United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 116th CONGRESS, SECOND SESSION

Vol. 166 WASHINGTON, TUESDAY, JANUARY 28, 2020 *No. 18*

Senate

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

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

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

The Chaplain will lead us in prayer.

PRAYER

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

Let us pray.

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

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

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

THE JOURNAL

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

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

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

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

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. Chief Justice, we expect several hours of session today, with probably one quick break in the middle.

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

The Senate will now hear you.

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

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

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

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

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

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

they defined in the Constitution very specifically what constituted treason and how it had to be proved, and then that term was incorporated into the impeachment clause.

Similarly, in the rejection of maladministration, which had been an impeachable offense in England, the Framers rejected that because it was vague. A vague standard, something that is too changeable, that can be redefined, that can be malleable after the fact, allows for the arbitrary exercise of power, and that would be dangerous to give that power to the legislature as a power to impeach the executive.

Similarly—and it relates again to the impeachment clause—one of the greatest dangers from having changeable standards that existed in the English system was bills of attainder. Under a bill of attainder, the Parliament could pass a specific law saying that a specific person had done something unlawful—they were being attainted—even though it wasn't unlawful before that.

The Framers rejected that entire concept. In article I, section 9, they eliminated both bills of attainder and all ex post facto laws for criminal penalties at the Federal level, and they also included a provision to prohibit States from using bills of attainder.

In the English system, there was a relationship, to some extent, between impeachment and bills of attainder because both were tools of the Parliament to get at officials in the government. You could impeach them for an established offense or you could pass a bill of attainder.

It was because the definition of ''impeachment'' was being narrowed that George Mason at the debates suggested—he pointed out—that in the English system there is a bill of attainder. It has been a great, useful tool for the government, but we are eliminating that, and now we are getting a narrow definition of ''impeachment,'' and we ought to expand it to include ''maladministration.'' Madison said no, and the Framers agreed: We have to have enumerated and defined offenses—not a vague concept, not something that can be blurry and interpreted after the fact and that could be used, essentially, to make policy differences or other differences like that the subject of impeachment.

All of the steps that the Framers took in the way they approached the impeachment clause were in terms of narrowing, restricting, constraining, and enumerating offenses and not a vague and malleable approach, as they had been in the English system.

I think the minority views of Republican Members of the House Judiciary Committee at the time of the Nixon impeachment inquiry summed this up and reflected it well because they explained—and I am quoting from the minority views in the report:

> The whole tenor of the Framers' discussions, the whole purpose of their many careful departures from English impeachment practice, was in the direction of limits and of standards. An impeachment power exercised without extrinsic and objective standards would be tantamount to the use of bills of attainder and ex post facto laws, which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.

What we see in the House managers' charges and their definition of abuse of power is exactly antithetical to the Framers' approach because their very premise for their abuse of power charge is that it is entirely based on subjective motive—not objective standards, not predefined offenses, but the President can do something that is perfectly lawful, perfectly within his authority. But if the real reason, as Professor Dershowitz pointed out—that is the language from their report—the reason in the President's mind is something that they ferret out and decide is wrong, that becomes impeachable, and that is not a standard at all. It ends up being infinitely malleable.

It is something that I think—a telling factor that reflects how malleable it is and how dangerous it is in the House Judiciary's report because after they define their concept of abuse of power and they say that it involves your exercising government power for personal interest and not the national interest and it depends on your subjective motives, they realize that is infinitely malleable.

There is not really a clear standard there, and it is violating a fundamental premise of the American system of justice that you have to have notice of what is wrong. You have to have notice of an offense. This is something Professor Derschowitz pointed out last night. There has to be a defined offense in advance. The way they try to resolve this is to say: Well, in addition to our definition, high crimes and misdemeanors involve conduct that is recognizably wrong to a reasonable person. And that is their kind of add-on to deal with the fact that they have an unconstitutionally vague standard.

They don't have a standard that really defines a specific offense. They don't have a standard that really defines, in coherent terms that are going to be identifiable, what the offenses are, so they just add on. It has to be recognizably wrong.

They say they are doing this to resolve a tension, they call it, within the Constitution because they point out—and this is quoting from the report—''The structure of the Constitution, including its prohibition on bills of attainder and the ex post facto clause, implies that peaceable offenses should not come as a surprise.''

That is exactly what Professor Derschowitz pointed out. And everything about the terms of the Constitution, speaking of an offense and a conviction, that crime should be tried by jury except impeachments. They all talk about impeachment in those criminal offense terms.

But the tension here isn't within the Constitution; it is between the House managers' definition, which lacks any coherent definition of an offense that would catch people by surprise and the Constitution. That is the tension that they are trying to resolve between their malleable standards that actually states no clear offense and the Constitution and the principles of justice embodied in the Constitution that requires some clear offense.

I wanted to point that out in relation to the standards for impeachable offenses because it is another piece of the constitutional puzzle that fits in with the exposition that Professor Derschowitz set out. And it also shows an inherent flaw in the House managers' theory of abuse of power, regardless of whether or not one accepts the view that an impeachable offense has to be a defined crime. There is still the flaw in their definition of abuse of power; that it is so malleable, based on purely subjective standards, that it does not provide any recognizable notice of an offense. It is so malleable that it, in effect, recreates the offense of maladministration that the Framers expressly rejected, as Professor Derschowitz explained.

The second point that I wanted to make is, how do we tell, under the House managers' standard, what the illicit motive is; when is there illicit motive? How are we supposed to get the proof of what is inside the President's head because, of course, motive is inherently difficult to prove when you are talking about, as they conceded they are talking about, perfectly lawful actions, on their face, within the constitutional authority of the President? They want to make it impeachable if it is just the wrong idea inside the President's head. And they explain in the House Judiciary Committee report that the way we will tell if the President had the wrong motive is we will compare what he did to what staffers in the executive branch said he ought to do. They say that the President ''disregarded United States foreign policy towards Ukraine'' and that he ignored ''official'' policy that he had been briefed on and that ''he ignored, defied, and confounded every . . . agency within the Executive Branch.''

That is not a constitutionally coherent statement. The President cannot defy agencies within the executive branch. Article II, section 1 of the Constitution vests all of the Executive power in a President of the United States. He alone is an entire branch of government. He sets policy for the executive branch. He is given vast power. And, of course, within limits set by laws passed by Congress and within limits set by spending priorities—spending laws passed by Congress—he, within those constraints, sets the policies of the government. And in areas of foreign affairs, military affairs, national security—which is what we are dealing with in this case—in foreign affairs and head of state communications, he has vast powers.

As Professor Derschowitz explained, for over two centuries, the President

has been regarded as the sole organ of the Nation in foreign affairs. So the idea that we are going to find out when the President has a wrong subjective motive by comparing what he did to the recommendations of some interagency consensus among staffers is fundamentally anti-constitutional. It inverts the constitutional structure, and it is also fundamentally anti-democratic because our system is rather unique in the amount of power that it gives to the President.

