded the dangerous argument that they made that no quid pro quo is too corrupt if you think it will help your reelection. They compounded it by saying, if what you want is to target your rival, it is even more legitimate. That way, madness lies.

The CHIEF JUSTICE. The Senator from North Dakota.

Mr. CRAMER. I send a question to the desk on behalf of myself and Senator YOUNG.

The CHIEF JUSTICE. Thank you.

The question from Senators CRAMER and YOUNG is for the counsel for the President:

Manager SCHIFF regularly states that if the President is innocent he would agree to all of the witnesses and documents that the Managers want. Is the President the first innocent defendant not to waive his rights?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question because the answer is, obviously, no. The President is not the first innocent defendant who decided not to waive his rights, and I think it is striking and shocking that it is one of the arguments that has been repeatedly deployed by the House managers throughout these proceedings.

You heard Manager NADLER say only the guilty hide evidence, only the guilty don't respond to subpoenas, and Manager SCHIFF say that this is not the way innocent people act. Well, of course, that is contrary to the very spirit of our American justice system, where people have rights, and asserting those rights cannot be interpreted as an indication of guilt. That is expressly forbidden by the laws and by the Constitution.

The Supreme Court explained in Bordenkircher v. Hayes—a case that is cited in our trial memorandum—that the very idea of punishing someone, which is what the House managers are attempting to do here with their obstruction of Congress charge—they said that if the President insists on the constitutional prerogatives of his office; if the President insists that, like virtually every President—at least since Nixon and some going further back than that—he is going to assert the immunity of his senior advisers to compel congressional testimony; if he is going to assert those rights grounded in the separation of powers and essential for protecting constitutionally based executive branch confidentiality interests, we are going to call that obstruction of Congress and impeach him.

It is this fundamental theme running throughout both their obstruction charge and their arguments generally here that if the President stands on his constitutional rights—if he tries to

protect the institutional prerogatives of his office, which he is duty-bound to do for future occupants of that office—that it is somehow an indication of guilt and shows that he ought to be impeached.

That is fundamentally antithetical to the American system of justice and to our principles of due process, to our principles of acknowledging that rights can be defended, that rights exist to be defended, and that asserting those rights cannot be treated either as something punishable or as evidence of guilt.

There would be a long line of past Presidents—as Professor Dershowitz pointed out, there are a lot of Presidents who have been accused of abuse of power. There would also be a long line of Presidents who could have been impeached for ''obstruction of Congress'' if every time a President insisted upon the prerogatives of the office of the Presidency and insisted on defending the separation of powers, it could be treated as something impeachable and as evidence of guilt.

President Obama himself refused to turn over a lot of documents to the House in the Fast and Furious investigation, and his Attorney General was held in contempt, but no one thought that it was an impeachable offense.

So the concept of saying that when the President asserts the constitutionally grounded prerogatives of his office, that it is evidence of guilt is a completely bogus assertion. It is contrary to all of the principles of our American justice system and to the fundamental principles of fairness, and it ought to be rejected by this body.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Alabama.

Mr. JONES. Thank you, Mr. Chief Justice. I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator JONES' question is for the House managers:

Aside from the House's Constitutional impeachment authority, please identify specifically which provision or provisions, if any, in the House rules or a House Resolution authorized the subpoenas issued by the House Committees prior to the passage of House Resolution 660.

In addition, please list the subpoenas that were issued after House Resolution 660.

Mr. Manager SCHIFF. Senator, we will compile the list. We don't have it accessible at the moment. Oh, we do have it.

Specifically, the subpoenas that went out after the passage of the House resolution were the subpoena to John Eisenberg and the subpoenas to Brian McCormack, Robert Blair, Michael Ellis, Preston Wells Griffith, and Mick Mulvaney.

Let me underscore something that my colleague Manager LOFGREN had to say, and let me break this down, if I can, in very practical terms.

What is the practical import of what counsel for the President would argue? It is this: Let's say that a Democrat is elected in November, and let's say that any one of you who chairs a committee in the Senate determines that you think that the next President is engaged in something questionable, maybe even in some wrongdoing, and you begin an investigation. I would imagine that in your Senate rules, like in our House rules—and it is House rule X, Senator, that has the specific language authorizing the issuance of subpoenas as a part of our normal oversight responsibility. That power didn't exist at the time of Watergate, so they had to have a separate resolution. But that House rule, passed each session, empowers us to issue subpoenas, as committee chairs, as part of our oversight jurisdiction.

So there you are with a Democratic President. You are a chair, and you start to do oversight. You issue subpoenas. You start to learn more, and what you learn becomes more and more concerning, and you issue more subpoenas.

The administration's effort to cover up its misconduct says: We are not going to comply with any of your subpoenas. We are going to fight all subpoenas.

And they come up with one bad-faith excuse after another as to why they don't have to comply.

As you investigate further and you are able to overcome the wall of obstruction, then you begin an impeachment inquiry, and that leads to the passage of yet another resolution.

They would argue to you that all of the work you did before you determined that it merited potential impeachment must be thrown out, that they were perfectly empowered to obstruct you in your oversight responsibility, that you must begin with your conclusion and you must begin with the conclusion that you were prepared to impeach the President before you issued a single subpoena; otherwise, they can say whatever you did before you got to that place should be thrown out.

Now, we did not have the Justice Department do the initial investigation here. Why? Because Bill Barr turned it down. The same Attorney General that mentioned that July 25 call said there was nothing to see here. So there was no DOJ investigation. There was no special counsel investigation. It was not as if someone like Ken Starr handed us a package and said: Here is the evidence. Now you can take up an impeachment resolution because we have done the investigative work. No. We had to do that work ourselves.

They would have you believe that any subpoena you issue as a part of your oversight responsibility that, down the road, reveals evidence that leads you to embark on an impeachment inquiry must be disregarded. That cannot and is not the law. It would render the oversight function meaningless.

Court after court has looked at the Congress's power to issue subpoenas, and they have all reached the same conclusions. That is, if you have the power to legislate, you have the power to oversee. Here, we have a violation of the Impoundment Control Act. That is, Congress passes military spending. The President doesn't spend it, and he gives no reason. He keeps it a secret. We are investigating that. That can't be more squarely within the oversight power of Congress—to find out why aid we appropriated was not going out the door.

They would say: You can't look into that unless you are prepared to impeach the President and announce it firsthand. That is the import of that argument. It would cripple your oversight capacity, and without your oversight capacity, your legislative capacity is crippled. That is the real-world import of this legal window dressing. They would strip you of your ability to do meaningful oversight.

Particularly here, where we are talking about the misconduct of an impeachable kind and character, it would mean that a President could obstruct his own investigation.

If you need any evidence of his bad faith, which is abundant—of the shifting and springing rationalizations and explanations—when we had Corey Lewandowski in the Intelligence Committee, they said, under instructions of the White House, he wouldn't answer questions because they might claim executive privilege. Now, this was someone who had never worked for the executive, but they made the claim he might use executive privilege.

The CHIEF JUSTICE. Time is expired.

Mr. Manager SCHIFF. Thank you.

The CHIEF JUSTICE. The Senator from Texas.

Mr. CRUZ. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY and GRAHAM.

The CHIEF JUSTICE. Thank you.

The question from Senator CRUZ, along with Senators HAWLEY and GRAHAM, is for both sides—the counsel for the President and the House managers:

Yesterday, Manager DEMINGS refused to answer whether Joe Biden sought any legal advice concerning his conflict of interest on Burisma, the corrupt Ukrainian company that was paying his son Hunter $1 million per year.

USA Today reported that, when asked about it, Vice President Biden said, ''He hadn't spoken to his son Hunter Biden about his overseas business.''

That account was contradicted by Hunter Biden, who told the New Yorker that he told his father about Burisma, and ''Dad said, 'I hope you know what you're doing,' and I said, 'I do.' ''

Why do Joe and Hunter Bidens' stories conflict? Did the House ask either one that question?

The White House Counsel goes first.

Ms. Counsel BONDI. Chief Justice, Senators, you heard our answer regarding that yesterday, but it is very interesting that he said he never spoke to his son about overseas dealings and that his son said different things.

Joe Biden was the point man for Ukraine. The Ukrainians were investigating at that time a corrupt company, Burisma, and Zlochevsky, its owner—an oligarch—who, by all media accounts, as we have discussed, was extremely corrupt.

Hunter Biden was paid $83,000 a month—a month—to sit on that board with having no experience in energy, no experience in the Ukraine, and didn't speak the language. We clearly know that he had a very fancy job description, and he did none of those things. He attended one or two board meetings—one in Monaco. Then he went on a fishing trip with Joe Biden's family in Norway.

The entire time, Joe Biden knows that this oligarch is corrupt. Everyone knows that. There are news reports everywhere. No one will dispute that. In fact, it raised eyebrows worldwide. Yet the Vice President, by his account, never once asked his son to leave the board. We wouldn't be sitting here if he did. He never asked his son to leave the board. Instead, he started investigating the prosecutor who was going after Burisma and this corrupt oligarch, who they say was corrupt even by oligarch standards, who had fled the country—fled the country—and was living in Monaco.

He does not ask him to leave the board. He does the opposite.

In 2015, what does he do? We know by reports he has close contact with President Poroshenko. He travels to Ukraine twice. He links it to the—he links their aid to the firing.

Same thing in 2016 at a White House meeting—links the aid to the firing of the prosecutor; calls him four times in the 8 days up—leading to the prosecutor—the prosecutor investigating Hunter Biden. Yet he never says that. All cases closed.

Days before Biden leaves office, he jokes to Poroshenko that he may have to call him every couple weeks to check in. Hunter Biden stays on that board for 3 years—3 years.

Then we hear the video of Joe Biden bragging about firing the prosecutor, linking it to aid. Then we have a 6-minute phone call.

Ms. ROSEN. Mr. Chief Justice.

The CHIEF JUSTICE. I am sorry. The House managers have 2½ minutes.

Mrs. Manager DEMINGS. Mr. Chief Justice and to our Senators, Senators, thank you so much for that question. I know you have asked about a conversation between a father and his son, and what I can tell you, probably like just about everybody in this Chamber, there are probably some conversations that I can't repeat to you about my conversations with my son. So I don't know the answer to your question, Senator, what that exact conversation was.

But what I can tell you is this: If we are serious about why we are here—and I have no reason to doubt that we are—we are serious about seeking the truth because the truth matters, not just for those who have paid the price in our history to form a more perfect union and protect our democracy, but it is important for our future. And in this case, if we are serious about that, then I can tell you this: that we are serious, then, about hearing from fact witnesses.

Looking at the Bidens, no matter how many times we call their name, we have no evidence to point to the fact that either Biden has anything at all to tell us about the President shaking down a foreign power to help him cheat in the next election—the President's election trying to steal each individual in this country's vote.

I don't believe either Biden has any information about that, but let me tell you who I think does. Maybe we should call Ambassador Bolton. If we are serious about the truth, maybe we should call him because we have a good idea about what he might say. Or what about Mr. Mulvaney, who had day-to-day contact with the principal in our investigation—the President of the United States.

That is not good enough? Well, what about—the question was asked about when did we know—or when did the President first put the hold on. Well, we do have reports that say on June 19 of 2019, Mr. Blair personally instructed the Director of OMB to hold up security assistance from Ukraine—over a month before the infamous July 25 call.

The CHIEF JUSTICE. Thank you, Mrs. Manager DEMINGS.

Mrs. Manager DEMINGS. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Nevada.

Ms. ROSEN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator ROSEN is addressed to the House managers:

Over the course of your arguments, you have tried to make a case that the President put his personal interests over those of the Nation, risking our national security in the process. What precedent do you believe the President's actions set for future Presidents?

Mr. Manager CROW. Mr. Chief Justice, Senator, thank you for that question. It is one that I have wanted to answer for some time now.

You have heard me speak before about some of my personal experience in service to the country, and one thing that experience has taught me is that we are strong not just because of the service and the sacrifice of our men and women in uniform, which is extreme and pure in all of its sense and something that I think everybody in this Chamber actually appreciates and respects, but we are also strong because we have friends. We are strong because America doesn't go it alone.

You know, when I was in Iraq and Afghanistan, I worked frequently with Afghan Army partners, Iraqi Army partners and others, not because it was important but because it was essential. We couldn't accomplish the mission without it. But if those partners feel like our policies—what we say publicly—don't matter; if they feel like we are not a reliable and predictable partner; if they feel like the American handshake isn't worth anything, then they will not stand by us. They will not stand by us.

For over 70 years, since the end of World War II, the partnerships, the alliances that we have built, that we have strived to create, that have ushered in an unprecedented period of peace and prosperity throughout the world, will start to fray because the American handshake will not matter. Ukraine has started to learn that.

Our 68,000 troops throughout Europe deserve better because every day, they get up and they do their job—the job we have asked them to do—and they rely on our consistency, our predictability. They rely on the interest being in the national interest, not the whims and the personal interest of the President, whether that be President Trump or any other President.

It will continue to call into question our broader alliances, and it will send a message that the American handshake doesn't matter.

We have a slide that shows the evolution of some of the different arguments that we have seen on the other side that I think is important to see.

(Text of Videotape presentation:)

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

Mr. STEPHANOPOULOS. The campaign this time around, if foreigners, if Russia and China, if someone else offers information on an opponent, should they accept it or should they call the FBI?

President TRUMP. I think maybe they do both. I think you might want to listen. There is nothing wrong with listening. If somebody called from a country—Norway: We have information on your opponent—I think I would want to hear it.

Mr. STEPHANOPOULOS. You want that kind of interference in our elections?

President TRUMP. It's not an interference. They have information. I think I would take it.

Unidentified SPEAKER. Let's move to the third excerpt there related to Vice President Biden, and it says, ''The other thing, there's a lot of talk about Biden's son—'' this is President Trump speaking—''that Biden stopped the prosecution and a lot of people want to find out about that so that whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It sounds horrible to me.''

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

President TRUMP. If we feel there is corruption, like I feel there was in the 2016 campaign, there was tremendous corruption against me—if we feel there's corruption, we have a right to go to a foreign country.

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

Mr. Manager CROW. The American people deserve to know what happened.

The American people deserve to know when they go to bed tonight that there is a President that has their interests in mind, that will put the national security of the country above his own political self-interest. The American people deserve answers. And, yes, it is still a good time to call Ambassador Bolton to testify.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Ohio.

Mr. PORTMAN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators TOOMEY, CORNYN, CRAPO, ERNST, and MORAN.

The CHIEF JUSTICE. Thank you.

The question from Senator PORTMAN and the other Senators is for the counsel for the President:

I have been surprised to hear the House managers repeatedly invoke constitutional law Professor Jonathan Turley to support their position, including playing a part of a video of him. Isn't it true that Professor Turley opposed this impeachment in the House and has also said that abuse of power is exceedingly difficult to prove alone without an accompanying criminal allegation, abuse of power has never been the sole basis for a presidential impeachment and was not proven in this case?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

And that is exactly correct. Professor Turley was very critical of the entire process in the House and of the charges that the House—House Democrats were considering here, both the abuse of power charge and the obstruction charge. He explained that this was a rushed process; they did not adequately pursue an investigation; that, as the Senators point out in the question, abuse of power is an exceedingly difficult theory to use to impeach a President, and it has never been used without alleging violations of the law. I think that in the discussions we have had over the past week and a half, we have pointed that out multiple times.

Every Presidential impeachment in our history, including even the Nixon impeachment proceedings, which didn't actually lead to impeachment, have used charges that include specific violations of the law and the criminal law.

Andrew Johnson was charged mostly in counts that involved violation of the Tenure of Office Act, which Congress had specifically made punishable by fine and imprisonment and even wrote into the statute that violation would constitute either a high crime or a high misdemeanor—one of those terms—to make it clear that it was going to be used to trigger an impeachment.

In the proceedings in the Nixon impeachment inquiry, each of the Articles of Impeachment there—except for the obstruction of Congress charge is sort of treated separately on the obstruction theory—included specific violations of law. There were specific violations alleged in the second Article of Impeachment, which is often sort of referred to loosely as the abuse of power article. It wasn't actually entitled ''abuse of power.'' It didn't charge abuse of power. The specifications there were violations of the law—violating the constitutional rights of the citizens, violating the laws governing executive branch agencies, unlawful electronic surveillance, using the CIA and others. Specific violations of law.

Clearly, in the Clinton impeachment, President Clinton was impeached for perjury and obstruction of justice. Those are crimes.

While Professor Turley does not take the view that a crime is necessarily required, he pointed out here that there was not nearly a sufficient basis and not nearly a sufficient record compiled in the House of Representatives to justify an abuse of power charge.

He also was very critical of the obstruction of Congress theory, and he pointed out that it would be an abuse of power by Congress under these circumstances where Congress has simply demanded information, gotten a refusal from the executive branch based on constitutionally based prerogatives of the executive or refusal to provide that information, then to simply go straight to impeachment without going through the accommodations process, without considering contempt, without going to the courts. That is Professor Turley's view on how incrementally the House of Representatives would have to proceed if they were going to try to reach ultimately some theory of obstruction of Congress.

So to cite Professor Turley, it is true, in his academic writing and in his testimony, he did not adopt the view that you must have a crime and only a crime as the charge for an Article of Impeachment. He still thought that neither of the Articles of Impeachment here could be justified or sufficient or could be used to impeach the President—both the abuse of power article and the obstruction article. So taking snippets out of what he said really does an injustice to the totality of his testimony, because the totality of his testimony was entirely against what the House ended up doing.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Ohio.

Mr. BROWN. Mr. Chief Justice, on behalf of Senator WYDEN and myself, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senators BROWN and WYDEN ask the following question to the House managers:

During yesterday's proceedings, the President's counsel failed to give an adequate response to a question related to whether acceptance of information provided by a foreign country to a political campaign or candidate would constitute a violation of the law and whether offers of such information should be reported to the FBI. FBI Director Christopher Wray, who was appointed by President Trump, has said ''if any public official or member of any campaign is contacted by any nation-state about influencing or interfering with our election, then that [is] something that the FBI would want to know about,'' and ''we'd like to make sure people tell us information promptly so that we can take appropriate steps to protect the American people.'' If President Trump remains in office, what signal does that send to other countries intent on interfering in our elections in the future, and what might we expect from those countries and the President?

Mr. Counsel JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, thank you for that question.

I will take the last part first. It would send a terrible message to autocrats and dictators and enemies of democracy and the free world for the President and his team to essentially put out there for all to consume that it is acceptable in the United States to solicit foreign interference in our free and fair elections or accept political dirt simply to try to cheat in the next election.

I was certainly shocked by the comments from the President's Deputy White House Counsel yesterday, right here on the floor, when he said: ''I think that the idea that any information that happens to come from overseas is necessarily campaign interference is a mistake.''

No. It is wrong. It is wrong in the United States of America.

He also added ''Information that is credible, that potentially shows wrongdoing by someone that happens to be running for office, if it's credible information, is relevant information for the voters to know . . . to be able to decide on who is the best candidate. . . . ''

This is not a banana republic. It is the democratic Republic of the United States of America. It is wrong.

The single most important lesson that we learned from 2016 was that nobody should seek or welcome foreign interference in our elections. But now we have this President and his counsel essentially saying it is OK.

It is not OK. It strikes at the very heart of what the Framers of the Constitution were concerned about—abuse of power, betrayal by the President of his oath of office, corrupting the integrity of our democracy and our free and fair elections by entangling oneself with foreign powers. That is at the heart of what the Framers of the Constitution were concerned about.

Don't just trust me. We have several folks who have made this observation. The FBI Director—the Trump FBI Director—said that the FBI would want to know about any attempt at foreign election interference.

The Chair of the Federal Elections Commission also issued a statement reiterating the view of U.S. law enforcement. She said in part:

Let me make something 100 percent clear to the American public and anyone running for [public] office: It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election.

This is not a novel concept. Election intervention from foreign governments

has been considered unacceptable since the beginning of our Nation. It is wrong, it is corrupt, it is lawless, it is an abuse of power, it is impeachable, and it should lead to the removal of President Donald John Trump.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Missouri.

Mr. HAWLEY. I send a question to the desk on behalf of myself and on behalf of Senator LEE.

The CHIEF JUSTICE. Thank you.

The question from Senators HAWLEY and LEE is for counsel to the President:

The U.S. Federal Courts have held, most prominently in the Blagojevich case, that it is not unlawful for a public official to condition his official acts on official acts performed by another public officer. Is there any application to the allegations against President Trump?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think an important threshold point to make here is that we are not even in the realm of exchanging official acts, because there has been no proof of a quid pro quo here. We are not in the realm of a situation where there is one official act being traded for another.

I think that we have gone through the evidence that makes it quite clear that both, with respect to a meeting with the President—a bilateral meeting—and with respect to the temporary pause of security assistance, the evidence just doesn't stack up to show that President Trump linked either of those. Both took place—the meeting and the release of the aid—without Ukrainians doing anything, announcing or beginning any investigations. There is nothing in the transcript linking them to a quid pro quo. The Ukrainians didn't even know that there had been a temporary pause on the aid, and I could go on with a list of points on that.

I think if there were any application hypothetically, it would come in the realm of the fact that in foreign policy there are situations where there can be situations where one government wants some action from another and wants that action from another in a way that would condition other policies of one country.

You can say: We would like you—and this happens. For example, with the Northern Triangle countries: We want you to do more to stop the flow of illegal immigration. We are going to be conditioning some of our policies toward you, unless and until you do a better job stopping the flow of illegal immigration. It is a real problem on our southern border.

That happens all the time, and when there is something legitimate to look into, there could be a situation where the United States would say: You've got to do better on corruption. You've got to do better on these specific areas of corruption, or we are not going to be able to keep the same relationship with you.

One example like that, I believe it was pointed out that aid was held up to Afghanistan. President Trump held up aid to Afghanistan specifically because of concerns about corruption. In situations like that, there would be nothing wrong whatsoever with conditioning one policy approach on a foreign country modifying their policy to be more in line, to attune more directly to U.S. foreign interests. That is what foreign policy is all about. That could arise in situations of even calling for investigations.

I think it is interesting to point out that in May of 2018, three Democratic Senators sent a letter to the then-prosecutor in Ukraine suggesting that we have heard some things that you might not be cooperating with the Mueller investigation. And there was sort of an implicit indication behind the letter that there is not going to be as much support for Ukraine. This is something that is important. You have got to be helping with that investigation.

There is nothing wrong with encouraging the prosecutor general to assist with something important to the United States. That is part of foreign policy. It happens all the time. So to the extent that the Blagojevich case is relevant, it is in the general concept that were there some linkage between ''we want your country to pursue these policies; it is going to affect our policies towards you,'' that is entirely legitimate. That is not something that is a violation of any law or is improper. Again, coming back to the point here, there is no proof of that linkage. There no proof of what we have come to call ''quid pro quo'' in this case.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Washington.

Ms. CANTWELL. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator CANTWELL's question is for the House managers:

In his opening remarks, Chairman SCHIFF said the Ukraine scheme was expansive and involved many people. Is there any evidence that Acting White House Chief of Staff Mick Mulvaney, Secretary of State Pompeo, Attorney General Barr or anyone on the outside were involved in this scheme to withhold military aid or obstruction of Congress?

Mrs. Manager DEMINGS. Mr. Chief Justice and Senator, thank you so much for that question.

If we remember Ambassador Sondland's testimony, where he said, ''everyone was in the loop,'' we don't just have to take his word for it. During his hearing, Mr. Sondland discussed a July 19 email he sent to the President's top aides, including Secretary Mike Pompeo, Acting Chief of Staff Mick Mulvaney, Mr. Mulvaney's senior adviser, Robert Blair, Secretary Rick Perry, and Brian McCormick, Secretary Perry's Chief of Staff.

We should at least start with, if we are serious about getting to the truth, issuing a subpoena for State Department emails. If you pay attention to the slide, in the email, Sondland stated:

I talked to Zelensky just now.

He is prepared to receive POTUS's call. Will assure him that he intends to run a fully transparent investigation and will ''turn over every stone''. He would greatly appreciate a call prior to Sunday so that he can put out some media about a ''friendly and productive call'' (no details). . . .

Mr. Mulvaney, in the email, acknowledges receipt and responds shortly: I asked the NSC to set up the call for tomorrow—6 days before President Trump's now infamous July 25th call in which he told President Zelensky to conduct investigations into the Bidens and the 2016 election. Mr. Sondland sent an email to the President's top aides updating them on the status of the scheme.

Again, ''everyone was in the loop.'' On August 11, Ambassador Sondland emailed Mr. Brechbuhl to ask him to brief Secretary Pompeo on the statement he was negotiating with President Zelensky with the aim of ''making the boss happy''—the boss being the President—enough to authorize the investigation.

Ambassador Sondland wrote to Mr. Brechbuhl:

Kurt and I negotiated a statement from Z—

Mr. Zelensky.

to be delivered for our review in a day or two. The content will hopefully make the boss happy enough to authorize an invitation.

And he is talking about the invitation for a White House Oval Office meeting, which we know was much more critical and important than a sideline meeting at the U.N.

Yet, further evidence that ''everyone was in the loop,'' Attorney General Barr reportedly responded at some point—there was a New York Times article that was done, and Attorney General Barr responded to that article by stating that he was aware of DOJ investigations into some countries, and that he was concerned President Trump was giving world leaders the impression he had undue influence over what would ordinarily be independent investigations. He cited conversations the President had with leaders of Turkey and China, further demonstrating that there was concern about the President abusing the power of his office for personal, political reasons. Again, it proves that everybody was in the loop, and we should want to subpoena and review those emails involving the State Department and others.

The CHIEF JUSTICE. Thank you, Mrs. Manager.

Mr. THUNE. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from South Dakota.

Mr. THUNE. I send a question to the desk on behalf of myself and Senators MORAN, DAINES, ERNST, SCOTT of Florida, and CRAPO.

The CHIEF JUSTICE. Thank you. Senator THUNE and the other Senators ask the counsel for the President:

On March 6, 2019, Speaker NANCY PELOSI said, ''impeachment is so divisive to the country that unless there's something so compelling and overwhelming and bipartisan, I don't think we should go down that path because it divides the country.'' Alexander Hamilton also warned in Federalist 65 against the ''persecution of an intemperate or designing majority in the House of Representatives'' with respect to impeachment. In evaluating the case against the President, should the Senate take into account the partisan nature of the impeachment proceedings in the House?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice and Members of the Senate.

Absolutely you should take that into account. That is dispositive. That should end it. Based on the statements that we heard the last time from our friends on the Democratic side, that is a reason why you shouldn't have an impeachment. Speaker PELOSI was right when she said that. Unfortunately, she didn't follow her own advice.

We have never been in a situation where we have the impeachment of a President in an election year with the goal of removing the President from the ballot. As I have said before, that is the most massive election interference we have ever witnessed. It is domestic election interference; it is political election interference; and it is wrong.

They don't talk about the horrible consequences to our country of doing that, but they would be terrible. They would tear us apart for generations, and the American people wouldn't accept it.

Let me address, in that context, the importance of the vote for their inquiry, which also had bipartisan opposition. Now they said: Well, we were fine when Speaker PELOSI announced it. We didn't need a vote. The subpoenas were authorized.

Then why did they have a vote? They had a vote because they understood they had a big problem that they needed to fix. But what is more important about the vote than the procedural issue? The important thing about the vote is that if you are going to start an impeachment investigation, particularly in an election year, there needs to be political accountability to the American people. You can't just go have a press conference. If you are going to say that the votes of the American people need to be disallowed and that all of the ballots need to be torn up, then at the very least you need to be accountable to your home district for that decision, and now they are—and now they are.

If the American people decide—if they are allowed to vote—if the American people decide that they don't like what has happened here; that they don't like the constitutional violations that have happened; that they don't like the attack on a successful President for purely partisan political purposes, then they can do something about it, and they can throw them out. That is why a vote is important.

We should never even consider removing the name of a President from a ballot on a purely partisan basis in an election year. Important? I will say it is important. For that reason alone and for the interest of uniting our country, it must be rejected.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mr. REED. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Rhode Island.

Mr. REED. Mr. Chief Justice, I send a question to the desk on behalf of Senators DUCKWORTH and HARRIS and myself for the House managers and for the President's counsel.

The CHIEF JUSTICE. Thank you. The question from Senator REED and the other Senators is for both parties, beginning with the House managers:

It has been reported that President Trump has not paid Rudy Giuliani, his personal attorney, for his services. Can you explain who has paid for Rudy Giuliani's legal fees, international travel, and other expenses in his capacity as President Trump's attorney and representative?

Mr. Manager SCHIFF. A short answer to the question is, I don't know who is paying Rudy Giuliani's fees, and if he is not being paid by the President to conduct this domestic political errand for which he has devoted so much time, if other clients are paying and subsidizing his work in that respect, it raises profound questions—questions that we can't answer at this point.

There are some answers that we do know. As he has acknowledged, he is not there to inform policy. So when counsel for the President says this is a policy dispute and you can't impeach a President over policy, what Rudy Giuliani was engaged in, by his own admission, has nothing to do with policy—has nothing to do with policy.

And let me mention one other thing about this scheme that Giuliani was orchestrating and the consequence of the argument that they would make that quid pro quos are just fine. Let's say Rudy Giuliani does another errand for the President—this time an errand in China—and he says to the Chinese: We will give you a favorable deal with respect to Chinese farmers as opposed to American farmers. We will betray the American farmer in the trade deal, but here is what we want. The quid pro quo is we want you to do an investigation of the Bidens. You know the one, the one the President has been calling for. They would say that is OK. They would say that is a quid pro quo to help his reelection. He can betray the American farmer; that is OK. That is their argument. Where does that argument lead us? That is exactly the kind of domestic, corrupt, political errand that Rudy Giuliani was doing gratis, without payment—at least not payment, apparently, from the President.

So who is paying the freight for it? I don't know who is directly paying the freight for it, but I can tell you the whole country is paying the freight for it because there are leaders around the world who are watching this, and they are saying the American Presidency is open for business. This President wants our help, and if we help him, he will be grateful.

He will be grateful. Is that the kind of message we want to send to the rest of the world? That is the result of normalizing lawlessness of the kind that Rudy Giuliani was engaged in.

One other thing, if I have—my time is not expired.

The CHIEF JUSTICE. I am sorry; your time is expired. Counsel.

Mr. Counsel SEKULOW. Mr. Chief Justice and Members of the Senate, it is hard for me to believe the words that just came out of the manager's mouth: ''open for business.'' I will tell you who was open for business. You know who was open for business? The Vice President of the United States was charged by the then-President of the United States with developing policies to avoid and assist in removing corruption from Ukraine, and his son was on the board of a company that was under investigation for Ukraine, and you are concerned about what Rudy Giuliani, the President's lawyer, was doing when he was over trying to determine what was going on in Ukraine?

And by the way, it is a little bit interesting to me—and my colleague, the Deputy White House Counsel referred to this. It is a little bit ironic to me that you are going to be questioning conversations with foreign governments about investigations when three of you—three Members of the Senate—Senator MENENDEZ, Senator LEAHY, and Senator DURBIN sent a letter that read something—quickly—like this. They wrote the letter to the prosecutor general of Ukraine. They said they are advocates—talking about the Congressmen—they are ''strong advocates for a robust and close relationship with Ukraine [and] we believe that our cooperation . . . extend to such legal matters, regardless of politics.'' And their concern was ongoing investigations and whether the Mueller team was getting appropriate—appropriate—responses from Ukraine regarding investigations of what? The President of the United States. And you are asking about whether foreign investigations are appropriate? I think it answers itself.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mr. LANKFORD. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Oklahoma.

Mr. LANKFORD. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator ERNST, and Senator CRAPO.

The CHIEF JUSTICE. Thank you. The question from Senator LANKFORD and the other Senators is for the counsel for the President:

House managers have described any delay in military aid and State Department funds to Ukraine in 2019 as a cause to believe there was a secret scheme or quid pro quo by the President. In 2019, 86% of the DOD funds were

obligated to Ukraine in September, but in 2018, 67% of the funds were obligated in September and in 2017, 73% of the funds were obligated in September. In the State Department, the funds were obligated September 30 in 2019, but they were obligated September 28 in 2018. Each year, the vast majority of the funds were obligated in the final month or days of the fiscal year. Was there a national security risk to Ukraine or the United States from the funds going out at the end of September in the 2 previous years? Did it weaken our relationship with Ukraine because the vast majority of our aid was released in September each of the last 3 years?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for that question. And the short, straightforward answer is there was no jeopardy to the national security interest of the United States from the timing of the release of this money. As the question indicated, the vast bulk of the funds in each of the prior 2 fiscal years were also obligated in September. So the fact that the funds were released here on September 11 and obligated by the end of the fiscal year was consistent with the timing in past years.

