

THE BROOKINGS INSTITUTION

IMPEACHMENT: WHAT HAPPENS NOW?

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Welcome:

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Panel:

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P R O C E E D I N G S

GENERAL ALLEN: Well, ladies and gentlemen, welcome. Whether you're coming in in person or you're coming in over the webcast, good morning and welcome to the Brookings Institution. We're very glad to have you with us today.

My name is John Allen. I'm the president of Brookings. And we're glad to welcome you today to this event entitled, "Impeachment: What Happens Now?"

This is an extraordinary moment for America as for the fourth time in our history U.S. House leadership has launched a formal impeachment inquiry into the President of the United States. It's also a grave moment for the stakes are undoubtedly high, not just for this country, but for the world, as well.

Ladies and gentlemen, the Constitution of the United States vests in the House of Representatives the sole power to impeach a public official, while it further vests the Senate the sole power to try all impeachments. This separation of roles was vital in the minds of the framers of our Constitution to ensure that the enormity of the power to remove from public office, to impeach, was not concentrated in the hands of a small, politically partisan clique.

Well, this is only the fourth time a sitting President has experienced the impeachment process. The process has actually been employed by the Congress several score times throughout our history, and of that number the Senate has actually convicted a relatively small number officials.

In the end, this awesome power to remove a sitting official, in this case the President of the United States, President Trump, must proceed deliberately and carefully. And to ensure that that happens, the Constitution provides that the trial itself in the Senate be presided over by the Chief Justice of the Supreme Court. It is the ultimate intersection of the responsibility as envisaged by the framers as they carefully crafted our Constitution.

Indeed, writing on impeachment in "Federalist 65," Alexander Hamilton, who would sign the document as "Publius," would explain to us that public office is a sacred trust and holders of that trust must act on behalf of the governed. Therefore, when there is suspicion of misbehavior, high crimes as it is defined in Article II, the Constitution provides then that it shall be in the hands of the

people through their elected representatives that the official should be held to account.

And all the elected officials of the United States legislature, the Congress of the United States, shall be involved in this process. And all will have a role in the context of the Constitution's intent that their members be fully engaged in the impeachment process so grave is this matter.

So here at Brookings our scholars want to play a constructive role in helping the American citizens understand how the impeachment process works and what it is and what it isn't and what's involved in the current inquiry. This event today is our initial institutional response, and over the coming weeks we'll be posting a number of rigorous, fact-based op-eds, blogs, and research products analyzing the history, the context, and the dynamics by which the impeachment process unfolds.

We will also be offering commentary on how things are proceeding in the here and now, and what people should be looking for along the way. And I expect you'll see some of our upcoming panelists, if you haven't already, on a variety of the news networks doing that very thing.

All of our commentary will be readily available on our website, ladies and gentlemen, brookings.edu, under the keyword "impeachment." I encourage you to take a look as we've written a great deal already.

Finally, ladies and gentlemen, if you've not read it, you'd be well-served now to read the Constitution. (Laughter) Some still haven't. Article I captures much of this process that we're seeing unfold. And despite all of the flurry in the media, and I truly value the role of the media in this process right now, it's important to recall that from time to time those protections have been used in the past and will be used in the future. But, most importantly, the Constitution intends through our elected representatives that no one is above the law.

For my part, I believe this historic moment is an important reminder of the extraordinary processes enshrined in our Constitution of the United States of America, those that protect our integrity of government and preserve the strength of our democracy.

So for today's event we have assembled a panel of some of our best Brookings experts to offer their thoughts on the topic of impeachment and this moment in history. Moderating today will be E.J. Dionne, the Averell Harriman Senior Fellow in our Governance Studies Program. He will introduce

the panel and guide the discussion and then go out to you, the audience, for questions.

A final reminder, we are very much on the record today. And in future sessions we will be, at your convenience, distributing copies of the Constitution for those who need a reference.

So with that, E.J., panel, and the floor is yours. Thank you. (Applause)

MR. DIONNE: Good morning, everyone. Thank you for coming. Thank you for those who are joining us online. The hashtag for this event for those who want to quote the very distinguished panel or make any comments is #impeachment101.