The Executive here has much more power than in a parliamentary system, but part of the reason that the President can have that power is if he is directly democratically accountable to the people. There is an election every 4 years to ensure that the President stays democratically accountable to the people. Those staffers in these supposed interagencies who have their meetings and make recommendations to the President are not accountable to the people. There is no democratic legitimacy or accountability to their decisions or recommendations. And that is why the President, as head of the executive branch, has the authority to actually set policies and make determinations, regardless of what his staffers may recommend. They are there to provide information and recommendations, not to set policy.

The idea that we are going to start impeaching Presidents by deciding that they have illicit motives if we can show they disagree with some interagency consensus is fundamentally contrary to the Constitution and fundamentally anti-democratic. Those were the two observations I wanted to add to supplement specific points on Professor Derschowitz' comments from last night.

I want to shift gears and respond to a couple of points that the House managers have brought up that are really completely extraneous to this proceeding. They involve matters that are not charged in the Articles of Impeachment. They do not relate directly to the President and his actions, but they are accusations that were brought up somewhat recklessly, in any event, and we can't close without some response to them. The first has to do with the idea that somehow the White House and White House lawyers were involved in some sort of coverup related to the transcript of the July 25 call because it was stored on a highly classified system.

Let me start with that. The House managers made this accusation of something nefarious going on. Let's see what the witnesses actually had to say. LTC Alexander Vindman—remember Lieutenant Colonel Vindman is the person who was listening in on the call and who raised a concern. He was the only person who went and raised a concern with NSC lawyers that he thought there was something improper, something wrong with the call. Even though he later conceded under cross-examination it was really a policy concern, but he thought there was something wrong.

And he had to say: "I do not think there was malicious intent or anything of that nature . . . to cover anything up."

He is the one who went and talked to the lawyers. He is the one whose complaint spurred the idea that, wait, there might be something that is really sensitive here. Let's make sure this is not going to leak. He thought there was nothing covering it up.

His boss, Senior Director Tim Morrison, had similar testimony.

(Text of Videotape presentation:)

Mr. CASTOR. So to your knowledge, there was no malicious intent in moving the transcript to the compartmented server?

Mr. MORRISON. Correct.

Mr. Counsel PHILBIN. The idea that there was some sort of coverup is further destroyed by the simple fact that everyone who as part of their job needed access to that transcript, still had access to it, including Lieutenant Colonel Vindman. The person who raised the complaint still had access to the transcript the entire time.

This is the way Mr. Morrison's testimony explained that.

(Text of Videotape presentation:)

Mr. CASTOR. And even on the code word server, you had access to it?

Lieutenant Colonel VINDMAN. Yes.

Mr. CASTOR. So at no point in time in your official duties were you denied access to this information, is that correct?

Lieutenant Colonel VINDMAN. Correct.

Mr. CASTOR. And to your knowledge, anybody on NSC staff that needed access to their official duties always was able to access it, correct, people that had a need to know and a need to access it?

Mr. MORRISON. Once it was moved to the departmental system? Yes.

Mr. CASTOR. OK.

Mr. Counsel PHILBIN. Now, Mr. Morrison testified that he recommended restricting access to the transcript, not because he was concerned there was anything improper or illegal, but he was concerned about a potential leak and, as he put it, how that "would play out in Washington's polarized environment" and would "affect bipartisan support our Ukrainian partners are currently experiencing in Congress."

He was right to be concerned, potentially, about leaks because the Trump administration has faced national security leaks at an alarming rate. Lieutenant Colonel Vindman, himself, said concerns about leaks seemed justified, and it was not unusual that something would be put in a more restricted circulation.

Now, what else is in the record evidence? Mr. Morrison explained his understanding of how the transcript ended up on that server.

(Text of Videotape presentation:)

Mr. MORRISON. I spoke with the NSC executive secretariat staff, asked them why, and they did their research and they informed me that it had been moved to the higher classification system at the direction of John Eisenberg, whom I then asked why. I mean, if that was the judgment he made, that's not necessarily mine to question, but I didn't understand it. And he essentially told me: I gave no such direction. He did his own inquiry, and he represented back to me that it was his understanding that it was kind of an administrative error, that when he also gave direction to restrict access, the executive secretariat staff also understood that as an apprehension that there was something in the content of the Memcon that could not exist on the lower classification system.

Mr. CASTOR. To the best of your knowledge, there was no malicious intent in moving the transcript to the compartmented server?

Mr. MORRISON. Correct.

Mr. Counsel PHILBIN. Everyone who knew something about it and who testified agreed there was no malicious intent. The call was still available to everyone who needed it as part of their job, and it certainly wasn't covered up or deep-sixed in some way. The President declassified it and made it public. So why we are even here talking about these accusations about a coverup, when it is a transcript that was preserved and made public, is somewhat absurd.

The other point I would like to turn to—another accusation from the House managers—is that the whistleblower complaint was not forwarded to Congress. They have said that lawyers at the Department of Justice, this time, they accused OLC, the Office of Legal Counsel, of providing a bogus opinion for why the Director of National Intelligence did not have to advance the whistleblower's complaint to Congress.

Manager JEFFRIES said that OLC opined "without any reasonable basis that the Acting DNI did not have to turn over the complaint to Congress."

The way he portrayed this—now, there is a statute that says if the inspector general of the intelligence community finds a matter of urgent concern, it must be forwarded to Congress. And Manager JEFFRIES portrayed this as if the only thing to decide was were these claims urgent. He said: "What can be more urgent than a sitting President trying to cheat in an American election by soliciting foreign interference?"

Except that is not the only question. The statute doesn't just say, if it is urgent, you have to forward it. It talks about "urgent concern" as a defined term. If the House managers want to come and cast accusations that the political and career officials at the Office of Legal Counsel, which we all know is a very respected office of the Department of Justice, provides opinions for the executive branch on what governing law is, they should come backed up with analysis.

So let's look at what the law actually says, and I think we have the slide of that.

"Urgent concern is defined as a serious or flagrant problem, abuse, violation of law relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information."

So the Office of Legal Counsel was consulted by the General Counsel at

the DNI's office, and they looked at this definition, and they did an analysis. They determined that the alleged misconduct was not an urgent concern within the meaning of the statute because they were not just talking about ''Do we think it is urgent?'' ''Do we think it is important?'' No. They were analyzing the law, and they looked at the terms of the statute.

''The alleged misconduct is not an urgent concern within the meaning of the statute because it does not concern the funding, administration, or operation of an intelligence activity under the authority of the DNI.''

Remember, what we are talking about here is a head-of-state communication between the President of the United States and another head of state. This isn't some CIA operation overseas. This isn't the NSA's doing something. This isn't any intelligence activity going on within the intelligence community under the supervision of the DNI. It is the head of the executive branch, in the exercising of his constitutional authority, engaging in foreign relations with a foreign head of state.

So, in reaching that conclusion, the Office of Legal Counsel looked at the statute, case law, and the legislative history. It concluded that this phrase ''urgent concern'' included matters relating to an intelligence activity subject to the DNI's supervision, but it did not include allegations of wrongdoing arising outside of any intelligence activity or outside the intelligence community itself.