There was—and it is also the case that at the end of every fiscal year, there is some funding in this Ukrainian military assistance that doesn't actually make it out the door. It isn't obligated by the end of the fiscal year. We heard the House managers point to the fact that Congress had to put something in the continuing resolution, a special provision, to get $35 million of the aid extended so it can be used in the next fiscal year. My understanding is that every fiscal year there is some amount of money. It is not always that same amount, but there is some amount of money that that has to be done for every year because it doesn't get out the door by the end of the year.

Now, it is not just from the raw data that we can see that the funds went out roughly the same timing toward the end of the year that, therefore, it doesn't suggest any great risk to Ukraine or risk to the national security of the United States. We know that from testimony as well.

Ambassador Volker testified that the brief pause on the aid was not significant, and the Under Secretary of State for Political Affairs, David Hale, explained that this is future assistance, and I mentioned this the other day. It is not like this money is being spent month by month to supply current needs in Ukraine. It is 5-year money. Once it is obligated, it can go to U.S. firms for providing materiel to the Ukrainians, and it doesn't get spent down finally and materiel shipped to Ukraine for a long time. So a delay of 48 or 55 days—depending on how you count it—and the money being released before the end of the fiscal year ends up having no real effect. It is not current money. It is supplying immediate needs.

Despite what we have heard about the idea that on the frontlines in the Donbas, Ukrainian soldiers are being put at risk, that is just not accurate.

And we know that also from Oleg Shevchuk, the Ukrainian Deputy Minister of Defense, who gave an interview to the New York Times and explained that the hold came and went so quickly that he didn't even notice any change.

And, remember, the Ukrainians didn't even know. President Zelensky and his advisers—Yermak and others—have made it abundantly clear. There was another interview just the other day with Danylyuk, who—I might get his title wrong. I think he was the Foreign Minister at the time. But there was an interview just the other day that was published. And he explained, again, that they didn't know the aid had been held up until the POLITICO article on August 28. And then he said there was a panic in Kyiv because they were just trying to figure out what to do. Well, within 2 weeks, it had been released.

And so we have also heard the idea that, well, it was just the fact of the delay that gave the Russians a signal, and it gave the Ukrainians a signal, and that was what the damage to the national security was. But the whole point is, leaders of the Government in Ukraine didn't know. It wasn't made public. So they weren't being given a signal by that, and the Russians weren't being given a signal by that. So that theory for damage to the national security also doesn't work.

There was a pause temporarily so that there could be some assessment to address concerns the President had raised. The money was released by the end of the fiscal year. There was no damage to the national security either in terms of materiel not being available to the Ukrainians or in terms of any signal sent to any foreign power. The money got out the door roughly the same time as in prior years. A little bit more left over at the end that had to be fixed, but there is some left over at the end every year that has to be fixed with a rider on the next appropriations bill or continuing resolution. So no damage whatsoever to the national security of the United States.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Hawaii.

Ms. HIRONO. ''Aloha.'' I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator HIRONO for the House managers reads as follows:

In contrast to arguments by the President's counsel, acting White House Chief of Staff Mick Mulvaney stated that President Trump held up aid to Ukraine to get his politically-motivated investigations. He claimed: ''We do that all the time with foreign policy'' and ''Get over it.'' What was different about President Trump's withholding of aid to Ukraine from prior aid freezes? Are you aware of any other Presidents who have withheld foreign aid as a bribe to extract personal benefits?

Mr. Manager SCHIFF. Thank you, Senator.

I will respond to the question, but let me begin with something in the category of: You can't make this stuff up.

Today, while we have been debating whether a President can be impeached for essentially bogus claims of privilege for attempting to use the courts to cover up misconduct, the Justice Department, in resisting House subpoenas, is in court today and was asked: Well, if the Congress can't come to the court to enforce subpoenas because, as we know, they are in here arguing, Congress must go to court to enforce its subpoenas, but they are in the court saying: Congress, thou shall not do that, so the judge says: If the Congress can't enforce its subpoenas in court, then what remedy is there? And the Justice Department lawyers' response is impeachment—impeachment. You can't make this up. I mean, what more evidence do we need of the bad faith of this effort to cover up?

I said the other day they are in this court making this argument; they are down the street making the other argument. I didn't think they would make it on the same day, but that is exactly what is going on.

Now, in response to the question about how is this aid different, this hold different from other holds, it is certainly appropriate to ask that question.

The laws Congress passed authorizing this appropriation did not allow for the hold by this President. And as the GAO—the Government Accountability Office—found, it violated the law to hold the aid the way it did.

Once the Department of Defense, in consultation with the Department of State, certified that Ukraine had met the anti-corruption benchmarks required under the law, there was nothing that would allow for a hold. The money had to flow.

And that was intentional. Military assistance to Ukraine is critical to our national security. It has overwhelming bipartisan support.

And recall that in the spring of 2019, the Defense Department certified Ukraine had met all of the anti-corruption benchmarks. The Department of State sent the Senate a letter saying that the benchmarks had been met. It issued a press release saying that the aid was moving forward. It began to spend the funds to help Ukraine, but then the President stepped in. Without legal authority, he secretly had placed a hold on the aid.

Now, the President's counsel, in their presentation, gives specific examples of past holds, as if we cannot distinguish one for a corrupt reason and one that is for a policy reason.

In many of their examples, the law explicitly provided the executive branch the authority to pause, reevaluate, or cancel foreign aid programs as the situation in a recipient country evolved.

For example, with regard to foreign assistance to El Salvador, Honduras, or Guatemala, the law explicitly allows

the Secretary of State to ''suspend, in whole or in part'' that ''assistance'' if at any time the Secretary deems ''that sufficient progress has not been made by a central government.''

On a host of priorities, from respecting human rights to upholding the law, those are the priorities that you, the Senate, agreed to, and the President was required to implement them; similarly, aid to Afghanistan, the subject of periodic reevaluations by law. And the law explicitly directs the Secretary of State should ''suspend assistance for the Government of Afghanistan'' should be it assessed that the Afghan Government is ''failing to make measurable progress'' in meeting certain anti-corruption, human rights, and counterterrorism benchmarks.

The overthrow of the democratically elected Government in Egypt, we have had that brought up as another example. Members of this body, including Senators McCain, LEAHY, and GRAHAM, pressed the Obama administration to suspend military aid. It wasn't hidden from the Senate. It was urged on the administration by the Senate. Senators pressed for that aid to be withheld because the law was clear, in instances of a military coup, aid must be suspended. Senators McCain and GRAHAM wrote an op-ed in the Washington Post:

Not all coups are created equal, but a coup is still a coup. Morsi—

That is the deposed leader of Egypt.

was elected by a majority of voters, and U.S. law requires the suspension of foreign assistance.

I could go on and on with examples. No one has suggested you can't condition aid, but I would hope that we would all agree that you can't condition aid for a corrupt purpose, to try to get a foreign power to cheat in your election.

Now, counsel says that if you decide the prosecution has proved that he engaged in this corrupt scheme, if you decide, as impartial jurors, that the Constitution requires his removal from office, that the public will not accept your judgment. I have more confidence in the American people.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BOOZMAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Arkansas.

Mr. BOOZMAN. I send a question to the desk on behalf of myself, Senators COTTON, ERNST, YOUNG, HAWLEY, RISCH, FISCHER, and HOEVEN.

The CHIEF JUSTICE. Thank you.

Senator BOOZMAN and the other Senators pose a question to both sides:

In the House Managers' opening statement, they argue that it is necessary to pursue impeachment because ''The President's misconduct cannot be decided at the ballot box. For we cannot be assured that the vote would be fairly won.'' How would acquitting the President prevent voters from making an informed decision in the 2020 presidential election?

The President's counsel goes first.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

That is exactly who should decide who should be President, the voters. All power comes from the people in this country. That is why you are here; that is why people are elected in the House; and that is why the President is elected. It is exactly who should decide the question, particularly in a case like this, where it is purely partisan.

Here is the other thing, when we are talking about impeachment as a political weapon, they didn't tell you what they told the court over the holidays when they were waiting to deliver the Impeachment Articles. They went and told the court: They are actually still impeaching over there in the House; did you know that? They are actually still impeaching.

They are coming here, and they are telling you: Please do the work that we didn't do, where we had 2 days in the House Judiciary Committee; we had to rush delivery for Christmas; and then we waited and waited and waited. But now we want you to call witnesses that we never called; that we didn't subpoena. They want to turn you into an investigative body. In the meantime, they are saying: By the way, we are still doing it over there. We are still impeaching. And they want to slow down now. They don't want to speed up. They want to slow it down and take up the election year and continue this political charade. It is all so wrong. It is all so wrong.

Let's leave it to the people of the United States. Let's trust them. They are asking you not to trust them. Maybe they don't trust them. Maybe they won't like the result. We should trust them. That is who should decide who the President of this country should be. It will be a few months from now, and they should decide.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, I appreciate the question.

President Trump must be removed from office because of his ongoing abuse of power. It threatens the integrity of the next election.

As we saw from the video montage, the President has made no bones about the fact that he is willing to seek foreign intervention to help him cheat in the next election.

Now, counsel for the President says the next election is the remedy. It is not the remedy when the President is trying to seek to cheat in that very election. This is why the Founders did not put a requirement that a President can only be impeached in their first term. Indeed, at that time, of course, there weren't term limits on the Presidency.

If it were the intent of the Framers to say that a President can't be impeached in an election year, they would have said so. Now, they didn't for a reason, because they were concerned about a President who might try to cheat in that very election.

Now, counsel—as I was getting to a moment ago—made the argument: If you make the decision as impartial jurors that the President has violated the Constitution, he has abused his power, he should be convicted and removed from office, that the country will not accept it. I have more confidence in the American people than that. But I will assure you of this: If you make the decision that a fair trial can be conducted without hearing from witnesses, the American people will not accept that judgment because the American people understand what goes into a fair trial, and they understand that a fair trial requires both sides to have the opportunity to present their case.

We would like to present our case. We would like to call our witnesses. We would like to rely on more than our argumentation.

There are few things about this trial that Americans agree on, but one thing they are squarely in agreement on—well, two. They believe a trial should have witness testimony, and they want to hear from John Bolton. That is the overwhelming consensus of the American people, and it is consistent with common sense.

Let's give the country a trial they can be proud of. Let's show that at least the process worked and that we followed the Founders' intent that a trial have witnesses. I don't think anyone can quarrel with the fact, when you look at the history of this body and evidence of impeachment—

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Virginia.

Mr. KAINE. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. The question from Senator KAINE to the House managers:

If the Senate acquits the President on article II, after he violated both the Impoundment Control Act and the Whistleblower Act to hide the Ukraine scheme from Congress, what is to stop President Trump from complete refusal to cooperate with Congress on any matter?

Mr. Manager SCHIFF. Mr. Chief Justice, in short, the consequence is there is no constraint on this President or any other. This gets to a point—you have heard counsel for the President repeat over and over: Can you be impeached for asserting privileges—and, I would add, no matter how bogus or in bad faith those assertions may be, no matter whether they are in court today arguing the opposite of what they are arguing before you today?

And the answer is, yes, the President can be impeached for using the assertion of baseless claims to cover up his misconduct.

The House did not impeach the President over a single assertion of privilege. We impeached him for a far more fundamental reason: because he issued an order categorically directing the executive branch to defy every single

part of every single subpoena served by the House.

A President who issues orders like this is a President who can place himself above the law and a system of checks and balances. He can do whatever he wants and get away with it by using his powers to orchestrate a massive coverup. The President's lawyers haven't disputed that point. They can't. It is obvious that a President who ignores and can ignore all oversight is a threat to the American people.

Instead, they have argued assertion of a grab bag of legal privileges warranting this categorical defiance. These arguments are unprecedented and wrong.

The first thing to note is the President's arguments conveniently ignore the October 8 letter sent at the President's behest declaring that the President will not ''participate'' in the impeachment investigation.

I will not participate. This blanket defiance preceded all of the other letters and creative OLC opinions the President relied upon. It made clear that the rationale for blanket defiance was the President's belief that he can declare his own innocence and make it illegitimate to investigate him. This was not about privileges or legal arguments. Those came later, as his lawyers rushed to justify that Congress has no power whatsoever to enforce subpoenas against anyone.

Let's be clear. They may claim that their October 8 letter where they said they will not participate was somehow an offer to accommodate, but what the real condition was, was that the House simply drop the impeachment investigation or place the President in charge of its direction. That wasn't a real offer. That was a poison pill.

Now, what about the remaining arguments? The first point is that none of them justify his order to defy all the subpoenas. He never asserted executive privilege over any documents, and his remaining arguments that absolute immunity or agency counsel not being allowed to attend depositions have nothing to do with documents—nothing. So none of his legal arguments even applies to his direction that every single office and agency defy every single subpoena for documents.

And what about the total obstruction of the witnesses? Here, too, he never invoked executive privilege. Absolute immunity obviously couldn't apply to many of the lower level officials we subpoenaed.

The only remaining legal ground for defiance was the argument it is unconstitutional for Congress to prevent agency counsel from going to depositions—the fallback of fallback of fallbacks—except this rule was originally passed by a Republican Congress and has been used repeatedly by both Republican- and Democratic-led majorities and committees. It can't possibly justify obstruction of witness subpoenas. It is nothing more than a phony cover for an obstruction that President Trump decided upon at the outset.

These arguments are, thus, incorrect on their own terms and fail to explain this categorical order.

One final irony, even before the argument in court today: At a recent oral argument in the DC Circuit, they made the same claim they made today. Let's pull up slide 56. In litigation, again, to enforce subpoenas, the judge said they can make it grounds for impeachment for obstruction of Congress. And the President's own lawyers said impeachment is certainly one of the tools that Congress has. We agree; it is one of the tools that you have for when a President would use a categorical obstruction of investigation into his own wrongdoing.

It is a tool that should be applied here. There cannot be a better case for impeachment on obstructing a coequal branch of Congress than the one before you where the obstruction is so complete and so categorical.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Florida.

Mr. SCOTT of Florida. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator BRAUN, and it is to the President's counsel.

The CHIEF JUSTICE. Thank you. The question from Senators SCOTT of Florida and BRAUN for counsel for the President:

If Speaker PELOSI, Chairman SCHIFF, Chairman NADLER, and House Democrats were so confident in the gravity of the President's conduct and the ''overwhelming evidence'' of an impeachable offense that prompted the inquiry, why were the House Republicans denied the procedural accommodations and substantive rights afforded to the minority party in the Clinton impeachment? Additionally, why were the President's counsel and agency attorneys denied access to cross-examine witnesses during committee testimony and present the testimony of witnesses in defense of the issues under review?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate. I don't know why they would do that. I don't know. They violated every past precedent. They violated all forms of due process.

Now, they say that is a process argument, and it is, but it is more than that. It is more than that. If you feel confident in your facts, then why do you design a process that completely shuts out the President? Why do you cook up the facts in a basement SCIF instead of in the light of day? Why do you do that?

Why don't you allow the minority to call witnesses, as they have had the right to do in all past impeachments? And then they come here and say: By the way, we were fully in charge, so completely in charge that we locked out the President's counsel, denied all rights, denied the minority any witnesses at all. But when we come here, they don't—they still don't get witnesses. They want you not only to do their job but to make the same mistake, the same violation of due process, that they did. They said: Well, let's just pick the witnesses that we want. The other ones are irrelevant—not relevant.

In listening to Mr. SCHIFF over these months, I have come to a determination about what he means by ''irrelevant.'' He means bad for them, OK. He means witnesses that the President wants to call. So I don't know why they did that.

I will say something else. I will say something else. I have respect for you, and I have respect for the House. And when I first got this job, I went—one of the first things I did is I went to visit Mr. SCHIFF, Chairman SCHIFF. I went to visit Chairman NADLER. I went to visit Chairman Cummings at that time. And I said: We are here to work with you, to cooperate where we can, but in the institutional interest, obviously. We will participate in oversight, but if we have constitutional points to make, we will make them and we will make them directly.

And the administration has participated in oversight. Many, many witnesses have testified in oversight hearings. A large number of documents have been produced in oversight hearings.

And in fact, in the letter that I sent on October 8, I made the same offer. I said: Look, this is not really a valid impeachment proceeding, for all of the reasons that we have stated, but if the committees wish to return to the regular order of oversight requests, we stand ready to engage in that process. But that never happened.

So I respect Congress. The administration respects Congress, but we respect the Constitution. We respect the Constitution, too, and we have an obligation to the executive branch and to the future Presidency—future Presidents—to vindicate the Constitution and vindicate those rights.

Thank you.

The CHIEF JUSTICE. The Senator from Oregon.

Mr. WYDEN. Mr. Chief Justice, I send a question to the desk for the House floor managers.

The CHIEF JUSTICE. Thank you. The question from Senator WYDEN for the House managers:

The Intelligence Community is prohibited from requesting that a foreign entity target an American citizen when the Intelligence Community is itself prohibited from doing so. In 2017, during [Director] Mike Pompeo's confirmation hearing to be the Director of the Central Intelligence Agency, he testified that ''it is not lawful to outsource that which we cannot do.'' So when President Trump asked a foreign country to investigate an American when the U.S. government had not established a legal predicate to do so, how is that not an abuse of power?

Mr. Manager SCHIFF. It is absolutely an abuse of power. And what is more, if you believe that a President can essentially engage in any corrupt activity as long as he believes that it will assist his reelection campaign and

that campaign is in the public interest, then what is to stop a President from tasking his intelligence agencies to do political investigations? What is to stop him from tasking the Justice Department? If it can come up with some credible or incredible claim that his opponent deserves to be investigated, their argument would lead you to the conclusion that he has every right to do that, to use the intelligence agencies or the Justice Department to investigate a rival. And when they become a rival, it is even more justified.

But you are absolutely right. If Secretary Pompeo was correct and you can't use your own intelligence agencies, you sure shouldn't be able to use the Russian ones or the Ukrainian ones.

And here we have the President on that phone call pushing out this Russian propaganda, this Russian intelligence service propaganda—CrowdStrike, the server, as if there was just one server and it was whisked away to Ukraine; the Ukrainians hacked the server and not the Russians. A made-for-you-in-the-Kremlin conspiracy theory that undermines our own intelligence agencies but suits the political interests of the President.

And his legal agent, Rudy Giuliani, is out there peddling this fiction. The President himself is out there promoting this fiction, standing side by side with Vladimir Putin.

But you are absolutely right. It would be a monumental abuse of power, and it is a monumental abuse of power. And if you don't think abuse of power is impeachable, well, don't take my word for it. Don't take, earlier, Professor Dershowitz' word for it or Jonathan Turley's word for it. Let's look to our Attorney General. This is what he said: ''Under the Framers' plan, the determination whether the President is making decisions based on improper motives''—something that Professor Dershowitz says we are not allowed to consider—''based on 'improper' motives or whether he is 'faithfully' discharging his responsibilities is left to the People, through the election process, and the Congress, through the Impeachment process. . . . The fact that [the] President is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process means that the President is not the judge in his own cause.''

Their own Attorney General doesn't agree with their theory of the case. But again, we don't have to rely on Bill Barr's opinion or Alan Dershowitz' opinion or my opinion or the consensus of constitutional scholars everywhere; we can rely on our common sense. The conclusion that a President can abuse his power by corruptly entering into a quid pro quo to get a foreign intelligence service or a foreign government or foreign leader to do their political dirty work and help them cheat in the election—our common sense tells us that cannot be compatible with the Office of the Presidency.

If we say it is, if we say it is beyond the reach of the impeachment power, or we engage in this sophistry and we say: Because you put it under the rubric of abuse of power—even though that was the Framers' core offense—and you didn't put it under some other rubric, well, we won't even consider it—if we are going to engage in that kind of legal sophistry, it leaves the country completely unprotected from a President who would abuse his power in this way. That cannot be what the Framers had in mind.

The Constitution is not a suicide pact. It does not require us to surrender our common sense. Our common sense, as well as our morality, tells us what the President did was wrong. When a President sacrifices the national security interests of the country, it is not only wrong, but it is dangerous. When a President says, as we saw just a moment ago, over and over again, he will continue to do it if left in office, it is dangerous. The Framers provided a remedy, and we urge you to use it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BRAUN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Indiana.

Mr. BRAUN. I ask to send a question to the desk on my behalf and Senator BARRASSO's for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators BRAUN and BARRASSO for counsel for the President:

The House Managers have said the country must be saved from this President, and he does not have the best interests of the American people and their families in mind. Do you wish to respond to that claim?

Mr. Counsel HERSCHMANN. Mr. Chief Justice, Members of the Senate, while the House managers are coming before you and accusing the President of doing things, in their words, solely for personal and political gain and claiming that he is not doing things in the best interests of the American people, the American people are telling you just the opposite.

The President's approval ratings, while we are sitting here in the middle of these impeachment proceedings, have hit an alltime high. A recent poll shows that the American people are the happiest they have been with the direction of the country in 15 years. Whether it is the economy, security, military preparedness, safer streets, or safer neighborhoods, they are all way up. We, the American people, are happier. Yet the House managers tell you that the President needs to be removed because he is an immediate threat to our country.

Listen to the words that they just said: We—we, the American people—cannot decide who should be our President because, as they tell us—and these are their words—''we cannot be assured that the vote will be fairly won.'' Do you really, really believe that? Do you really think so little of the American people? We don't. We trust the American people to decide who should be our President. Candidly, it is crazy to think otherwise.

What is really going on? What is really going on is that he is a threat to them, and he is an immediate, legitimate threat to them, and he is an immediate, legitimate threat to their candidates because the election is only 8 months away.

Let's talk about some of the things the President has done. We have replaced NAFTA with the historic MCA. We have killed a terrorist—al-Baghdadi and Soleimani. We secured $738 billion to rebuild the military. There have been more than 7 million jobs created since the election. Illegal border crossings are down 78 percent since May, and 100 miles of the wall have been built. The unemployment rate is the lowest in 50 years. More Americans—nearly 160 million—are employed than ever before. The African-American unemployment, the Hispanic-American unemployment, the Asian-American unemployment has the lowest rate ever recorded. Women's unemployment recently hit the lowest rate in more than 65 years. Every U.S. metropolitan area saw per capita growth in 2018. Real wages have gone up by 8 percent for the low-income workers. Real median household income is now the highest level ever recorded. Forty million fewer people live in households receiving government assistance. We signed the biggest package of tax cuts and reforms in history. Since then, over $1 trillion has poured back into the United States. Six hundred and fifty thousand single mothers have been lifted out of poverty. We secured the largest ever increase for childcare funding, helping more than 800,000 low-income families access high-quality, affordable care. We passed, as Manager JEFFRIES will recall, bipartisan criminal justice reform. Prescription drugs have received the largest price decrease in over half a century. Drug overdose deaths fell nationwide in 2018 for the first time in nearly 30 years.

The Gallup poll from just 3 days ago says that President Trump's upbeat view of the Nation's economy, military strength, economic opportunity, and overall quality of life will likely resonate with Americans when he delivers the State of the Union Address to Congress next week.

If all that is solely—solely, in their words—for his personal and political gain and not in the best interests of the American people, then I say: God bless him. Keep doing it. Keep doing it. Keep doing it.

Maybe if the House managers stop opposing him and harassing him and harassing everyone associated with him, with the constant letters and the constant investigations, maybe we can even get more done.

Let's try something different now. Join us. Join us. One Nation. One Nation. One people. Enough is enough. Stop all of this.

Thank you.

Mr. BENNET. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Colorado.

Mr. BENNET. Thank you. I send a question to the desk from myself and Senator SCHATZ and Senator MENENDEZ.

The CHIEF JUSTICE. Thank you.

The question from Senators BENNET, MENENDEZ, and SCHATZ is to the House managers:

If the Senate accepts the President's blanket assertion of privilege in the House impeachment inquiry, what are the consequences to the American people? How will the Senate ensure that the current president or a future president will remain transparent and accountable? How will this affect the separation of powers? And, in this context, could you address the President's counsel's claim that the President's advisers are entitled to the same protections as a whistleblower?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, privileges are limited. We have voted to impeach the President for, among other things—article II of the impeachment is total defiance of House subpoenas.

And the President announced it in advance: I will defy all the subpoenas. What does this mean? It means that there is no information to Congress. It means the claim of monarchical, dictatorial power. If Congress has no information, it cannot act. If the President can define—now, he can dispute certain specific claims. You can claim privilege, et cetera. But to defy categorically all subpoenas, to announce in advance you are going to do that and to do it, is to say that Congress has no power at all, that only the executive has power.

That is why article II is impeaching him for abuse of Congress. That is why, for a much lesser degree of offense, Richard Nixon was impeached for abuse of Congress—for the same defiance of any attempt by the Congress to investigate.

What are the consequences? The consequences, if this is to be—if he is to get away with it, is that any subpoena you vote in the future, any information you want in the future from any future President may be denied you, with no excuses, announced in advance—I will defy all the subpoenas. It eviscerates Congress and establishes the executive department as a total dictatorship. That is the consequence.

I want to also talk about—and the motives are clearly dictatorial.

I want to also take a point, since I have the floor, to answer a question—to comment on a question that Senator COLLINS and Senator MURKOWSKI asked yesterday. They asked about the question of mixed motives. How do you define—how do you deal with a deed—with a President who may have a corrupt motive and a fine motive? How do you deal with it?

Professor Dershowitz said: Well, you have to look at the—you have to mix. You have to weigh the balances.

Nonsense. Nonsense. We never, in American law, look at decent motives if you can prove a corrupt motive. If I am offered a bribe and I accept the bribe for corrupt motive, I will not be heard in defense to say: Oh, I would have voted for the bill anyway; it was a good bill. You don't inquire into other motives. Maybe you had good motives, but once the corrupt motive and the corrupt act was established, there is no comparison.

All of this is just nonsense to point away from the fact that the President has been proven beyond a shadow of a doubt—and the defenders don't even bother, really, to defend; they just come out with distractions—has been proven beyond a reasonable doubt to have abused his power by violating the law to withhold military aid from a foreign country to extort that country into helping his reelection campaign by slandering his opponent. Corrupt—no question. Violation of the law—no question. Factually—no question. They don't even make a real attempt to deny it. Everything is a distraction.

And the one chief distraction is, once you prove a corrupt act, that is it. You never measure the degree of, maybe he had decent motives too. Professor Dershowitz, in talking about that and in talking about the absolute power of the Presidency, was just absent from American law or any kind of Western law.

I yield back.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. PERDUE. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Georgia.

Mr. PERDUE. I send a question to the desk for the President's counsel on behalf of myself, Senator ERNST, and Senator BARRASSO.

The CHIEF JUSTICE. Thank you.

The question from Senators PERDUE, ERNST, and BARRASSO for counsel for the President is as follows:

Please summarize the House of Representatives' three-stage investigation and how the President was denied due process in each stage. Combined with Manager SCHIFF's repeated leaks during the House's investigation, do these due-process violations make this impeachment the fruit of the poisonous tree?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question. The short answer, as I think I have indicated a couple of the times I have been up here, is, yes, this entire proceeding here is now the fruit of the poisonous tree. It is the fruit of a proceeding that was fatally deficient in due process from the start to the beginning. As a result of that, it produced a record that is totally unreliable, can't be relied on here for any conclusion other than acquitting the President.

Let me detail the three phases.

The first error was the House began the proceeding in a totally unconstitutional, unlawful, and illegitimate manner that started with an impeachment inquiry without any vote of the House to authorize that inquiry. I want to spend a second on this because the House managers have spent a lot of time today trying to go back and argue about why their proceeding was all right, but they are not actually engaging the real issues.

In order for the House to exercise the power of impeachment, there has to be a delegation of that authority to a committee. That is just a fundamental principle that the Constitution gives power to the House itself, not to individual Members of the House, not to the Speaker. Just as here in the Senate you wouldn't think that the majority leader could say—if an impeachment arrived, the majority leader could say: Guess what. We are not going to do a trial with the whole Senate. I, the majority leader, will decide I will have one committee hear the evidence, provide a summary, and then you all can vote.

The majority leader doesn't have the authority on his own to do that. The Speaker doesn't have the authority in the House to give the power of impeachment to any committee to start pursuing an inquiry, and this is the key. There is no rule giving any committee in the House the authority to use the power of impeachment. Rule X speaks of legislative authority, not power of impeachment, and all the subpoenas that were issued came with letters saying on them: Pursuant to the House's impeachment inquiry. They purported to be using a power that hadn't actually been delegated to the committee. That is the first flaw—illegitimate, unlawful proceeding from the start.

Then there are the due process laws. Three stages of the hearings: One, secret hearings in the basement bunker; the President is locked out. No opportunity to cross-examine witnesses, to see the evidence, to present evidence.

And then, they go from that to the public hearings, what was really just a public show trial, because the President is still cut out, totally unprecedented in any Presidential impeachment—that there would be that second phase of public hearings where the President is still cut out, can't present evidence. The minority Members don't have equal subpoena authority.

In the third phase in front of the House Judiciary Committee, they purport to have offered rights, but I have explained that. It was illusory because they had already decided. Before the President was even supposed to respond to what rights he would like to exercise, the Speaker had announced the result that there were going to be Articles of Impeachment. The Judiciary Committee decided they weren't going to hear from any fact witnesses. They had no plans for hearings. It was all a foregone conclusion because they had to get it done by Christmas.

And the third error: Chairman SCHIFF was in charge of all the fact-finding and he had an interest, because of the interactions of his office with the whistleblower that we still don't know about, to shut down questioning about

the motives, the bias, the reasons that the whistleblower—how this all came about.

All three of those errors affected this process from the very beginning. They resulted in a one-sided, slanted fact-finding that was rushed by a person controlling the fact-finding who had a motive to limit what facts would be allowed to get into the proceedings and produced a record that cannot possibly be relied on here. We said many times that the Supreme Court has made clear that cross-examination is the greatest legal engine ever invented for the discovery of truth. And they didn't permit the President the opportunity to cross-examine anyone. And that is an indication that the goal was not a search for the truth. It was a partisan charade intended to justify a preordained result and to get it done by Christmas, and it is not a record that can be relied on here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Ms. DUCKWORTH. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator DUCKWORTH for the House managers:

> If the hold on aid to Ukraine was meant to be kept secret until the President could gather internal U.S. government information on Ukraine corruption and European cost sharing, then is there any documentary evidence of this? For example, is there any evidence that the President was briefed on those issues by the NSC, DOD or State Department during the period of the hold in the summer of 2019, or any evidence that he requested specific information on anti-corruption reform measures in Ukraine? Prior to releasing the aid on September 11, 2019, did the President order any changes to Administration policy to address corruption in Ukraine or burden sharing with our European allies?

Mr. Manager CROW. Mr. Chief Justice. Thank you, Senator, for that question.

Let's just take a moment and address what the process should have looked like, because, as we have already established and as President's counsel has conceded and we have conceded, this does happen. Right? There is a legitimate policy process for review and for determination on hold because there is, indeed, legitimate policy reasons to hold aid. And we have never said that corruption is not one of those or burden-sharing wouldn't be one of those. What we are saying is that there is no evidence that what we are talking about today—- that the President was concerned or engaged in that process.

So what would normally happen is Congress would come together as we did. We passed appropriations bills, and we made the determination that funding was appropriate for the aid, which 87 Members of the Senate did this past year. The President would then rely on the advice of government experts from the National Security Council, the Department of Defense, State Department, and the Office of Management and Budget regarding that aid. That is the interagency process that we have talked so much about—the interagency process that we went through earlier last year. And at the conclusion of that interagency process, it was determined that it had met all the conditions for the aid and all the agencies determined that it should go forward. The President would then seek permission from Congress that he intended—normally, if there was a reason, the President would go back and seek permission from Congress—to hold the aid. So let me repeat that. If there were a reason to hold it, the President—and President Trump has done this in the past under legitimate processes, as has President Obama and prior Presidents—would go back to Congress under predescribed processes and make sure that they are not violating the Impoundment Control Act and seek permission to hold it. That did not happen.

Congress would then weigh in on the request by approving or denying the President's request. Unless Congress specifically approves the President's request, the aid must be made available. Of course, none of that happened.

In this instance, a hold was put in place. We don't know exactly when because the President and his agencies have prevented us, and his counsel prevented us, from getting that information. But a hold was put in place. No reason was given. The only one in the United States Government who apparently knows why that hold was put in place is President's counsel, who tried to tell us last night why he thinks the hold was put in place, but nobody else knows.

So yes, the answer is if there was a legitimate policy process put in place, there will be a lot of information about burden-sharing, about corruption, about any of the other concerns to which we have no evidence.

And if burden-sharing—to the last point of the question—was a concern, then the person who should have been asked to discuss those concerns with the EU and our European partners would have been Ambassador Sondland, because he is the United States Ambassador to the European Union. And not once did President Trump go to Ambassador Sondland and say: Discuss these issues with the EU and the Europeans, saying they need to provide more money. Not once did that happen, and it didn't happen because it wasn't the real concern.

All the evidence shows the President withheld taxpayer money, foreign aid to our partner at war to coerce them to start a political investigation to benefit his 2020 election campaign. That is what the evidence shows, and that is why we are still here. And there is one person that can provide additional information on that, and that is Ambassador Bolton. And, yes, it is still a good time to subpoena Ambassador Bolton.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Maine.