I really want to thank John Allen for those remarks. And I think it would show the seriousness of a think tank if John Allen's remarks alone could make "Federalist 65" go viral. (Laughter) And perhaps we can published "Federalist 65" as a Brookings policy brief and turn Alexander Hamilton into a temporary senior fellow. (Laughter) But thank you so much.

Because since Watergate we have become almost accustomed to impeachment, but this doesn't make it any less serious or complicated. It involves, as John said, solemn constitutional issues related to accusations of abuse of power and that loaded but ill-defined phrase "high crimes and misdemeanors." Our panel will try to define those for us or talk about how they have been defined at different moments in our history.

But it is also inevitably political in both the very high sense of that word, and there is a high sense of the word "politics," and the less high sense of that term. Because public opinion matters and the judgements of both House members and senators are inevitably affected by the views of their constituents, as they should be. But in the end, this is about how we govern ourselves and, to paraphrase Ben Franklin's much-quoted line, how we can keep our Republic.

So we are very blessed today to have a panel that is sophisticated on the law, on the Constitution, on national security, and, yes, on politics itself. I'll introduce them and I'll ask a couple of larger framing questions. We're going to go on and chat for a bit and then we will bring you into the conversation. We'll have mics going around the room.

I think everybody in the world now knows Susan Hennessey, a star of stage, screen, and Twitter. (Laughter) She is a senior fellow in national security in Government Studies here at

Brookings; is the executive editor of the Lawfare blog. She focuses on national security issues surrounding cybersecurity, surveillance, federal terrorism prosecutions, and congressional oversight of the intelligence community.

Her forthcoming book, which she just got in her hands this weekend, the galleys, I guess, yeah, a beautiful picture on Twitter, actually, is co-authored with Brookings Senior Fellow Ben Wittes. It is called *Unmaking the Presidency: Donald Trump's War on the Most Powerful Office*. And appropriately enough, it comes out on January 21, 2020. (Laughter)

John Hudak is deputy director of the Center for Effective Public Management and a senior fellow in Governance Studies. His research examines questions of presidential power in the context of administration, personnel, and public policy. He also focuses on campaigns and elections, legislative executive interaction, and state and federal marijuana policy. And I want to say that John also is a senior fellow who behaves in the best sense like a journalist. I can't tell you how many events I have run into John at where I did not expect to see him, but now I've come to expect him. So I miss you when you're not at every major political event in our country.

Elaine Kamarck is an old and dear friend. She is -- well, she's not old, I'm old.

(Laughter)

MS. KAMARCK: Thank you. Thank you. Nice of you to clarify that.

MR. DIONNE: Is a dear -- I always tell my children one of the only good things about getting old is you have old friends. But is a friend of longstanding, a senior fellow in Governance Studies, as well director of our Center for Effective Public Management. She is an expert on American electoral politics, government innovation and reform, OECD in the U.S., OECD nations in developing countries. She focuses her research on the presidential nominating system and has worked on many presidential campaigns.

You just might tell us a bit about how in the world is this going to affect the nominating process in the other party, from the President's.

And lastly, Margaret Taylor is a fellow in Governance Studies at the Brookings Institution. She is also senior editor and counsel at Lawfare. Previously, she was Democratic chief

counsel and deputy staff director for the Senate Foreign Relations Committee from 2015 to July 2018. It's great to have you with us. And she will tell us everything senators are privately saying about the choice they have to face today. (Laughter)

I just want to ask what I think is the obvious question. This seems to have moved very, very fast. As of about two and a half weeks ago, many of the leading folks on the Democratic side who were not for impeachment, including the Speaker of the House, were not for impeachment. And then the story about Ukraine and President Trump said in that phone conversation broke, and we were at a very different place.

Perhaps I could just go straight down the line and ask, has it moved as fast as it seems or were there things working underneath? And why now? Why has this happened? Susan, please.