That makes sense. This statute was meant to provide for an ability of the inspector general's of the intelligence community, in overseeing the activities of the intelligence community, to receive reports about what was going on at intelligence agencies, those who were members of the intelligence community, and if there were fraud, waste, abuse—something unlawful—in those activities. It was not meant to create an inspector general of the Presidency, an inspector general of the Oval Office, to purport to determine whether the President, in exercising his constitutional authorities, had done something that should be reported.

This law is narrow, and it does not cover every alleged violation of law, the OSC explained, or other abuse that comes to the attention of a member of the intelligence community. Just because you are in the intelligence community and happen to see something else doesn't make this law apply. The law does not make the inspector general for the intelligence community responsible for investigating and reporting on allegations that do not involve intelligence activities or the intelligence community.

Nonetheless, the President, of course, released the July 25 call transcript, and it was also not the end of the matter that the whistleblower complaint and the ICIG's letter were not sent directly to Congress. As the OLC explained, if the alleged complaint does not involve an urgent concern but if there is anything else there that you want to have checked out, the appropriate action is to refer the matter to the Department of Justice, and that is what the DNI's office did.

They sent the ICIG's letter, with the complaint, to the Department of Justice, and the Department of Justice looked at it. This was all made public some time ago. The Department of Justice examined the exact allegations of the whistleblower's and the exact framing and concern raised by the inspector general, which had to do with the potential of, perhaps, a campaign finance law violation. The DOJ looked at it—looked at the statutes, analyzed it—and determined there was no violation, and it closed the matter. It announced that months ago.

When something gets sent over to the Department of Justice to examine, you can't call that a coverup. Everything here was done correctly. The lawyers analyzed the law. The complaint was sent to the appropriate person for review. It was not within the statute that it required transmission to Congress. Everything was handled entirely properly.

Again, actually extraneous to the matters before you, there is nothing about these two points in the Articles of Impeachment, but it merits a response when reckless allegations are made against those at the White House and at the Department of Justice.

With that, Mr. Chief Justice, I yield my time to Mr. Sekulow.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate.

What we are involved in here, as we conclude, is perhaps the most solemn of duties under our constitutional framework—the trial of the leader of the free world and the duly elected President of the United States. It is not a game of leaks and unsourced manuscripts. That is politics, unfortunately, and Hamilton put impeachment in the hands of this body—the Senate—precisely and specifically to be above that fray. This is the greatest deliberative body on Earth.

In our presentation so far, you have now heard from legal scholars from a variety of schools of thought, from a variety of political backgrounds, but they do have a common theme with a dire warning—danger, danger, danger. To lower the bar of impeachment based on these Articles of Impeachment would impact the functioning of our constitutional Republic and the framework of that Constitution for generations.

I asked you to put yourselves—in quoting Mr. SCHIFF's statement that his father made—in the shoes of someone else, and I said I would like you to put yourselves in the shoes of the President. I think it is important, as we conclude today, that we are reminded of that fact.

The President of the United States, before he was the President, was under an investigation. It was called Crossfire Hurricane. It was an investigation, led by the FBI, the Federal Bureau of Investigation. James Comey eventually told the President a little bit about the investigation and referenced the Steele dossier. James Comey, the then-Director of the FBI, said it was salacious and unverified—so salacious and unverified that they used it as a basis to obtain FISA warrants. Members—managers here, managers at this table right here—said that any discussions on the abuse from the Foreign Intelligence Surveillance Act, utilized to get the FISA warrants from the court, were conspiracy theories.

At the very beginning, I asked you to put yourselves in the shoes of not just this President but of any President who would have been under this type of attack. FISA warrants were issued on people affiliated with his campaign—American citizens affiliated with the people of his campaign, citizens of the United States being surveilled pursuant to an order that has now been acknowledged by the very court that issued the order that it was based on a fraudulent presentation.

In fact, evidence specifically changed—changed by the very FBI lawyer who was in charge of this, changed to such an extent that the Foreign Intelligence Surveillance Court—as I said earlier, and I will not repeat it again—issued two orders, saying that when this agent—this lawyer—made these misrepresentations to the National Security Division, they also made a misrepresentation to a Federal court—the Federal court—the Foreign Intelligence Surveillance Court. This is a court where there are no defense witnesses and is a court where there is no cross-examination. It is a court based on trust. That trust was violated.

Then the Director of the Federal Bureau of Investigation, James Comey, decides he will leak a memo of a conversation he had with the President of the United States. He is leaking the memo for a purpose, he said—to obtain the appointment of a special counsel. Lo and behold, a special counsel is appointed. It just so happens that that FBI agent—lawyer—who committed the fraud on the FISA Court, became a lawyer for the Mueller investigation, only to be removed because of political animus and bias found by the inspector general.

Then we have a special counsel investigation. Lisa Page, Agent Strzok—I am not going to go into the details. You know them. They are not in controversy. They are uncontroverted. The facts are clear. But does it bother your sense of justice even a little bit—even a little bit—that Bob Mueller allowed the evidence on the phones of those agents to be wiped clean while there was an investigation going on by the inspector general?

Now, if you did it, or if you did it, Manager SCHIFF, or if you did it, Manager JEFFRIES, or if I did that—destroyed evidence—if anyone in this Chamber did this, we would be in serious trouble. Their serious trouble is their getting fired. Bob Mueller's explanation for it is, I don't know what happened. I don't know what happened. I can't recall conversations.

You can't view this case in a vacuum. You are being asked—and I say this with the utmost respect—to remove a duly elected President of the United States. We have referenced the law school exams, and I love that. I thought there was great analysis yesterday. I appreciate all of that, but I want to focus today on my section, on what you are being asked to do. You are being asked to remove a duly elected President of the United States, and you are being asked to do it in an election year—in an election year.

There are some of you in this Chamber right now who would rather be someplace else, and that is why we will be brief. I understand. You would rather be someplace else. Why would you rather be someplace else? Because you are running for President, for the nomination of your party. I get it, but this is a serious, deliberative situation. You are being asked to remove a duly elected President of the United States. That is what the Articles of Impeachment call for—removal.

So we had a special counsel, and we got the report. Just for a moment, putting yourselves in the shoes of this President—or of any President who would be under this situation—you are No. 4 at the Department of Justice. His wife is working for the firm that is doing the opposition research on him and is communicating with the foreign former spy, Christopher Steele, who put together the dossier. It is being handled by Christopher Steele, through Nellie Ohr, to her husband—then, the fourth ranking member at the Department of Justice, Bruce Ohr. All of this is going on, and he doesn't want to tell everybody—and he has testified to this—what he is doing because he is afraid he might have to stop.

Might have to stop?

How did this happen? This is the Federal Bureau of Investigation. And then we ask why the President is concerned about advice he is being given?

Put yourself in his shoes. Put yourself in his shoes.

We have given you—and our approach has been to give—an overview, and to be very specific, to remove a duly elected President, which is what you are being asked to do, for essentially policy disagreements—you heard a lot about policy, although the one that I still—it still troubles me, this idea that the President—it was said by several of the managers—is only doing these things for himself.