Ms. COLLINS. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators CRAPO, BLUNT, and RUBIO.

The CHIEF JUSTICE. Thank you.

The question from Senator COLLINS and the other Senators for both parties:

> Are there legitimate circumstances under which a President could request a foreign country to investigate a U.S. citizen, including a political rival, who is not under investigation by the U.S. government? If so, what are they and how do they apply to the present case?

The House goes first.

Mr. Manager SCHIFF. Mr. Chief Justice, Senator.

It would be hard for me to contemplate circumstances where that would be appropriate, where it would be appropriate for the President of the United States to seek a political investigation of an opponent.

One of the, I think, most important post-Watergate reforms was to divorce decisions about specific cases, specific prosecutions from the White House to the Justice Department, to build a wall. One of the many norms that has broken down in this Presidency is that wall has been obliterated, where the President has affirmatively and aggressively sought to investigate his rivals. I cannot conceive of circumstances where that is appropriate.

It may be appropriate for the Justice Department, acting independently and in good faith, to initiate an investigation. There is a process for doing that. We heard testimony about doing that. You can make a request under the mutual legal assistance treaty, MLAT, process when a foreign country has evidence involving a criminal case involving a U.S. person. There is a legitimate way to do that.

That didn't happen here. In fact, when Bill Barr's name was first revealed, when that transcript was brought to light, the Justice Department immediately said: We have nothing to do with this—nothing to do with this. Here, this particular domestic political error was being done by the President's personal lawyer.

I want to just follow up also while I can, Senator, on my colleague's comments in terms of mixed-motives. If you conclude the President acted with mixed-motives—some corrupt and forbidden, some legitimate—you should vote to commit. That principle is deeply rooted in our legal tradition. It is commonplace in civil and criminal law going back centuries.

For example, in describing the standard for corrupt motive for obstruction, the 7th Circuit rejected any requirement that a defendant's only or main purpose was to obstruct the due administration of justice and, instead, the court explained a defendant is guilty if his motives included any corrupt, forbidden goals. That case, United States

v. Cueto, which I cited earlier, is not only relevant here, but that case was argued by Professor Dershowitz and he lost. He made the argument he has made and the President's lawyer have made today. They lost that case and for a good reason. It is contrary to the history of our legal traditions. If someone, and this is—the Founders were concerned, for example, that a President might be charged with bribing managers of the electoral college.

The CHIEF JUSTICE. The President's counsel.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I would like to start by pointing out that the question sort of assumes that there is a request for an investigation in a foreign country of a United States person.

I would just like to bring it back, though, here, to the transcript of the July 25 call, where President Trump didn't ask President Zelensky, specifically, for an investigation or investigation into Vice President Biden or his son Hunter. There is a lot of loose talk in sort of shorthand reference to it that way.

What he refers to is the incident in which the prosecutor was fired. The first thing that he says in that whole exchange is talking about the prosecutor being fired—and he says it sounds horrible to him—and the situation with Burisma. And all the President says is: ''So if you can look into it. . . . It sounds horrible.'' It sounds like a bad situation.

That is not calling for an investigation, necessarily, into Vice President Biden or his son, but the situation in which the prosecutor had been fired which affected anti-corruption efforts in the Ukraine.

President Zelensky responded by saying the issue of the investigation of the case is actually the issue of making sure to restore the honesty. So we will take care of that. He is explaining that he understands that it is an issue that has to do with, was an investigation over there, which their prosecutor was handling, derailed in a way that affected their anti-corruption efforts, and was it something worth looking into?

It is the President's making clear that we are not saying that it is off-limits. It sounds bad to the U.S. as well.

Let me get more specifically to the question of, Is there any situation where it might be legitimate to ask for an investigation overseas?

Yes. If there were conduct by a U.S. person overseas that potentially violated the law of that country but didn't violate the law of this country but there were a national interest in having some information about that and understanding what went on, then it would be perfectly legitimate to suggest that this was something worth looking into.

We have an interest in knowing about this, even if it is not something that would mean a criminal investigation here in the United States. So that could arise in various circumstances where a person had done something overseas, but there was a national interest in knowing what they had done.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I send a question to the desk for President's counsel and the House managers.

The CHIEF JUSTICE. Thank you.

The Democratic leader's question is this:

> Yesterday I asked the President's Counsel about the President's claim of absolute immunity. Specifically, I asked the President's lawyers to name a single document or witness that the President turned over to the House impeachment inquiry in response to their request or subpoena. Mr. Philbin spoke for 5 minutes and talked about the various types of immunities and privileges the President could invoke, but did not answer my question. So I ask once again, can you name a single witness or document that the President turned over to the House impeachment inquiry?

It is directed to both parties, and the President's counsel goes first.

Mr. Counsel PHILBIN. Mr. Chief Justice, Minority Leader SCHUMER, thank you for that question. I apologize if I was not direct at getting to the nub of the question yesterday.

I was intending to explain the rationales that the administration had provided for its actions and to explain, contrary to the question, that there was not simply absolute defiance and not simply a blanket assertion that we won't do anything. That is the way the House managers have tried to characterize it.

So let me be clear. There were document subpoenas issued prior to the adoption of H. Res. 660. The President explained—the administration explained—in various letters that all of those were invalid, and there were no documents produced in response. There were no documents produced in response because all of those subpoenas were invalid. There was no attempt to reissue those subpoenas or to retroactively attempt to authorize them.

There were then subpoenas for witnesses who were senior advisers to the President. The President advised the head of the committees that had issued those that those senior advisers had absolute immunity, and they were not produced for testimony. Those three senior advisers were not produced.

There were then subpoenas for witnesses to others whom the House Democrats insisted would be required to testify without the benefit of agency counsel, and I have explained that principle. The Office of Legal Counsel advised that those subpoenas attempting to require executive branch officials to testify without the benefit of agency counsel were unconstitutional, and so those witnesses were not produced. Still, there were 17 witnesses who testified, not including the 18th witness, the ICIG, whose testimony is still secret.

So there was quite a bit of testimony, and there have been, subsequently, some documents relevant to this, produced under FOIA. I just want to raise that because it makes clear that, if you follow the law and you follow the rules and you make a document request that is valid, documents get produced. If you don't follow the law, the administration resists. That is why the documents were not produced—because the subpoenas were invalid. We made that very clear.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. The quick answer, Senator, is that not a single document was turned over and not a single witness was produced. The witnesses who did come came in defiance of the orders of the President.

Counsel has, obviously, made all of these claims that we think are completely spurious, but what they don't answer is, what was the motivation to fight all of these subpoenas?

They argue this interpretation which the courts have rejected—that the courts have looked at it and that somehow these subpoenas were invalid. But why didn't they produce the documents? Why did they insist on this ''now discredited by the courts'' legal theory? Because they were covering up the President's misconduct.

I want to return briefly to finish the comments I was making earlier about the Senator's question earlier on mixed motives.

There is a good reason mixed motives are no defense. Otherwise, officials who commit misconduct could always claim that, even if they did it and even if it were corrupt, they must be acquitted because they were able to invent some phony motivation and insist it played some minor role in their scheme.

Imagine how that principle would apply to a President charged with bribing members of the electoral college. Multiple Framers cited this specific threat while discussing impeachment at the Constitutional Convention. Could a President defend himself on the ground that he was motivated, in part, by a noble desire to reward members of the electoral college for their public service? Could he defend it on the ground that, even as he handed over the bribes, he wasn't just acting corruptly but was also seeking to advance the public interest by keeping himself in power? According to the President's lawyers, yes, he could.

Indeed, for all of the reasons we provided, there is no doubt that the President's quid pro quo, the solicitation of foreign interference, and his use of official acts to compel that interference were a fundamentally corrupt scheme, by which I mean the motive and intent was to benefit himself—to obtain personal political gain while ignoring and injuring core national interests in our democracy and our security.

We have demonstrated, we believe, that the scheme was entirely corrupt, but if you have any question about that, ask John Bolton. If there is any question about whether the motive was mixed or not mixed, ask John Bolton. He has relevant testimony. You can ask, also, Mick Mulvaney.

You can subpoena the documents and answer the earlier questions as to what the documents say about when the President withheld the aid and whether there was any interagency discussion of reforms in the errata. I mean, the President's counsel literally made the argument that the circumstance that changed was a change in the errata, but there is no evidence to support that idea.

The CHIEF JUSTICE. The manager's time has expired.

The majority leader is recognized.

RECESS

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess until 4 p.m.

There being no objection, at 3:37 p.m., the Senate, sitting as a Court of Impeachment, recessed until 4:03 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senator from Idaho.

Mr. CRAPO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators RISCH, GRAHAM, ERNST, FISCHER, CRUZ, and PERDUE.

The CHIEF JUSTICE. Thank you.

The question from Senator CRAPO and the other Senators for counsel for the President:

How many witnesses have been presented to the Senate at this point in this trial, how many pages of documentary evidence have been put in the record before the Senate in this trial, and how many other clips and transcripts of evidence have been presented to the Senate in this trial?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think it is important to recognize that—because the House managers keep talking about the need for witnesses, you can't have a trial without witnesses—you have seen a lot of witnesses. There were 17 witnesses who were deposed and testified—12 in public, 17 who were in closed hearings below.

So far you have seen in these presentations 192 video clips from 13 different witnesses. So testimony was shown here to you. Just as you would in a trial in an ordinary court sometimes play the video of a deposition instead of having the witness take the stand, you have seen video clips from 13 different witnesses.

The House managers dramatically wheeled into the Senate a record—I think it was reported as being 29,000 pages. I think the more official number is 28,578 pages. So you have got over 28,000 pages of documents submitted into the record provisionally in evidence in this trial, subject later to potential objections for hearsay and other evidentiary objections.

You have also heard here the arguments that have been presented, along with presentation of both the documentary and testimonial evidence by video clip and by slides that were put up. You have heard arguments for up to 24 hours from each side. We didn't take all of our time. The House managers argued for over 21 hours, putting on, with their video clips and their excerpts from documents in the record, their case.

So at this point there has been a lot put on here in terms of a trial. You have seen the witnesses in the clips—all the most relevant parts. You have seen the documents put up in excerpts on screens.

And as a result of this, the House managers have consistently said over and over again—before they came here, they said they had an overwhelming case. It was already buttoned down. They didn't need anything else.

They said when they got here that it was proven—every single allegation, every line in each Article of Impeachment. They said: Proven, proven, proven.

We don't think that that is true, but those are their words. That is what they are telling you—that they have had sufficient evidence to make their case. They said ''proven,'' ''sufficient,'' ''uncontested,'' and ''overwhelming'' at least 68 times in the proceedings on the floor here.

Manager NADLER told us just today that they think they have not only proved it beyond a reasonable doubt but beyond any doubt because of the evidence that they have already put on in front of you.

We don't think that is true. We think we have demonstrated it is not.

But the point is that the House managers have already put on a substantial amount of testimony from witnesses through their clips of prior deposition and hearing testimony. They have already presented to you a large portion of the most relevant documents from those 28,000. You have heard from the witnesses; you have seen where their testimony conflicts. You can see which is the better, more persuasive version of the facts.

You have been able to see what it is that they have in the record that they say was overwhelming—already ready to go to trial—and this proceeding, therefore, has already had a lot of the earmarks of a trial.

So don't be taken in by the idea that we can't have a trial here, you can't have a valid proceeding unless they bring someone in here to testify live, because it wouldn't be just one person. If we start to go down that route, it is not presenting the case that was prepared in the hearings below; it is opening up discovery for an entirely new case, and there would have to be depositions and witnesses on both sides, and there is no need to do that if they really believe what they are telling you—that it is already overwhelming. It is already proven.

There is no need to go on to anything else when you have already seen so much and House managers had their chance to prepare their case.

And, again, I would also just make the point to bear in mind what is the set—what precedent would be set if this Chamber has to become the investigatory body for impeachments that were not prepared properly in the House.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Arizona.

Ms. SINEMA. Mr. Chief Justice, I submit a question to the desk for the President's counsel on behalf of myself, Senator MANCHIN, Senator MURKOWSKI, and Senator COLLINS.

The CHIEF JUSTICE. Thank you.

The question from Senator SINEMA and the other Senators for counsel for the President:

The Logan Act prohibits any U.S. citizen without the authority of the United States from communicating with any foreign government with the intent to influence that government's conduct in relation to any controversy with the United States. Will the President assure the American public that private citizens will not be directed to conduct American foreign policy or national security policy, unless they have been specifically and formally designated by the President and the State Department to do so?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

Let me preface—let me answer in several parts.

The first is, I just want to make clear that there was no conduct of foreign policy being carried on here by a private person.

The testimony was clear from Ambassador Volker—and I assume that the reference would be to Mr. Giuliani, the President's private counsel. Ambassador Volker was clear that he understood Mr. Giuliani just to be a source of information for the President and someone who knew about Ukraine and someone who spoke to the President.

And, in fact, it was the testimony that it was the Ukrainians, Andriy Yermak, who asked to be connected to Mr. Giuliani simply because he was someone who could provide information to the President.

And Ambassador Volker testified that it was not his understanding, he did not believe, that Mr. Giuliani was carrying out policy directives of the President but, rather, indicating his views of what he thought would be something useful for the Ukrainians to convince the President of their anticorruption bona fides. So I just wanted to make that point.

It is, of course, the President's policy always to abide by the laws, and I am not in a position to make pledges for the President here, but the President's policy is always to abide by the laws, and we continue to do so.

I think it is worth pointing out that many Presidents, starting with President Washington, have relied on persons who are their trusted confidants but who are not actually employees of the government to assist in the conduct of foreign diplomacy.

President Washington relied on Gouverneur Morris to carry messages in certain circumstances, I believe, to the French. FDR had his confidants whom he relied on in certain circumstances to be a go-between with foreign powers, and there is a list of others. They were mentioned in some of the testimony during the House proceedings.

So I don't think that there is anything—again, as I said, it was not here, but there would not be anything improper for a President in some circumstances to rely on a personal confidant to be able to convey messages or receive messages back and forth from a foreign government that would relate to the President's conduct in foreign affairs. That is not prohibited but within his authority under the Constitution under article II.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. KENNEDY. Your Honor.

The CHIEF JUSTICE. The Senator from Louisiana.

Mr. KENNEDY. Thank you, Your Honor. On behalf of myself and Senator ERNST, I send a question to the desk for Mr. NADLER and Mr. Philbin.

The CHIEF JUSTICE. The question from Senator KENNEDY and Senator ERNST to both parties, and the House managers will be first:

If the president asks for an investigation of possible corruption by a political rival under circumstances that objectively are in the national interest, should the president be impeached if a majority of the House believes the president is in it for the wrong reason?

Mr. Manager NADLER. The President, of course, is entitled to conduct foreign policy; he is entitled to look into corruption in the United States or elsewhere; he is entitled to use the Department of State or any other Departments in that effort. He is not entitled to target an American citizen specifically, nor did he do so innocently here. It was only after Mr. Biden became an announced candidate for President that he suddenly decided that Ukraine ought to look into the Bidens.

And he made it very clear—he made it very clear—that he wasn't interested in an investigation; he was interested in an announcement of an investigation just so the Bidens could be smeared.

So it is probably never suitable for a President to order an investigation of an American citizen. If he thinks there is general corruption and there is an investigation ongoing, the Justice Department certainly can ask the foreign government to assist in an investigation. But that wasn't done here. The President specifically targeted an individual with an obvious political motive, and I would simply say that that is so clear that there is no question that it was a political motive against a specific individual.

There are about 1.8 million companies in Ukraine. The estimates were that about half of them were corrupt. The President chose one—the one with Mr. Biden.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think the short answer is no; the President should not be impeached. And I think what the focus of the question is getting at is to the situation of mixed motives, which has come up a couple of times here.

If the President, as chief law enforcement officer, head of the executive branch, is in a situation where there is a legitimate investigation being pursued and he indicates that it should be pursued, is it possible that he should be impeached for that if there is some dispute about his motives, whether there is a legitimate basis for that conduct? The answer is no, and the House managers themselves, in the way they framed their case, recognized this.

In the House Judiciary Committee report, they repeatedly say that the standard they are going to have to meet—they are going to have to show that these are sham investigations; these are baseless investigations that they are alleging that the President wanted to initiate; and they had no legitimate—there was not any legitimate basis for pursuing the investigation. I am pretty sure that is page 5 of the House Judiciary report.

They use that standard and they talk about there not being a scintilla of evidence about anything that anyone could reasonably want to ask about related to the Bidens and Burisma because they know they can't get into a mixed-motive scenario, because if you have a legitimate basis for asking a question about something, if there is a legitimate national interest there, it is totally unacceptable to start getting into the field of saying: Well, we are going to impeach the President and remove him from office by putting him on the psychiatrist's couch to try to get inside his head and find out was it 48 percent in this motive and 52 in the other—or did he have some other rationale? No. If it is a legitimate inquiry in the national interest, that is the end of it, and you can't say that we are going to impeach the President, remove him from office, decapitate the executive branch of the government, disrupt the functioning of the government of the country in an election year by trying to parse out subjective motives and which percentage of the motive was a good motive or some other motive—something like that. If it is a legitimate inquiry in the national interest, if that possibility is there, if the national interest is there, that is the end of it. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

I haven't specified this before, but I think it would be best if Senators directed their questions to one of the parties or both and leave it up to them to figure out who they want to go up to bat, rather than particular counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, now I send a question to the desk.

The CHIEF JUSTICE. The question from Senator DURBIN to the House managers:

Would you please respond to the answer that was given by President's counsel to Senator SINEMA's question?

Mr. Manager SCHIFF. Senators, Mr. Chief Justice, in answer to that question, we heard a rather breathtaking admission by the President's lawyer, and it was said in an understated way, so you might have missed it. But what the President's counsel said was that no foreign policy was being conducted by a private party here; that is, Rudy Giuliani was not conducting U.S. foreign policy. Rudy Giuliani was not conducting policy.

That is a remarkable admission because, to the degree that they have attempted to suggest or claim or insinuate that this is a policy difference, that a concern over burden-sharing or some big corruption was a policy issue, they have now acknowledged that the person in charge of this was not conducting policy. That is a startling admission.

So the investigations that Giuliani was charged with trying to get Ukraine to announce into Joe Biden, into this Russia propaganda theory, they have just admitted were not part of policy. They were not policy conducted by Mr. Giuliani.

So what were they? They were, in the words of Dr. Hill, ''a domestic political errand,'' not to be confused with policy. They have just undermined their entire argument—even as to mixed motives—because the man in charge of it was undergoing a domestic errand.

You heard a suggestion that he was only doing this because he was asked by Andriy Yermak. That is laughable. Giuliani tried to get the meeting with Zelensky, remember? And he couldn't get in the door, and then he announced that there were enemies around President Zelensky. And then they go into the phone call on July 25, and the Ukrainians try to persuade the President: You don't have enemies in Ukraine; we are only friends. And what was the President's response? I want you to ''talk to Rudy.'' That is not policy being conducted; that is a personal, political errand. They just undermined their entire argument.

Now the President's counsel also essentially argues, in terms of witnesses, if their case is as strong as Mr. SCHIFF and Mr. NADLER and others say, then why do they need witnesses? You know, you can imagine a scene in any courtroom in America where, before the trial begins, defense counsel for the defendant stands up and says: Your

Honor, if the prosecution's case is so strong, let them prove it without witnesses. That is essentially what is being argued here.

Well, I will make an offer to opposing counsel, who have said that this will stretch on indefinitely if you decide to have a single witness: Let's cabin the depositions to 1 week.

In the Clinton trial, it was 1 week of depositions, and do you know what the Senate did during that week? They did the business of the Senate. The Senate went back to its ordinary legislative business while the depositions were being conducted. If you want the Clinton model, let's use the Clinton model. Let's take a week.

Let's take a week to have a fair trial. You can continue your business. We can get the business of the country done. Is that too much to ask in the name of fairness, that we follow the Clinton model, that we take 1 week?

I mean, are we really driven by the timing of the State of the Union? Should that be our guiding principle?

Can't we take 1 week to hear from these witnesses? I think we can. I think we should. I think we must.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Alaska.

Ms. MURKOWSKI. Mr. Chief Justice, I send to the desk a question submitted on behalf of myself and Senator SCHATZ, directed to both White House counsel and the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senators MURKOWSKI and SCHATZ directed to both parties:

Would you agree that almost any action a President takes, or indeed any action the vast majority of politicians take, is, to one degree or another, inherently political? Where is the line between permissible political actions and impeachable political actions?

The President's counsel will go first.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question, and I think that the question really hits the nail on the head.

As I mentioned the other day, in a representative democracy, elected officials almost always have at least one eye looking on to the next election and how their actions—their policy decisions, their actions in office—will be received by the electorate, and there is nothing wrong with that. That is good. It is part of the way representative democracy works. So having part of your motives being looking toward the next election, looking toward how that will affect electoral chances—that is part of the nature of elected office. And to start getting into motives about ''Will this affect my prospects in the next election?'' and calling that corrupt, and, if you have got that as part of your motive, looking into whether you were doing something for electoral advantage and saying ''That is going to be a corrupt motive; we will say that you can be charged for wrongdoing with that or impeached'' is very dangerous because there is almost no way to get inside someone's head and parcel out which percentage was one motive and which percentage was another motive.

If you start down that path, it is totally amorphous. This is part of the point that Professor Dershowitz was making and that was made here a couple of times. This idea of impeaching a President on a theory of abuse of power depends entirely on analyzing subjective motives because that is what the House managers have suggested—that we are assuming there is an act, on its face, that is legitimate and is within the President's authority and is not, on its face, in any way unlawful or unconstitutional, but solely based on motive, we are going to impeach him. And by saying ''Well, if it was really directed at the next election, that is the corrupt motive,'' that is a very dangerous path because there is always some eye on the next election.

It ends up becoming a standard so malleable that it really is a substitute for a policy difference: If we don't like your policy, we attribute it to bad motives. That is something that Justice Iredell warned about in the North Carolina ratifying convention, that if you base something just on motive because of what he called ''malignity of party,'' the other party will always attribute bad motives.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Counsel PHILBIN. Thank you.

Mr. Manager SCHIFF. Senators, I think the answer is yes.

I think the answer is yes, that public officials are inherently political animals. I don't mean that in the derogatory term. They run for office; they hold office; they conduct acts as political figures. But if we look at what Hamilton had to say about the core of offenses that warrant the impeachment power, he talked about the crimes being political in character and the remedies being political in character because we are not talking about imprisonment here. We are not talking about taking away someone's liberty.

So we are talking about a political punishment for a political crime. Now, what is a political crime? Yes, everyone in office has a political motivation. But certainly that doesn't mean that we can't draw a line between corrupt activity that is undertaken, yes, for a political reason and noncorrupt activity. Indeed, we have to draw that line.

Let's show what Professor Dershowitz had to say about where we should draw the line.

(Text of Videotape presentation:)

Mr. DERSHOWITZ. If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment. The fact that he has announced his candidacy is a very good reason for upping the interest in this son. If he wasn't running for President, he's a has-been. He is the former Vice President of the United States. OK, big deal. But if he is running for President, that is an enormous big deal.

Mr. Manager SCHIFF. So it is certainly true that when public officials take actions, they may have in mind, when they make a policy judgment, what is the impact on my political career going to be, or, what is the impact going to be on my reelection prospects, but that is a very different question than whether they can engage in a corrupt act to help their election—in this case, to get foreign help to cheat in an election.

I think we can distinguish between the fact that political actors have political interests and what the President's defense would argue, and that is, if he believes it is in his reelection interest, then no quid pro quo is too corrupt. If we go down that road, there is no limit to what this or any other President can do. There is no limit to what foreign powers will feel they can offer a corrupt President to help their reelection if that is the precedent we intend to establish.

The CHIEF JUSTICE. Thank you, counsel. Thank you, Mr. Manager.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. Chief Justice, I have a question, which I send to the desk and ask the House managers to respond to it.

The CHIEF JUSTICE. Thank you. The question for the House managers from Senator MENENDEZ:

The President was seeking investigations from a foreign power based partly on what Fiona Hill called ''a fictional narrative perpetrated and propagated by the Russian security services.'' The US Intelligence Community has warned that the Russian government is already preparing to attack our election in 2020, and the President has said publicly he would welcome foreign interference in our elections. Why should Americans be concerned about foreign interference and why does it matter that the President continues to solicit foreign interference in our elections?

Mr. Manager CROW. Mr. Chief Justice and Senator, thank you for the question.

Let's outline the facts that we do know about today. None of the 17 witnesses who testified as part of the House's impeachment inquiry were aware of any factual basis to support the allegations that it was Ukraine and not Russia that interfered in the 2016 election. FBI Director Christopher Wray, who was nominated by President Trump and confirmed by this body, stated as recently as this past December that we have no reason to believe that Ukraine interfered in the 2016 U.S. election. He said: ''We have no information that indicates that Ukraine interfered with the 2016 Presidential election.''

President Trump's own Homeland Security advisor, Tom Bossert, said about this allegation: ''It's not only a conspiracy theory, it is completely debunked.'' He added: ''Let me just repeat here again, it has no validity.''

And, of course, Ms. Hill, as the question indicated, said ''fictional narrative that is being perpetrated and propagated by the Russian security services themselves.''

The U.S. intelligence community has unanimously determined that there is no validity to this—our own intelligence and law enforcement. Special Counsel Mueller found that Russia's interference was ''sweeping and systematic.''

But don't take our own law enforcement and intelligence community's word for it; let's hear what Vladimir Putin himself said recently about this. In November of 2019, Mr. Putin was overheard saying: ''Thank God no one is accusing us of interfering in the U.S. elections anymore. Now they are accusing Ukraine.''

Let me end with that one because that one demonstrates to me why this matters. That one demonstrates to me why anyone in the United States should matter. Vladimir Putin could care less about delivering healthcare for the people of Russia and building infrastructure in Russia. Vladimir Putin, as many people in this Chamber know well—because I have worked with some of you on this—wakes up every morning and goes to bed every night trying to figure out how to destroy American democracy, and he has organized the infrastructure of his government around that effort.

This is a battle over resolve. It is the battle over the hearts and minds of our people. It is the battle over information and disinformation. And if a message from the very top of our government, from the very top of our leaders—if the message from some folks over the last couple of weeks is that facts don't matter, that our law enforcement doesn't matter, that our intelligence communities' unanimous consensus doesn't matter, that is dangerous. That is what Vladimir Putin and Russia are looking for, and that makes us less safe.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Wisconsin.

Mr. JOHNSON. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY, CRUZ, CRAMER, BRAUN, PERDUE, BARRASSO, RUBIO, RISCH, SULLIVAN, ERNST, SCOTT of Florida, DAINES, and FISCHER for both the House managers, with response from the counsel for the President.

The CHIEF JUSTICE. Thank you. The question from Senator JOHNSON and the other Senators for both parties:

Recent reporting described two NSC staff holdovers from the Obama Administration attending an ''all hands'' meeting of NSC staff held about two weeks into the Trump Administration and talking loudly enough to be overheard saying ''we need to do everything we can to take out the President.'' On July 26, 2019, the House Intelligence Committee hired one of those individuals, Sean Misko. The report further describes relationships between Misko, Lt Col Vindman, and the alleged whistleblower. Why did your committee hire Sean Misko the day after the phone call between President Trump and Zelensky, and what role has he played throughout your committee's investigation?

The House will begin.

Mr. Manager SCHIFF. First of all, there have been a lot of attacks upon my staff, and, as I said when this issue came up earlier, I am appalled at some of the spearing of the professional people that work for the Intelligence Committee.

Now, this question refers to allegations in a newspaper article which are circulating smears on my staff and asks me to respond to those smears, and I will not dignify those smears on my staff by giving them any credence whatsoever; nor will I share any information that I believe could or could not lead to the identification of the whistleblower.

I want to be very clear about something. Members of this body used to care about the protection of whistleblower identities. They didn't used to gratuitously attack members of committee staff, but now they do. Now they do. Now they will take an unsubstantiated, repressed article and use it to smear my staff. I think that is disgraceful. I think it is disgraceful.

You know, whistleblowers are a unique and vital resource for the intelligence community. And why? Because, unlike other whistleblowers who can go public with their information, whistleblowers in the intelligence community cannot because it deals with classified information. They must come to a committee. They must talk to the staff of that committee or to the inspector general. That is what they are supposed to do. Our system relies upon it. And when you jeopardize a whistleblower by trying to out them this way, then you are threatening not just this whistleblower but the entire system.

Now, the President would like to have nothing better than that, and I am sure the President is applauding this question because he wants his pound of flesh and he wants to punish anyone that has the courage to stand up to him. Well, I can't tell you who the whistleblower is because I don't know, but I can tell you who the whistleblower should be. It should be every one of us. Every one of us should be willing to blow the whistle on Presidential misconduct. If it weren't for this whistleblower, we wouldn't know about this misconduct, and that might be just as well for this President, but it would not be good for the country.

And I worry that future people that see what I am doing are going to watch how this person has been treated, the threats against this person's life, and they are going to say: Why stick my neck out? Is my name going to be dragged through the mud?

Will people join our staff if they know that their names are going to be dragged through the mud?

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Mr. Chief Justice and Members of the Senate, there are two responses that I would like to get to, one with regard to the issue of witnesses and, in this case, the whistleblower.

Mr. SCHIFF put the whistleblower issue front and center with his own words during the course of their investigation. He talked about the whistleblower testifying.

Retribution is what is prohibited under the statute, against a whistleblower. That is what the whistleblower statute protects, that there is no retribution. In other words, you are not being fired from blowing the whistle.

But this idea that there is complete anonymity—and I am not saying that we should disclose the individual's name. I would be happy to handle that in executive session or any way you want. But we can't just say it is not a relevant inquiry to know who on the staff that conducted the primary investigation here was in communication with that whistleblower, especially after Mr. SCHIFF denied that he or his staff initially had even had any conversations with the whistleblower.

It goes back to the whole witness issue. I want to go to that for just 30 seconds here. It seems to me that the discussion on witnesses—I heard what Mr. SCHIFF said about the 30—we will do depositions in a week. The Democratic leader said I can have any witnesses I want yesterday. I got it from the transcript. And you couldn't get all the witnesses you want in a week. You couldn't get the discovery done in a week.

But if, in fact—if, in fact, they believe they have presented this overwhelming case that they have, all—they talked about subterfuge and smokescreens. The smokescreen here is that they used 13 of their 17 witnesses to try to prove their case, and we were able to use those very witnesses to undercut that case. So I think we just have to keep that in perspective.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mrs. MURRAY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. Chief Justice. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question for the House managers from Senator MURRAY:

If there are no consequences to openly defying a valid congressional subpoena, how will Congress be able to perform its constitutional oversight responsibility to make sure any administration is following the law and acting in the best interests of American families?

Ms. Manager GARCIA of Texas. Well, they could have very serious, devastating, and dire consequences. If the Senate ignores President Trump's ongoing obstruction of Congress, it would lead to the end of congressional oversight as we know it today.

President Trump's attorneys argued that our congressional subpoenas are constitutionally invalid until a court determines otherwise. Their argument is false, and it is an attack on congressional oversight powers.

A vote against article II is a vote to condone President Trump's corrupted view of America's constitutional balance. Voting against article II would grant President Trump—and every other President from now until forever—the power to simply ignore all congressional subpoenas unless and until we seek a court to enforce it.

Under President Trump's view, even if all of you Senators were to vote to favor to issue a subpoena for documents or witnesses, the administration could still ignore them until a court ruled on it.

I think Mr. SCHIFF addressed some of that earlier in another question. You could go to court to enforce it. Then, it would get appealed, then, go back to court. We could go on and on because, quite frankly, that is what their position is.

So, again, as Mr. SCHIFF said earlier, imagine yourselves having jurisdiction over an item that you care deeply about, and you needed information. You heard of some wrongdoing. You heard there was a whistleblower complaint on something, and you decided that you wanted to do a hearing. It is very possible that the President would just flatly refuse your subpoena, because, if we ignore article II, that would be the precedent—to ignore all subpoenas.

But we need you to issue a subpoena for us today not only to get Mr. Bolton here but Mr. Duffey, Mr. Mulvaney, and everyone else with relevant evidence on this case.

Now, when the administration exerts executive privilege, there might be some privilege, one, that is available to them on any of these documents, but those have to be asserted with every document as we send a subpoena.

So don't buy the White House argument that our subpoenas are invalid because we don't have any authority to issue them. We know we do. You know we do. So let's make sure that this body will make sure that no future President will just simply defy, disrespect, and ignore subpoenas because some day you may be in our shoes wanting to get information, wanting to get to the bottom line to ensure that no President is above the law.

Thank you.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. SULLIVAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Alaska.