MS. HENNESSEY: So I think it has moved as fast it seems. It certainly is moving very quickly in a very real and practical way. I think we have to acknowledge that support for impeachment in the House has probably been artificially deflated by the lack of public support by leadership, so there is something sort of pent up that is coming out now.

But really the reason why I think this has been the tipping point is it's an unambiguous example of abuse. This is the President of the United States using the powers of his office, the constitutional power to conduct foreign policy on behalf of the United States, in order to essentially as alleged extort a foreign leader into pressuring -- into investigating a political opponent in violation of that political opponent's civil liberties and constitutional rights not for policy purposes on behalf of the United States, but for the President's own personal political gain. And so this really is the sort of staggering nature of the alleged abuse.

I think it's one of those cases in which you know when you see it. And so that we've come to this point and we're seeing this degree of sort of rapid movement I really think is just a response to the seriousness of the allegations, the seriousness of not just the allegations, but actually what has been confirmed by the White House itself in releasing the sort of summary transcript of the call.

MR. DIONNE: Thank you. John.

MR. HUDAK: I agree with everything that Susan said. This is such an unambiguous example of what a President can be impeached for.

But what is also important is that it fits into a narrative that we have about the President, or at least the Democrats have about the President, with regard to the manner in which he conducts foreign policy, particularly in Eastern Europe and with some of the players who are involved there. But this also moved rapidly in part because there were questions about the President already in existence. It's not as if Democrats in Congress went from a position of believing that the President is good and righteous and is doing his job and upholding his oath perfectly, to use the President's word, but there were all of these questions. So when something like this happened, it was very easy for them to go to -- from a position of deep skepticism of the President to ready to impeach the President.

And that's important. I think it means that messaging is going to be easier. I think it means for the President that his approach is something that he and his staff should have been prepared for because this is not necessarily a shocking moment that we're ready for impeachment. But the shocking thing about this impeachment, as Susan said, is that it is just such a glaring example of the type of behavior we do not expect from our public servants.

MR. DIONNE: Elaine?

MS. KAMARCK: Yeah. Let me put a little meat on the outline that John just gave. One of the reasons that this is so fast and so sudden, seems so fast and so sudden, it's the straw that broke the camel's back. All right.

So let's start in 2016, in April. We see the first ads which we now know were backed by the Russians coming out of IRA in St. Petersburg. We see the first ads interfering in the 2016 election.

We get to the summer of 2016 and there's two events that have gotten attention, but not for the right things. The first event, of course, is that famous press conference at the Dural Golf Club where Candidate Trump says to the reporters, if the Russians are listening, I want to know what's in Hillary's emails.

What has been forgotten about that press conference is he is also asked about Russia

and the Ukraine. And he says, yeah, we'll be looking into that, indicating that his foreign policy vis-à-vis Russia and the Ukraine are not the same as has been the foreign policy of the United States.

The second event that goes on in the summer is everybody heard about the Trump Tower meeting with the Russian intermediary. We forgotten that at the Republican Convention, two weeks before the convention, they wrote a platform. Usually these platform meetings you can see very clearly where the presidential candidate is having their impact. The Trump campaign has no interest --- no interest -- in any of the pieces of the Republican platform. They just get to write a traditional Republican platform, but one, which is U.S. policy towards Russia and Ukraine.

Now, this is like hidden in plain sight. We go to the transition and, sure enough, his national security advisor, about to be, has an illegal meeting with the Russian ambassador, which eventually cost him his job. He was only in the job for a month. Okay.

He fires Comey. The very next day he meets with the Russian foreign minister and the Russian ambassador, the next day, and he throws everybody out of the meeting except for the Russians. Okay. We're looking at something that's telling us something, and I think for a long time we didn't want to see what was going on.

And then we get to the Helsinki Summit. And the Helsinki Summit, the President's behavior after the Helsinki Summit is outrageous. If you want a little summary of that, go look at John Allen's piece on the Brookings website that he wrote immediately after that.

People with foreign policy backgrounds are saying what on Earth is he doing there? And, in fact, the Helsinki Summit causes the largest number of Republican senators to attack their President that has ever happened. So we've got a lot in plain sight.