Understanding what is going on in the world today, as we are here—they raised it, by the way. I am not trying to be disrespectful. They raised it: This President is only doing things for himself while the leaders of opposing parties, by the way, at the highest level, to obtain peace in the Middle East—to say you are only doing that for yourself? I think the irony is that those statements were made while all of that was going on and other acts that this body has passed, some of them bipartisan, to help the American people.

Policy differences—those policy differences cannot be used to destroy the separation of powers. House managers spoke for—I know we have had disagreements on the time. It was 21 hours or 23 hours. They spoke during their time—a lot of time—most of it attacking the President, policy decisions. They didn't like what they heard. They didn't like there was a pause on foreign aid.

I have laid out before that there were pauses on all kinds of foreign aid. He is not the first President to do it.

But the one thing I am still trying to understand from the managers' perspective—and maybe it is not fair to ask the managers because you are not the leader of the House. But remember the whole idea that this was a dire national security threat, a danger to our Nation, and we had to get this over here right away. It had to be done before Christmas. It was so important; it was so significant; the country was in such jeopardy; the jeopardy was so serious that it had to be done immediately.

Let's hold on to the Articles of Impeachment for a month to see if the House could force the Senate to adopt rules that they wanted, which is not the way the Constitution is set up.

But it was such a dire emergency, it was so critical for our Nation's national interests, that we could hold them for 33 days. Danger, danger, danger. That is politics.

As I said, you are being called upon to remove the duly elected President of the United States. That is what these Articles of Impeachment call for.

They never really answered the question of why they thought there was such a national emergency. Maybe they will during questions; I don't know. If there was such a national emergency, they never did explain why it was that they waited. They certainly didn't wait to have the proceedings, as my colleagues have laid out; I mean, those proceedings moved in record time. I suspect that we have been here more than the House actually considered the actual Articles of Impeachment.

Is that the way the Constitution is supposed to work? Is that the design of the Constitution?

And then their question, of course, came up yesterday on the whole situation with Burisma and the Bidens and that whole issue, and my colleague went through that a great deal, and I am not going to do that.

But do we have a—we used to call this, in free speech cases, like a free speech zone. You could have your free speech activities over here; you can't have them over there. Do you we have like a Biden-free zone? Was that was this was? You mention someone or you are concerned about a company, and it is now off limits? You can impeach the President of the United States for asking a question? I think we significantly showed the question.

I am not going to go through a detail-by-detail analysis of the facts, but there are some that we just have to go through.

You heard a lot of new facts yesterday in our presentation. On Saturday, what we were pointing to was a very quick overview, and then yesterday we spent the day—and we appreciate everybody's patience on that—going through the facts: They showed you this, but they didn't show you that.

The facts are important, though, because facts have legal ramifications; legal ramifications impact the decisions you make. So I don't take facts lightly, and I certainly don't take the constitutional mandate lightly, and we can't.

The facts we demonstrated yesterday and briefly on Saturday demonstrate that there was, in fact, a proper governmental interest in the questions that the President asked and the issues that the President raised on that phone call.

A phone call—now, let's—again, put your feet in the shoes of the President. Put yourself in the President's position. Do you think he thought, when he was on the call, it was him and President Zelensky he was talking to, and that was it? Or as I heard one commentator say it was—people listening in on the call—the President and 3,000 of his closest friends.

Let's be realistic. The President of the United States knew, when he was on that call, there were a lot of people listening from our side and from their side. So he knew what he was saying. He said it. We released a transcript of it.

The facts on the call that have been kind of the focus of all of this really focused on foreign policy initiatives both in Ukraine and around the globe. They talked about other countries. The President has been very concerned about other countries carrying some of the financial load here, not just the United States. That is a legitimate position for a President to take. If you disagree with it, you have the right to do that, but he is the President. As my colleague Deputy White House Counsel Philbin just said, that is the executive branch prerogative. That is their constitutional, appropriate role.

So the call is well documented. There were lots of people on the call. The person that would be on the other end of the quid pro quo, if it existed, would have been President Zelensky. But President Zelensky—and we already laid out the other officials from Ukraine—has repeatedly said there was no pressure. It was a good call. They didn't even know there was a pause in

the aid. All of that is well documented. I am not going to go through each and every one of those facts. We did that over the last several days.

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

So we talk about this whole quid pro quo, and that was a big issue. That is how this—actually, before it became an impeachment proceeding, there was—as the proceedings were beginning in the House Permanent Select Committee on Intelligence under Chairman SCHIFF's role, there were all these discussions: Is it a quid pro quo? Was it extortion? Was it bribery? What was it?

And we are clear in our position that there was no quid pro quo. But then yesterday, my cocounsel, Professor Alan Dershowitz, explained last night that these articles must be rejected—he was talking about from a constitutional framework—even if it was a quid pro quo, which we have clearly established there was not.

And this is what he said, and I am going to quote it verbatim:

> The claim that foreign policy decisions can be deemed abuses of power based on subjective opinions about mixed or sole motives that the President was interested only in helping himself demonstrate the dangers of employing the vague, subjective, and politically malleable phrase "abuse of power" as a constitutionally permissible criteria for the removal of a President.

He went on to say:

> Now, it follows from this that if a President—any President—were to have done what "The Times" reported about the content of John Bolton's manuscript, that would not constitute an impeachable offense.

I am quoting exactly from Professor Dershowitz. He said:

> Let me repeat it. Nothing in the Bolton revelations, even if true—

Even if true.

> would rise to the level of abuse of power or an impeachable offense. That is clear from history. That is clear from the language of the Constitution. You cannot turn conduct that is not impeachable into impeachable conduct simply by using words like "quid pro quo" and "personal benefit."
>
> It is inconceivable that the Framers would have intended so politically loaded and promiscuously deployed a term as "abuse of power" to be weaponized—

Again, Professor Dershowitz.

> as a tool of impeachment. It is precisely the kind of vague, open-ended, and subjective term Framers feared and rejected.

Now, to be specific: You cannot impeach a President on an unsourced allegation. But what Professor Dershowitz was saying is that even if everything in there is true, it constitutionally doesn't rise to that level.

But I want to be clear on this because there is a lot of speculation out there with regard to what John Bolton has said, which referenced a number of individuals. We will start with the President. Here is what the President said in response to that New York Times piece:

> I NEVER told John Bolton that the aid to Ukraine was tied to investigations into Democrats, including the Bidens. In fact, he never complained about this at the time of his very public termination. If John Bolton said this, it was only to sell a book.

The Department of Justice.

> While the Department of Justice has not reviewed Mr. Bolton's manuscript, the New York Times' account of his conversation grossly mischaracterizes what Attorney General Barr and Bolton discussed.
>
> There was no discussion of "personal favors" or "undue influence" on investigations, nor did Attorney General Barr state that the President's conversations with foreign leaders were improper.

The Vice President's chief of staff issued a statement:

> In every conversation with the President and the Vice President, in preparation for our trip to Poland—

Remember, that was the trip that was being planned for the meeting with President Zelensky.