Mr. SULLIVAN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators RISCH, BLUNT, KENNEDY, JOHNSON, and CAPITO for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senator SULLIVAN and the other Senators for counsel for the President:

Given that the Senate is now considering the very evidentiary record assembled and voted on by the House, which Chairman NADLER has repeatedly claimed constitutes overwhelming evidence for impeachment, how can the Senate be accused of engaging in, what Mr. NADLER described as ''a coverup,'' if the Senate makes its decision based on the exact same evidentiary record the House did?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think that is exactly right. I think it is rather preposterous to suggest that this Senate would be engaging in a coverup to rely on the same record that the House managers have said is overwhelming.

They have said it dozens of times. They have said that, in their view, they have had enough evidence presented already to establish their case beyond any doubt, not just beyond a reasonable doubt. And it is totally incoherent to claim at the same time that it would be improper for the Senate to rely on that record.

Your judgment may be and should be, we submit, different from the House managers' assessment of that evidence because it hasn't established their case at all. But if they are willing to tell you that it is complete and it has everything they need—it has everything they need to establish everything they want—I think you should be able to take them at their word that that is all that is there.

And to switch now to say, ''Well, no, we need more; we need more witnesses,'' I think just demonstrates that they haven't proved their case. They don't have the evidence to make their case.

As I went through a minute ago, they have already presented a record with over 28,000 pages of documents that is here. They have already presented video clips of 13 witnesses. You have heard all of the key evidence that they gathered. It was their process. They were the ones who said what the process was going to be, how it had to be run, who ought to testify, when to close it, when to decide they had enough, and you heard all the key highlights from that, and that is sufficient for this body to make a decision.

In the time I have remaining, I just want to turn to one point in response to something that was said a couple of minutes ago. We keep hearing repeatedly today the refrain of the idea that President Trump was somehow trying to peddle Vladimir Putin's conspiracy theory that it was Ukraine and not Russia that interfered in the 2016 election. And the House Democrats tried to present this binary view of the world that only one country, and one country alone, could have done something to interfere in the election, and it was Russia. And if you mention any other country doing something related to election interference, you are just a pawn of Vladimir Putin, trying to peddle his conspiracy theories.

That is obviously not true. More than one country and foreign nationals from more than one country could be doing different things for different reasons in different ways to try to interfere in the election, and that is exactly what President Trump was interested in.

In the telephone call, the July 25 transcript, he mentions CrowdStrike. He mentions the server. But he talks about—he says:

There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people.

So he is talking about much more than just the DNC server. And he closes it again, saying—he refers to Robert Mueller's testimony, and he says: ''They say a lot of it started in Ukraine.'' There are just a lot of stuff going on. Twice in that exchange he says there is a lot of stuff—the whole situation.

And what is that referring to, surrounding yourself with the same people? President Zelensky refers immediately to changing out the Ambassador because the previous Ambassador, who had been there under Poroshenko, had written an op-ed criticizing President Trump during the election.

We also know that there was a POLITICO article in January 2017 cataloging multiple Ukrainian officials who did things either to criticize President Trump or to assist a DNC operative, Alexandra Chalupa, in gathering information against the Trump campaign.

And they said: There was no evidence in the record; no one said that there was anything done by Ukraine.

That is not true. One of their star witnesses, Fiona Hill, specifically testified in her public hearing, because she said she went back and checked because she hadn't recalled the POLITICO article. And then she said that she acknowledged that some Ukrainian officials ''bet on Hillary Clinton winning the election.'' And so it was quite evident, in her words, that they were trying to favor the Clinton campaign, including trying to collect information on people working in the Trump campaign. That was Fiona Hill. She acknowledged the Ukrainian officials were doing that.

So this idea that it is a binary world—it is either Russia or Ukraine; if you mention Ukraine, you are just doing Vladimir Putin's bidding—is totally false, and you shouldn't be fooled by that.

Ukrainians—various Ukrainians—were doing things to interfere in the election campaign, and that is what President Trump was referring to.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Vermont.

Mr. LEAHY. Mr. Chief Justice, I ask to send a question to the desk on behalf of myself and Senator BLUMENTHAL to the House managers.

The CHIEF JUSTICE. Thank you, Senator.

The question for the House managers from Senator LEAHY and Senator BLUMENTHAL:

The President's counsel claimed, ''If a president does something which he believes will help him get elected in the public interest that cannot be the kind of quid pro quo that results in impeachment.'' He added a

hypothetical, ''I think I'm the greatest president there ever was and if I'm not elected, the national interest will suffer greatly.' That cannot be an impeachable offense.'' Under this view, there is no remedy to prevent a president from conditioning foreign security assistance, in violation of the Impoundment Control Act, on the recipient's willingness to do the president a political favor. If the Senate fails to reject this theory, what would stop a president from withholding disaster aid funding from a U.S. city until that mayor endorses him? What would stop the president from withholding nearly any part of the $4.7 trillion annual federal budget subject to his personal political benefit?

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, I thank the Senators for that very important question.

Certainly, what we have alleged in this case is that the President solicited a personal political benefit in exchange for an official act, solicited dirt on a political opponent in exchange for the release of $391 million in military aid, and solicited dirt in exchange for a White House meeting. And if this Senate were to say that is acceptable, then, precisely as was outlined in that question could take place all across America in the context of the next election and any election—grants allocated to cities or towns or municipalities across the country, where the President could say: You are not going to get that money, Mr. Mayor, Mrs. County Executive, Mrs. Town Supervisor, unless you endorse me for reelection. The President could say that to any Governor of our 50 States.

That is unacceptable. That cannot be allowed to happen in our democratic Republic.

Now, by my count, as of this afternoon, the Framers of the Constitution and the Founders of our great Republic had been quoted either directly or mentioned by name 123 times: Alexander Hamilton, 48 times; James Madison, 35 times; George Washington, 24 times; John Adams, 8 times; Thomas Jefferson and Ben Franklin, pulling up the rear, 4 times.

It seems to me that Ben Franklin and Thomas Jefferson need a little bit more love, and so let me try to do my part.

Thomas Jefferson once observed that ''tyranny is defined as that which is legal for the government but illegal for the citizenry.'' ''Legal for the government but illegal for the citizenry''—that is what we confront right now.

President Trump corruptly abused his power. He targeted an American citizen, pressured a foreign government to try to cheat in the upcoming election, and the President's counsel would have you believe that is OK because he is the President of the United States.

But our fellow citizens cannot cheat the Workers' Compensation Board by claiming a fake injury and escape accountability. Our fellow citizens cannot cheat the stock market by engaging in insider trading and then escape accountability. Our fellow citizens cannot cheat the college admissions process in order to get their child into an elite university and then escape accountability.

Why should the President of the United States be allowed to cheat in the upcoming election and escape accountability?

Tyranny is defined as that which is legal for the government and illegal for the citizenry.

The President's counsel has suggested that President Trump can do anything—anything that he wants—and escape accountability. President Trump can solicit foreign interference in the upcoming election and escape accountability. He can cheat and escape accountability. He can engage in a coverup and escape accountability. He can corruptly abuse his power, escape accountability; elevate his personal political interest, subordinate America's national security interest, and escape accountability.

That is the Fifth Avenue standard of Presidential accountability: I can do anything I want. I can shoot someone on Fifth Avenue, and it doesn't matter.

No. Lawlessness matters. Abuse of power matters. Corruption matters. The Constitution matters.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Louisiana.

Mr. CASSIDY. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator RISCH to both the House managers and the White House counsel. And although I cannot pick, ideally, it would be Manager LOFGREN.

The CHIEF JUSTICE. The question from Senators CASSIDY and RISCH for both parties is as follows:

In the Clinton proceedings, we saw a video of Manager LOFGREN saying, ''This is unfair to the American people. By these actions you would undo the free election that expressed the will of the American people in 1996. In so doing, you will damage the faith the American people have in this institution and in the American democracy. You will set the dangerous precedent that the certainty of Presidential terms, which has so benefited our wonderful America, will be replaced by the partisan use of impeachment. Future Presidents will face election, then litigation, then impeachment. The power of the President will diminish in the face of the Congress, a phenomena much feared by the Founding Fathers.''

What is different now? If the response is that the country cannot risk the President interfering in the next election, isn't impeachment the ultimate interference? How does this not cheat those who did and/or would vote for President Trump from their participation in the democratic process? I ask Manager LOFGREN to address the question directly and to not avoid, as Manager JEFFRIES did with a related question last night.

The President's counsel answers first.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

Well, as I have said before, I agree 100 percent with Manager LOFGREN's comments from the past, and I think they should guide the Senate. There is really no better way to say it.

What they are doing here—they keep falsely accusing the President of wanting to cheat, when they are coming here and telling you ''take him off the ballot'' in a political impeachment. Talk about cheating. You don't even want to face him.

And let me say one more thing while I am up here. I listened to Manager SCHIFF come up here and say he won't even dignify a legitimate question about his staff with a response because he won't stand here and listen to people on his staff be besmirched—who will join his staff.

Since the beginning of this Congress, Manager SCHIFF, the other House managers, and others in the House have falsely accused the President—and they have come here and done it—the Vice President, the Secretary of State, the Attorney General, the Chief of Staff, lawyers on my staff—false accusations, calumny after calumny, in dulcet tones. And that is wrong.

And when you turn that around and say he will not respond to a legitimate question that I ask—it is a legitimate question: Who communicated with the whistleblower? Why were you demanding something that you already knew about?

I asked him, in another part of my October 8 letter that doesn't get a lot of attention from Mr. SCHIFF—I said: You have the full ability to release these documents on your own. No response.

So I think—I think you deserve an answer to that question, and I think it is time in this country that we start—that we stop assuming that everybody has horrible motives, in the puritanical rage of just everybody is doing something wrong except for you—you cannot be questioned. That is part of the problem here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, I was a member of the House Judiciary Committee during the Clinton impeachment, and I was a member of the staff of a member of the Judiciary Committee during the Nixon impeachment. And during the Clinton impeachment, I found myself comparing what we were doing in Clinton to what we were doing or had done with Nixon, and here is what I saw and I still see today: a special prosecutor started with Whitewater, spent several years, until they found DNA on a blue dress. And they had a lie. The President lied about a sexual affair under oath, and that was wrong. It was a crime, but it was not a misuse of Presidential power.

Any husband caught would have lied about it. It was wrong, but it was not a misuse of Presidential power. And so, throughout the Clinton matters, I kept raising the issue that it was a misuse—and it turned out to be a partisan misuse—of impeachment to equate a lie about a sexual affair to a high crime and misdemeanor.

Mr. MARKEY said they rubbed out the word ''high'' and made it ''any crime and misdemeanors.'' That was what was wrong in the Clinton impeachment, compared to the Nixon impeachment where Richard Nixon engaged in a broad scope, upending the constitutional order, corrupting the government for his own personal benefit in the election.

I would add, unfortunately, that I never thought I would be in a third impeachment. Unfortunately, that is what we see in this case with President Trump.

The CHIEF JUSTICE. Thank you, Ms. Manager.

The Senator from West Virginia.

Mr. MANCHIN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator GILLIBRAND, and Senator SCHATZ to the President's counsel and the House managers.

The CHIEF JUSTICE. Thank you. The question from Senators MANCHIN, GILLIBRAND, and SCHATZ for both parties:

Have you ever been involved in any trial—civil, criminal, or other—in which you were unable to call witnesses or submit relevant evidence?

I believe the House is first.

Mrs. Manager DEMINGS. Thank you, Mr. Chief Justice, and thank you to the Senator for the question.

I want us to imagine for just a moment someone broke into your house; stole your property; police caught them; they returned the property. Now, the fact that they returned the property changes nothing. They would still be held accountable.

But imagine if they had the power to obstruct every witness, prevent witnesses from appearing. Imagine if they had the power to destroy or obstruct any evidence in the case against them from being presented to the court.

I have had the opportunity to appear in a lot of hearings and be a part of building a lot of cases. We all know. I know everybody here knows that witness testimony and evidence or documentation in a case is everything. It is the life and breath of any case. It is the prosecutor's dream or the police officer's or detective's dream to have information and evidence.

It truly baffles me, really, as a 27-year law enforcement officer, that we would not accept or welcome or be delighted about the opportunity to hear from direct witnesses, people who have firsthand knowledge.

We know that the President cannot be charged with a crime. We know that. The Department of Justice has already ruled on that. But the remedy for that is impeachment. That is the tool that, as we know, has solely been given—that power, solely—to the House of Representatives, solely tried before the Senate.

So, to answer your question, it is extremely—let me say it this way: Only in a case where there are no available witnesses or no available evidence have I ever seen that occur.

Thank you.

The CHIEF JUSTICE. Thank you, Mrs. Manager.

Counsel.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

I would respond to that question in this way. Thank you for the question. The House managers controlled the process in the House. I think we can all agree to that. They were in charge, and they ran it. And they chose not to allow the President's counsel to have any witnesses. And they chose not to call the witnesses that they are now asking you to call, demanding you to call, accusing you of a coverup if you don't call.

I have never been in any proceeding, trial or otherwise, where you show up on the first day, and the judge says: Let's go. And you say: Well, I'm not ready yet. Let's stop everything. Let's take a bunch of depositions.

Well, did you subpoena the witnesses you are now seeking?

Well, some but not others.

Well, when you did subpoena them, did you try to enforce that subpoena in court?

No.

The other witnesses that you did subpoena, did they go to court?

Yes.

What did you do? I withdrew the subpoena and mooted out the case. And now I want them. I want them. Otherwise, you are doing the coverup.

Let me make another point because they keep making this point: What will we do? The President is not producing documents.

I would like to refresh your recollection about the Mueller investigation, OK. The Mueller investigation had 2,800 subpoenas, 500 search warrants, 500 witnesses. The President's Counsel, the Chief of Staff, and many, many others from the administration testified. Documents—voluminous documents—were produced. And what happened? Bob Mueller came back with a conclusion. He announced it. There was no collusion.

What did the House do? They didn't like it. Didn't like the outcome. So what did they do? They wanted a do-over. They wanted to do it all again themselves, despite the $34 million or more that was spent.

So I don't think anybody really believes that the Trump administration hasn't fully cooperated with the investigations. The problem is, when they don't like the outcome, they just keep investigating. They keep wasting the public's money because they don't really care about truth; they care about a political outcome.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Utah.

Mr. LEE. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY, ERNST, and BRAUN.

The CHIEF JUSTICE. The question for counsel for the President from Senator LEE and other Senators:

Under the standard embraced by the House Managers, would President Obama have been subject to impeachment charges based on his handling of the Benghazi attack, the Bergdahl swap, or DACA? Would President Bush have been subject to impeachment charges based on his handling of NSA surveillance, detention of combatants, or use of waterboarding?

Mr. Counsel HERSCHMANN. Thank you, Mr. Chief Justice, Members of the Senate. Under the standard, which is no standard that they bring their impeachment to the Senate, any President would be subject to impeachment for anything. Presidents would be subject to impeachment for exercising longstanding constitutional rights, even when the House chose not to enforce their subpoenas under their vague theory of abuse of power.

I guess any President—as Professor Dershowitz, he had a long list of Presidents who might have been subject to impeachment. So I am not going to go through the particular incidents because I don't want to besmirch past Presidents.

I don't think the standard that they announced is helpful. I think it is very dangerous. I mean, you might want to get a lock on that door because they are going to be back a lot if that is the standard.

The truth of the matter is, you don't have to look at anything. They are talking about witnesses. You don't have to look at anything, except the Articles of Impeachment.

I tried to seek areas of agreement. I think we all agree that they don't allege a crime. That is why they spend all their time saying you don't need one. I remember one of the clips I showed where someone was saying, with a lot of passion, they are trying to cross out ''high crime'' and make it ''any crime.'' Now they are trying to cross out ''crime,'' any crime. No crime is necessary.

That is not what impeachment is about. This is dangerous. And it is more dangerous because it is an election year. So, yes, under the standardless impeachment, any President can be impeached for anything. And that is wrong. By the way, they should be held to their Articles of Impeachment. A lot of what they are trying to sell here, their own House colleagues weren't buying. They didn't make it into the Articles of Impeachment.

Read the Articles of Impeachment. They don't allege a crime. They don't allege a violation of law. You don't need anything else, except their Articles of Impeachment, your Constitution, and your common sense, and you can end this. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Ms. STABENOW. Thank you, Mr. Chief Justice.

I send a question to the desk on behalf of myself, Senator CORTEZ MASTO, and Senator ROSEN.

The CHIEF JUSTICE. The question for the House managers from Senators STABENOW, CORTEZ MASTO, and ROSEN to both parties:

In June 2019, Ellen Weintraub, then-chair of the Federal Election Commission, wrote in a statement that ''It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election. This is not a novel concept. Electoral intervention from foreign governments has been considered unacceptable since the beginnings of our nation.'' In a 2007 advisory opinion, the FEC found that campaign contributions from foreign nationals are prohibited in federal elections, even if ''the value of these materials may be nominal or difficult to ascertain.'' How valuable would a public announcement of an investigation into the Bidens be for President Trump's reelection campaign?

Begin with the White House Counsel.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for the question.

The idea that these investigations were a thing of value—something that was specifically examined by the Department of Justice—as I explained the other day, the inspector general for the intelligence community wrote a cover letter on the whistleblower complaint, in which he had actually exaggerated in the complaint—the idea that there was a demand for some assistance with the President's reelection campaign. That was forwarded to the Department of Justice. They examined it, and they announced back in September that there was no election law violation because it did not qualify as a thing of value. I think that that issue has been thoroughly examined by the Department of Justice here.

I just want to clarify one thing. The other day there was—yesterday there was a question about information coming from overseas, and I was asked a question about that. And I want to be very precise; that I understood the question to be about was there a violation of a campaign finance law, would there be one if someone simply got information from overseas? And the answer is no, as a matter of law.

Think about this. If pure information—if information that came to someone in a campaign could be called a thing of value, if it comes from overseas, a thing of value is a prohibited campaign contribution; it is not allowed. If it comes from within the country, it has to be reported.

So that would mean that anytime a campaign got information from within the country about an opponent or about something else that maybe would be useful in the campaign, they would have to report the receipt of information as a thing of value under the campaign finance laws.

That is not how the laws work, and there would be tremendous First Amendment implications if someone attempted to enforce the laws that way. So that is simply the point that I wanted to make.

Pure information that is credible information is not something that is prohibited from being received under the campaign finance laws.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice.

The CHIEF JUSTICE. Yes, Mr. Manager.

Mr. Manager SCHIFF. How valuable would it be for the President to get Ukraine to announce his investigations? And the answer is immensely valuable. And if it wasn't going to be immensely valuable, why would the President go to such lengths to make it happen? Why would he be willing to violate the law, the Impoundment Control Act; why would he be willing to ignore the advice of all of his national security professionals; why would he be willing to withhold hundreds of millions of dollars from an ally at war if he didn't think it was going to really benefit his campaign? You have only to look at the President's actions to determine just how valuable he believed it would be to him.

Now, how would he make use of this? Well, if we look in the past, we get a perfect illustration of how Donald Trump would have made use of this political help from Ukraine.

Let's look at 2016, when the Russians hacked the DCCC and the DNC, and they started dripping out these documents through WikiLeaks and other Russian platforms.

What did the President do? Did he make use of it? Did he condemn it? Oh, he made beautiful use of it. Over 100 times in the last 3 months of the campaign, the President brought up time after time after time, rally after rally after rally, the Clinton Russian stolen documents.

We have had a debate since then. What was the impact of the Russian interference in 2016? In an election that close, was it decisive? No one will ever know. Was it valuable? You only have to look at Donald Trump's actions to know just how valuable he thought it was. He thought it was immensely valuable.

And you can darn well expect that if he had gotten this help from Ukraine, he would be out there every day talking about how Ukraine was investigating Joe Biden, and Ukraine is conducting an investigation into Joe Biden. It would be proof of his argument against his feared opponent.

You are darn right it would be valuable. What is more, it is illegal. And do we have to go through all the turmoil of the Russian interference perhaps to have the President do it all over again?

One of the things I found so significant was the day after Bob Mueller reached his conclusion that this President was back on the phone asking yet another country to help cheat in another election. You are darn right that would have been valuable.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. GRAHAM. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from South Carolina.

Mr. GRAHAM. I send a question to the desk on behalf of myself, Senators CRUZ and CORNYN, for both parties.

The CHIEF JUSTICE. Thank you.

The question from Senators GRAHAM, CORNYN, and CRUZ is for both parties:

When DOJ Inspector General Horowitz testified before the Judiciary Committee, he said their DOJ had a ''low threshold'' to investigate the Trump campaign. At the hearing, Sen. FEINSTEIN said, ''your report concluded that the FBI had an adequate predicate, reason, to open the investigation on the Trump campaign ties to Russia. Could you define the predicate?'' Horowitz replied, ''yeah, so the predicate here was the information that the FBI got at the end of July from the friendly foreign government.'' Why is the legal standard for investigating Trump so much lower than the standard for investigating Biden? And why was it ok to get the information from a ''friendly foreign government?''

The House managers are first.

Mr. Manager SCHIFF. The inspector general's report found that the investigation was properly predicated. That was the bottom-line conclusion that this was not a politically motivated investigation.

The inspector general also found, though, there were serious flaws with the FISA Court process. There were serious flaws on how the FISA applications were written in the information that was used and prescribed a whole series of remedies, which the FBI Director has now said should be implemented. But they found it was properly predicated. They found they did not have to ignore the evidence that had come to their attention that the campaign for the President was having illicit contacts, potentially; that it may be colluding or conspiring with a foreign power. Indeed, it would have been derelict for them to ignore it.

But the argument—the implicit argument here is, because there were problems, albeit serious problems, on the FISA Court application involving a single person, that somehow we should ignore the President's conduct here; that somehow that justifies the President's embrace of the Russian propaganda; that somehow that justifies the President's distrust of the entire intelligence community; that somehow that justifies his ignoring what his own Director of the FBI said, which his lawyers ignore today, which is there is no evidence that Ukraine interfered in the 2016 election. Because of a single FISA application against a single person and the flaws in it, you should ignore the evidence of the President's wrongdoing. Turn away from that. Let's not look at whether the President conditioned military aid and a White House meeting on help with an investigation. Let's look at flaws in how the FBI conducted a FISA application. The one does not follow from the other.

The reality is that what you must judge here is: Did the President commit the conduct he is charged with?

Did the President withhold military aid and a coveted meeting to secure foreign interference in the election? And if he did, as we believe we have shown, does that warrant his removal from office? That is the issue before you, whether the FBI made one mistake or five mistakes with the FISA application.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, let me actually answer the question.

The inspector general said, in a response actually from Senator GRAHAM, when James Comey said he was vindicated by the inspector general's report, the inspector general said: No one who touched this was vindicated.

With regard to the FISA—you make so light, Manager SCHIFF, of what the FBI did. It wasn't a FISA warrant. There was an order unsealed just days ago saying the process was so tainted by the Federal Bureau of Investigation—so tainted—that not only was the NSD misled, but so was the FISA Court.

For those that don't know that are watching, the FISA Court—you can't blame the court on this, by the way. You have to blame the Federal Bureau of Investigations for allowing this to happen. That is the court that issues warrants on people that are alleged to be spies. There are no lawyers in those proceedings. There is no cross-examination. The court itself in its order said: We rely on the good faith of the officers presenting the affidavits.

Are there two standards for investigations? That is an understatement. But to belittle what took place in the FISA proceedings—frankly, Manager SCHIFF, you know better than that.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator DURBIN is to both parties.

Emails between DOD and OMB officials reveal that by August 12 the Pentagon could no longer guarantee that all of the $250 million in DOD aid to Ukraine could be spent before it expired. Deputy Secretary of Defense Norquist drafted a letter and stated that the Pentagon had ''repeatedly advised OMB officials that pauses beyond August 19 jeopardize the Department's ability to obligate USAI funding prudently and fully.'' Why did the President persist in withholding the funds when DOD officials were sounding the alarm that the hold would violate the law and short-change our ally of needed military aid?

It is the turn of the White House counsel to go first.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for that question.

I think the thing to understand is, there was a series of communications reflected, I believe, in the letter that OMB has sent to the JAO and in some of the testimony in the proceeding below that the Office of Management and Budget was encouraging DOD to take what steps it could to get everything lined up, have everything ready to obligate the funds so everything would be able to move quickly when the pause was lifted.

The email you mentioned suggests—was saying: We are running out of time. We are running out of time. We are going to have difficulty doing it.

But the fact was that the deadline for obligating the funds was not going to be until the end of the fiscal year. And as it turned out, as I explained earlier in response to Senator LANKFORD's question, the funds were released on September 11, and the vast majority of them were obligated by the end of the fiscal year, so that the procedures that had been used to try to get everything preplanned were mostly successful.

Yes, there were some funds—I believe it was $35 million—that did not get out of the door by the end of the fiscal year—slightly more than in past years. But in every year—in fiscal year 2017, fiscal year 2018—there were funds in the security assistance program that didn't make it out of the door by the end of the year. Each of those years, there was also a little fix in either the appropriations bill or CR to allow those funds to carry over.

So the planning had been to try to ensure that when the decision was made to release the funds, it would be done by the end of the fiscal year. Not quite all of that got out of the door, that is true, but there is always some that doesn't get out of the door by the end of the fiscal year.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, thank you for that question.

As we go further and further down this rabbit hole, I think we need to make it very clear that, you know, of the 17 witnesses that the House interviewed, nobody had an explanation. Yet again, like last night, Mr. Philbin seems to know more than anybody else in the government, more than anyone in the Department of Defense, more than anybody in the Department of State, more than anybody in OMB who had come forward with information about how exactly this happened.

But, again, here are the facts. OMB interviewed about an interagency process that they supposedly said was going on long after the interagency process had already ended. In fact, as OMB was doing those footnotes that we talked about last week—those footnotes that had never been done before, that Mr. Sandy said he had never seen in his 12 years of time working this process—as that was going on, DOD was asking the question about why we are doing this. They had no idea.

Then when the release was finally getting ready to be finally lifted—the hold, rather—OMB emailed DOD, saying: Listen, as we have been saying all along, under the Impoundment Control Act, there are no problems here, and if there is a problem, it is your fault. To which DOD replied back, as you may recall: You have got to be kidding me. ''I'm speechless.'' Because they did not know. Nobody had told them anything. None of the other 17 witnesses knew about it.

So I do want to address, before I finish one other point, this idea that the delay didn't matter. Listen, it doesn't matter if it was a 4-day delay, a 40-day delay, or a 400-day delay; every delay in combat matters. Every delay in combat matters.

And I will say—they talked about delays in the past. Well, in past years, there was about 3 to 6 percent of the funds unobligated because of unforeseen and legitimate reasons following the policy process. In 2019, 14 percent of the funds went unobligated for foreseeable and avoidable reasons—because the President could have held them. And to this day, $16 million is unspent.

The CHIEF JUSTICE. Thank you, Mr. Manager. Your time has expired.

The Senator from Wyoming.

Mr. BARRASSO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators RISCH, YOUNG, FISCHER, BLUNT, and CAPITO.

The CHIEF JUSTICE. Thank you. The question from Senator BARRASSO and the other Senators is for the counsel to the President:

Is it within a U.S. President's authority to personally address the issue of corruption with a head of a foreign government when he believes the established U.S. process has been unsuccessful in the past?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

The short answer is yes. The President is, under article II, vested with the entirety of the executive power, and it has been made clear since the founding, since the early part of the 1800s, in decisions by the Supreme Court, that the President is the sole organ of the Nation in foreign affairs. He is vested with the authority to speak on behalf of the Nation. As the Supreme Court has described it, he is to be the sole voice of the Nation in foreign affairs. And that is why that authority was assigned in the Constitution to the Executive.

Alexander Hamilton explained in the Federalist Papers that the Executive is characterized by unity and dispatch, the ability to have one view, to act quickly, and also the ability to maintain secrecy, and therefore it is the Executive that is uniquely suited and uniquely has the ability to carry out the responsibilities of engaging with foreign nations and carrying out diplomacy.

So when the President believes that there is an issue of interest to the United States, including corruption in another country, and there hasn't been the sort of progress that he would want to see in dealing with that issue in the foreign country—perhaps interactions

with prior administrations, prior officials of prior administrations that don't look great from an anti-corruption perspective—it is entirely within the President's prerogative and his province to raise those issues with a foreign leader, to point out where he believes there needs to be something done in the interest of the United States. If there is an issue related to corruption or whether it is something else—an issue related to economic matters, trade matters, antitrust matters, cross-border trade—those are all things the President can raise with a foreign leader.

Corruption is not taken off the table. And it is also not taken off the table if it is an issue that happens to involve an official from a prior administration, whether that official is not or may have recently decided to run for another office. If it relates to the national interest of the United States, he has legitimate reason for raising it, and it is within his authority as the Chief Executive.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Ms. WARREN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator WARREN is for the House managers:

At a time when large majorities of Americans have lost faith in government, does the fact that the Chief Justice is presiding over an impeachment trial in which Republican senators have thus far refused to allow witnesses or evidence contribute to the loss of legitimacy of the Chief Justice, the Supreme Court, and the Constitution?

Mr. Manager SCHIFF. Senator, I would not say it contributes to a loss of confidence in the Chief Justice. I think the Chief Justice has presided admirably.

But I will say this: I was having a conversation the other day on the House floor with one of my colleagues, TOM MALINOWSKI, from Jersey—a brilliant colleague—and I was harkening back to what I thought was a key exchange during the course of this saga.

This is when Ambassador Volker, in September, is talking with Andriy Yermak. Volker is making the case that the new President of Ukraine should not do a political investigation and prosecution of the former President of Ukraine, Poroshenko. He is making the case we often make when we travel around the country and meet with other Parliamentarians about not engaging in political investigations. And when he makes that remark, Yermak throws it right back in his face and says: Oh, you mean like the investigation you want us to do with the Clintons and the Bidens?

I was lamenting this to my colleague. What is our answer to that? What is the answer to that from a country that prides itself on adherence to the rule of law? How do we answer that? And his response, I thought, was very interesting. He said: This proceeding is our answer. This proceeding is our answer.

Yes, we are a more than fallible democracy and we don't always live up to our ideals, but when we have a President who demonstrates corruption of his office, who sacrifices the national interest for his personal interests, unlike other countries, there is a remedy. So, yes, we don't always live up to our ideals, but this trial is part of our constitutional heritage, that we were given the power to impeach the President.

I don't think a trial without witnesses reflects adversely on the Chief Justice. I do think it reflects adversely on us. I do think it diminishes the power of this example to the rest of the world if we cannot have a fair trial in the face of this kind of Presidential misconduct. This is the remedy. This is the remedy for Presidential abuse. But it does not reflect well on any of us if we are afraid of what the evidence holds.

This will be the first trial in America where the defendant says at the beginning of the trial: If the prosecution case is so good, why don't they prove it without any witnesses? That is not a model we can hold up in pride to the rest of the world.

Yes, Senator, I think that will feed cynicism about this institution, that we may disagree on the President's conduct or not, but we can't even get a fair trial. We can't even get a fair shake for the American people. Oh my God, we can't hear what John Bolton has to say.

God forbid we should hear what a relevant witness has to say. Hear no evil. That cannot reflect well on any of us. It is certainly no cause for celebration or vindication or anything like it.

My colleague says that I am a Puritan who speaks in dulcitones. I think that is the nicest thing he has ever said about me. I wouldn't describe myself as a Puritan, but, yes, I do believe in right and wrong, and I think right matters. I think a fair trial matters, and I think that the country deserves a fair trial.

Yes, Senator, if they don't get that fair trial, it will just further a cynicism that is corrosive to this institution and to our democracy.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Alabama.

Mr. SHELBY. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator SHELBY is for the counsel for the President:

Though not charged in the Articles of Impeachment, House Managers and others have stated the President's actions constituted criminal bribery. Can this claim be reconciled with the Supreme Court's unanimous decision in McDonnell v. United States?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for that question.

I think the answer is, no, it can't be reconciled with the McDonnell case. Let me make a couple of points in my answer.

The first is, of course, because there is no bribery or extortion charge in the Articles of Impeachment, the managers can't rely on that now to try to establish their case.

I pointed out yesterday, I believe, that that is a due process violation of the most fundamental sort to have a charging document and leave out certain charges in the charging document, then come to trial and say: Well, it is not in the indictment, and it is not in the charge, but, actually, what we have shown you is he did something else wrong. It was ''this crime.'' As the House managers well know, that would result in an automatic mistrial in any actual trial in a court in this country. So that is the initial problem with trying to go there on bribery or something else.

Then, as the Senator's question raises, the McDonnell case made clear, that simply arranging a meeting for someone—simply setting up a meeting with other government officials—couldn't be treated as a thing of value in an exchange under the bribery statute. It pointed out, particularly in terms of government officials who all the time are asked by their constituents to introduce them to someone else in the government, to arrange a meeting, that that is not an official act. It is not an official policy decision, an action that is determining some government policy. It is simply allowing someone to have a meeting and then talk about something. If that is the nature of the meeting, that can't be the thing of value that is being exchanged and can't support a charge of bribery.

