

**IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP**

**FLOOR STATEMENT - SENATOR BENJAMIN L. CARDIN**

**Monday, February 3, 2020**

Senators have a grave responsibility when it comes to the power of impeachment, particularly when it involves the President of the United States. This is a very profound responsibility in which Senators have to do what is right for our country. Our decision here will affect not only this President but the future of the Presidency itself.

The Constitution leaves to the Senate “the sole power to try all impeachments.” The Constitution clearly requires the Senate to conduct a trial. The Supreme Court, the ultimate interpreter of the Constitution, has given the Senate some guidance in carrying out its responsibility to conduct impeachment trials. Supreme Court Justice Byron White, in a concurring opinion in *Nixon v. United States*, 506 U.S. 224 (1993), found that the Framers of the U.S. Constitution clearly intended “that the term ‘try’ as used in Art. I, section 3, clause 6 meant that the Senate should conduct its proceeding in a manner” that a “reasonable judge” would deem a trial. Justice White acknowledged that the Senate “has very wide discretion in specifying impeachment trial procedures,” but stated that the Senate “would abuse its discretion” if it were to “insist on a procedure that could not be deemed a trial by reasonable judges.” Justice Blackmun concurred in Justice White’s opinion.

The Senate has the sole power to “try” impeachments. Yet how can the Senate hold an actual “trial” without hearing direct evidence from witnesses? The Senate chose not to hear additional relevant evidence and key witnesses with firsthand knowledge of the President’s conduct. However, the Senate is not bound solely to the House record when conducting an impeachment trial. The Senate should have heard new and relevant evidence that bore directly on the articles of impeachment, including testimony from former White House National Security Advisor John Bolton, Acting White House Chief of Staff and Acting OMB Director Mick Mulvaney, as well as various other OMB and DOD officials. The Senate should have demanded additional documents from the White House, State Department, OMB, and DOD that bore directly on the articles of impeachment. The Senate should have been able to receive further evidence before concluding its trial in this case, whether or not the additional evidence was incriminating or exculpatory. As one of President Trump’s counsel Mr. Philbin said during the trial, the best way to find out the truth is for witnesses under oath to be subject to cross examination. The Senate has therefore failed in its responsibility when it did not conduct a constitutionally fair trial. I suspect that Justice White in the *Nixon* case would have concluded that no “reasonable judge” would conclude these proceedings constitute such a trial.

The evident deficiencies of the Senate trial has made it more difficult for me to carry out my responsibility, and if the Senate fails to convict, that acquittal will be always be questioned because of the absence of a fair trial. This process is not fair to the House, Senate, American people, or the President.

Now in regards to the specific articles of impeachment, Article I alleges “abuse of power” by the President, stating that:

“Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage. President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations. President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit. In so doing, President Trump used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process. He thus ignored and injured the interests of the Nation.”

I reluctantly conclude that the President has indeed engaged in the conduct alleged. I come to this conclusion based first on the record during this impeachment trial.

In weighing the facts and evidence in this case, I have listened carefully to all of the trial proceedings and taken extensive notes, including during the managers' presentations and Senators' questioning period. Let me highlight a few key facts and pieces of evidence that were determinative for my thinking, with the understanding that this is not an exhaustive list.

- First, President Trump indicated his strong interest in having Ukrainian President Volodymyr Zelensky open a political investigation into the Bidens, in a July 26, 2019 phone call between the President and U.S. Ambassador to the European Union Gordon Sondland.
- Second, acting Chief of Staff and Office of Management and Budget Director Mick Mulvaney admitted that a quid pro quo existing in terms of tying the release of U.S. funding to Ukraine to the opening of a political investigation to help President Trump.

- Third, there are numerous examples in the record of direct pressure on the Ukrainian government to open political investigations for the personal benefit of President Trump, including a September 1, 2019 Warsaw meeting between Ambassador Sondland and Andriy Yermak, a top advisor to the Ukrainian President, which directly tied U.S. military assistance to Ukraine to the opening of political investigations to hurt President Trump's political rivals. These accounts were later confirmed in testimony by other U.S. diplomats, and on September 7 Amb. Sondland reiterated these themes following discussions with President Trump.
- Fourth, before the July 25 phone call between Presidents Trump and Zelensky, former U.S. Special Envoy to Ukraine Kurt Volker communicates with Yermak and conditions a White House visit to the launching of a political investigation against the President's rivals in Ukraine.