> the President consistently expressed his frustration that the United States was bearing the lion's share of responsibility for aid to Ukraine and that European nations weren't doing their part.
>
> The President also expressed concerns about corruption in Ukraine, and at no time did I hear him tie Ukraine aid to investigations into the Biden family or Burisma.

That was the response responding to an unpublished manuscript that maybe some reporters have an idea of maybe what it says. I mean, that is what the evidence—if you want to call that evidence. I don't know what you call that. I would call it inadmissible, but that is what it is.

To argue that the President is not acting in our national interest and is violating his oath of office, which the managers have put forward, is wrong based on the facts and the way the Constitution is designed.

When you look at the fullness of the record of their witnesses—their witnesses—the witnesses' statements, the transcripts—there is one thing that emerged: There is no violation of law. There is no violation of the Constitution. There is a disagreement on policy decisions.

Most of those who spoke at your hearings did not like the President's policy. That is why we have elections. That is where policy differentials and differences are discussed. But to have a removal of a duly elected President based on policy differences is not what the Framers intended.

If you lower the bar that way, danger, danger, danger, because the next President or the one after that—he or she would be held to that same standard. I hope not. I pray that is not what happens, not just for the sake of my client but for the Constitution. Professor Dershowitz gave a list of Presidents, from Washington to where we are today, who, under the standard that they are proposing, could be subject to abuse of power or obstruction of Congress.

We know that this is not about a President pausing aid to Ukraine. It is really not about the law. It is about a lot of attempts on policy disagreements that are not being debated here. My goodness, how much time—how much time has been spent in the House of Representatives hoping? They were hoping that the Mueller probe would result in—I mean, I am not going to play all the—I was thinking about it, playing all the clips from all the commentators the day after Bob Mueller testified. Bob Mueller was unable to answer, under his examination, basic and fundamental questions. He had to correct himself, actually. He had to correct himself before the Senate for something that he said before the House. So that is what the President has been living with.

And we are today arguing about what? A phone call to Ukraine or Ukraine aid being held or a question about corruption or a question about corruption that happened to involve a high-profile public figure? Is that what this is? Is that where we are?

Then what do we find out? The aid was released. It was released in an orderly fashion. The reform President, President Zelensky, wins, but there was a question on whether his party would take the Parliament. It did. They worked late into the evening with the desire to put forward reforms. So everybody was waiting, including—and you heard the testimony from, I will say, their witnesses—you heard the testimony—everybody was concerned about Ukraine. Everybody was concerned about whether these reforms could actually take place. Everybody was concerned about it. So you hold back.

It didn't affect anything that was going on in the field. We heard Mr. CROW worrying about the soldiers. I understand that, I appreciate that, but none of that aid was affecting what was going on in the battlefield right then or for the next 4 months because it was future aid. Are we having an impeachment proceeding because aid came out 3 weeks before the end of the fiscal year, for a 6-minute phone call? You boil it down, that is what this is.

It is interesting to me that everybody said: Well, the aid was finally released September 11 only because of the committee and the whistleblower we have never seen. Mr. Philbin dealt with that in great detail. I am not going to go over that again. But, you know, the new high court, the anti-corruption court, wasn't established and did not sit until September 5, 2019. So while the President of Ukraine was trying to get reforms put in place, the court that was going to decide corruption issues was not set until September 5.

I want you to think about this for a moment too. They needed a high court of corruption for corruption. Think

about that for a moment. Now, it is good that they recognized it, but remember when I said the other day that you don't wave a magic wand and now Ukraine doesn't have a corruption problem? The high court of corruption, which they have to have because it is not just past corruption—they are concerned about ongoing corruption issues.

You could put all of your witnesses back under oath in the next hearings you will have when this is all over, and you are going to be back in the House and you are going to be doing this again, putting them all back under oath, and ask them, Mr. SCHIFF, is there a problem with corruption in Ukraine? If they get up there and say: No. Everything is great now, hallelujah—but I suspect they are going to say: We are working really hard on it. But this idea that it has just vanished and now we are back into ''everything is fine'' is absurd.

Mr. Morrison testified that while the developments were taking place, the Vice President also met with President Zelensky in Warsaw. That was the meeting of September 1—the one, by the way, where the Vice President's Office said in response to this New York Times article that nobody told him about aid being held or linked to investigations.

Are you going to stop—are you going to allow proceedings on impeachment to go from a New York Times report about someone that says what they hear is in a manuscript? Is that where we are? I don't think so. I hope not.

What did Morrison say? You heard firsthand that the new Ukraine administration was taking concrete steps to address corruption. That is good. He advised the President that the relationship with Zelensky is one that could be trusted. Good.

President Zelensky also agreed with Vice President PENCE—this is interesting—that the Europeans should be doing more and related to Vice President PENCE conversations he had been having with European leaders about getting them to do more.

In sum, the President raised two issues he was concerned with to get them addressed.

Now I have already gone over—again, this is just the closing moments here of our portion of this proceeding. Aid was withheld or paused, put on a pause button not just for Ukraine but for Afghanistan, South Korea, El Salvador, Guatemala, Lebanon, and Pakistan. I am sure I am leaving countries out. But do you think the American people are concerned if the President says: You know, before we give a country, I don't know, $550 million—some countries, only $400 million—we would like to know what they are doing with it. You are supposed to be the guardians of the trust here. It is the taxpayers' money we are spending.

There was a lot of testimony from Dr. Fiona Hill, John Bolton's deputy. Here is what she said about aid that was being held. This was her testimony: There was a freeze put on all kinds of aid and assistance because it was in the process at the time of an awful lot of reviews of foreign assistance.

Oh, you mean there was a policy within the administration to review foreign assistance and how we are doing it because we spend a lot of money?

By the way, I am not complaining about the money. I don't think anybody doesn't want to help. But we do need to know what is going on, and those are valid and important questions.

Manager CROW told you that the President's Ukraine policy was not strong against Russia, but Ambassador Yovanovitch stated the exact opposite. She said in her deposition that our country's Ukraine policy under President Trump actually—her words—''got stronger'' than it was under President Obama.

So, again, policy disagreements. Disagreements on approach. Have elections. That is what we do in our Republic.

For 3 long days, House managers presented their case by selectively showing parts of testimony. Good lawyers show parts of testimony. You don't have to show the whole thing. But other good lawyers show the rest of the testimony. And that is what we sought to do to give you a fuller view of what we saw as the glaring omissions by my colleagues, the House managers.

The legal issues here are the constitutional ones, and I have been I think pretty clear over the last week, starting when we had the motions arguments, in my concern about the constitutional obligations that we are operating under. I have been critical of Manager NADLER's ''executive privilege and other nonsense.''

I want you to look at it this way. Take out executive privilege; First Amendment free speech and other nonsense; the free exercise of religion and other nonsense; the right to due process and other nonsense; the right of equal protection under the law and other nonsense. You can't start doing that. You would not do that. No administration has done that, in fact, since the first administration, George Washington. They wanted information. He thought it was privileged. He said it was executive privilege.