So they can't raise it because it is not in the Articles of Impeachment. If they had wanted to charge that, they had to charge it in the Articles of Impeachment. They can't come here now and try to try a different case from the one they framed in the charging document that they had complete control over drafting. Even if they did, they can't make out the claim with respect to the White House meeting because the McDonnell case prohibits that.

I would like to make one other point because the House managers today have brought up a lot. There have been a lot of questions again and again about the subpoena power and were their subpoenas actually valid and how it is going to destroy oversight if the President's arguments are accepted. I just want to point something out.

The subpoenas that were issued—that were purported to have been issued—were not under oversight authority but pursuant to—every letter that came out said: pursuant to the House's impeachment inquiry. They purported to be exercising the authority of impeachment, and that makes a difference.

One of the House managers mentioned that the legislative oversight—

the authority to acquire the information for legislative purposes—has to actually relate to something that legislation could be passed on. There are certain constraints on what information can be sought. It is slightly different if you are going under the impeachment power because then you can investigate into specific past facts more readily because that is relevant to an impeachment inquiry that might not be for legislative purposes. They purported to be using the impeachment authority. They didn't have that authorization because the Speaker's press conference did not validly give them that authorization. We pointed out that the subpoenas were invalid. They did nothing to try to cure that deficiency. They didn't reissue the subpoenas. They didn't have the votes to reissue them or anything.

To say now that all oversight will be destroyed forever if you accept the President's arguments is totally false. It is totally misleading because they were not purporting to do just regular oversight. As we pointed out several times in the October 8 letter that the White House Counsel sent to Chairman SCHIFF and others, it said, specifically, if you want to return to regular oversight, we are happy to do that. As we have in the past, subject to constitutional constraints, we will participate in the accommodation process. It was the House Democrats who didn't want to take that route. They insist on using the impeachment authority. We pointed out that they didn't have it, and they didn't seek to cure that problem.

Accepting the President's position here has nothing to do with destroying oversight by Congress for all time and all circumstances. It has to do with the mistake that they made in trying to assert a particular authority that they didn't have in this case.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Virginia.

Mr. WARNER. Mr. Chief Justice, on behalf of myself, Senator BENNET, Senator BLUMENTHAL, and Senator HEINRICH, I have a question to send to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senators WARNER, BENNET, BLUMENTHAL, and HEINRICH is for the House managers:

Our intelligence community and law enforcement leadership unanimously concluded Russia interfered in the 2016 election and that Russia continues those efforts toward the 2020 election. The Mueller report and the Senate Intelligence Committee reached the same conclusion. Yesterday the President's counsel said that foreign election interference could be legal if it's related to ''credible'' information. Does this mean it is proper for the President to accept or encourage Russia, China, or other foreign countries to produce damaging intelligence or information targeting his domestic political opponents as long as he deems it to be from ''credible information''?

This is for the House managers.

Mr. Manager SCHIFF. Senators and the Mr. Chief Justice, that is the natural conclusion of what the President's lawyers are arguing.

Essentially, if the President believes that it would serve his reelection interest to seek the help of a foreign intelligence service to provide dirt on his opponent or in other ways assist his campaign, as long as he thinks his winning is in the national interest, then that is OK.

It is not OK, but no restraint can be placed upon him. Even if he were to go so far as to proclaim a quid pro quo—hey, Russia, you have got among the best intelligence services on the planet. If you will engage those intelligence services on my behalf, I will refuse to enforce sanctions on you over your invasion of Ukraine. That may injure the security of our country, but, look, I think my reelection is more important—that is where this bastardization of the Constitution leads us—to the idea that no abuse of power is within reach of the Congress.

Now I want to take this opportunity to respond to a couple of other quick points if I can.

First, counsel neglects the fact that, when we issued those subpoenas, we stated in the letters accompanying their issuances that they were being issued consistent with both the impeachment inquiry and our oversight authority. They neglected to tell you the latter part—that we explicitly made reference to our oversight capacity as legislators.

Finally, on the issue of bribery, in the Nixon impeachment, there was an umbrella Article of Impeachment that listed a series of specific acts. Some of those acts involved criminal activity, and some involved just unethical activity. If you were to accept counsel's argument, you would have said that the articles that passed out of the House Judiciary Committee in Nixon were likewise infirm because, if they were going to charge the President with engaging in a criminal act, they needed to make a separate article of it. Otherwise, how dare they? It would be a violation of due process, and it would be thrown out of any court—prosecutorial misconduct and the like.

OK. That is nonsense. On the one hand, they want to argue there is no conduct here that is even akin to a crime, when, under McDonnell, in fact, this would constitute bribery. Withholding a White House meeting and withholding the provision of hundreds of millions of dollars in aid under the precedent of McDonnell would be bribery, but there is no doubt it is akin to bribery. They would say, unless you charge that—in the Nixon case, they had 15 articles on each particular act, criminal and noncriminal—then you could not make out a viable charge. That has never been a constitutional principle. Just as they would have had the House organize its impeachment investigation along the terms they dictate, they now want to dictate how we can charge an offense.

At the end of the day, the task is to determine whether the conduct that is charged has been committed and whether that abuse of power rises to the level warranting impeachment. This is a technical legal argument that, no, you have to charge it as we would like you to charge it, and you can't make reference to the fact that, yes, these acts also constitute bribery and that that is somehow offensive to legal or constitutional principles. It is not. Yes, we could have charged bribery. We could have had two separate counts. That is not a constitutional requirement. Had we done that, as I said last night, they would have attacked that, saying you are taking one offense and making it into two.

That does not detract from the fact that the President's conduct violated our bribery laws, particularly as they were understood by the Framers, not as they were understood 200 years later. They violated what the Framers understood from British common law to constitute extortion. They violated the modern-day Impoundment Control Act. They violated the Whistleblower Protection Act. They violated multiple laws, but that is not even necessary.

What is necessary is that they abused their power. Counsel says: Well, claims are made of abuse of power all the time. Yes, that is true in political rhetoric, but these circumstances warranted impeachment. The President was not impeached over climate change or any of the other enumerable examples they gave of people rhetorically saying the President is abusing his office. That is not what brought us here. What brought us here was the President decided that he could withhold military aid to an ally at war to get help in his reelection.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Oklahoma.

Mr. INHOFE. Mr. Chief Justice, I have a question for the President's counsel, and I am being joined by Senators ROUNDS and YOUNG.

The CHIEF JUSTICE. Thank you.

The question from Senator INHOFE, joined by Senators ROUNDS and YOUNG, is for counsel to the President:

Even if additional witnesses are called, do you ever envision the House Managers agreeing there has been a fair Senate trial if it ends in the President's acquittal?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, the answer is no.

Now, they will not agree that it is fair because what will happen is, if there is a discussion of witnesses and if we go to witnesses, Mr. SCHUMER has laid out the four he wants, and he tells me we could have anybody we want. The reality is that also includes documents, and that includes other witnesses that it may lead to. So, at some point, this body will say—because this cannot go on forever, and we will be at the election—this has to come to an end, and they will say: Aha, it has been brought to an end as we were about to get the key evidence.

But what is so interesting here is they had 17 witnesses—that they had. When the hearing took place before the Judiciary Committee, if I am not mistaken, Manager NADLER, you had four witnesses at one point, when you had the law professors, and there were three law professors from the Democratic side and there was one from the Republican side. So if we are going to take that same four-to-one analysis, for every one of their witnesses, we should get four.

But there was a question earlier asked about the truth of the poisonous tree. The taint of the poison does not age well. The longer it goes does not make that poison go away. It gets deeper and deeper into the soil, and here, the soil we are talking about is a trial that would be not only ongoing, but they put up 17 witnesses. You have heard them. They are acting like there have been no witnesses presented here. They presented the testimony of 17. They may not have liked that we were able to respond to those 17 by playing those witnesses' words. By the way, those witnesses—the testimony of those witnesses—were never done with cross-examination by the counsel for the President.

So does this end? Will it ever be enough? No, it will only be enough if they got a conviction because that is what it is about, because let's not forget for a moment that this has been going on, in one stage or another, for 3½, 3 years now.

My concern is there is not a—where is the end point in that? So their end point is: Well, just give us John Bolton, and then, you know, you don't get anybody or then, you know, you get one and we get one, and then that one may lead to somebody else. It is not the way it works.

So they have said ''overwhelming,'' ''proved,'' 63 times—63 times. And as we are 3 hours away from answering the end of the question section, we are about to go into—I mean, it sounds like we have been arguing about witnesses for the last couple hours, but that starts tomorrow.

But do I think that there will be—is it our position that there will be—a recognition that there is due process that has been reached and we have reached a happy accord? No, I do not believe that.

I also don't believe that what can be cured here. I don't think what they did can be cured here by anything you were to do as far as witnesses or anything else. That process was so tainted, and I thought Mr. Philbin did a very effective job of explaining—painstakingly, now, and multiple times, I know—the issue of those subpoenas. And I thought the perfect analysis was when one of the managers said: Well, when people file freedom of information requests, they get answers. And Mr. Philbin said: That is because they followed the law; they followed the rules. That is not what happened here.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Delaware.

Mr. CARPER. Mr. Chief Justice, on behalf of our colleagues Senators BOOKER, CARDIN, KAINE, MARKEY, MENENDEZ, MERKLEY, MURPHY, and SHAHEEN, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator CARPER and the other Senators addressed to the House managers:

> The President's aides and defenders have claimed that it is ''normal'' or ''usual'' to use U.S. foreign assistance as the President did to achieve a desired outcome. How was the President's act in withholding U.S. security assistance to Ukraine different from how the U.S. uses foreign assistance to achieve foreign policy goals and national security objectives, and how should we evaluate the defense argument that this is what is ''done all the time''?

Mr. Manager CROW. Mr. Chief Justice, Senators, thank you for the question.

So to understand the answer to this, you don't have to look inside the President's mind. You just have to look at recent history and then what was done last year.

As I talked about earlier, and even yesterday, other Presidents have held holds in aid for legitimate reasons, even this President. We concede that. But there are a variety of legitimate policy reasons for holding aid, whether it be corruption or burden-sharing.

See, even in the President's other holds—like Afghanistan, because of concerns about terrorism, or Central America, because of immigration concerns—even though some might disagree with that, that is a legitimate policy debate.

The difference here is that every witness testified—these 17 witnesses that you hear about testified—that there was no reason provided for the implementation of this hold. Right?

I talked about earlier how there is a process for doing this. Right? There is a well-prescribed process for allocating the funds, like we all did here in this Chamber and 87 of you agreed on it, and then an interagency process to review it to make sure that it meets the standards and criteria outlined by this body, anticorruption reforms. And that was done in this case. That interagency process was followed. That certification was made. The notification to Congress was conducted. The train had left the station, just like the train had left the station in 2018, in 2017, in 2016. And every element of the agencies and the bureaucracy involved in that process in prior years had been engaged and had signed off, except this year.

In 2019, rather, that all changed. A hold was implemented for no known reason. There was no notification given to Congress, which violated the Impoundment Control Act. DOD, Department of State, Secretary Esper, Secretary Pompeo, even Vice President PENCE, and the entire National Security Council implored the President to release the aid because it not only had met all of the certifications but it was in the U.S. national interest and consistent with U.S. policy.

And yet, nobody knew why it happened, and, to this day, the individual who could shed light on this, Mr. Bolton, is being prohibited from coming forward to explain why the President told him it happened.

So, yes, it is still a good time to subpoena Ambassador Bolton and get that information.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Carolina.

Mr. BURR. Mr. Chief Justice, I have a question for both sets of counsel, sponsored by myself, Senator CRUZ, Senator SCOTT of South Carolina, HAWLEY, SASSE, and RUBIO.

The CHIEF JUSTICE. Thank you.

The question from Senator BURR and the other Senators is for both parties. The House will answer first:

> Hillary Clinton's campaign and the Democratic National Committee hired a retired foreign spy to work with Russian contacts to build a dossier of opposition research against her political opponent, Donald Trump. Under the House Manager's standard, would the Steele dossier be considered as foreign interference in a US election, a violation of the law, and/or an impeachable offense?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice and distinguished Senators. I thank you for the question.

The analogy is not applicable to the present situation because, first, to the extent that opposition research was obtained, it was opposition research that was purchased.

But this speaks to the underlying issue of the avoidance of facts—the avoidance of the reality of what President Trump did in this particular circumstance.

Now, I have tremendous respect for the President's counsel, but one of the arguments that we consistently hear on the floor of this Senate, this great institution in America's democracy, is conspiracy theory after conspiracy theory after conspiracy theory.

We have heard about the deep-state conspiracy theory. We have heard about the ''Adam Schiff is the root of all evil'' conspiracy theory. We have heard about the Burisma conspiracy theory. We have heard about the CrowdStrike conspiracy theory. We have heard about the whistleblower conspiracy theory. It is hard to keep count.

This is the Senate. This is America's most exclusive political club. This is the world's greatest deliberative body, and all you offer us is conspiracy theories because you can't address the facts in this case, that the President corruptly abused his power to target an American citizen for political and personal gain. He tried to cheat in the election by soliciting foreign interference. That is an impeachable offense. That is a crime against the Constitution. That is the reason that we are here. That is what is before this great body of distinguished Senators.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. SEKULOW. Mr. Chief Justice, Members of the Senate, so, I guess you can buy—that is what it sounds like; you can buy a foreign interference. If you purchase it, if you purchase their opposition research, I guess that is OK.

So let me try to debunk the conspiracy, Manager JEFFRIES; and that is, it is not conspiracy that Christopher Steele was engaged to obtain and prepare a dossier on the Presidential candidate for the Republican Party, Donald Trump. It is not a conspiracy that Christopher Steele utilized his network of assets—including assets, apparently, in Russia—to draft the dossier. It is not a conspiracy that the dossier was shared with the Department of Justice through Bruce Ohr, who was the No. 4 ranking member of the Department of Justice at that time, because his wife, Nellie Ohr, happened to be working for the organization, Fusion GPS, that was putting the dossier together. This is also not a conspiracy. It sounds like one, except it is real. And it is also not a conspiracy that that dossier—purchased dossier—was taken by the FBI, submitted to the Foreign Intelligence Surveillance Court to obtain a foreign intelligence surveillance order on an American citizen. It is also not a conspiracy that that court issued an order—two of them now—condemning the FBI's practice and acknowledging that many of those orders were not properly issued. None of that is a conspiracy theory. That is just the facts.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Wisconsin.

Ms. BALDWIN. Mr. Chief Justice, I send a question to the desk for both President's counsel and House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator BALDWIN is for both parties, and counsel for the President will answer first:

Can you assure us that the Jennifer Williams document submitted to the House was not classified SECRET for any reasons prohibited by Executive Order 13526, such as preventing embarrassment to a person? If yes, please describe or identify the serious damage to national security that would be caused by declassifying this document, pursuant to the same Executive Order.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, in response to your question, the Trump administration's policy is always to abide by the requirements for classification of material, and the classification—my understanding is that that document is derivatively classified because it refers to another document, a transcript that was originally classified. I can't represent to you a specific reason that the classification officer classified that document, but I can tell you that it was originally classified according to proper procedures. It is a properly classified document, and that is the policy of the administration, to follow the classification procedures.

The memorandum that she submitted is derivatively classified because of that transcript. Now, that transcript relates to a conversation with a foreign head of state. Almost all conversations with foreign heads of state are classified. They are classified because the confidentiality relates to those communications. It is important for ensuring that there can be candid conversations with foreign heads of state.

The President took an extraordinary action in declassifying two of his conversations with foreign heads of state—unprecedented—because he carefully weighed the balance of what was at stake in this case and the need for transparency to the American public in those two conversations. But that was an exception to the usual rule that such conversations are properly classified.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Senators, I would encourage you, if you haven't already had the opportunity, to read that document for yourself and ask whether you think there is any legitimate basis to classify that supplemental testimony.

Now, the Vice President has said that he had no knowledge of this scheme. He has denied any knowledge, involvement in any way, shape, or form.

We heard the testimony of Ambassador Sondland that Ambassador Sondland raised to the Vice President that the aid was being held up and was tied to these investigations, and the Vice President didn't say: What are you talking about? That could never be. The President would never allow such a thing.

There was nothing but a silent nod of acknowledgment of what he was being told. But, nonetheless, the Vice President says that he knew nothing, and the Vice President points to the open testimony of Jennifer Williams to support that contention. But the classified submission goes to that phone call between the Vice President and President Zelensky. You should read that and ask yourself whether that submission is being classified because it would either embarrass or undermine what the President and the Vice President are saying or there is some legitimate reason.

Now, the Vice President at one point said that he wanted to release the record of his call. He certainly talked all about this issue, as has the President. If it was so classified, then why are they all talking about it? But we are to be assured that this classification decision was made absolutely above board. I am sure that John Bolton's manuscript will be treated with the same rigid, objective scrutiny.

You read that. Don't take my word for it. You read that, and you ask yourselves, is there anything that—other than avoiding evidence that the administration doesn't want you to see—that the public shouldn't see in Jennifer Williams' supplemental testimony? I don't think you can conclude that it is, except that it would be inconsistent with what you are being told and what the American people are being told. Well, they deserve the whole truth, and that is part of the truth. So let the public see it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Tennessee.

Mr. ALEXANDER. Thank you, Mr. Chief Justice. I send a question to the desk on behalf of myself, Senator DAINES, and Senator CRUZ.

The CHIEF JUSTICE. Thank you.

The question from Senators ALEXANDER, DAINES, and CRUZ is for the House managers:

Compare the bipartisanship in the Nixon, Clinton, and Trump impeachment proceedings. Specifically, how bipartisan was the vote in the House of Representatives to authorize and direct the House committees to begin formal impeachment inquiries for each of the three Presidents?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, in the Nixon impeachment, you look back and think about the vote in the House Judiciary Committee. It ended up bipartisan, but it didn't start that way. The parties were dug in, as parties are today. The Republicans and Democrats saw it differently. But as the evidence emerged, a bipartisan consensus emerged on the committee, and a number of Republicans—Tom Railsback, who just passed away, and Caldwell Butler, who loved Richard Nixon—he was a huge fan of Richard Nixon's. But they couldn't turn away from the evidence that their President had committed abuse of power, cheated the election, and they had to vote to impeach him.

When it came to the Clinton impeachment, that was—again, it started out along very partisan lines, and it ended along partisan lines. I believe the reason why, as I said a short while earlier, was that we never had a high crime and misdemeanor. That was the problem.

With Nixon, we had clear abuse of Presidential authority to upend the Constitution, scheme to cheat in an election, and Members of both parties voted to impeach. With Clinton, we had private misconduct. Yes, I would call it a crime because he lied about that under oath, but it wasn't misuse of Presidential authority. As I said, any husband caught in an affair could have lied about it. And it didn't involve the use of Presidential authority. So we never got beyond our partisan divisions on that. And many of us—and I will include myself—believed that it was being done for a partisan purpose, because it didn't reach a high crime and misdemeanor.

In the Trump case—and I will say I have been disappointed, because I serve with a number of Republicans in the House whom I like, whom I respect, whom I work with on legislation, and I honestly believed that when this evidence came out, as with the Nixon administration, we would have a coming

together. But it didn't happen, much to my disappointment.

I think you have a new opportunity here in the Senate. For one thing, this is a smaller body. You are, as has been mentioned, the greatest deliberative body on the planet. You have an opportunity to do something that we didn't have a chance to do, which is to call firsthand witnesses and hear from them.

A lot of things have happened since the impeachment articles were adopted. One of them was emails that have been released that we didn't know about.

It has been said by counsel that the Freedom of Information Act information shows that if you follow the process, you get information. No, they had to sue, and they are still in a lockdown fight over the Freedom of Information Act and redactions that were not proper. So that is a big fight that is still going on, but we got information.

But most tellingly, Mr. Bolton has now stepped forward and said he is willing to testify. He is willing to come here and testify under oath. And I think we can all learn something. As Mr. SCHIFF has mentioned, I think we can structure this in such a way that it would respect the Senate's need to do other business, which we also do in the House.

Let's get that done, and let's see if that kind of information can help the Senators come together, as happened in the House Judiciary Committee so many years ago when we dealt with the serious problem of Presidential misconduct—abuse of power to cheat an election—when Richard Nixon shocked the Nation and ultimately had to resign.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. SCHUMER. Mr. Chief Justice.

The CHIEF JUSTICE. The Democratic leader is recognized.

Mr. SCHUMER. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator SCHUMER for the House managers:

Many of our colleagues are worried that if we were able to bring witnesses and documents in the trial it would take too long. Mr. SCHIFF mentioned we could do depositions in one week. Please elaborate. What can you say that will reassure us that having witnesses and documents can be done in a short time, minimally impeding the business of the Senate?

Mr. Manager SCHIFF. I thank the Senator for the question.

First of all, with respect to the documents that we subpoenaed and sought to get in the House, those documents have been collected. So that work has been done. We have been informed, for example, that the State Department documents have been collected. Those can readily be provided to the Senate for its consideration.

With respect to witnesses, if we agree to a 1-week period to do depositions while you continue to conduct the business of the Senate, it doesn't mean that we would have unlimited witnesses during that week. We would have to decide on witnesses who are relevant and probative of the issues. Neither side would have an unlimited capacity to call endless witnesses. We would have a limited period of time, just as we had a limited period of time for our opening presentations and for this question and answer period.

If there is any dispute over whether a witness is truly material or probative, that decision can be made by the Chief Justice in very short order. If there is a dispute as to whether a passage in a document is covered by an applicable privilege and if, for the first time, the White House would actually invoke a privilege, the Chief Justice can decide, is that properly made or is that merely an attempt to conceal crime or fraud?

So this can be done very quickly. This can be done, I think, effectively. We have never sought to depose every witness under the face of the Sun. We have specified four in particular, who we think are particularly appropriate and relevant here. But we should be able to reach an agreement on concluding that process within a week. So that is how we would contemplate it being done.

We would make that proposal to our opposing counsel. It would be respectful of your time. It would, I think, be a reasonable accommodation. And counsel says that the Constitution mandates a reasonable accommodation. Well, let's have a reasonable accommodation here, and the reasonable accommodation could be to take 1 week to continue with the business of the Senate. We will do the depositions, and then we will come back, and we will present to you what the witnesses had to say in those depositions. That is how we contemplate the process would work.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I am about to send a question to the desk, but I am going to suggest that following the response to my question and one more Democratic question, we take a 45-minute break for dinner.

So I send a question to the desk.

The CHIEF JUSTICE. I am sure there is no objection.

The question from the majority leader is for the counsel to the President:

Would you please respond to the question on bipartisanship by Senator ALEXANDER and any assertions the House managers made in response to any of the previous questions?

Mr. Counsel PHILBIN. Mr. Chief Justice, majority leader, thank you for that question.

In response to Senator ALEXANDER, your question, in the Nixon case, the authorizing resolution—this is in the House to authorize the inquiry—was passed by a vote of 410 to 4. Four hundred and ten voted in favor of the inquiry; only four voted against. Two hundred and thirty-two Democrats, 177 Republicans, and 1 Independent voted in favor.

In the Clinton authorizing resolution—this was H. Res. 581—they authorized just the beginning of the inquiry. It passed by a vote of 258 to 176 Now, 31 Democrats joined 227 Republicans voting in favor of authorizing that inquiry. That was substantial bipartisan support to authorize the inquiry.

In this case, H. Res. 660, which was passed on October 31, had bipartisan opposition. The votes in favor of the resolution were 231 Democrats and 1 Independent. The opposition was all Republicans, 194, plus 2 Democrats voting against.

In terms of other assertions that have been made, there are just a couple of points I wanted to touch on. There has been a lot said about—House managers have suggested that counsel for the President have argued that the President could do anything he wants now—solicit any foreign interference in any election. If he thinks it will help him get elected, that is OK, and that is the theory of the case. That is absolutely false. That is a gross distortion of what has been presented, and let me make a couple of points about that.

There have been questions about the campaign finance laws, and one narrow point that we have made in response to specific questions about the campaign finance laws is simply that information—limited information—being presented to a party is not a contribution, a thing of value under the campaign finance laws. And that is not just my conclusion; that is what the Mueller report said. When the Mueller report looked into this, it said: ''No judicial decision has treated the voluntary provision of uncompensated opposition research or similar information as a thing of value that could amount to a contribution under campaign-finance law.'' That is volume I, page 187. So that is a limited point.

The bigger point: The suggestion has been made, because of Professor Dershowitz's comments, that the theory that the President's counsel is advancing is the President can do anything he wants. If he thinks it will advance his reelection, any quid pro quo, anything he wants, anything goes. That is not true. Professor Dershowitz today issued a statement to show that that was an exaggeration of what he was saying.

But let me make an even more narrow point. Aside from what Professor Dershowitz was saying the other night and explaining in abstract and hypothetical terms and academic terms, we have a specific case here. And the specific case here is the one that has been framed by the House managers. And the defects in that case and their theory of the case are, there is abuse of power that involves no allegation of a crime whatsoever and no allegation of a violation of established law. Instead, the theory that you can take action that, on its face, is objectively permissible under the powers of the President and determine that it is going to be

treated as impeachable and impermissible solely on an inquiry into subjective motives—that is what the House Judiciary Committee report says. That is a theory that is infinitely malleable. It provides no standard—no real standard at all. And that was one core point Professor Dershowitz was making, that it is tantamount to impeachment for maladministration.

The other point I will make is they set the standard for themselves with respect to investigations. They have to establish, in order to establish their bad motive, that there is not a scintilla of evidence—there is nothing that you can look at that would suggest any possible legitimate national interest in inquiring into 2016 election interference or the Biden and Burisma affair. They can't possibly meet that standard. It is overdetermined that there is a legitimate policy interest in at least raising a question about those things.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. COONS. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Delaware.

Mr. COONS. On behalf of myself and Senator KLOBUCHAR, I send a question to the desk, addressed to the President's counsel and the House managers.

The CHIEF JUSTICE. Thank you. The House will go first in answering the question from Senators COONS and KLOBUCHAR:

Mr. Sekulow said earlier that the President's Counsel would expect to call their own witnesses in this trial if Mr. Bolton or others are called by the House managers. Can you tell the Senate if any of those witnesses would have first-hand knowledge of the charges against the President and his actions?

Mr. Manager SCHIFF. Mr. Justice and Senators, there certainly are witnesses that the President could call with firsthand information. I don't know that they are—the witnesses that they have described so far, their position is, apparently, if you are the chairman of a committee doing an investigation, that makes you a relevant witness. It doesn't—or you all become witnesses in your own investigations.

They want to call Joe Biden as a witness. Joe Biden can't tell us why military aid was withheld from Ukraine while it was fighting a war. Joe Biden can't tell us why President Zelensky couldn't get in the door of the White House while the Russian Foreign Minister could. He is not in a position to answer those questions. He can't tell us whether this rises to an impeachable abuse of power, although he probably has opinions on the subject.

But are there witnesses they could call? Absolutely. They have said Mick Mulvaney issued a statement saying: The President never said what I had said he had said earlier. Well, if that is the case, then why don't they call Mick Mulvaney? He should be on their witness list. If Secretary Pompeo has evidence that there was a policy basis to withhold the aid and it was discussed, well, then, why don't they call him? That is a relevant fact witness.

They don't want to allow the Chief Justice to decide issues of materiality because they know what they are trying to do involves witnesses that don't shed light on the charges against the President. They do satisfy the appetite of their client, but they don't have probative value to the issues here.

So, yes, there are witnesses. Now, the reason they are not on the President's witness list is because if they were truthful under oath, they would incriminate the President. Otherwise, they would be begging to have Mick Mulvaney come testify; otherwise, they would be begging to have the head of OMB, who helped administer the freeze on behalf of the President: Let's bring him in. He will tell you it was completely innocent. It was all about burden-sharing.

So why don't they want the head of OMB in? Why don't they want their own people in? Because their own people will incriminate the President.

But there is no shortage of relevant, probative witnesses. They just don't want you to hear what they have to say.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Mr. Chief Justice, so besides the fact that Mr. SCHUMER said—and it is on page 675 of the transcript—that we can call any witnesses we want, Mr. SCHIFF just said we don't really get—we can call their witnesses. That is what he said. We can call their witnesses because, under their theory, if we wanted to talk to the whistleblower, even in a secure setting to find out if he, in fact, may have worked for the Vice President or may have worked on Ukraine or may have been in communication with the staff, that is irrelevant.

We can't talk to Joe Biden or Hunter Biden because that is irrelevant—except the conversation that is the subject matter of this inquiry, the phone call transcript that you selectively utilized, has a reference to Hunter Biden. The conversation with Burisma, they raised it for about a half a day, saying there was nothing there. Well, let me find out through cross-examination.

But I just think of the irony of this—before we go to dinner—that we could call anyone we want, except for witnesses we want, but we can call their witnesses that they want.

Remember we said ''the fruit of the poisonous tree''? It is still the fruit of the poisonous tree. It doesn't get better with age, as I said.

This idea that this is going to be a fair process—call the witnesses they want; don't call the witnesses you want because they are irrelevant. They may be irrelevant to them. They are not irrelevant to the President, and they are not irrelevant to our case. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

RECESS

The CHIEF JUSTICE. Mr. Majority Leader, I understand we have 45 minutes?

Mr. MCCONNELL. Mr. Chief Justice, we do indeed.

There being no objection, at 6:39 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:37 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. Senators, please be seated.

The Senate will come to order.

Mr. GRASSLEY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. GRASSLEY. I send a question to the desk on behalf of myself, Senators MCCONNELL, HOEVEN, and WICKER.

The CHIEF JUSTICE. Thank you.

The question from Senator GRASSLEY and the other Senators is addressed to counsel for the President:

During President Clinton's impeachment trial, he argued that ''no civil officer—no President, no judge, no cabinet member—has ever been impeached by so narrow a margin . . . [and] that the closeness and partisan division of the vote reflected the constitutionally dubious nature of the charges against him.'' President Trump has raised similar concerns during these proceedings and argues that the lack of bipartisan consensus highlights the partisan nature of the charges. Are the President's concerns well-founded?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think the concerns are very well-founded. I think that they are concerns that echo back to our founding, when Alexander Hamilton warned in Federalist No. 65 precisely against partisan impeachments. A partisan impeachment is one of the greatest dangers that the Framers saw in the impeachment power. And in Federalist No. 65, Hamilton specifically said that impeachments could become ''persecution of an intemperate or designing majority in the House of Representatives,'' and that is what we have in this case.

In fact, there was bipartisan opposition to the Articles of Impeachment here in the House. So this is one of the—it is the most divisive sort of impeachment that could be brought here, and it reflects very poorly on the process that was run in the House, which had not had bipartisan support, and the charges that were ultimately adopted in the House, because it is a purely partisan impeachment.

And I think that that is important to bear in mind also, that the House managers themselves and some of the Members of this Chamber, at the time of the Clinton impeachment, warned very eloquently against partisan impeachments. They recognized that a partisan impeachment would not be valid, that it would do grave damage to our political community, to our polity, to the country. It would create deep divisions

that would last for years. And in the Clinton impeachment, they made those warnings when it was not even arising in the context of an election year.

Now we have a partisan impeachment—as we have pointed out—when there is an election only 9 months away, and it will be perceived, and is perceived by many in the country, as simply an attempt to interfere with the election and to prevent the voters from having their choice of who they want to be President for the next 4 years.

And the House managers have said: We can't allow the voters to decide because we can't be sure it will be a fair election. That can't be the way we approach democracy in the United States. We have to respect the ability of the voters to take in information, because all the information is out now. They have had plenty of opportunity, with the process that they ran in the House, to make all the information public that they want and to be able to make their accusations against the President. We think they have been disapproved, and the voters should be able to decide.

And the most important thing, the greatest danger from this partisan impeachment, I believe, is the one that Minority Leader SCHUMER warned about back in 1998, which is that, once we start down the road of purely partisan impeachments, once we start to normalize that process and make it all right to have a purely partisan impeachment, especially in an election year, then we have just turned impeachment into a partisan political tool, and it will be used again and again and again and more frequently and more frequently. And that is not a process—that is not a future—for the country that this Chamber should accept.

Instead, this Chamber should put an end to the growing pattern towards partisan impeachments in this country, put an end to that practice and definitively make clear that a purely partisan impeachment not based on adequate charges, not based on charges that meet the constitutional standard will not get any consideration in this Chamber and will be rejected.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. VAN HOLLEN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Maryland.

Mr. VAN HOLLEN. Mr. Chief Justice, on behalf of myself and Senator KLOBUCHAR, I send a question to the desk directed to both parties.

The CHIEF JUSTICE. Thank you.

The question from Senator VAN HOLLEN is to both parties. The President's counsel will go first:

> In his response to an earlier question this evening, Mr. Sekulow cited individuals like the Bidens as being ''not irrelevant to our case.'' Are you opposed to having the Chief Justice make the initial determinations regarding the relevance of documents and witnesses, particularly as the Senate could disagree with the Chief Justice's ruling by a majority vote?