Then comes this news of this phone call. And on the Democratic side you have seven members of Congress all brand ne. Five of them, I'm proud to say, are women; five of them are veterans; two are former CIA analysts. And this just tips it. All of a sudden this is not the far left saying, oh, impeach the guy. Impeach the guy because we disagree with him on healthcare. Okay? All of a sudden, this has gotten a different level of seriousness and one that, frankly, has been bothering people for three years. And here we are.

MR. DIONNE: Margaret.

MS. TAYLOR: So I would absolutely agree. I was going to be one to talk about the freshmen Democrats, but Elaine got in there in front of me. (Laughter)

MS. KAMARCK: I had to end my timeline.

MS. TAYLOR: Yeah. I totally agree. I mean, just to say it out loud, you know, we have had the Mueller investigation and the Mueller Report. That is part of this whole backdrop. I totally understand that different Americans view the Mueller Report in different ways. I think for anyone who's actually gone in and read it or listened to Susan's great podcast about what is in the content of the Mueller Report, that is like a really crucial backdrop for understanding this news story.

I do agree that it's been quick. It was only two weeks ago that I was scrambling to write an article for Lawfare with the question of what is Adam Schiff talking about with this whistleblower complaint? That was just a mere two weeks ago. Now we know a whole lot more.

And I just would also say this set of facts implicates two really, you know, important things that I think we hadn't really seen before necessarily. One is getting a foreign government to interfere in our elections. And obviously, that was part of the Mueller Report, but here it's in our faces. And that goes to the heart of the sovereignty of our democracy. Who will decide in our elections who will represent us President? Who will decide these questions? And we as Americans have always thought we will decide. But this particular set of facts seems to have the President putting the into some question.

The second thing, and this goes to Elaine's point about the seven freshmen Democrats who have national security backgrounds, this set of facts implicates national security. I just want to say I've worked in foreign policy for a long time, our assistance to Ukraine and our support for Ukraine is crucial to the continued existence of Ukraine. And I think, you know, we don't quite remember that when we're thinking about a domestic scandal here.

The United States and Europe are so important to Ukraine because Putin literally invaded Ukraine in 2014, and then annexed Crimea. So literally invasion of the country. That is why they are so dependent on the West, Europe and the United States. And the idea that the President

would use that crucial assistance that Ukraine needs to protect itself from Russia as part of some scheme to help the President's reelection is really -- it really is a crucial national security issue. And I think that is something that is different and it's made it move fast because it is a national security issue.

MR. DIONNE: Thank you. I'm going to go one more round. I apologize to Margaret. You just happened to have your name begin with a T. We've got two H's and a K, so this is alphabetical discrimination going on here.

MS. TAYLOR: I thought it was because I was the newest. (Laughter)

MR. DIONNE: But I'm just going to go all the way down a second time on what I think are two crucial and interrelated questions, which are, in a sense, how fast and how far? And I'll go with the "how far" first.

We were talking before the event about how articles of impeachment look, how people -- how Congress decides what to impeach on, how many articles to have, how broad, how narrow. This, in turn, implicates how long this process might be.

I wonder if you could all talk about how the House is likely to go about making these decisions. What are the splits which we are seeing between broader or narrower or something in between? And then talk a bit about the time. And again, I'll start with Susan and go down the line.

MS. HENNESSEY: Yeah, so I think this is really a critical question and it's important that the House really anchors sort of its impeachment inquiry and understanding this a grave and very serious constitutional responsibility. So it needs to be really, really disciplined.

Impeachment is not an airing of any and all grievances against the President. It's not a mechanism to achieve things where you can't build a legislative coalition. It is a very, very serious and unique remedy in cases of sort of serious abuse.

And so whenever you think about what actually might fall within those articles of impeachment, we're seeing a huge span right now. Some people arguing just moving forward on this narrow Ukraine call all the way to people saying sort of include family separation, everything that we've seen this President do.

So what if we think about sort of what should be in articles in impeachment? You want

to think about two things. One is you want unambiguously impeachable conduct and you want unambiguously strong evidence.