Let's not start calling constitutional rights ''other nonsense'' and lumping them together. This is from the House of Representatives that actually believes the attorney/client privilege doesn't apply, which should scare every lawyer in Washington, DC, but more scary for their clients. They say that in writing, in letters. They don't hide it.

I would ask them—I am not going to; it is not my privilege to do that—do you really believe that? Do you really believe that the attorney/client privilege does not apply in a congressional hearing? Do you really believe that? Because if that is what is believed or implied, then there is no attorney/client privilege—or is that the attorney/client privilege and other nonsense? Danger, danger, danger.

We believe that article I fails constitutionally. The President has constitutional authority to engage in and conduct foreign policy and foreign affairs. It is our position legally—the President at all times acted with perfect legal authority, inquired of matters in our national interest, and, having received assurances of those matters, continued his policy that his administration put forward of what really is unprecedented support for Ukraine, including the delivery of a military aid package that was denied to the Ukrainians by the prior administration.

Some of the managers right here, my colleagues at the other table, voted in favor of those—wanted Javelin antitank missiles for Ukraine. Some of the Members here did not, didn't want to do that, voted against that. I am glad we gave it to them. I am glad we allowed them to purchase Javelins.

I never served in the military. I have tremendous, tremendous respect for the men and women who protect our freedom. I have tremendous respect for what they are doing and continue to do.

This President actually allowed the Javelins to go. Some of you liked that idea; some of you did not. Policy difference. Were you going to impeach President Obama because he did not give them lethal aid? No. Nor should you. You should not do that. It is a policy difference. Policy differences do not rise to the level of constitutionally mandated or constitutional applications for removal from office. It is policy differences.

By the way, it is not just on lethal weapons; President Obama, as I said, withheld aid. He had the right to do that. You have allowed him to do that.

Oh, but we don't like that this President did it, so the rules change. So this President's rules are different than—he has a different set of standards he has to apply than what you allowed the previous administrations to apply. And you know what—or the future administrations to apply. That is the problem with these articles.

We have laid out, I believe, a compelling case on what the Constitution requires. When they were in the House of Representatives putting this together, did they go through a constitutionally mandated accommodation process to see if there was a way to come up with something? No, they did not. Did they run to court? No. And the one time it was about to happen, they ran the other way.

Separation of powers means something. It is not separation of powers and other nonsense. If we have reached now, at this very moment in the history of our Republic, a bar of impeachment because you don't like the President's policies or you don't like the

way he undertook those policies—because we heard a lot about policy. If partisan impeachment is now the rule of the day, which these Members and Members of this Senate said should never be the rule of the day—my goodness, they said it—some of them—5 months ago, but then we had the national emergency, a phone call. It is an emergency, except we will just wait.

But if partisan impeachment based on policy disagreements, which is what this is, and personal presumptions or newspaper reports and allegations in an unsourced—maybe this is in somebody's book who is no longer at the White House—if that becomes the new norm, future Presidents, Democrats and Republicans, will be paralyzed the moment they are elected, before they can even take the oath of office. The bar for impeachment cannot be set this low.

Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate—danger, danger, danger. These articles must be rejected. The Constitution requires it. Justice demands it.

We would ask the majority leader for a short recess, if we can, about 15 minutes.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. MCCONNELL. Mr. Chief Justice, we will be in recess for 15 minutes.

There being no objection, at 2:18 p.m., the Senate, sitting as a Court of Impeachment, recessed until 2:44 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order. Please be seated.

Mr. Cipollone.

Mr. Counsel CIPOLLONE. I thank Mr. Chief Justice and Members of the Senate.

Well, I had kind of a lengthy presentation prepared, but I think you have heard a lot from our side, and I think we have made our case.

I just want to leave you with a couple of points. First of all, I thank the majority leader and thank Democratic Leader SCHUMER and all of you for the privilege of speaking on the floor of the Senate and for your time and attention. We really appreciate it.

We made three basic points. One, all you need in this case is the Constitution and your common sense. If you just look at the Articles of Impeachment, the Articles of Impeachment fall far short of any constitutional standard, and they are dangerous. If you look to the words from the past that I think are instructive, as I said last night, they are instructive because they were right then and they are right now, and I will leave you with some of those words.

(Text of Videotape presentation:)

Mr. NADLER. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment will lack legitimacy, will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions.

Ms. LOFGREN. 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.

Mr. MARKEY. This is a constitutional amendment that we are debating, not an impeachment resolution. The Republicans are crossing out the impeachment standard of high crimes and misdemeanors, and they are inserting the words "any crime or misdemeanor." We are permitting a constitutional coup d'etat which will haunt this body and our country forever.

Mr. MENENDEZ. I warn my colleagues that you will reap the bitter harvest of the unfair partisan seeds you sow today. The constitutional provision for impeachment is a way to protect our government and our citizens, not another weapon in the political arsenal.

Mr. SCHUMER. I suspect history will show that we have lowered the bar on impeachment so much we have broken the seal on this extreme penalty so cavalierly that it will be used as a routine tool to fight political battles. My fear is that when a Republican wins the White House Democrats will demand payback.

Mr. Counsel CIPOLLONE. You were right, but I am sorry to say you were also prophetic, and I think I couldn't say it better myself, so I will not. You know what the right answer is in your heart. You know what the right answer is for our country. You know what the right answer is for the American people.

What they are asking you to do is to throw out a successful President on the eve of an election with no basis and in violation of the Constitution. It would dangerously change our country and weaken—weaken—forever all of our democratic institutions. You all know that is not in the interest of the American people. Why not trust the American people with this decision? Why tear up their ballots? Why tear up every ballot across this country? You can't do that. You know you can't do that.

So I ask you to defend our Constitution, to defend fundamental fairness, to defend basic due process rights, but most importantly—most importantly—to respect and defend the sacred right of every American to vote and to choose their President. The election is only months away. The American people are entitled to choose their President.

Overturning the last election and massively interfering with the upcoming one would cause serious and lasting damage to the people of the United States and to our great country. The Senate cannot allow this to happen. It is time for this to end, here and now. So we urge the Senate to reject these Articles of Impeachment for all of the reasons we have given you. You know them all. I don't need to repeat them.

They have repeatedly said, over and over again, a quote from Benjamin Franklin: "It is a republic, if you can keep it." And every time I heard it, I said to myself: It is a republic, if they let us keep it.

I have every confidence—every confidence—in your wisdom. You will do the only thing you can do, what you must do, what the Constitution compels you to do: Reject these Articles of Impeachment for our country and for the American people.

It will show that you put the Constitution above partisanship. It will show that we can come together on both sides of the aisle and end the era of impeachment for good. You know it should end. You know it should end. It will allow you all to spend all of your energy and all of your enormous talent and all of your resources on doing what the American people sent you here to do: to work together, to work with the President, to solve their problems.

So this should end now, as quickly as possible. Thank you again for your attention. I look forward to answering your questions.

With that, that ends our presentation. Thank you very much.