The President's counsel is first.

Mr. Counsel SEKULOW. Mr. Chief Justice, again, to make our position clear, we think, constitutionally, that would not be the appropriate way to go.

Again, no disrespect to the Chief Justice at all, who is presiding here as the Presiding Officer, but our view is that, if there are issues that have to be resolved on constitutional matters, that it should be done in the appropriate way.

You have Senate rules that govern that, as to what you would do, and then there is—you know, if litigation were to be necessary for a particular issue, that would have to be looked at. But this idea that we can short circuit the system, which is what they have been doing for 3 months, is not something we are willing to go with.

I have said that. I said it all day yesterday. And, again, no disrespect to the Senator's question, but we are just—that is not a position that we will accept as far as moving these proceedings forward.

Thank you.

Mr. Manager SCHIFF. Senators, counsel for the President says that would not be constitutionally appropriate. Why not? Where is it prohibited in the Constitution that in an impeachment trial, upon the agreement of the parties, the Chief Justice cannot resolve issues of materiality of the witnesses? Of course that is permitted by the Constitution.

Now, counsel earlier said that the House managers want to decide on which witnesses the President should be able to call; we want them to call our witnesses. Well, you would think that Mick Mulvaney, the White House Chief of Staff, would be their witness. If indeed he supports what the President is claiming, if indeed he is willing to say under oath what he is willing to say in a press statement, you would think he would be their witness.

But I am not saying that we get to decide. That is not the proposal here. The proposal is we take a week; the Senate goes about its business; we do depositions. The witnesses are not witnesses on the President's behalf that we get a decision on as House managers; but, rather, that we entrust the Chief Justice of the United States to make a fair and impartial decision as to whether a witness is material or not, whether a witness has relevant facts or not, or whether a witness is simply being brought before this body for the purposes of retribution—in the case of the whistleblower—or to smear the Bidens without material purpose relevant to these proceedings.

We are not asking that you accept our judgment on that. We are proposing that the Chief Justice make that decision. And I think the reason, of course, that they don't want the Chief Justice to make that decision, as I indicated the other night, is not because they don't trust the Chief Justice to be fair. It is because they fear the Chief Justice will be fair. And I think that tells you everything you need to know about the lack of good faith when it comes to the arguments they make about why they went to court, why they refused to comply with any subpoenas, why they refused to provide any documents, why they are here before you saying that the House managers must sue to get witnesses and they are in court on the same day saying you can't sue to get witnesses.

This is why they don't want the Chief Justice to make that decision, because they know the witnesses they are requesting are for purposes of retribution or distraction.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Carolina.

Mr. TILLIS. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator CRUZ.

The CHIEF JUSTICE. Thank you. The question from Senators TILLIS and CRUZ is for the House managers:

> You have based your case on the proposition that it was utterly ''baseless'' and a ''sham'' to ask for an investigation into possible corruption of Burisma and the Bidens.
>
> Chris Heinz, the step-son of then-Secretary of State John Kerry, emailed Kerry's Chief of Staff that ''Apparently, Devon and Hunter both joined the board of Burisma and a press release went out today. I can't speak to why they decided to, but there was no investment by our firm in their company.'' Heinz subsequently terminated his business relationship with Devon Archer and Hunter Biden because ''working with Burisma is unacceptable,'' and showed a ''lack of judgment.''
>
> Do you agree with Chris Heinz that working with Burisma was ''unacceptable''? Did John Kerry or Joe Biden agree with Chris Heinz? If not, why not?

Mr. Manager SCHIFF. The reason why Joe Biden is not material to these proceedings, the reason why this is a baseless smear is that the issue is not whether Hunter Biden should have sat on that board or not sat on that board. The issue is not whether Hunter Biden was properly compensated or improperly compensated or whether he speaks Ukrainian or he doesn't speak Ukrainian.

What the President asked for was an investigation of Joe Biden, and the smear against Joe Biden is that he sought to fire a prosecutor because he was trying to protect his son. I guess that is the nature of the allegation. And that is a baseless smear.

As we demonstrated—as the unequivocal testimony in the House demonstrated, when the Vice President sought the dismissal of a corrupt and incompetent prosecutor, it had nothing to do with Hunter Biden's position on the board. It had everything to do with the fact that the State Department, our allies, the International Monetary Fund were in unanimous agreement that this prosecutor was corrupt. And the uncontradicted testimony was also that, in getting rid of that prosecutor, it would increase the chances of real

corruption prosecutions going forward, not that it would decrease them.

So the sham is this: The sham is that Joe Biden did something wrong when he followed United States policy, when he did what he was asked to do by our European allies, when he did what he was asked to do by international financial institutions.

And the other sham is the Russian propaganda sham that this CrowdStrike—kooky conspiracy theory that the Ukrainians, not the Russians, hacked the DNC and that someone whisked the server away to Ukraine to hide it. That is Russian intelligence propaganda, and yes, it is a sham. And it is worse than a sham. It is a Russian propaganda coup is what it is. Thank God, Putin says, that they are not talking about Russian interference anymore; they are talking about the Ukrainian interference.

Now, counsel says: Well, isn't it possible that two countries interfered?

But you heard what our own Director of the FBI, Christopher Wray, said: There is no evidence of Ukrainian interference in our election. There is no evidence. So, yes, I think we can cite the FBI Director for the proposition that that is a sham. And that is why—that is why—we refer to it as such.

But at the end of the day, what this is all about is the President using the power of his office, abusing the power of that office to engage in soliciting investigations—and actually just the announcement of them. If the President thought there was so much merit there, then why was it that he just needed their announcement?

And what is more, as counsel just conceded before the break, Rudy Giuliani was not pursuing the policy of the United States. OK. If it wasn't the policy of the United States, then what was it? If it wasn't the policy to pursue an investigation of the Bidens, then what was it?

It was a ''domestic political errand'' is what it was.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Oregon.

Mr. WYDEN. Mr. Chief Justice, on behalf of Senator MENENDEZ, Senator BROWN, and myself, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. Senators WYDEN, MENENDEZ, and BROWN ask the House managers:

The President's counsel has argued that the President's actions are based on his desire to root out corruption. However, new reporting indicates that Attorney General Barr and former National Security Advisor Bolton shared concerns that the President was granting personal favors to autocratic foreign leaders like President Erdogan of Turkey. The President has also acknowledged his private business interests in the country like Trump Towers Istanbul. The Treasury Department has not denied that the President directed Treasury and the Department of Justice to intervene in the criminal investigation of Halkbank, the Turkish state-owned bank, which has been accused of a scheme to evade Iranian sanctions. Has the President engaged in a pattern of conduct in which he places his personal and political interests above the national security interests of the United States?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice. I also want to thank the Senators, again, for your hospitality and for listening to both sides as we have endeavored to answer your questions. Thank you for that question.

I think, first and foremost, there has been a troubling pattern of possible conflicts of interest that we have seen from the beginning of this administration through this moment, but the allegation here related to the abuse of power charge is that, in this specific instance, the President tried to cheat by soliciting foreign interference in an American election by trying to gin up phony investigations against a political opponent.

Now, what counsel for the President has said is that what the President was really interested in is corruption, that he is an anti-corruption crusader. For you to believe the President's narrative, you have to conclude that he is an anti-corruption crusader. Perhaps his domestic record is part of what Senators can reasonably consider, but let's look at the facts of the central charge here.

The President had two calls with President Zelensky, on April 21 and on July 25. In both instances, he did not mention the word ''corruption'' once. Released the transcripts. The word ''corruption'' was not mentioned by Donald Trump once.

We also know that in May of last year President Trump's own Department of Defense indicated that the new Ukrainian Government had met all necessary preconditions for the receipt of the military aid, including the implementation of anti-corruption reforms. That is President Trump's Department of Defense saying there is no corruption concern as it relates to the release of the aid.

Now, I think we can all acknowledge, as the President's counsel indicated, that there was a general corruption challenge with Ukraine. I think the exact quote from Mr. Purpura was: ''Since the fall of the Soviet Union, Ukraine has suffered from one of the worst environments for corruption in the world.''

Certainly I believe that that is the case, but here is the key question: Why did President Trump wait until 2019 to pretend as if he wanted to do something about corruption? Let's explore.

Did Ukraine have a corruption problem in 2017, generally? The answer is yes. Did President Trump dislike foreign aid in 2017? The answer is yes. What did President Trump do about these alleged concerns in 2017? The answer is nothing.

Under the same exact conditions that the President now claims motivated him to seek a phony political investigation against the Bidens and place a hold on the money, the President did nothing. He did not seek an investigation into the Bidens in 2017. He did not put a hold on the aid in 2017. But the Trump administration oversaw $560 million in military and security aid to Ukraine in 2017.

In 2018, the same conditions existed. If President Trump is truly an anti-corruption crusader—but what happened in 2018? He didn't seek an investigation into the Bidens. He didn't put a hold on the aid. Rather, the Trump administration oversaw $620 million in military and security aid to Ukraine, which brings us to this moment.

Why the sudden interest in Burisma, in the Bidens, in alleged corruption concerns about Ukraine? What changed in 2019? What changed is that Joe Biden announced his candidacy. The President was concerned with that candidacy. Polls had him losing to the former Vice President, and he was determined to stop Joe Biden by trying to cheat in the election, smear him, solicit foreign interference in 2020.

That is an abuse of power. That is corrupt. That is wrong.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Maine.

Ms. COLLINS. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator RUBIO, and Senator RISCH.

The CHIEF JUSTICE. Thank you. The question from Senators COLLINS, RUBIO, and RISCH is addressed to the House managers:

The House of Representatives withdrew its subpoena to compel Charles Kupperman's testimony. Why did the House withdraw the Kupperman subpoena? Why didn't the House pursue its legal remedies to enforce its subpoenas?

Mr. Manager SCHIFF. Senators, I thank you for the question.

When we—our practice in the House was to invite witnesses to come voluntarily; if they refused, to give them a subpoena. In the case of Dr. Kupperman, he refused to come in voluntarily, and we subpoenaed him.

Almost instantly upon receipt of the subpoena, a lengthy complaint was filed in court where he sought to challenge that subpoena. Interestingly, and contrary to, I think, what you are hearing from the President's counsel here today, the House took the position that a witness cannot challenge—does not have standing to challenge a congressional subpoena.

We were joined, by the way, in that position by the Justice Department, which also said that Dr. Kupperman didn't have jurisdiction to challenge or get a declaratory judgment as to the validity of the subpoena.

So, in that litigation, we were often on the same page as the Justice Department. But more meaningful to us, we were simply not going to engage in a yearslong process of delay to get the answers that we needed.

We proposed to Dr. Kupperman's counsel that if, as you claim, this is really about just wanting to get a court blessing, there is a willingness to

come forward, but we just want to make sure that it is appropriate that we do so, if you are sincere about that, there is already a case that has been filed, the McGahn case, that is about to be decided. Let's agree to be bound by what conclusion Judge Jackson reaches in that case. And their answer was no.

And, indeed, that opinion would come out shortly thereafter. That opinion said, this claim of absolute immunity is absolute nonsense, and there is no precedent for it in the 250 years of jurisprudence on this subject.

So we went back to Dr. Kupperman, and, of course, Dr. Kupperman said: No, we would like to get our own judicial opinion.

Now, had we gone to fruition, even though we don't believe—and it would have created a bad precedent that they have standing to challenge subpoenas that way. Had they lost, they would have gone to the court of appeals and the Supreme Court. They would have come back to the district court. And now no longer arguing absolute immunity because that would have been, we believe, defeated, they would make claims of executive privilege, and they would litigate those up through the court of appeals and the Supreme Court.

We knew that course because we are in it with Don McGahn. Nine months after he was subpoenaed, we are still litigating it. And they are in Court saying Congress shouldn't do what they are saying that we should do before this body.

So that is why we withdrew the subpoena. We were not going to go through that exercise.

You have to ask the question, I think, why did Fiona Hill feel that she could come and testify? She worked for Dr. Kupperman. Why was she willing to show the courage to come and testify when her boss wasn't?

There is not a good answer to that question, but I am awfully glad that she did because, without her, we would be that much less knowledgeable about this President's scheme.

So that was the history of the Kupperman subpoena. Likewise, John Bolton, who has the same counsel, told us if we subpoenaed him, he would sue.

Now, why is it that he is willing to testify now, and he wasn't willing to testify before the House? You should ask him that question. But that was the predicament we faced. And in our view, a President should not be able to defeat an investigation into his wrongdoing by endlessly litigating the matter in court, particularly when they are in court saying you can't use the court to enforce your subpoenas.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Ms. HIRONO. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Hawaii.

Ms. HIRONO. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator HIRONO is for the House managers:

Can you talk about what has happened to whistleblowers when they have been outed against their will? What are the consequences of revealing their identity, particularly when we have a President who has tried to bully and threaten impeachment witnesses?

Mr. Manager SCHIFF. Senator, I don't know that we can give you examples of whistleblowers who were the subject of retaliation, although I have no doubt that there are many. We can seek by the latter part of this evening to get a list of some of the whistleblowers that have confronted retaliation.

But I—this does give me an opportunity to speak a little more—in a more fulsome way about a point I made earlier about the unique importance of whistleblowers in the intelligence community.

Our area of intelligence is unique in this respect. If you are a whistleblower who wants to blow the whistle on a fraudulent contract in a transportation project, you can go public. If you are blowing the whistle on misconduct in the area of housing, you can go public. You can have a press conference, and you can declare the wrongdoing that you have seen.

If you are a whistleblower in the intelligence community, however, you cannot go public. You have no recourse to bring to the public's attention wrongdoing, except one of really two vehicles. You can go to an Intelligence Committee or you can go to the inspector general.

And in this area, where our hearings are in closed session, where you don't have outside stakeholders that can point out the flaws in what an agency is representing, if you are on the Transportation Committee and someone comes in and they say: This high-speed rail project is on time and under budget, you have outside validators and stakeholders that can say that is just not true.

In the intel world where our hearings are in closed session, there are not outside stakeholders that are listening, that can hold those agencies to account. And so we are uniquely dependent when there is wrongdoing on two things: self-reporting by the agencies and the willingness of people of good faith to come forward and blow the whistle.

And we do injury to that when we expose those whistleblowers to retaliation. I don't think any of us would have imagined a circumstance in which a President of the United States before now would have called a whistleblower a traitor or a spy or suggested that people that blow the whistle on his wrongdoing are traitors and spies, and we should treat them as we used to treat traitors and spies.

I don't think we could have imagined a circumstance where a President of the United States would have told a foreign leader that the U.S. Ambassador—our anti-corruption champion in Ukraine—was ''going to go through some things.'' I don't think we could have imagined that happening before this Presidency. And sometimes you just have to step back and realize just how striking and abhorrent this is and what a risk it is to civility, to decency, to our institutions.

We have become inured to it through endless repetition of attacks on anyone who will stand up to this President. And, of course, the risk is—the very reason we have a whistleblower protection, the very reason why whistleblowers should enjoy a right of anonymity, is that in the absence of that, misconduct and wrongdoing will proliferate. If there is not a mechanism for people lawfully to expose wrongdoing, you can bet that wrongdoing is going to increase. And that is why there have been great champions, like Senator GRASSLEY, of whistleblower protections, Senator BURR and Senator WARNER, and many others, because we all understand—at least we did heretofore—the vital importance and contributions that are made by American citizens who bring wrongdoing to our attention.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BLUNT. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Missouri.

Mr. BLUNT. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators HAWLEY, WICKER, and CAPITO.

The CHIEF JUSTICE. Thank you.

The question from Senators BLUNT, HAWLEY, WICKER, and CAPITO is addressed to counsel for the President:

What responsibility does the president have to safeguard the use of taxpayer dollars for foreign aid and work to root out corruption?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice and Members of the Senate.

The President has an important responsibility to safeguard taxpayer dollars that are used in foreign aid or used anywhere, frankly, and to root out corruption. Now, it is no secret that President Trump, from the beginning, from the time he came down the escalator, has been committed to ensuring that American taxpayer dollars are used appropriately—are used appropriately. And if they are going to foreign countries, he wants to make sure that they are used wisely. And there is ample evidence of that—ample evidence of that. I don't think that is even disputed or disputable. And he is fulfilling that obligation.

The other point that he makes repeatedly is that if we are helping countries around the world, other countries should help us help them. We use the word ''burden-sharing.'' What does that mean? ''Burden-sharing'' means that if American taxpayers are going to help with a problem in a country around the world—and we do, and we do a lot. We do it to the tune of billions and billions

of dollars. When here in our country, we need to fix our roads; we need to fix our bridges. So if we are going to take money away from those important projects here in America that come from the hard-earned dollars of taxpayers, why can't other countries help us? That is called burden-sharing. It is also called fairness. So he has that obligation, and every day he fulfills that obligation.

Let me make another point in response to Senator WARREN's question. The most important thing, in terms of the fairness of this proceeding—and that is why I have quoted repeatedly. I haven't played the videos over and over again, but you remember them—the wise words, the true words of the Democrats in the Clinton impeachment years. And the only point the American people understand—they understand it, and I think everyone in this body understands it; that there can't be one standard for one political party and another for the other political party. That is important. Those words should be applied here. We can't have a standard that changes depending on what somebody thinks about political issues.

In order to be fair, the same standard has to be applied, regardless of your party. So that is the critical issue here. And that is the bedrock principle, not a double standard for justice in the Senate but one standard—the true standard, the standard that has been articulated eloquently by Democrats over and over again in the Clinton proceedings. That is the standard that is right. That is the standard that we ask for, regardless of political party.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. KING. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Maine.

Mr. KING. I am sending a question to the desk.

The CHIEF JUSTICE. Senator KING asks the President's counsel:

> Would it be permissible for a President to inform the Prime Minister of Israel that he was holding congressional appropriated military aid unless the Prime Minister promised to come to the United States and publicly charge his opponent with antisemitism in the midst of an election campaign?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for the question, but the question really has nothing do with this case. I mean, it seems to be trying to get at the most extreme hypothetical related to a misinterpretation of what Professor Dershowitz was saying the other night. It is totally irrelevant here.

The charges that have been brought here, articulated in the Articles of Impeachment, are based on a theory of abuse of power; that the House Democrats, the House managers have made clear depends for them to make their case to establish that when the President raised two issues on the call with President Zelensky of Ukraine, he raised the 2016 election interference, and he mentioned the Biden and Burisma incident; that there was not any legitimate public policy or foreign policy interest in mentioning those things to the President of Ukraine. That is the standard they have set for themselves. It is on page 5 of the House Judiciary Committee report, and it is on page 4. They say they have to show it is a sham investigation, and I think it is on page 6 they say it is a bogus investigation. That is their standard because they know they have to establish that there is no legitimate public policy interest at all in mentioning those in order to come anywhere close to being able to assert something that could be a wrongful conduct by the President, because if there is a legitimate interest, if there is something there that is worth asking, they don't have a case. And that is why they have tried to tell you again and again there is not a scintilla of evidence.

This is really pretty preposterous, for the House managers to come and say, particularly with respect to the Biden-Burisma incident, there can't be any legitimate interest in raising that question because it has all been debunked. And the question has been asked: Where was it was debunked? By whom was it debunked? Who conducted that investigation? Where is the report from that investigation? Who established that there is nothing there? There is no such report. They have been asked; they haven't been able to cite it. There has been no such investigation.

But what do we know? We do know that every witness who was asked about it said, at a minimum, there was an appearance of a conflict of interest. We do know that these two members of the Obama administration—Amos Hochstein and Deputy Assistant Secretary of State Kent—raised the issue of the conflict of interest with Vice President Biden's Office. We know that Chris Heinz, the stepson of Secretary of State Kerry, who had been a business partner with Hunter Biden, broke off his business ties with him because Hunter Biden took a seat on the board of Burisma.

So to say that there is nothing that could possibly merit asking a question about that is utterly disingenuous. It can't be said with a straight face. Every witness that was asked about it said that there was something, at least, that gave the appearance of a conflict of interest. There hasn't been any investigation to debunk this theory. There hasn't been any inquiry to find out if there is ''there'' there or not.

It doesn't have to do, as Manager SCHIFF was suggesting, just with, well, why was Hunter Biden on the board, or were they paying him? It is the whole situation—the whole situation of, all of a sudden, he is put on the board at the time when his father was put in charge of Ukraine policy. And there are people—there were witnesses who testified in the House proceedings that it appeared like Burisma was trying to whitewash their reputation by putting people with connections on their board. And then there is the prosecutor being fired.

It is just not reasonable to say that no one could possibly say: That looks fishy. There is something maybe that somebody should look into there.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Alaska.

Ms. MURKOWSKI. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you. Senator MURKOWSKI asks counsel for the President:

> You explain that Ambassador Sondland and Senator JOHNSON both said the President explicitly denied that he was looking for a quid pro quo with Ukraine. The reporting on Ambassador Bolton's book suggests the President told Bolton directly that the aid would not be released until Ukraine announced the investigations the President desired. This dispute about material facts weighs in favor of calling additional witnesses with direct knowledge. Why should this body not call Ambassador Bolton?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think the primary consideration here is to understand that the House could have pursued Ambassador Bolton. The House considered whether or not they would try to have him come testify. They chose not to subpoena him.

This all goes back to the most important consideration, I think, that this Chamber has before it in some ways, especially on this threshold issue of whether there should be witnesses or not. It has to do with the precedent that is established here for what kind of impeachment proceeding this body will accept from now going forward, because whatever is accepted in this case becomes the new normal for every impeachment proceeding in the future.

And it will do grave damage to this body as an institution to say that the proceedings in the House don't have to really be complete. You don't have to subpoena the witnesses that you think are necessary to prove your case. You don't really have to put it all together before you bring the package here. When you are impeaching the President of the United States—the gravest impeachment that they could possibly consider—you don't have to do all of that work before you get to this institution.

Instead, when you come to this Chamber, it can be kind of half-baked, not finished—we need other witnesses, and we want this Chamber to do the investigation that wasn't done in the House of Representatives. And then this Chamber will have to be issuing the subpoenas and dealing with that. And that is not the way this Chamber should allow impeachments to be presented to it.

We have heard—there was some exchange the other day about, well, there

were a lot of witnesses in the Judge Porteous impeachment, and this Chamber was able to handle that. It is very different in the impeachment of a judge, which is being handled by a committee. My understanding is that, under rule XI of the Senate procedures, there was a committee receiving that evidence. But in a Presidential impeachment, there is not going to be just a committee; it is the entire Chamber that is going to have to be sitting as Court of Impeachment, and that will affect the business of the Chamber.

So I think the idea that something comes out and somebody makes an assertion in a book, allegedly—it is only an alleged; it is simply alleged now that the manuscript says that; Ambassador Bolton hasn't come out to verify that, to my knowledge—that then we should start having this Chamber calling new witnesses and establish the new normal for impeachment proceedings as being that there doesn't have to be a complete investigation in the House, I think that is very damaging for the future of this institution.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Hawaii.

Mr. SCHATZ. Mr. Chief Justice, I have a question on behalf of myself and Senators WHITEHOUSE and HEINRICH, and this is for the counsel for the President and the House managers.

The CHIEF JUSTICE. Thank you.

Question from Senators SCHATZ, WHITEHOUSE, and HEINRICH for both parties:

Can the White House really not admit that Senator KING's hypothetical would be wrong?

We begin with the House managers.

Mr. Manager SCHIFF. Senator, we have no trouble recognizing just how wrong that would be, but more than that, it is the natural extension of Professor Dershowitz' argument that if the President believed that kind of quid pro quo would help his reelection, then it is perfectly fine and nonimpeachable. There was a reason, of course, why they didn't want to address that hypothetical.

Let me go back also to the question that was asked about the other written reports that Ambassador Bolton and Attorney General Barr were concerned that the President was intervening in cases in which he had business investments, like Turkey. Under the theory of the President's lawyers, that is perfectly OK, too. If the President thinks somehow that that is in the United States' interest because it is in his interest, that is perfectly fine. It is unimpeachable.

Now, is it a crime to give preference to autocrats, to give special consideration to autocrats where your business investments are? That may not be criminal, but it is impeachable. It certainly should be impeachable if we are going to sacrifice the national security of the country, if we are going to withhold military aid, if we are going to bestow favors in U.S. resources to countries where the President has investments. Is that what we want driving U.S. policy? But that is the implication of what they have to say.

I agree with counsel about one thing they said: If we have a trial with no witnesses, that will be a new precedent. We should be very concerned about the precedent we set here because it will mean heretofore—that when a President is impeached, that one party can deny the other witnesses, and that will be the new normal, that we have trials without witnesses, and I don't think that is the precedent we should be setting here.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

Let me just begin by noting I think it is a little bit rich for Manager SCHIFF to say that one party—i.e., the President—is going to deny them witnesses. It was the President who was denied any witnesses throughout this process up until now.

But to get back to the question on Senator KING's hypothetical, if the President insisted that a foreign leader come here and lie about someone else and he was holding up military aid or a package of congressional aid and saying ''You have to go out and lie about this,'' that would be wrong. But that is not this case, and it has nothing to do with this case.

But I would like to address something that Manager SCHIFF said because he immediately pivoted now to the next thing. What is in the newspapers? What else can we bring in from the newspapers? There is an allegation that the manuscript says something about conversations that Ambassador Bolton had with Attorney General Barr. Well, Attorney General Barr has issued a statement saying that allegation, that assertion, is not accurate, that that is false. And there are other allegations that are made about what might be in this manuscript. Mick Mulvaney has issued a statement saying that is not true.

So to sort of play the game of, there is going to be another leak; somebody might write a book; there is something else—and that is, again, turning this body into the one doing the investigation because the House didn't pursue the investigation. That is not prudentially a wise move for this Chamber to take on that task.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Louisiana.

Mr. KENNEDY. Your Honor, I send a question to the desk for counsel for the President.

The CHIEF JUSTICE. Thank you.

The question from Senator KENNEDY is for counsel for the President:

Has the House of Representatives, in its impeachment proceedings or otherwise, investigated the veracity of the statement by former Ukrainian Prosecutor General Victor Shokin that Mr. Shokin ''believes his ouster was because of his interest in [Burisma Holdings], and his claim that had he remained in his post, Shokin said he would have questioned Hunter Biden,'' as reported on July 22, 2019 in an article in The Washington Post entitled ''As Vice President, Biden said Ukraine Should Increase Gas Production. Then His Son got a job with a Ukrainian Gas Company,'' by Michael Kranish and David L. Stern.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for that question.

The answer, to the best of my knowledge, is no, the House of Representatives did not investigate the veracity of the truth of that reporting about Prosecutor General Shokin. In fact, that was part of the point.

As Manager SCHIFF was saying here, again, the House Democrats' position is that everything related to the entire incident of the Bidens and Burisma and what was going on with the prosecutor—it is all debunked. There is nothing to see there. Move along. Don't ask about it. But they didn't investigate it, and they can't point to anyone who has investigated it. They can't point to anyone who has really looked at it.

As I said a minute ago—and I will not belabor the point—every witness who was asked said that they thought, yes, there was at least the appearance of a conflict of interest there. At least one witness—and there is a public reporting of another person, whose name is Hochstein, in the Obama administration—raised the issue with Vice President Biden's Office, but nothing was done about it.

There have been questions about whether Vice President Biden sought or received an ethics opinion. We don't know—not that I have heard of, not that I have seen anywhere. It is just something that no one has actually inquired into.

There have been questions raised about ''Why now?'' ''Why are they being raised now?'' The implication the House managers have tried to make is it is just because Joe Biden decided in April he was going to run for the Presidency.

As I explained the other day, Rudy Giuliani, as the President's private counsel, was exploring matters in Ukraine starting in the fall of 2018. He had tips because he was interested in finding out—remember, the Mueller investigation was still ongoing at that point. It wasn't clear what the outcome of the Mueller investigation was going to be. He was trying to find out what were the origins of Russian interference, of the Steele dossier, of allegations of collusion by the Trump campaign. That led, in part, to Ukraine, and he got information that led him to various strands to pursue. One of them became the issue of the Biden and Burisma incident.

He prepared a little package on that based on interview notes on January 23 and January 25 of 2019. Months before

Joe Biden announced that he was going to run for the Presidency, Rudy Giuliani was interviewing Shokin and Lutsenko and wrote down in the interview notes stuff about the Biden and Burisma incident and the firing of Shokin. He put it all in a package, and he delivered it to the State Department in March—still before Joe Biden said he was going to be running for President. That didn't happen until April 25. It was all done—all put in a package, all delivered.

That is public now because that little package that he sent to the State Department was released, I think it was, under the FOIA litigation, but it has been released publicly, and the notes that he took, his interview notes, were released publicly.

So the timing dates back to when Rudy Giuliani was pursuing that, starting back in the fall of 2018 with his taking time to pursue leads. He was trying to get Shokin to come to this country to interview him. He couldn't get him a visa and had to interview him by phone. Lutsenko was in New York, and he prepared this package. That is why there is that timing.

Then there were public articles published about the Biden-Burisma affair. One of them was just mentioned in the question—a Washington Post article, July 22, 2019, specifically about it—about the firing of Shokin 3 days before the July 25 telephone call. It was in the news. It was topical.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Mr. PETERS. Chief Justice, on behalf of myself and Senator CORNYN, I send a question to the desk for both House managers and the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators PETERS and CORNYN for both parties reads:

How would the verdict in this trial alter the balance of power between the executive and legislative branches in the future?

The President's counsel goes first.

Mr. Counsel CIPOLLONE. A verdict—a final judgment—of acquittal would be the best thing for our country and would send a great message that will actually help in our separation of powers. Here is why.

As I have said repeatedly—and according to the standard articulated so well during the Clinton impeachment—what are we dealing with here? We are dealing with a purely partisan impeachment with bipartisan opposition, no crime, and no violation of law in an election year. It has never happened before—no investigation, no due process, nothing.

What they are telling you—I mean, we can talk all we want, and we will, but what are we talking about at the end of the day? We are talking about removing the President of the United States from the ballot in an election that is occurring in months. Who thinks that is a good idea, particularly when you are dealing with a purely partisan impeachment that was warned about from the Framers?

The only appropriate result that will not damage our country horribly—maybe forever but certainly for generations—is a verdict of acquittal.

Here is the other point. In getting back to the question of witnesses, Mr. SCHIFF is up here: Let's make a deal. How about we have the Chief Justice—and we have the greatest respect for the Chief Justice. Here is the problem. We are talking about critical constitutional rights that have been protected by the Supreme Court over our history. So what is he really saying? Think about these questions.

The Senate can decide about executive privilege by a vote—by a majority vote. With the greatest respect—with the greatest respect—if the Senate can just decide there is no executive privilege, guess what? You are destroying executive privilege. Can the Senate decide the House's speech or debate protection? I mean, when we ask for documents from Mr. SCHIFF and his staff and he says ''speech or debate,'' are you going to decide that? Is that how we are going to do this? Are we going to flip a coin? Is that going to be your next suggestion?

We are talking about an election of the President. There are critical constitutional issues that will alter our balance of power for generations if we go down that road.

Down this road is the path provided by the Democrats so wisely during the Clinton administration.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice, it may be different in the court than it is in this Chamber and in the House, but when anybody begins a sentence with the phrase ''I have the greatest respect for,'' you have to look out for what follows.

We trust the Justice will make the right decision. The Justice has, I think, conducted these proceedings in an eminently fair way.

There is nothing in the Constitution that would preclude us from taking a week to hear from witnesses and allowing the Chief Justice to make those calls.

I would say also, with respect to an argument counsel made about the Porteous impeachment trial, where, yes, the Senate designated 12 Senators to hear the witness testimony, the implication is, you can't do that in an impeachment of the President. That is only half correct. The other half is, you can do depositions in which only a couple of Members of the body need participate. So it is a false argument to say or to suggest that the whole body would need to conduct the whole of the depositions. So much as we would like live testimony, we have offered a compromise.

With respect to the question about what this will do to the balance of power, I would say this: As I mentioned earlier, our relationship with Ukraine will survive this debacle. But if we hold that a President can defy all subpoenas, can tie up the Congress endlessly with bad-faith claims of privilege—claiming here one thing and claiming in court something else—it will eviscerate our oversight power. If the President is allowed to decide which subpoenas they will deign to consider valid and which they will deign to consider invalid, your oversight power and our oversight power is gone. That is an irrevocable change to the balance of power.

What is more, if we adopt their theory of the case that a President can abuse his power and do so by holding another country hostage by withholding congressionally appropriated funds and can violate the law in doing so as long as they think it is in their interest, imagine what that will do to the balance of power. Article II will really mean what the President says it means, which is he can do whatever he wants.

So, yes, the stakes are big here. Article II goes to whether our oversight power—particularly in a case of investigating the President's own wrongdoing—continues to have any weight or whether the impeachment power itself is now a nullity.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Florida.