- Fifth, on July 10, 2019, the White House held a series of meetings with high-level Ukrainian defense officials, which conditioned a White House visit from the Ukrainian President with the opening of political investigations in Ukraine sought by President Trump. Notably, former National Security Advisor John Bolton refused to be part of any “drug deal” and asked his staff to report these meetings to National Security Council lawyers. It was explained by National Security Council Member Fiona Hill that by “drug deal” Ambassador Bolton was referring to conditioning a White House meeting for the President of Ukraine with the Ukrainians starting the political investigations desired by the President.
- Mr. Bolton should have testified before the Senate, and we should not have to wait for his book release (after this Senate trial concludes) to get a full accounting of firsthand conversations here that bear directly on the impeachment charges against the President. Press reports indicate that in his upcoming book Bolton will state that the president explicitly told him that he did not want to release \$391 million in aid to Ukraine until it announced investigations into his Democratic rivals, including former Vice President Joe Biden. Also, the President specifically asked Bolton to arrange a meeting for President Trump’s personal attorney, Rudy Giuliani, with President Zelensky to further the illegal scheme. Notably, the former White House chief of staff at the time, John Kelly, believes Bolton’s account.

- Sixth, the language used in the July 25, 2019 phone call between Presidents Trump and Zelensky was a direct solicitation of foreign interference (a “favor”) by using a political investigation to help President Trump’s campaign and hurt his Democratic rivals.
- Seventh, why did the Administration keep secret its hold on assistance to Ukraine in order to allegedly combat corruption? The U.S. has generally notified countries, Congress, and the public when it is withholding foreign aid in order to change the country’s behavior, and let them know what steps they need to take to resolve the hold.

As the Ranking Member of the Helsinki Commission and as a senior member of the Senate Foreign Relations Committee, I know the importance of promoting American values in foreign policy. The President’s conduct has weakened America’s global leadership in fighting corruption, promoting democracy, and strengthening the rule of law.

President Trump’s corrupt use of his foreign policy power compromised America’s ability to help shape the global community that protects American values.

The record shows that Ambassador Volker tried to discourage Mr. Yermak and the Ukrainian Government from trying to prosecute the country's previous president. Amb. Volker says he warned it would sow deep societal divisions. Amb. Volker says that Mr. Yermak quipped in response, "You mean like asking us to investigate Clinton and Biden?"

In addition to the record, I am supported in my conclusions by three other considerations. First, why hasn't the President presented to the impeachment trial the testimony of the witnesses that have direct knowledge concerning the factual allegations in the Articles of Impeachment? I draw from the absence of such testimony that it would only corroborate the record presented by the House Managers. Secondly, counsel to President Mr. Sekulow acknowledged "you cannot view this case in a vacuum." I agree. President Trump during his presidency has consistently misrepresented the facts and defamed anyone who challenged him.

One clear and relevant example of this is how he tried to obstruct the Mueller investigation and how to this date he mischaracterizes its conclusion. The President was not exonerated by the Mueller Report, which found that Russia interfered in our 2016 presidential election in a "sweeping and systematic fashion." President Trump consistently took steps to deny Russia involvement in tampering in our elections, resisted efforts to hold Russia accountable, besmirched the reputation of the Special Counsel while trying to dismiss him or willfully impeded his investigation, and repeatedly attacked the integrity of our intelligence and law enforcement agencies.



Indeed, the Mueller Report stated that: “If we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and applicable legal standards, however, we are unable to reach that judgment.” At a press conference, Special Counsel Mueller reiterated: “If we had had confidence that the president clearly did not commit a crime, we would have said so.” The report detailed numerous instances in which the president may have obstructed justice, but left further pursuit of the matter to Congress or future prosecutors once the President leaves office.

With such a track record it is easier to understand how the facts presented by the House managers tie together supporting an illegal scheme orchestrated by the President to get Ukraine involved in our 2020 elections to help Mr. Trump’s re-election.

Third, the President has consistently failed to show any remorse for his conduct, leading to the conclusion that he will continue to violate the sacred trust of the office.

Having been satisfied that the President did commit the offenses in the first Article of impeachment, the next hurdle is whether these constitute impeachable offenses? I conclude that is does. President Trump is not a king or monarch. The Founding Fathers wisely created a system of separation of powers and checks and balances, so as not to concentrate power in only one official or department of government. The Senate must reject President Trump’s statement on July 23, 2019 that his right under Article II of the Constitution is “to do whatever I want as president.”