The CHIEF JUSTICE. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENT

Mr. MCCONNELL. Mr. Chief Justice, I have reached an agreement with the Democratic leader on how to proceed during the question period. Therefore, I ask unanimous consent that the question period for Senators start when the Senate reconvenes on Wednesday; further, that the questions alternate between the majority and minority sides for up to 8 hours during that session of the Senate; and finally, that on Thursday, the Senate resume time for Senators' questions, alternating between sides for up to 8 hours during that session of the Senate.

The CHIEF JUSTICE. Is there objection? Without objection, it is so ordered.

Mr. MCCONNELL. Mr. Chief Justice, we will complete the question period over the next 2 days. I remind Senators that their questions must be in writing and will be submitted to the Chief Justice. During the question period of the Clinton trial, Senators were thoughtful and brief with their questions, and the managers and counsel were succinct in their answers. I hope we can follow both of these examples during this time.

The CHIEF JUSTICE. During the impeachment trial of President Clinton, Chief Justice Rehnquist advised "counsel on both sides that the Chair will operate on a rebuttable presumption that each question can be fully and fairly answered in 5 minutes or less." The transcript indicates that the statement was met with "laughter."

Nonetheless, managers and counsel generally limited their responses accordingly. I think the late Chief's time limit was a good one and would ask both sides to abide by it.

MORNING BUSINESS

NATIONAL SLAVERY AND HUMAN TRAFFICKING PREVENTION MONTH

Mr. GRASSLEY. Mr. President, today, I join my colleagues on an important resolution condemning human trafficking both at home and around the world.

Congress made human trafficking a federal crime 20 years ago with passage of the Trafficking Victims Protection Act. Since then, I have worked with my colleagues on several pieces of legislation to strengthen existing protections and continue putting victims first.

President Trump has also made addressing human trafficking one of his top priorities. He signed my bill, the Trafficking Victims Protection Act of 2017 into law, as well as other measures that I cosponsored, such as the Stop Enabling Sex Traffickers Act, the Abolish Human Trafficking Act and the Frederick Douglass Trafficking Victims Prevention and Reauthorization Act. He also proclaimed January as National Slavery and Human Trafficking Prevention Month.

IOWA CAUCUSES

Mr. GRASSLEY. Mr. President, this coming Monday, the first in the Nation Iowa caucuses kick off the Presidential nomination process. The Presidential preference part of the caucus is just one part, however. In truth, the Iowa caucuses are an example of grassroots democracy. Iowa voters for each political party gather in each of the 1681 precincts across my State. At these neighborhood meetings, voters discuss issues of local and national importance and elect party officers and convention delegates. The platform planks approved and the officers and delegates elected often have a longer lasting impact on the political parties than the Presidential preference votes.

Mr. President, in a week, all political focus will be set on my home State of Iowa for the first in the Nation precinct caucuses. Many pundits ask why Iowa should be awarded this much impact in the Presidential nomination process? Iowans take this job seriously. They study the candidates' backgrounds and positions on issues and they thoughtfully listen to the debates. In Iowa, Presidential candidates must explain and discuss their positions and answer tough questions directly to citizens instead of relying on advertising. Candidates who have done this successfully will be rewarded with momentum and excitement that could launch the rest of their candidacy.

SUPPORT FOR AMERICAN VICTIMS OF TERRORISM

Mr. LEAHY. Mr. President, this past December, H.R. 1865, the Further Consolidated Appropriations Act, 2020, was enacted into law as Public Law 116–94. I want to take a moment to offer some clarity regarding section 903 of division J of the Act, which is a modified version of the Promoting Security and Justice for Victims of Terrorism Act of 2019.

I commend the Republican and Democratic Senators who have dedicated their time to pursuing justice for American victims of terrorism. We all want these victims to have their day in court and to be appropriately compensated. It is also important that we do so in a manner that does not do more harm than good. That is the balance that was sought in section 903 on a bipartisan basis.

One component of section 903 is a provision that enables the Palestinian Authority and the Palestinian Liberation Organization, PA and PLO, to conduct certain activities in the United States ''exclusively for the purpose of conducting official business'' and activities ''ancillary'' to those listed in the provision without consenting to personal jurisdiction in civil cases. The provision was included because Senators of both parties understand that it is in our national interest to permit certain activities related to the official representation of the PA and PLO. Having been part of the negotiation that resulted in this language, I believe it is important that we have a clear understanding of the types of activities that are considered ''ancillary'' to the conduct of official business.

While the official business of any foreign mission necessarily includes meetings with Members of Congress and their staff, representatives of the executive branch, and other public officials, ancillary activities are those which may not be essential for the minimal functioning of the mission but which support the mission's primary operations. By way of example, I am confident that every Member of this body would, as I do, consider a public statement, the issuance of a press release, or a meeting or public appearance—while not essential—to be ancillary to his or her primary functions as a U.S. Senator and would reject any attempt to define such activities otherwise.

That is also why, with regard to the PA and PLO, while we may or may not agree with the statements of its representatives, the law contemplates that its representatives may meet with advocates regarding relevant issues, make public statements, and otherwise engage in public advocacy and civil society activities that are ancillary to the conduct of official business without consenting to personal jurisdiction. Such jurisdiction is provided for elsewhere in section 903.

The message in this bill is clear: Congress is committed to pursuing justice for American victims of terrorism while ensuring appropriate standards regarding the ability of foreign missions to conduct official business in the United States. This is a solution that protects U.S. national interests, and I thank the Senators on both sides of the aisle who have worked together to find a way forward on this measure.

THE PHILIPPINES

Mr. LEAHY. Mr. President I want to take a few moments to discuss an issue that has garnered some attention in recent months, which is our relations with the Government of the Philippines, including President Duterte's counter-drug strategy and his government's treatment of those who have openly criticized that strategy.

It is important to first recount the long history of friendship and strategic cooperation between the United States and the Philippines. Family and cultural ties that extend back many generations bind us together, as do our shared goals in East Asia and the Pacific. Our Armed Forces regularly engage in joint exercises to enhance regional security. Despite our differences, relations between our two countries are strong and based on mutual respect.

We should also extend our deepest sympathies to those harmed by the recent eruption of the Taal volcano in Luzon. It has displaced tens of thousands of families and destroyed the livelihoods of many. The U.S. Agency for International Development and international organizations that receive U.S. funding like the World Food Programme are responding with humanitarian aid to those in need, which I and others in Congress strongly support.

One of the manifestations of our longstanding, close relations with the Philippines is the assistance we provide annually to promote a wide range of interests there, from humanitarian and economic assistance to military assistance, which in fiscal year 2019 totaled more than $150 million. However, as is the case for other recipients of U.S. assistance, those funds are not an entitlement and they are not a blank check. For example, in the Philippines they may not be used to support police counter-drug operations. We condemn the thousands of extrajudicial executions of suspected drug users and drug-traffickers by police and their collaborators. Such a strategy is not consistent with due process and the rule of law, nor an effective way to combat the trafficking and abuse of illegal drugs that every country, including the United States, is struggling with. We do support treatment programs for Filipinos suffering from drug addiction.

We also stand strongly in support of freedom of expression, whether in the Philippines or anywhere else, including in our own country, and that, as well as President Duterte's counter-drug strategy, is what underlies our current

very right. The Trump administration should apply the law as required in this case.