Mr. RUBIO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators CAPITO and SCOTT of South Carolina—with all due respect.

The CHIEF JUSTICE. The question from Senators RUBIO, CAPITO, and SCOTT of South Carolina is directed to both parties, and we will begin with counsel for the House managers.

The question reads:

If I understand the Managers' Case: The President abused his power because he acted contrary to the advice of his advisors, but he is guilty of obstruction of Congress because he acted in accordance to the advice of his advisors.

Mr. Manager SCHIFF. That is not our argument at all. The President is impeached on article I not because he acted contrary to the advice of his advisers. That is a red herring offered by the President's legal team. We are not saying that the President is not free to disregard the advice of his counsel. He is. He is entitled to disregard even really good advice. What he is not free to do is to engage in corruption. What he is not free to do is to withhold military aid—not for a valid policy disagreement. They have conceded Rudy Giuliani was not doing policy. What is not permitted is for a President to withhold congressionally appropriated money for a corrupt purpose—to secure help, to illicit foreign help, and cheat in an election. That is no policy disagreement.

Now, are we arguing in article II that he should be impeached for following his lawyers' advice? No. They were following his advice. His advice was to fight all subpoenas. They were giving

the legal window dressing to that. They were going to court and arguing one thing and coming before you and arguing another. He was not following their advice; they were following his. You can say a lot about Donald Trump, but he is not led around by the nose by his legal counsel. Ask Don McGahn about that. Don McGahn stood up to the President.

Bob Mueller—if we are going to talk about the Mueller report—found several instances—and this goes to the pattern of the President's misconduct—in which he sought to obstruct that investigation, including telling the President's lawyer that he should fire the special counsel and then that he should lie about that instruction.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

You are right. That is yet another way in which the House managers' theories of impeachment are incoherent and dangerous.

With respect to article II—and again, I won't respond to the ad hominem attacks that keep coming. I will say, just for the record, you are right—I haven't been elected to anything, but when I say ''with the greatest respect,'' I mean it.

Article II: The President has been impeached for exercising longstanding constitutional rights. He is looking out for constitutional rights in the face of a House process that violated all of them against all precedent, and he is looking out for future Presidents and for the executive branch. How? If he had said, ''OK. Fine. No rights. No counsel. No witnesses. No right to cross-examine. Here is everything you asked for,'' what sort of precedent would that set? That would irreparably damage the separation of powers.

Again, all you need to look at are the Articles of Impeachment. The Articles of Impeachment do not allege a crime. They do not even allege a violation of law. They are purely partisan. They were opposed by Democrats in the House.

It is an election year, and they are here, saying: Instead of an election, let's confront very consequential, constitutional issues that have never really been confronted, and let's do it in a week. Let's destroy executive privilege. Maybe let's destroy speech and debate privilege.

Let me point out one other thing. It is not right to accuse somebody falsely of something and then say: Unless you waive your constitutional rights, you are guilty. That is not right. We shouldn't accept that in this country. These are the longstanding privileges. They have been respected for hundreds of years, and we should continue to respect them.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from West Virginia.

Mr. MANCHIN. Mr. Chief Justice, I send a question to the desk on behalf of myself for the President's counsel and House managers.

The CHIEF JUSTICE. Thank you.

The question is from Senator MANCHIN for both parties. We will begin with the President's counsel.

Over the past two weeks, the White House counsel had detailed all the problems associated with the House's decision to move quickly through their impeachment proceedings. Why shouldn't this body heed their advice and slow down and at least allow the judge to rule in the McGahn case to give the members of this body an official opinion from the Judiciary on Article II?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I think the key point here is the McGahn case is not going to directly resolve something related to the obstruction charges here. It is going to address a legal issue with respect to an assertion of absolute immunity for Don McGahn.

There should be a decision from the DC Circuit sometime soon, but that will almost certainly go to the Supreme Court. I mean, that immunity is being challenged, and it has been relied upon by the executive for over 40 years. That is an issue destined for the Supreme Court.

So the idea—it is not going to be just to slow down here a little bit. This trial can't be held open pending a final resolution of that litigation, and that is an important point, because this is something that Alexander Hamilton pointed out in Federalist No. 65, when he was discussing who should be the body to try impeachments. One consideration was potentially drawing in judges from various States to create a new body to try impeachments, and the rationale that Hamilton gave that that would be a bad idea is that there has to be swift progression from an impeachment to the trial, to a verdict, to having it finished, precisely because this is where he talked about ''the persecution of an intemperate or designing majority in the House of Representatives.''

He recognized there could be partisan impeachments, and that accusation, that impeachment, shouldn't been hanging out there. There should be a swift trial to determine things finally, and that is why all of the preparation ought to be done in the House of Representatives to ensure that there is an investigation, there is a case put together. And, if they are ready to impeach the President of the United States, they had better be finished, have everything buttoned down, and have their case ready because they can't have a trial of the President—Hamilton warned against that specifically—hanging over the country for months on end.

And so to push off this trial to say: Well, we will wait for litigation and at that point—that is a very dangerous idea, and that is not the way that the trial here should operate. It ought to be finished on the basis of the case that the House managers came ready to present. If they weren't ready to present a case that can win, there should be an acquittal.

Thank you, Counsel.

Mr. SCOTT of South Carolina. Mr. Chief Justice.

The CHIEF JUSTICE. We have another half of the presentation.

Mr. Manager SCHIFF. If we could—Senator, if we could pull up slide 37, this is what the district court had to say in the McGahn litigation, now on appeal:

Executive branch officials are not absolutely immune from compulsory congressional process no matter how many times the executive branch has asserted as much over the years.

That is consistent with the decision in the Miers case, where the court said:

Clear precedent and persuasive policy reasons confirm that the Executive cannot be the judge of its own privilege and hence Ms. Miers is not entitled to absolute immunity.

Let's look at what the court said on slide 38, where Judge Jackson said:

Stated simply, the primary takeaway from the past 250 years of recorded American history is that Presidents are not kings . . . compulsory appearance by dint of a subpoena is a legal constrict not a political one, and per the Constitution no one is above the law.

This is the district court saying: Thou shalt appear and this claim of absolute immunity is absolute nonsense.

In the court, now, this is what the Justice Department is arguing in that case, if we can see slide 39.

The committee lacks article III standing to sue to enforce a congressional subpoena demanding testimony from an individual on matters related to his duties as an executive branch official.

And so here we are. We are now in a court of appeals, the Justice Department is saying that you cannot force congressional subpoenas, and they are saying: Well, let's continue to litigate the matter. Let this play out further.

To what end? To what end? Yes, I suppose we could wait for a court of appeals decision, but, of course, they would say they are not satisfied with that court throwing out this idea either.

Well, look, we have got a perfectly good Justice right here that can make these decisions. Let's let him make the call. Let's let him make the call. Let's trust that he would be fair and impartial.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from South Carolina

Mr. SCOTT of South Carolina. Thank you, sir.

I send a question to the desk on behalf of myself, Senators HAWLEY, SASSE, and BARRASSO.

The CHIEF JUSTICE. Thank you.

The question from Senators SCOTT of South Carolina, HAWLEY, SASSE, and BARRASSO is to the counsel for the President:

During their presentation, the House Managers referenced Chairman Gowdy and the

House Benghazi Investigation. The final report on Benghazi flatly says ''The administration did not cooperate with the investigation.'' That committee fought for two years to access information, and often had information requests ignored or denied. Yet this House investigation, after just 3 months, already supposedly justifies impeachment. Does President Trump owe more compliance than other Presidents did?

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

Part of what we are seeing, I believe, is kind of a two-fold attack or approach. We just saw a citation to two district court opinions, as if the final arbiter of an issue of this magnitude is going to be the district court—or, for that matter, the court of appeals.

You are right. It is going to be the Supreme Court of the United States, if it goes in that direction.

Now, with regard to the question about the statement in the Benghazi report that the administration did not cooperate, the same was also true with Fast and Furious and the investigation there. And in that particular investigation, it reached such a significant point that Members of the House determined that the then-Attorney General of the United States should be held in contempt.

Now, President Obama exercised executive privilege over documents and testimony related to Fast and Furious. The constitutional process was followed.

Now, I am not the one that makes the decision whether that was privileged or not privileged. If there was going to be a challenge, it would have been adjudicated. But the fact of the matter is, at least 10 times tonight Manager SCHIFF has said: We have complete confidence in the Chief Justice, ignoring the fact that it is not his call. And I mean that with all sincerity, since you are making fun of people who are saying ''with due respect.'' It is not—that is not the way it is set up.

Now, you could agree to anything. Sure, you can negotiate. You can negotiate that all the witnesses that will be called will be the witnesses they requested, or you could negotiate that since they had 17 and we had none, we get 17 and they get 4. All kinds of things can be negotiated under their view.

But this is brought to you by the managers who have an overwhelming case that they proved over and over again. That is what they say. They have proved it. It is overwhelming. It is incredible. We were able to put it together in a record amount of time. And now we want you, the U.S. Senate, to start calling witnesses for our overwhelmingly proved case.

I would just lay this down: If we are negotiating, why don't we just go to closing arguments, and see what this body decides?

But I respect the process. The process is we have 2 days of questioning. Tomorrow there will be an argument on the motion. There will be a decision on the motion, and we have to—that is the system that is in place. That is the system we should follow.

But this idea that two district court judges have decided an issue of this magnitude and that is now the determination—they wouldn't accept it if they were in our position. They would say: Well, the district court decided; so that is going to be it.

So I think we need to look at what is really at stake. These are really significant issues. These are serious. I mean, the idea that executive privilege should just be waived or doesn't exist, that, in your view, absolute immunity can't possibly exist—it has only been utilized for administrations for 50 years or more.

Professor Dershowitz gave you the list of Presidents that have put forward executive privilege, and in a lot of his writings, he talks about it.

But to say tonight that we are just going to—you know, we will just cut a deal. We will do it in a week. We will get some depositions, and that will make everyone happy.

It doesn't make the Constitution happy.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Ohio.

Mr. BROWN. Mr. Chief Justice, I send a question to the desk on behalf of Senators CASEY, KLOBUCHAR, WARREN, and WYDEN for the House managers.

The CHIEF JUSTICE. Thank you.

The question for the House managers from Senator BROWN and the other Senators is as follows:

Yesterday, you referenced how President Trump's perpetuating and propagating Russian conspiracy theories undercut our national security objectives. If acquitted in the Senate, what would prevent the President from continuing to side with Putin and other adversaries, instead of our intelligence community and career diplomats, and what are the implications on our national security agenda if such behavior continues, unchecked?

Mr. Manager CROW. Mr. Chief Justice, Senators, thank you for the question.

You know, I have talked a lot tonight and throughout the last week about what is at stake here, because, you know, it is getting late into the night, and we have been having this debate for several days now. There is a lot of discussion in the legal aspects of this. So I don't want to get into, again, you know, the issues of our troops in Europe, the hot war that continues to happen right now as we are speaking in Ukraine, but I will reiterate the precedent that we set with regard to Russia and foreign adversaries—you know, this idea that it is OK to continue to pedal in Russian propaganda and debunked conspiracy theories—because counsel for the President would have you believe that, you know, this is a policy discussion, that, you know, we have not resolved this, that there is a lot of debate about this issue. And if that is indeed the case, if we concede that, then, there are some witnesses that we can call on, including Ambassador Bolton, that could shed additional light on it.

But the fact pattern that we are sitting at right now—what we are talking about right now—is 17 witnesses that were called in the House, none of whom had any indicia or had any data to provide that any of these theories were accurate.

We have the entire intelligence and law enforcement community of the United States unanimously saying that there is no indication that Ukraine was involved in the 2016 election, that it was Russia.

And don't buy the red herring, by the way, that counsel for the President has brought forth—this idea that, oh, it can only be Russia. You know, they said earlier that we are claiming that it can only be Russia. That is not what we are saying. Nobody on this team has ever said it can only be Russia, because, indeed, we know, as many of these people in the Chamber know well, that there are a lot of mal actors out there, that there are a lot of countries out there that have the capability and the will and that regularly try to attack us in a variety of ways.

What we are saying is, with respect to this issue that is before the body right now, that, unanimously, the law enforcement agencies of the United States and the intelligence communities of the United States have said that it was Russia that interfered in the 2016 elections and that there is no data to suggest Ukraine was involved. That is the issue.

So the precedent—bringing it all around to the beginning of the question, the precedent is that all of our adversaries, including Vladimir Putin, will understand that they can play to the whims of one person, whether that be President Trump or some future President, Democrat or Republican. They can play to the whims and the interests and the personal political ambitions of one person and get that individual to propagate their propaganda, get them to undermine our own intelligence and law enforcement communities. That is a precedent that I don't think anybody here is willing and interested in sending, and that is truly what is at stake.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Dakota.

Mr. HOEVEN. Mr. Chief Justice, I am sending a question to the desk for myself, Senator BOOZMAN, Senator WICKER, and Senator CAPITO.

The CHIEF JUSTICE. The question for counsel for the President from Senators HOEVEN, BOOZMAN, WICKER, and CAPITO:

House managers contend that they have an overwhelming case and that they have made their case in clear and convincing fashion. Doesn't that assertion directly contradict their request for more witnesses?

Mr. PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think it does directly contradict their claim now that they need more

witnesses. They said for weeks that it was an overwhelming case. They came here and they have said 63 times that it is overwhelming or proved beyond a reasonable doubt. Manager NADLER said twice today that based on what they have already shown you, it has been proved beyond any doubt.

All right, if that is their position, why do they need more witnesses or evidence? It is completely self-contradictory.

I would like to address a couple of other points while I am here and I have the time, and we have gone back and forth on this, and I don't know why I have to say it again, but the House managers keep coming up here and saying and acting as if, if you mention Ukraine in connection with election interference, if you even mention it, you are a pawn of Vladimir Putin because only the Russians interfered in the election and there is not any evidence in the record—they say—the Ukrainians did anything.

I read it before; I will read it again. One of their star witnesses, Fiona Hill, said that some Ukrainian officials ''bet on Hillary Clinton winning the election,'' so it was ''quite evident'' that ''they were trying to curry favor with the Clinton campaign,'' including by ''trying to collect information . . . on Mr. Manafort and on other people as well.'' That was Fiona Hill.

There was also evidence in the record from a POLITICO article in 2017. There was a whole bunch of Ukrainian officials who had done things to try to help the Clinton campaign and the DNC and to harm the Trump campaign.

In addition, two news organizations, both POLITICO and the Financial Times did their own investigative reporting, and the Financial Times concluded that the opposition to President Trump led ''Kiev's wider political leadership to do something they would never have attempted before: [to] intervene, however indirectly, in a US election''—the Financial Times.

So the idea that there is no evidence whatsoever of Ukrainians doing anything to interfere in any way is just not true. They come up here and say it again and again, and it is just not true.

The other thing I would like to point out, Manager SCHIFF is suggesting that somehow we are coming here and saying one thing and the Department of Justice is saying something else in court about litigation. That is also not true.

We have been very clear every time. The position of the Trump administration, like the Obama administration, is that when Congress sues in an article III court to try to enforce a subpoena against an executive branch official, that is not a justiciable controversy, and there is not jurisdiction over it. The House managers in the House, though, take the position that they have that avenue open to them.

So our position is when we go to court, we will resist jurisdiction in the court, but if the House managers want to proceed to impeachment, where they claim that they have an alternative mechanism available to them, our position is, the Constitution requires incrementalism in conflicts between the branches, and that means that first there should be an accommodation process, and then Congress can consider other mechanisms at its disposal, such as contempt or such as squeezing the President's policies by withholding appropriations or other mechanisms to deal with that interbranch conflict or, if they claim they can sue in court, to sue in court. But an impeachment is a measure of last resort.

Now, earlier, Manager SCHIFF suggested that today in court, the Department of Justice went in and said: There is no jurisdiction. And when the judge said: Well, if there is no jurisdiction to sue, then what can Congress do? And the DOJ, the key representative, simply said: Well, if they can't sue, then they can impeach—as if that was the direct answer to just go from if you can't sue, the next step is impeachment.

Now that didn't seem right to me, because I didn't think that was what DOJ would be saying, and DOJ put out a statement. I don't have a transcript of the hearing. They don't have the transcript ready yet, as far as I know, but DOJ said, and this is a quote from the statement:

> The point we made in court is simply that Congress has numerous political tools it can use in battles with the executive branch—appropriations, legislation, nominations, and potentially in some circumstances even impeachment. For example, it can hold up funding for the President's preferred programs, pass legislation he opposes, or refuse to confirm his nominees.

This is continuing their statement:

> But it is absurd for Chairman SCHIFF to portray our mere description of the Constitution as somehow endorsing his rush to an impeachment trial.

Thank you.

The CHIEF JUSTICE. The Senator from Connecticut.

Mr. BLUMENTHAL. Thank you, Mr. Chief Justice. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator BLUMENTHAL to the House managers:

> On April 24, 2019—one day after the media reported that former Vice President Biden would formally enter the 2020 U.S. Presidential race—the State Department executed President Trump's order to recall Ambassador Marie Yovanovitch, a well-regarded career diplomat and anti-corruption crusader. Why did President Trump want, in his words, to ''take her out''?

Mr. Manager SCHIFF. Mr. Giuliani has provided the answer to that question. He stated publicly that the reason they needed to get Ambassador Yovanovitch out of the way was that she was going to get in the way of these investigations that they wanted. This is the President's own lawyer's explanation for why they had to push out—why they had to smear—Ambassador Yovanovitch.

So the President's own lawyer gives us the answer, and that ought to tell us something in a couple of respects: one, that the President's own agents have said that she was an impediment to getting these investigations. She was this anti-corruption champion, this anti-corruption champion who is at an awards ceremony or recognition ceremony for a Ukrainian anti-corruption fighter, a woman who had acid thrown in her face and died a painful death after months. She is at the very ceremony acknowledging this other champion fighting corruption when she gets the word: You need to come back on the next plane.

One of the reasons the Ukrainians knew they had to deal with Rudy Giuliani is that Rudy Giuliani was trying to get this Ambassador replaced. And, you know, he succeeded. He succeeded, and that sent a message to the Ukrainians that if Rudy Giuliani had the juice with the President of the United States, the power with the President of the United States to recall an Ambassador from her post, this is not only somebody who had the ear of the President but could make things happen.

So the short answer is that Rudy Giuliani tells us why she had to go.

Now why they had to smear her, why the President couldn't simply recall her—that is harder to explain. But the reason they wanted her out of the way is they wanted to make these investigations go forward, and they knew someone there fighting corruption was getting in the way of that.

Now I wanted to say, with respect to some of the arguments against having the testimony of John Bolton, these are some of the former National Security Advisors who have been called to hearings and depositions: Zbigniew Brzezinski, National Security Advisor for President Carter, provided 8 hours of public hearing testimony and additional deposition testimony before the Senate Judiciary Committee Subcommittee to Investigate Individuals Regarding the Interests of Foreign Governments; Admiral Poindexter testified, providing 25 hours of public hearing testimony and 20 hours of deposition testimony before the House Select Committee to Investigate Covert Arms Transactions with Iran; Robert McFarland, former National Security Advisor for President Ronald Reagan, provided over 20 hours of hearing testimony and 3 additional hours of deposition testimony; Samuel Berger, National Security Advisor to President Clinton, provided 2 hours of public hearing testimony before the Senate Committee on Governmental Affairs, its inquiry into campaign finance practices; Condoleezza Rice, National Security Advisor to President George W. Bush, 3 hours of public testimony, additional closed session testimony; Susan Rice provided closed session testimony to the House Select Committee on how the Obama administration handled identification of U.S. citizens in U.S. intelligence reports.

There is ample precedent where it is necessary to have testimony of National Security Advisors.

Now you saw, I think, President's counsel dancing on the head of a pin to try and explain why they are before you arguing ''We can't have these people come here; the House should sue in court'' and why they are in court saying ''The court can't hear it.''

I have to say I have a great understanding of the difficulty of that position. I wouldn't want to be in a position of having to advocate that argument. But it goes to the demonstration of bad faith here. How can you be before this body saying ''You have got to go to court; the House was derelict because it didn't go to court,'' and go to the same court and say ''The House shouldn't be here''? How do you do that?

Now, they say: Well, the House is in court, so the House must think it is OK, even though we don't think so, and we will argue that and take it all the way up to the Supreme Court if we have to.

We don't think that is an adequate remedy. That is the whole problem. When you have bad faith indication of privilege, when you have, in fact, nonassertion of privilege, when you have a President who wants to continue to cover up his wrongdoing indefinitely—a President who is trying to get foreign help on the very next election—that process of going endlessly up and down the courts with a duplicitous counsel to the President arguing ''In one place you can do it and the other place you can't'' shows the flaw with a precedent that Congress must exhaust all remedies before it can insist on answers with the ultimate remedy of impeachment.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader is recognized.

RECESS

Mr. MCCONNELL. Mr. Chief Justice, I suggest we take a 5-minute break.

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

There being no objection, the Senate, at 9:13 p.m., sitting as a Court of Impeachment, recessed until 9:25 p.m., whereupon, the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Ms. ERNST. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Iowa.

Ms. ERNST. Mr. Chief Justice, I send a question to the desk for myself and Senator LANKFORD.

The CHIEF JUSTICE. Thank you. The question from Senators ERNST and LANKFORD is for the counsel for the President:

Members of the House Permanent Select Committee on Intelligence, of which Manager SCHIFF sits as Chairman, conducted a number of depositions related to this impeachment inquiry. One of the individuals deposed was Intelligence Community Inspector General Michael Atkinson. Has the White House been provided a copy of this deposition transcript? Do you believe this transcript would be helpful? If so, why?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for that question.

We have not been provided that transcript. My understanding is that the inspector general for the intelligence community, Mr. Atkinson, testified in executive session, and HPSCI has retained that transcript in executive session and was not transmitted to the House Judiciary Committee, and, therefore, under the terms of H. Res. 660, was not turned over to the White House counsel, so we have not seen it.

I just want to clarify: We don't think there is any need to start getting into more evidence or witnesses, but if one were to start going down that road, I think that that transcript could be relevant because it is my understanding, from public reports, that there were questions asked of the inspector general about his interactions with the whistleblower, and there is some question in public reports about whether the whistleblower was entirely truthful with the inspector general on the forms that were filled out and whether or not, you know, there were certain representations made about whether or not there had been any contact with Congress, and that then ties into the contact that the whistleblower apparently had with the staff and committee, which we also don't know about.

So if we were to go down the road, we don't think it necessary. We think that this—these Articles of Impeachment should be rejected. But if one were to go down the road with any more evidence or witnesses, it would certainly be relevant to find out what the inspector general of the intelligence community had to say about the whistleblower, along with the other issues that we mentioned about the whistleblower's bias, motivation: What were his connections with the whole situation of the Bidens? And, apparently, if he worked with Vice President Biden, did he work—he worked on Ukraine issues, according to public reports—how does that all tie in? All of those things would become relevant in that instance. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. JONES. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Alabama.

Mr. JONES. Thank you, Mr. Chief Justice. I send a question to the desk on behalf of myself, Senator MANCHIN, and Senator SINEMA.

The CHIEF JUSTICE. Thank you. The question from Senators JONES, MANCHIN, and SINEMA is directed to the House managers:

So much of the questions and answers, as well as the presentations, have focused on the completeness of the House record. Should the House have initiated the formal accommodations process with the Administration to negotiate for documents and witnesses after the passage of H. Res. 660? And regardless of whether the House record is sufficient or insufficient to find the President guilty or not guilty, what duty, if any, does the Senate owe to the American public to ensure that all relevant facts are made known in this trial and not at some point in the future?

Mr. Manager SCHIFF. Senators, thank you for the question.

It was apparent from the very beginning, when the President announced that they would fight all subpoenas, when the White House Counsel issued its October 8 diatribe saying they would not participate in the inquiry, that they were not interested in any accommodation.

We tried to get Don McGahn to testify. We tried that route. We have been trying that route for 9 months now. We tried for quite some time before we took that matter to court, with absolutely no success.

And I think what we have seen is, there was no desire on the part of the President to reach any accommodation. Quite the contrary, the President was adamant that they were going to fight in every single way.

Now, if they had an interest in accomodation, we wouldn't be before you without a single document. There would have been hundreds and hundreds of documents provided. We would have entered an accommodation process over claims of—narrow claims of privilege as to this sentence or that sentence. They would have had to make a particularized claim that we could have negotiated over. But, of course, they did none of that.

They said: Your subpoenas are invalid. You have to depart from the bipartisan rules of how you conduct your depositions. Essentially, our idea of accommodation is you have to do it our way or the highway. And the President's instructions, the President's marching orders were: Go pound sand.

Now, what is the Senate's responsibility in the context of a House impeachment for which there was such blanket obstruction? And bear in mind, if you compare this to the Nixon impeachment, Richard Nixon told his people to cooperate, provided documents to the Congress. Yes, there were some that were withheld, and that led to litigation, and the President lost that litigation. But the circumstances here are very different.

Frankly, the President could have made this difficult case but didn't because of the wholesale nature of the obstruction.

Now, in terms of the Senate's responsibility, the Constitution says:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation.

And so you have the sole power.

That expression is used, I believe, only twice in the Constitution: One, when it tells the House that we have the sole power to conduct an impeachment proceeding; and, again, the process we used—and they can repeat this

as often as they would like—it is the same process used in the Clinton and Nixon impeachments. And I am sure Clinton and Nixon thought that was unfair, but, nonetheless, we used the same process.

But, here, you have the sole power to try the case. And if you decide that 1 week is not too long, in the interest of a fair trial, to have depositions of key witnesses, that is for you to decide. You get to decide how to try the case.

And so if you decide that you have confidence in the Chief Justice of the Supreme Court to make decisions about materiality and relevance and privilege and make those line-by-line redactions, if they are warranted, if you decide you trust the Chief Justice to decide whether privilege is being applied properly or improperly to conceal crime or fraud or for legitimate national security purpose, you have the sole power to make that happen. That is within—every bit within your right, and we would urge you to do so.

Now, counsel for the President says the Constitution doesn't require that. The Constitution doesn't prohibit that. It gives you the sole power to try this case. And under your sole power, you can say: We have made a decision. We are going to give the parties 1 week. We are going to let the Chief Justice make a fair determination of who is pertinent and who is not. We are not going to let the House decide who the President's witnesses are; we are not going to let the President decide who the House witnesses are. We are going to let them both submit their top priorities, and we are going to let the Chief Justice decide who is material and who is not. That is fully within your power.

And so, in sum and substance, there is no evidence of an intention or willingness in any way, shape, or form to accommodate in the House. If there was, we wouldn't be here. Instead, there was: We will fight all subpoenas, and under article II, I can do whatever I want. And now we are here.

And they make the astounding claim: If their case is so good, let them try it without witnesses. That wouldn't fly before any judge in America, and it shouldn't fly here either.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mrs. BLACKBURN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Tennessee.

Mrs. BLACKBURN. I send to the desk a question on behalf of myself and Senators LEE and JOHNSON.

The CHIEF JUSTICE. Thank you.

The question from Senator BLACKBURN and Senators LEE and JOHNSON is for counsel for the President:

What was the date of first contact between any member of the House Intelligence committee staff and the whistleblower regarding the information that resulted in the complaint? How many times have House Intelligence committee members or staff communicated in any form with the whistleblower since that first date of contact?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

The answer is, we don't know. Nobody knows. We don't know when the first contact was. We don't know how many contacts there were. We don't know what the substance of the contact was. That all remains shrouded in some secrecy.

And as I said a moment ago, we think that the way this case has been presented, this body should simply acquit. There is no need to get more evidence to probe into that.

But if we were to go down the road of any evidence or witnesses, then those are certainly relevant questions and relevant things to know about, to understand what those contacts were, what the whistleblower's motivation was, what is the connection between the whistleblower and any staffers, and how that played any role in the formulation of the complaint. That would all be relevant to understand how this whole process began.

Now, I do want to mention something else, while I have the moment, in response to some things that Manager SCHIFF said.

Again, the House managers come up—it seems like they keep saying the same thing, and we keep pointing to actual evidence and letters that disprove what they are saying. They come up and say that the President said: It is my way or the highway—blanket defiance—there is nothing you can do. And they say that, well, they would have accommodated if we were willing to participate in the accommodation process.

The October 8 letter that Counsel for the President, who Mr. SCHIFF says acts in bad faith and called duplicitous here on the floor of the Senate, sent a letter on October 8 to Mr. SCHIFF and others explaining: ''If the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution.''

That was followed up in an October 18 letter that I mentioned before, a letter that specified the defects in the subpoenas that had been issued—not blanket defiance, not simply ''we don't cooperate''—specifying the legal errors in the subpoenas.

And it concluded: ''As I stated in my letter of October 8th, if the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established constitutional protections and a respect for the separation of powers enshrined in our Constitution.''

The President stood ready to engage in the accommodations process. If anyone said: ''My way or the highway'' here, it was the House because the House was determined that they wanted just to get their impeachment process done on the fastest track they could. They didn't want to do any accommodation. They didn't want to do any litigation. They didn't want anything to slow them down. They wanted to get it done as fast as they could so it was finished by Christmas.

It was a partisan charade from the beginning. It resulted in a partisan impeachment, with bipartisan opposition, and it is not something this Chamber should condone.

The CHIEF JUSTICE. Thank you, counsel.

Ms. ROSEN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Nevada.

Ms. ROSEN. I have a question I send to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator ROSEN is for the House managers:

During the President's phone call with Ambassador Sondland he insisted there was no ''quid pro quo'' involving the exchange of aid and a White House meeting for an investigation, but he also said, according to Sondland, that the stalemate over aid will continue until President Zelensky announces the investigations. Isn't that the definition of the exact quid pro quo that the President claimed didn't exist?

Mr. Manager SCHIFF. The short answer is yes; that is exactly what a quid pro quo is.

When someone says: ''I am not going to ask you to do this,'' but then says: ''I am going to ask you to do this,'' that is exactly what happened here.

Sondland calls the President, and the first words out of his mouth are ''no quid pro quo.'' Now, that is suspicious enough when someone blurts out there—what we would find out is a false exculpatory, but then the President goes on, nonetheless, to say: ''No quid pro quo.''

At the same time, Zelensky has got to go to the mic to announce these investigations—that is the implication—and he should want to do it. So no quid pro quo over the money, but Zelensky has got to go to the mic.

And if you have any question about the accuracy of that, you should demand to see Ambassador Taylor's notes, Tim Morrison's notes. And, of course, Sondland goes and tells Ukraine about this coupling of the money in order to get the investigations.

Let me just, if I can, go through a little of the history of that. You have Rudy Giuliani and others trying to make sure the Ukrainians make these statements in the runup to that July phone call. This is the quid pro quo over the meeting. So they are trying to get the statement that they want. They are trying to get the announcement of the investigations. And around this time, prior to the call, the President puts a freeze on the military aid. And then you have that call, and the minute that Zelensky brings up the defense support and the desire to buy

more Javelins, that is when the President immediately goes to the favor he wants.

So the Ukrainians, at this point, know that the White House meeting is conditioned on getting these investigations announced, but in that call, the minute military aid is brought up, the President pivots to the favor he wants of these investigations they already know about.

Now, after that call, the Ukrainians quickly find out about the freeze in aid. According to the former Deputy Foreign Minister, they found out within days. July 25 is the call. By the end of July, Ukraine finds out the aid is frozen. The Deputy Foreign Minister is told by Andriy Yermak: Keep this secret. We don't want this getting out. She had planned to come to Washington. They canceled her trip to Washington because they don't want this made public.

And so, in August, there is this effort to get the investigations announced. That is the only priority for the President and his men. So the Ukrainians know the aid is withheld. They know they can't get the meeting. They know what the President wants, these investigations. And the Ukrainians, like the Americans, can add up two plus two equals four. But if they had any question about that, Sondland removes all doubt on September 1 in Warsaw, when Sondland goes over—after the Pence-Zelensky meeting, he goes over to Yermak, and he says that ''until you announce these investigations, you are not getting this aid.''

He makes explicit what they already knew—that not just the meeting but the aid itself was tied. And on September 7, Sondland tells Zelensky directly: The aid is tied to your doing investigations. And it is at that point, on September 7, when Zelensky is told by Sondland directly of the quid pro quo, that Zelensky finally capitulates and says: All right; I will make the announcement on CNN.

And then the President is caught. The scheme is exposed. The President is forced to release the aid. And what does Zelensky do? He cancels the CNN interview because the money was forced to be released when the President got caught.

But that is the chronology here. Let's make no mistake. The Ukrainians are sophisticated actors. As one of the witnesses said, they found out very shortly after the hold. The Ukrainians have good tradecraft. They understood very quickly about this hold.