As noted in the House Judiciary Committee Report on constitutional grounds for presidential impeachment (December, 2019), President Trump’s claim here “is wrong, and profoundly so, because our Constitution rejects pretensions to monarchy and binds Presidents with law. That is true even of powers vested exclusively in the chief executive. If those powers are invoked for corrupt reasons, or wielded in an abusive manner harming the constitutional system, the President is subject to impeachment for ‘high crimes and misdemeanors.’ This is a core premise of the impeachment power.” I agree.

The President’s counsel notes that abuse of power could become too subjective a standard for presidential impeachments. But as Representative William Cohen remarked in President Nixon’s case, “It has also been said to me that even if Mr. Nixon did commit these offenses, every other President...has engaged in some of the same conduct, at least to some degree, but the answer I think is that democracy, that solid rock of our system, may be eroded away by degree and its survival will be determined by the degree to which we will tolerate those silent and subtle subversions that absorb it slowly into the rule of a few.”

The premise that abuse of power being a too subjective standard belies common sense and could lead to the absurd conclusion given by Professor Dershowitz, one of President's Trump impeachment counsel, during the trial. He stated: "Your election is in the public interest. And 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." Abuse of power as used by President Trump to further a scheme to get Ukraine to help in President Trump's campaign must be an impeachable offense if we believe our Constitution guarantees that no one including the President of the United States is above the law.

The President's counsel also observes that when initiating Articles of Impeachment the House should only proceed if there is bipartisan support. But that decision is left solely to the House. Once the House has acted the Senate shall proceed to trial and must render a decision based upon the case presented.

There are clear distinctions between the Clinton and Trump impeachments. In Clinton, the trial was acknowledged to be fair; witnesses testified before the Senate; President Clinton and members of his administration testified under oath; and documents were produced for review by the President. President Clinton showed remorse for his conduct and apologized. His misconduct was personal in nature.

In contrast, President Trump blocked all witnesses and documents and the Senate called no witnesses to testify under oath. President Trump has shown no remorse, continuing to say that the controversial call with President Zelensky was “perfect.” Unlike President Clinton’s misconduct, President Trump has abused the power of his office for personal gain.

Turning to the second article of impeachment, Obstruction of Congress, the House alleges that in response to their impeachment inquiry, President Trump “directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives...without lawful cause or excuse, President Trump directed Executive branch agencies, offices, and officials not to comply with those subpoenas. President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to exercise of the ‘sole power of impeachment’ vested by the Constitution in the House of Representatives.”

In particular, the second article alleges that the President: (1) directed the White House to defy a lawful subpoena by withholding the production of documents; (2) directed other executive branch agencies and offices to defy lawful subpoenas and withhold the production of documents, including OMB and the Departments of State, Defense, and Energy; and (3) directed current and former executive branch officials not to cooperate with the investigating committees, including Mick Mulvaney and numerous other officials.

After reviewing the evidence, I believe that the Senate record supports conviction under Article II as an impeachable offense.

President Trump carried out an extraordinary and unprecedented campaign of obstruction of Congress. Note that President Clinton provided evidence that was requested by the House and Senate during impeachment proceedings, and allowed multiple White House aides to testify in the underlying investigation. President Nixon cooperated to an extent in his investigation, allowing numerous White House officials to testify and providing substantial evidence to Congress in its inquiry. By contrast, President Trump issued an edict directing his Administration to refuse to “participate” in all aspects of the House’s impeachment inquiry. In particular, the October 8, 2019 letter from the White House Counsel did not even attempt to assert any specific privileges.

This trial has been very difficult for the Senate and our nation, but each Senator must in his or her own judgment carry out the oaths we have taken as Senators to support the Constitution, as well as our special oath to do “impartial justice” as participants in this Senate impeachment trial, with Chief Justice Roberts presiding over the Senate.

Weighing the credibility of President Trump, I find a clear pattern of misconduct in office. President Trump’s obstruction of Congress shows a deep and abiding disrespect for Congress and lack of appreciation for the separation of powers and system of checks and balances in our government.

As the President and Commander in Chief, President Trump used his power to compromise and corrupt America's values. Our values are our strength. In particular, President Trump has undermined the rule of law, weakened our efforts to fight corruption both at home and abroad, damaged our national security, and helped our adversary, Russia.

President Trump's conduct clearly crossed the line when he put his own personal interests over the country's interests, using the power of his office for his own personal benefit.

No one is above the law. We must act to protect the Constitution and our democratic system of government. It is with a heavy heart that I support both articles of impeachment requiring the removal of the President from office, as well as disqualification to hold and enjoy any office of honor, trust, or profit under the United States.