U.S. SENATE SELECT COMMITTEE ON ETHICS ANNUAL REPORT

Mr. LANKFORD. Mr. President, I ask unanimous consent, for myself as chairman of the Select Committee on Ethics and for Senator CHRISTOPHER A. COONS, vice chairman of the committee, that the Annual Report for the Select Committee on Ethics for calendar year 2019 be printed in the RECORD. The Committee issues this report today, January 28, 2020, as required by the Honest Leadership and Open Government Act of 2007.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ANNUAL REPORT OF THE SELECT COMMITTEE ON ETHICS

116TH CONGRESS, SECOND SESSION

JANUARY 28, 2020

The Honest Leadership and Open Government Act of 2007 (the Act) calls for the Select Committee on Ethics of the United States Senate to issue an annual report no later than January 31st of each year providing information in certain categories describing its activities for the preceding year. Reported below is the information describing the Committee's activities in 2019 in the categories set forth in the Act:

(1) The number of alleged violations of Senate rules received from any source, including the number raised by a Senator or staff of the Committee: 251. (In addition, 16 alleged violations from previous years were carried into 2019.)

(2) The number of alleged violations that were dismissed—

(A) For lack of subject matter jurisdiction or in which, even if the allegations in the complaint are true, no violation of Senate rules would exist: 135. (This figure includes 4 matters from the previous year carried into 2019.)

(B) Because they failed to provide sufficient facts as to any material violation of the Senate rules beyond mere allegation or assertion: 118. (This figure includes 5 matters from previous years carried into 2019.)

(3) The number of alleged violations for which the Committee staff conducted a preliminary inquiry: 16. (This figure includes 8 matters from previous years carried into 2019.)

(4) The number of alleged violations for which the Committee staff conducted a preliminary inquiry that resulted in an adjudicatory review: 0.

(5) The number of alleged violations for which the Committee staff conducted a preliminary inquiry and the Committee dismissed the matter for lack of substantial merit or because it was inadvertent, technical or otherwise of a de minimis nature: 11.

(6) The number of alleged violations for which the Committee staff conducted a preliminary inquiry and the Committee issued private or public letters of admonition: 0.

(7) The number of matters resulting in a disciplinary sanction: 0.

(8) Any other information deemed by the Committee to be appropriate to describe its activities in the previous year:

In 2019, the Committee staff conducted 36 Member and committee office campaign briefings (includes 6 remedial training sessions); 21 employee code of conduct training sessions; 11 public financial disclosure clinics, seminars, and webinars; 19 ethics seminars and customized briefings for Member DC offices, state offices, and Senate committees; 4 private sector ethics briefings; and 3 international briefings.

In 2019, the Committee staff handled approximately 10,998 inquiries (via telephone and email) for ethics advice and guidance.

In 2019, the Committee wrote approximately 784 ethics advisory letters and responses including, but not limited to, 581 travel and gifts matters (Senate Rule 35) and 133 conflict of interest matters (Senate Rule 37).

In 2019, the Committee received 3,586 public financial disclosure and periodic disclosure of financial transactions reports.

TRIAL OF PRESIDENT DONALD J. TRUMP

Mrs. BLACKBURN. Mr. President, the impeachment trial of President Trump has devolved into a parade of last-minute red herrings meant to distract this body from the issue at hand. The near-hysteria over books, boredom, and beef jerky has provided a convenient vehicle for the House managers, who are trying their best to peddle outrage as evidence.

We learned nothing new from the House managers' presentations, but outside the Senate Chamber, they have been doing their best to convince us that we are one ''bombshell'' away from, at last, having all the elements needed for a speedy conviction. These efforts to keep unfounded allegations in the limelight have not gone unnoticed by those who should be commanding our attention: the American people.

Outside the beltway, Americans have grown weary of trials and talking points. They have heard enough, and they have had enough.

Taking that feedback into consideration, I thought it might be helpful to offer an update on what we could be focusing on instead of this farcical partisan grudge match.

Behind the scenes, we are limping along as best we can, but our focus is necessarily distracted from regular business. Before our time was monopolized by impeachment, the Senate was making wonderful progress on filling the Federal bench with well-qualified, constitutionalist judges.

When we weren't interviewing those nominees, members of the Judiciary Committee spent time hearing testimony on privacy, competition, and the crisis on our southern border.

Before impeachment, Senators serving on the Veterans' Affairs Committee were hard at work considering a comprehensive mental health bill that would strengthen veteran mental health and suicide prevention programs. My own IMPROVE Act is part of this effort. We were also working on the IT Reform Act, which would improve information technology projects at the VA, and the Network of Support Act, which would help VA officials guide veterans through the emotional upheaval of transitioning between Active Duty and civilian life. We were doing all of this in addition to our continued oversight of the VA MISSION Act, and check-ins on struggling clinics such as the one in Murfreesboro, TN, which just reduced bed space for veterans struggling with opiate addiction and thoughts of suicide.

This Thursday, we have an Armed Services Committee hearing on the U.S.' role in AFRICOM. When I visited with our troops in Djibouti and Somalia at the end of last year, I saw firsthand the importance of our advisory support on the African continent. Drawing down resources or personnel in AFRICOM would harm our position as we compete with Russia and China—but we won't have much time to discuss this potentially disastrous change. Every day, work grinds to a halt at 1:00 p.m., so that we can sit in our seats in the Senate Chamber and focus on the impeachment trial.

We could be paying attention to the full-blown health crisis plaguing our rural communities. Since 2010, 118 rural hospitals have shut their doors. Fourteen of those facilities were in my home State of Tennessee. Between these hospital closures, and high drug prices, there is enough work to be done in the health care sector alone to keep us busy through Christmas.

Mister President, if Tennessee is a good test group for the rest of the Nation—and it usually is—I can tell you that when asked to choose between discussing impeachment politics and real world problems, the American people are much more worried about trade, transportation, and manufacturing, and how evolving policy initiatives will affect prices at the grocery store.

I would encourage my colleagues to remember the cost of indulging these proceedings and to listen to their constituents back home and not the breathless coverage that dominates the 24 hour news cycle.

H. CON. RES. 83

Mr. MENENDEZ. Mr. President, H. Con. Res. 83 directs the President to terminate the use of U.S. Armed Forces to engage in hostilities against Iran, unless Congress has authorized the use of military force against Iran or such use is necessary to defend against an imminent armed attack. H. Con. Res. 83 was agreed to in the House of Representatives on January 9, 2020 and received in the Senate and referred to the Senate Committee on Foreign Relations on January 13, 2020.

The War Powers Resolution, PL 93–148, has special procedures underscoring the privileged nature of a concurrent resolution like H. Con. Res. 83. Section 1546(c) of the War Powers Resolution requires that once a privileged concurrent resolution such as H. Con. Res. 83 has been passed by the House, it must be referred to the Senate Foreign Relations Committee, and ''shall be reported out by such committee together with its recommendations within fifteen calendar days.'' Fifteen calendar