And what would you expect when you are fighting a war and your ally is withholding military aid without explanation and the only thing they tell you that they want from you are the announcement of these investigations? And if it wasn't clear enough, they hammered them over the head with it and told Yermak on September 1: You are not getting the money without announcing these investigations. They tell Zelensky himself on September 7: You are not getting the money without these investigations. And finally the resistance of this anti-corruption reformer, Zelensky, is broken down. He desperately needs the aid. Finally, the resistance is broken down: All right; I will do it. He is going to go on CNN.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Kansas.

Mr. MORAN. Mr. Chief Justice, I have a message to be sent to the desk, a question. It is on my behalf and on behalf of Senator RUBIO, Senator CRAPO, and Senator RISCH.

The CHIEF JUSTICE. Thank you.

The question from Senators MORAN, CRAPO, RUBIO, and RISCH for the counsel for the President reads as follows:

Impeachment and removal are dramatic and consequential responses to Presidential conduct, especially in an election year with a highly divided citizenry. Yet checks and balances is an important constitutional principle. Does the Congress have other means—such as appropriations, confirmations, and oversight hearings—less damaging to our nation?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question. And yes, Congress has a lot of incremental steps, a lot of means short of impeachment to address friction or conflicts with the executive branch. That was the point that I was making a moment ago with respect to what the Department of Justice has said in litigation today where the absolute immunity for senior advisers—actually, I think it was a different issue in that case. I beg your pardon.

But anyway, there is a dispute in that case about information requests, and the point the DOJ was making there is the Constitution requires incremental steps where there is friction between the branches.

As I mentioned the other day, friction between the branches—between Congress and the executive—on information requests in particular is part of the constitutional design. It has been with us since the first administration. George Washington denied requests from Congress for information about the negotiation of the Jay Treaty. So from the very beginning, there has been this friction leading to jockeying for position and accommodations and confrontation and leading to ways of working things out when Congress demands information from the executive and the executive asserts to protect the institutional authorities of the executive branch, the sphere where the executive can be able to keep information confidential.

But the first step in response to that should be the accommodations process. And the courts have described that as constitutionally mandated, something that actually furthers the constitutional scheme, to have the branches negotiate and try to come to an arrangement that addresses the legitimate needs of both branches of the government.

Part of that accommodations process is—or as it gets—as the confrontation continues can involve Congress exercising the levers of authority that it has under article I to try to put pressure on the executive. So, for example, appropriations, not funding the policy priorities of a particular administration or cutting funding on some policy priorities; or legislation, not passing legislation that the President favors or passing other legislation that the President doesn't favor. Or the Senate has the power not to approve nominees. As I am sure many of you well know, holding up nominees in committee can be effective in some points, putting pressure on an administration to get particular policies picked loose, things accomplished in a particular department or agency.

All of these elements of the interplay of the branches of government—that is part of the constitutional design. But impeachment is the very last resort for the very most serious conflict where there is no other way to resolve it.

So there are all of these multiple intermediate steps, and they all should be used. They all should be exercised in an incremental fashion. That is exactly what didn't happen in this case. There was no attempt at the accommodations. There was no attempt even to respond to the legal issues, the legal defects that counsel for the President and the departments and agencies pointed out in each of the subpoenas that were issued by the House committees.

And even the issue of agency counsel—there was no attempt to try to negotiate on that. And that is really something that, in the past—even last April, with the House Committee on Oversight and Government Reform with Chairman Cummings, there was a dispute about that. We wouldn't allow a witness to go without agency counsel, and then we had a meeting with Chairman Cummings, and it got worked out. And it was turned into a transcribed interview, I think, and the—but agency counsel was permitted to be there. But the committee got the interview. They got to talk to the person. They got the information they wanted. But the executive branch got to have agency counsel there to protect executive branch interests. That is the way it is supposed to work, but there was no attempt at anything like that from the House in this case.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Mr. MARKEY. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. Senator MARKEY's question for the House managers reads as follows:

It has recently been reported that the Russians have hacked the Ukrainian natural gas company Burisma, presumably looking for information on Hunter Biden. Our intelligence community has warned us that the Russians will be interfering in the 2020 election. If Donald Trump is acquitted of these pending charges but is later found to have invited Russian or other foreign interference

in our 2020 election, what recourse will there be for Congress under the Dershowitz standard for impeachment, which requires a president to have committed a statutory crime?

Mr. Manager SCHIFF. Senator, absolutely no recourse. No recourse whatsoever. If, in fact, it were later to be shown that not only did the Russians hack Burisma to try to get dirt on the Bidens and drip, drip, drip it out as they did in the 2016 election—let's say it were found that they did so at the request of the President of the United States; that in one of these meetings that the President had with Vladimir Putin, whose contents is unknown, that the President of the United States asked the President of Russia to hack Burisma because he couldn't get the Ukrainians to do what he wanted, so now he was turning to the Russians to do it. Under the Dershowitz theory of the case, under the President's theory of the case, that is perfectly fine.

But that is not—that is not how bad it is because it goes further than that. If the President went further and said to Putin in that secret meeting: I want you to hack Burisma. I couldn't get the Ukrainians to do it, and I will tell you what, if you hack Burisma and you get me some good stuff, then I am going to stop sending money to Ukraine. And I will go a step further. I am going to stop sending money to Ukraine so that they can't fight you in Donbass. And what is more, those sanctions that we imposed on you for your intervention on my behalf in the last election, I am going to make those go away. I am going to simply refuse to enforce them. I am going to call it a policy difference.

That is perfectly fine under their standard. That is not an abuse of power. You can't say that is criminal. Yet it is akin to crime—or maybe it is not, but that is what an acquittal here means. It means that the President is free to engage in all the rest of that conduct, and it is perfectly fine.

And what is the remedy that my colleagues representing the President say that you have to that abuse? Well, you can hold up a nominee. That seems wholly out of scale with the magnitude of the problem. That process of the appropriations or nominations is not sufficient for a Chief Executive Officer of the United States who will betray the national security for his own personal interests.

He got on the phone with Zelensky asking for this favor the day after Bob Mueller testifies. What do you think he will be capable of doing the day after he is acquitted here, the day after he feels: I have dodged another bullet. I really am beyond the reach of the law. My Attorney General says I can't be indicted; I can't even be investigated. He closed the investigation into this matter before he even opened it. And I can't be impeached either. I have got the best of both worlds. I have got Bill Barr saying I can't be investigated. I can't be prosecuted. I can be impeached, however. That is what Bill Barr says. But I have got other lawyers who say I can't be impeached.

That is a recipe for a President who is above the law. Not only is it not required by the Constitution—quite the contrary. The Founders knew, coming from a monarchy, that if they were going to give extraordinary powers to their new Executive, they needed an extraordinary constraint. They needed a constraint commensurate with the evil which they sought to contain. That remedy is not holding up a nomination. The remedy they gave for an Executive that would abuse their power and endanger the country, that would endanger the integrity of our elections, was the power of impeachment.

As one of the experts said in the House, if this conduct isn't an impeachable offense, then nothing is.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from South Carolina.

Mr. GRAHAM. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators ALEXANDER, CRUZ, PORTMAN, TOOMEY, SULLIVAN, and MURKOWSKI to the counsel for the President.

The CHIEF JUSTICE. Thank you.

The question from Senator GRAHAM and the other Senators is for the counsel for the President:

> Assuming for argument's sake that Bolton were to testify in the light most favorable to the allegations contained in the Articles of Impeachment, isn't it true that the allegations still would not rise to the level of an impeachable offense and that, therefore, for this and other reasons, his testimony would add nothing to this case?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

Let me start by just making very clear that there was no quid pro quo. There was no—and there is no evidence to show that. There was not that sort of linkage that the House managers have suggested.

But let me answer the question directly, which I understand to be assuming for the sake of argument that Ambassador Bolton would come and testify the way the New York Times article alleges, the way his book describes the conversation. Then it is correct that, even if that happened, even if he gave that testimony, the Articles of Impeachment still wouldn't rise to an impeachable offense. That is for at least two reasons. Let me explain that.

The first is, on their face, the Articles of Impeachment, as they have been laid out by the House managers, even if you take everything that is alleged in them, they don't, as a matter of law, rise to the level of an impeachable offense because even the House managers haven't characterized them as involving a crime. So that is one level of the answer, that an impeachable offense would require a crime.

Even going beyond that, a second level, the theory of abuse of power that they have alleged—put aside whether or not it is a crime, the thory of abuse of power that they have asserted is not something that conforms with the constitutional standard of high crimes and misdemeanors. It depends entirely on subjective intent, and it is subjective intent alone.

As Professor Dershowitz explained, and as I have explained—and I don't mean in the more radical portion of his explanation of his theory, I mean just in terms of what is high crimes and misdemeanors. He explained that something that is based entirely on subjective intent is equivalent to maladministration. It is equivalent to exactly the standard that the Framers rejected because it is completely malleable. It doesn't define any real standard for an offense. It allows you to take any conduct that on its face is perfectly permissible, and on the basis of your projection of a disagreement with that conduct, a disagreement with the reasons for it to attribute a bad motive, to try to say there is a bad subjective motive for doing that and will make it impeachable, that doesn't conform to the constitutional standard.

At the common law, they would call the reaction to a charge like this a demurrer. You demur and simply say, even if everything you say is true, that is not an impeachable offense under the law. And that is an appropriate response here. Even if everything you allege is true, even if John Bolton would say it is true, that is not an impeachable offense under the constitutional standard because the way you have tried to define the constitutional standard, this theory of abuse of power is far too malleable. It goes purely to subjective intent. It can't be relied upon.

The third level of my answer is this. We have demonstrated that there is a legitimate public policy interest in both of the matters that were raised on that telephone call: the 2016 election interference and the Biden Burisma affair. Because there is a legitimate public policy interest in both of those issues, even if it were true that there was some connection, even if it were true that the President had suggested or thought that, well, maybe I should hold up this aid until they do something, that is perfectly permissible where there is that legitimate public policy interest.

It is just the same as if there is an investigation going on. The President wants a foreign country to provide some assistance. It is a legitimate foreign policy interest to get that assistance. It is legitimate to use the levers of foreign policy to secure that assistance. So because there is a legitimate public policy interest in both of those issues—and I think we have demonstrated that clearly—it would be permissible for there to be that linkage.

But again, I will close where I began, which is there was no such linkage here. I just want to make that clear. But taking for the sake of argument the question as phrased, even if Ambassador Bolton would testify to that,

even if you assumed it were true, there is no impeachable offense stated in the Articles of Impeachment.

Thank you.

The CHIEF JUSTICE. Thank you.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator DURBIN for the House managers:

Would you please respond to the answer that was just given by the President's counsel?

Mr. Manager SCHIFF. Senators, it has been a long couple of days, so let me be blunt about where I think we are. I think we all know what happened here. I think we all understand what the President did here. I don't think there is really much question at this point about why the military aid was withheld or why President Zelensky couldn't get in the door of the Oval Office. I don't think there is any confusion about why he wanted Joe Biden investigated or why he was pushing the CrowdStrike conspiracy theory. I don't think there is really much question about that. I don't think there is any question about what we could expect if and when John Bolton testifies, although the details of which we certainly don't know. I don't think there is really much question about that. But what is extraordinary is, although they can claim that this was a radical mistake or notion of Professor Dershowitz that they seem to be distancing themselves from right now, I guess they think they are accusing Dershowitz now of some maladministration in his argument of the defense—they are still embracing that idea.

What they just told you admittedly in outline of A, B, and C, what they just told you is: accept everything the House said, accept the President withheld the military aid to coerce Ukraine into helping him cheat in the election, accept that these investigations are a sham, accept that he obstructed all subpoenas and witnesses, accept all of that. Too bad. There is nothing you can do. That is not impeachable.

A President of the United States—this is now where we have come to in this moment of our history, the President of the United States can withhold hundreds of millions of dollars in aid that we appropriated, can do so in violation of the law, can do so to coerce an ally, in order to help him cheat in an election, and you can't do anything about it, except hold up a nomination. That is not impeachable.

They can abuse their power all they want—the President, this President, the next President can abuse their power all they want in the furtherance of their reelection as long as—here is the limiting principle—as long as they think their reelection is in the national interest. Well, that is quite a constraint. That is where we have come now after 2½ centuries of our history.

I think our Founders would be aghast that anyone would make that argument on the floor of the Senate. I think they would be aghast, having come out of a monarchy, having literally risked their lives, having taken this great gamble that people could be entrusted to run their own government and choose their own leaders, recognizing that we are not angels, setting up a system that would have ambition, counterambition, that we would so willingly abdicate that responsibility and say that a Chief Executive now has the full power to coerce our ally—a foreign power to intervene in our election—because they think it is in the national interest that they get reelected.

Is that really what we think the Founders would have condoned or do we think that this is precisely the kind of character of conduct that they provided a remedy for? I think we know the answer to that.

They wrote a beautiful Constitution. They understood a lot about human nature. They understood, as we do, that absolute power corrupts absolutely. And they provided a constraint, but it will only be as good and as strong as the men and women of this institution's willingness to uphold it, to not look away from the truth.

The truth is staring us in the eyes. We know why they don't want John Bolton to testify. It is not because we don't really know what happened here. They just don't want the American people to hear it in all of its ugly, graphic detail. They don't want the President's National Security Advisor on live TV or even a nonlive deposition to say: I talked with the President, and he told me in no uncertain terms: John—

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Manager SCHIFF. To be continued.

The CHIEF JUSTICE. The Senator from Georgia.

Mrs. LOEFFLER. I send a question to the desk on behalf of myself and Senators HAWLEY, CRUZ, PERDUE, GARDNER, LANKFORD, HOEVEN, TOOMEY, SCOTT of Florida, PORTMAN, and FISCHER.

The CHIEF JUSTICE. Thank you.

The question from Senator LOEFFLER and the other Senators is for the counsel of the President:

As reported by Politico, ''in January 1999, then-Sen Joe Biden argued strongly against deposing additional witnesses or seeking new evidence in a memo sent to fellow Democrats ahead of Bill Clinton's impeachment trial.'' Politico reports that Sen SCHUMER agreed with Biden. Why should the Biden rule not apply here?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, in a memorandum dated January 5, 1999, that is captioned ''Arguments in Support of Summary Impeachment Trial,'' Senator Biden discussed some history first regarding two Senate impeachment proceedings that were put forward in the Senate that were summarily decided. This is what he said:

These two cases demonstrate that the Senate may dismiss articles of impeachment without holding a full trial or taking any evidence. Put another way, the Constitution does not impose on the Senate the duty to hold a trial. In fact, the Senate need not hold a trial even though the House wishes to present evidence and hold a full trial (Blount) and the elements of jurisdiction are present (English).

He went on to say:

In a number of previous impeachment trials, the Senate has reached the judgment in its constitutional role as sole trier of impeachments does not require it to take new evidence or hear live witness testimony.

This follows from the Senate's consideration of motions for summary disposition in at least three trials [and it listed the three trials of Judges Ritter, Claiborne, and Nixon]. In each, the Senate considered a motion for summary disposition on the merits and in no case did the Senate decline to consider a motion for summary disposition as beyond the Senate's authority or as forbidden by the Constitution.

The Framers did not mean that this political process was to be a partisan process. Instead, they meant it to be political in the higher sense. The process was to be conducted in the way that would best secure the public interest or, in their phrase, the ''general welfare.'' That was the Biden doctrine of impeachment proceedings.

Now, some Members in this Chamber agreed with that. Some Members that serve on the—as managers also agreed with that. But now the rules are different. The rules are different because Manager SCHIFF just moments ago did what he is now famous for and created a conversation, purportedly from the President of the United States, regarding Russia hacking of Burisma. And it is the same thing he did when he started his hearings.

So this is a common practice. But if we want to look at common practice and common procedures, the Biden rule is one. I would like to address something else because we have heard it time and time again about two judges have decided this issue of executive privilege. I want to address two things very quickly.

My very first case at the Supreme Court of the United States—and it was a long time ago, over 30—over 30 years ago, 33 years ago. My client lost in the district court. They said: Well, we will appeal to the Ninth Circuit Court of Appeals. We went to the Ninth Circuit Court of Appeals, was not so successful and did not win there either. My client said: Well, what do we do?

I said: We have one option. We can file a petition for certiorari to the Supreme Court of the United States. Chances are they are not going to take the case. But at this point, it is an important issue to you, so why don't we proceed. My client agreed to proceed.

A petition for certiorari was granted, and the Court reversed 9 to 0. And that is why you continue to utilize courts when appropriate. That is why you do it. And you don't rely on what a district court judge says.

The last thing I want to say, they are asking you, as a Senate body, to waive executive privilege on the President of the United States. Think about that for a moment. They are asking you to vote to determine or have the Chief Justice in his individual capacity as Presiding Judge vote to waive executive privilege as it relates to the President of the United States. And that is what they think is the appropriate role for this proceeding to continue. I think you should adopt the Biden rule.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Colorado.

Mr. BENNET. Mr. Chief Justice, thank you. I would like to send a question to the desk on behalf of myself and Senator WARNER.

The CHIEF JUSTICE. Thank you.

The question from Senators BENNET and WARNER is to the House managers:

Mr. Sekulow said that if the Senate votes for witnesses, he will call a long chain of witnesses that will greatly lengthen the trial. Isn't it true that the Senate will establish by majority vote which, and how many witnesses there will be? Isn't it also true that prior impeachment trials in the Senate commonly have heard witnesses who did not testify in the House?

Mr. Manager JEFFRIES. I thank you, Mr. Chief Justice. I thank the distinguished Senators for their questions.

It certainly is the case that all we are asking the Senate to do is to hold a full and fair trial consistent with the Senate's responsibility—article I, section 3 of this Constitution: ''The Senate shall have the sole Power'' with respect to an impeachment trial. And this great institution has interpreted that, during the 15 different impeachment trials that have taken place during our Nation's history, that a full and fair trial means witnesses, because this institution, every time it has held a trial, has heard witnesses all 15 times, including in several instances where there were witnesses who did not testify in the House who testified in the Senate.

Now, the point was raised earlier about Benghazi. And Trey Gowdy—he is a good man. I served with him. He is a very talented lawyer. I am sure he is pleased—the distinguished gentleman from the Palmetto State—that his name has been brought into this proceeding. But Trey Gowdy, according to one of the questions, said that the administration didn't cooperate. The White House, in that instance, and the State Department turned over tens of thousands of documents pursuant to a House subpoena. That is cooperation. Several witnesses appeared voluntarily in Benghazi, including GEN David Petraeus, former CIA Director; Susan Rice, who at the time was the National Security Advisor; Ben Rhodes, the Deputy National Security Advisor; ADM Mike Mullen, former Chairman of the Joint Chiefs of Staff; GEN Carter Ham, former commander of AFRICOM; Defense Secretary Leon Panetta, he also showed up; GEN Michael Flynn, former DIA Director. Who else showed up? The former Secretary of State, Hillary Clinton. She testified publicly under oath for 11 hours. That is cooperation.

What happened in this particular instance in the House? No documents, no witnesses, no information, no cooperation, no negotiation, no reasonable accommodation—blanket defiance. That is what resulted in the obstruction of Congress article.

So all we are asking for is the Senate to hold a fair trial consistent with past practice. At every single trial this Senate has held, the average number of witnesses was 33. We cannot normalize lawlessness. We cannot normalize corruption. We cannot normalize abuse of power—a fair trial.

Lastly, of the witnesses that did testify, voluntarily showed up, what did they have to say? These were Trump administration witnesses.

Ambassador Sondland, how did he characterize the shakedown scheme, the geopolitical shakedown at the heart of these allegations? Ambassador Sondland, ''quid pro quo''; Ambassador Taylor, ''crazy''; Dr. Fiona Hill, ''a domestic political errand''; Lieutenant Colonel Vindman, ''improper''; John Bolton, ''drug deal.''

What would the Framers have said? The highest of high crimes against the Constitution.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Utah.

Mr. ROMNEY. I have a question to send to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator ROMNEY is for both parties, and I believe the House manager will go first:

Do you have any evidence that anyone was directed by President Trump to tell the Ukrainians that security assistance was being held upon the condition of an investigation into the Bidens?

Mr. Manager SCHIFF. Senator, the evidence that is currently in the record—there are two people who had direct conversations with the President about the conditioning of aid on the performance of the investigations. The first was Gordon Sondland, who on September 7 had a conversation with the President that thereafter he relayed to Tim Morrison as well as Ambassador Taylor. And in the conversation that Ambassador Sondland described at the time, he said the President on the one hand said no quid pro quo but then went on to say that Zelensky has to announce these investigations and he should want to.

So the President made the direct link to Ambassador Sondland. Ambassador Sondland then made a direct link—or had already made the direct link to Andriy Yermak. But the conversation with—the President had a conversation with Zelensky himself and conveyed what he had been informed by the President, that Zelensky was going to have to conduct these investigations. And that is when Zelensky made the commitment to go on CNN.

So Ambassador Sondland has acknowledged the tie between the two. So did Mick Mulvaney. And I think that video is now etched in our minds for all of history. Trying to walk that back as he may, he was quite adamant when he was asked about that, and the reporter even followed up when he said that part of the reason why they held up the aid was the desire for this investigation into 2016. And the reporter said: Well, what you are saying is a quid pro quo. You don't get the money unless you do the investigation of the Democrats. And the Chief of Staff's answer was: ''We do that all the time; get over it.''

So you have it from the President's own Chief of Staff. You have it from one of the three amigos, the President's point people. And bear in mind, Ambassador Sondland—of course, not a Never Trumper; a million-dollar donor to the Trump inaugural; someone the President deputized to have a significant part of the Ukraine portfolio; someone who, given he is an EU Ambassador, if this was about burden-sharing, would have said this was about burden-sharing, but he didn't, of course. He said it was about the investigations.

The third direct witness would be John Bolton if we are allowed to bring him before you.

But there already are witnesses and evidence in the record of people who spoke directly to the President about this and to which the conditionality was made clear.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PURPURA. Mr. Chief Justice, Senator, thank you for your question.

I believe the question was, is there any evidence that anyone told—that President Trump had anyone tell the Ukrainians directly that the aid was linked? I believe that was the question, and the answer in the House record is no. I described this on Saturday when I walked through it at length, and so I refer back to that presentation.

Ambassador Sondland and Senator JOHNSON. Ambassador Sondland indicated in approximately the September 9 timeframe—as we all heard his statement, he asked the President. The President said: ''I want nothing. I want nothing. I want no quid pro quo.''

And you heard a lot from the House managers about, go out to the microphones or make this—do the right thing. But I believe the statement was, he needs to do the right thing. He needs to do what he campaigned on.

Even early, Senator JOHNSON—again, because Ambassador Sondland told Senator JOHNSON that there was a linkage. So Senator JOHNSON asked the President directly, and we know the answer to that. The President said: Was there any connection—when Senator JOHNSON asked if there was any connection between security assistance and investigations, the President answered: ''No way. I would never do

that. Who told you that?'' And the answer was Sondland. And Ambassador Sondland had come to that presumption prior to speaking to the President. And we saw the montage from Ambassador Sondland about presumptions and assumptions and guessing and speculating and belief. So we also remember the montage in which Ambassador Sondland was asked: Did anyone on the planet tell you that the aid was linked to the investigations? And his answer was no.

So in the House record before us, there is no evidence that the President told anyone to tell the Ukrainians that the aid was linked. And, in fact, the article from the Daily Beast yesterday—

The CHIEF JUSTICE. Thank you, Mr. Counsel.

Mr. Counsel PURPURA. Thank you, Chief Justice.

The CHIEF JUSTICE. The Senator from Oregon.

Mr. MERKLEY. Mr. Chief Justice, I send a question to the desk for Senator SCHATZ, for Senator CARPER, and for myself.

The CHIEF JUSTICE. Thank you.

The question is for the House managers from Senators MERKLEY, SCHATZ, and CARPER:

Yesterday, Alan Dershowitz stated that a President cannot be impeached for soliciting foreign interference in his re-election campaign if he thinks it's in the public interest. The President's Counsel stated the President cannot be prosecuted for committing a crime. And the President himself has said ''I have the right to do whatever I want as President.'' Aren't these views exactly what our Framers warned about: an imperial President escaping accountability? If these arguments prevail, won't future Presidents have the unchecked ability to use their office to manipulate future elections like corrupt foreign leaders in Russia and Venezuela?

Mr. Manager SCHIFF. Thank you for the question, Senators. Before I address it, I just want to complete my answer to the last question.

On September 7, the President has a conversation with Gordon Sondland, and the President says: No quid pro quo, but Zelensky has got to go to the mic, and he should want to do so.

This is in the context of whether the aid is being withheld in order to secure the investigations. After that call on the same day, Sondland calls Zelensky, the President of Ukraine, and says: You are not going to get the money unless you do the investigations.

So you have got the communication between the President and Sondland and Sondland conveying the message to the Ukrainians in short succession. And so I think you see that the message the President gave to Sondland was, in fact, communicated immediately to the Ukrainians.

Of course, Sondland went on to explain to Ambassador Taylor and to Tim Morrison that the President wanted Zelensky in a public box. What was meant by that is he wanted him to have to go out and announce publicly these investigations if he were going to get the money. Remember, Sondland explained that the President is a businessman, and before he gives away something, he wants to—before he signs the check, he wants to get the deliverable. Ambassador Taylor says: That doesn't make any sense. Ukraine doesn't owe him anything.

So it was clear to everyone, including the Ukrainians, that they were not going to get the money unless they did the investigations that the President wanted. That is the connection on September 7 that makes it crystal clear.

In terms of the Dershowitz argument, when coupled with a President who believes that, under article II, he can do whatever he wants, yes. I mean, this is the description of a President, not just of an imperial President but of an absolute President with absolute power because, if a President can take this action and extort one country, he can extort any country. If he can make a deal with the President of Venezuela or take an action that is antagonistic to what Congress has legislated with respect to that country and can violate the law in doing it to get help in his reelection—and I think that example that Senator KING asked about is directly on point—then there is no limiting principle here, as long as the President thinks it is in the interest of his reelection.

So, yes, he can ask the Israeli Prime Minister to come to the United States and call his opponent an anti-Semite if he wants to get U.S. military aid. That principle can be applied anywhere to anything, to the grave danger of the country.

That is the logical extension not just to what Professor Dershowitz said yesterday but to what the President's counsel said today. You can accept every fact of the articles, and we still think it is fine and beyond the reach of the Constitution. The President can extort an ally by withholding military aid and withholding meetings. He can ask them to do sham investigations, even if you acknowledge the fact that they are a sham. In fact, they don't even have to be done; they just have to be announced, and there is nothing Congress can do about it. That is a prescription for a President with no constraint.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Indiana.

Mr. BRAUN. Mr. Chief Justice, I, along with Senator LEE, send to the desk a question for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators BRAUN and LEE is for the counsel for the President:

Under Professor Dershowitz's theory, is what Joe Biden is alleged to have done potentially impeachable, in contrast to what has been alleged against President Trump?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I believe that, under Professor Dershowitz' theory, remember, he tried to categorize things into three buckets. One was of purely good motives. One was, well, you might have some motive for your personal political gain, as well as public interest motives for doing something or intent. Then there was the third bucket of purely private pecuniary gain. He said that is the one, if you are doing it for purely private pecuniary gain, that has the problem.

I think that would be the distinguishing factor in what is potentially a presence in the facts known about the Biden and Burisma incident because the conflict of interest that would be apparent on the face of the facts that are known is that there would be a personal, family financial interest in that situation.

Vice President Biden is in charge of Ukraine policy. His son is sitting on the board of a company that is known for corruption. The public reports are that, apparently, the prosecutor general was investigating that company and its owner, the oligarch, at the time. Then Vice President Biden quite openly said that he leveraged $1 billion in U.S. loan guarantees to ensure that that particular prosecutor was fired at that time.

One could put together fairly easily from those known facts the suggestion that there was a family financial benefit coming from the end of that investigation because it protected the position of the younger Biden on the board, and that would be a purely private pecuniary—financial—gain. That is the third bucket that Professor Dershowitz was describing and the one that is necessarily problematic when he said that that is where there is going to be a problem, that that is where you would have a crime and a potentially impeachable offense.

So I think that would be the distinction there. That is one that, if all of those facts lined up under Professor Dershowitz' categorization of things, would be the problematic category.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. Chief Justice, on behalf of myself, Senator CARDIN, and Senator VAN HOLLEN, I have a question for the House managers that I will submit to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator KLOBUCHAR and Senators CARDIN and VAN HOLLEN is directed to the House managers:

Could you please respond to the answer just given by the President's counsel, and provide any other comments the Senate would benefit from hearing before we adjourn for the evening?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, what we have just heard from the President's counsel is the usual nonsense. As we draw to a close tonight, there are only three things to remember.

One, this is a trial. It is a trial, and as any 10-year-old knows, we should

have witnesses. We are told we can't have witnesses because, after all, the House says we proved our case, as we have. So why should we need witnesses? Well, that is like saying that, in a bank robbery, the DA announces that he has proved his case. He has had all the witnesses. Then an eyewitness shows up, and he shouldn't be allowed to testify because, after all, the DA was sure he proved his case first. That is absurd, and any 10-year-old knows it is absurd.

That is the President's case against witnesses, that we have had enough. There is always more. There aren't too many more here. The fact is, when there are witnesses to be asked, they should be asked.

Second, there is only one real question in this trial. Everything else is a distraction—a three-card Monte game being played by the President's counsel—distractions. Don't look at the real question. Look at everything else. Everything else is irrelevant. Look at the whistleblower—irrelevant. Look at the House procedures—irrelevant. Look at Hunter Biden—irrelevant. Look at whether President Obama's policy was as good as or better than President Trump's policy with respect to Ukraine—irrelevant. Look at the Steele dossier—irrelevant.

There is only one relevant question: Did the President abuse his power by violating the law to withhold military aid from a foreign country and extort that country into helping him—into helping his reelection campaign—by slandering his opponent? That is the only relevant question for the trial.

The House managers have proved that question beyond any doubt.

The one thing the House managers think the President's counsel got right is quoting me as saying ''beyond any doubt.'' It is, indeed, beyond any doubt.

That is why all of these distractions. That is why the President's people are telling you to avoid witnesses—because they are afraid of witnesses. They know the witnesses—they know Mr. Bolton and others will only strengthen the case.

And, yes, we hear: Well, if the House managers say their case is so strong, why do you need more witnesses? Because the truth can be bolstered.

I yield back.

The CHIEF JUSTICE. Thank you, counsel.

NOTICE OF INTENT TO SUSPEND THE RULES

In accordance with rule V of the Standing Rules of the Senate, Mr. Blumenthal (for himself, Mr. Brown, and Mr. Durbin) hereby gives notice in writing of his intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials during consideration of the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents in connection with the impeachment trial of Donald John Trump:

(1) The phrase ''without debate'' in Rule VII.

(2) The following portion of Rule XX: '', unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record''.

(3) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'', and '', to be had without debate''.

NOTICE OF INTENT TO SUSPEND THE RULES

In accordance with Rule V of the Standing Rules of the Senate, I (for myself, Mr. Blumenthal, and Mr. Durbin) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials during the impeachment trial in the Senate of President Donald John Trump:

(1) The phrase ''without debate'' in Rule VII.

(2) The following portion of Rule XX: '', unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record''.

(3) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'', and '', to be had without debate''.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m. Friday, January 31.

There being no objection, at 10:40 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Friday, January 31, 2020, at 1 p.m.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. The Senate will come to order.

The Senate will now resume legislative session.

THE JOURNAL

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Roberts, one of his secretaries.

PRESIDENTIAL MESSAGE

TRANSMITTING DESIGNATION OF FUNDING AS EMERGENCY REQUIREMENTS IN ACCORDANCE WITH THE UNITED STATES-MEXICO-CANADA-AGREEMENT IMPLEMENTATION ACT—PM 42

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on the Budget:

To the Congress of the United States:

In accordance with section 904 of title IX of the United States-Mexico-Canada Agreement Implementation Act (H.R. 5430; the ''Act''), I hereby designate as emergency requirements all funding so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.

The details of this action are set forth in the enclosed memorandum from the Acting Director of the Office of Management and Budget.

DONALD J. TRUMP.

THE WHITE HOUSE, *January 29, 2020.*

MESSAGE FROM THE HOUSE

At 10:41 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 3201. An act to extend the temporary scheduling order for fentanyl-related substances, and for other purposes.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2153. An act to support empowerment, economic security, and educational opportunities for adolescent girls around the world, and for other purposes.

H.R. 3621. An act to amend the Fair Credit Reporting Act to remove adverse information for certain defaulted or delinquent private education loan borrowers who demonstrate a history of loan repayment, and for other purposes.

H.R. 4331. An act to modify and reauthorize the Tibetan Policy Act of 2002, and for other purposes.

H.R. 5338. An act to authorize the Secretary of State to pursue public-private partnerships, innovative financing mechanisms, research partnerships, and coordination with international and multilateral organizations to address childhood cancer globally, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 86. Concurrent resolution providing for a joint session of Congress to receive a message from the President.

The message further announced that the House has agreed to the amendment of the Senate to the bill (H.R. 550) to award a Congressional Gold