So we have some areas in which there is very strong evidence, but it's not clear that it's impeachable conduct, and evidence of wrongdoing. So the Stormy Daniels payments, right, pre-presidential conduct that implicates campaign finance law. We have a really clear evidentiary record for that. The question of whether or not pre-presidential conduct would fall within that, that starts to become a little bit more difficult.

The emoluments clause violations, very, very serious questions. Some open questions about the Constitution. Congress hasn't yet taken steps to sort of pass laws. That's going to be more difficult to make the argument.

Genuine policy differences, even things that we might find personally abhorrent, like the policy of family separation, that is a policy difference, a policy disagreement. You don't get to impeach for that.

Then there's a different sort of category and that's very unsatisfying to people to sort of leave that on the table. There's another category of plainly impeachable conduct in which the evidence isn't quite strong enough. So the President reportedly has offered people pardons in exchange for violating the law in the context of border security. Unambiguously impeachable conduct? The record is a little bit murky right now. Maybe he was kidding, maybe he didn't say it.

So we have to ask ourselves, all right, putting all that stuff aside, what are we left with when we think about unambiguously impeachable and very, very strong evidence? The answer to that question is a lot. (Laughter)

So the first one is obstruction, obstruction of justice. And so this is sort of the big questions that remain at the conclusion of the Mueller Report. Now, not every episode of obstruction of justice is very, very strong, but there are two or three that sort of unambiguously meet the statutory requirements. We would expect to see Congress potentially impeach for that.

Abuse of foreign policy powers, right. So using the foreign policy powers for personal gain, that's an abuse. Inviting foreign interference in a U.S. election, that's an abuse. The targeting --

the violation of the oath of office for targeting political opponents for investigations, not just in this foreign context, but also things like directing the Attorney General to investigate Hillary Clinton's emails. Right? That is not an appropriate use of U.S. law enforcement.

Obstruction of Congress, right. The refusal to reply to subpoenas, the frivolous assertions of privilege over people like Corey Lewandowski, that is obstruction of Congress and its function.

And then the last category is lies to the American public. So this is something we saw in the draft articles of impeachment for Richard Nixon, articles of impeachment against Bill Clinton, as well. Lying to the American public is not a crime. It is impeachable conduct. It does erode sort of the basic democratic accountability. And there is a very long, very strong record that could also an article there. (Laughter)

MR. DIONNE: Wow, they're going to be busy. (Laughter) Question: Susan, just to sharpen the question as we go down, Susan has laid out, what, probably 10 articles of impeachment perhaps in that list. Yet, within the Congress there is real pressure, particularly from vulnerable or vulnerable Democrats who came to this decision only after the Ukraine event that it should actually be focused only on the Ukraine-connected articles.

What say you, John, about what makes sense to you and what you think they're likely to do?

MR. HUDAK: Well, as you said at the outset, E.J., impeachment is both a legal constitutional issue, but it's also a political issue and a political action. And Susan laid out beautifully the legal and constitutional side of this, but for Democrats in Congress, particularly the Speaker as well as Chairman Schiff, they also have to think about the politics. And the politics are multifold.

They involve a presidential election. They involve the standing of Democrats before the American public. It involves, as well, these vulnerable Democrats, who we've talked about already and what they are likely to do. It also involves the optics of an eventual impeachment vote. If the Democrats put 70 articles of impeachment up and they impeach on 5 of those, the President is going to chalk that up as a win.

MR. DIONNE: Sixty-five to five. (Laughter)

MR. HUDAK: Exactly, right? If they put six or seven impeachment articles and he's impeach on five, that's a much harder point for the President to make that he's actually won.

And so the politics are going to be important. And the narrowing to the issue with Ukraine, the situation with the President's conversations with Ukraine, as we've said, are clear examples of that abuse. They are abuses that have put almost every member of the Democratic Caucus in the House in a position to be ready to proceed with impeachment hearings.

If we start to go back to Mueller Report, as Susan said, there are examples coming out of that report where the President has engaged in conduct that is impeachable and that there is evidence there to impeach him on it. But a lot of Americans will see this, and certainly the President will see this, as old news; as something that is not worth that kind of attention. And if that is the case, then going back and digging up the Mueller Report, which the President will say is a re-litigation of the 2016 election, he'll say it is something -- he will wrongly say it is something he's been exonerated on.

If that connects with the American public, that becomes a very serious political problem for Democrats, it becomes a serious messaging problem. And it also means that they're probably going to start to lose votes among those moderate and vulnerable Democrats in the House.

The focus on Ukraine, on the other hand, really strengthens Democrats' political hand in this space. It's hard to look at the evidence, unless you're Kevin McCarthy, and say that there is no there there. And as Elaine pointed out, seven vulnerable Democrats putting their careers on the line, seven vulnerable Democrats who have spent a lifetime of service to this country, have said you know what? I don't care if I lose my seat. This is more important than my seat in Congress. It's more important than whether a Democrat or a Republican holds this seat. This involves an oath and this involves our Constitution. And I think of everyone in the Congress, they are probably some of the best examples of people who think this way.

There is a political angle to that. There's a political angle to all of this. But the Speaker and the Chairman and Democratic leadership need to move forward thinking both about how to hold the President to account and how not to throw their own selves under the bus.

MR. DIONNE: Elaine, you can wear two hats. You're the only person who looks good in two hats. (Laughter) Because you're a political person and you've been involved in many campaigns. You're also a public policy person who teaches public policy.

Do you see a conflict between these two sides of yourself in the conversation about impeachment? Susan made a very powerful case for quite a few articles related not just to Ukraine, but to other matters. Yet John, I think channeling many of the moderate Democrats' views in the House, suggests that too broad will be problematic. And then just to sort of add an element, I've heard the argument made that you need at least multiple articles, so some Republicans might be able to vote no on some in order to vote yes on one, and it only takes one.

I'd like you to talk about how the politics and the constitutional responsibility and policy interact in this argument about articles of impeachment.

MS. KAMARCK: Well, that's a good question and maybe I'll put on my professor hat first and look at three presidential impeachments and how this has worked.

So the very first one was the Andrew Johnson impeachment. The first five articles of impeachment are all about this obscure thing called the Tenure of Office Act and whether or not the President violated the Tenure of Office Act. It's a little bit trivial. It was not clear even at the time that it was constitutional.

And Thaddeus Stevens, who was a radical Republican senator from Massachusetts, insisted that there be an article of impeachment that talked about the President violating the oath of office in a big-time impeachable offense, meaning what he was doing as President was undermining the result of the Civil War. Okay. There was the verdict, so to speak, of the Civil War. And that tension was there in the very first impeachment.

In the second impeachment, which was Richard Nixon's, it was very clear that they didn't want to go to all the various things involving CREEP and the Watergate break-in.

MR. DIONNE: The Committee to Re-Elect the President.

MS. KAMARCK: Yeah, the Committee to Re-Elect the President was called CREEP at the time, which is kind of funny.

MR. DIONNE: Watch your acronym. (Laughter)

MS. KAMARCK: Yeah, right. But they didn't want to go to those things. The President himself did not break into the Democratic headquarters. But the massiveness of the cover-up, okay, clearly became the center of the impeachment. That was so clearly an abuse of power.

And even then, right, it wasn't until the tapes were discovered and it wasn't until you actually heard Richard Nixon telling H.R. Haldeman, tell the CIA to tell the FBI to back off the Watergate investigation. Even then, it took a long time to reach the President. It was clearly impeachable.

You get to Bill Clinton. Okay. Did he lie under federal oath? Yep. Is that a crime? Yep. Did he have a sexual relationship with a young woman? Yes, he did. That was clearly not a good thing to do and pretty immoral.

But it was also very clear that when that got to the Senate, nobody thought that was an impeachable offense. It didn't rise to the level of seriousness. Monica Lewinsky was not a Russian spy. He was not giving her classified information in the course of their assignments. I mean, she was just a poor kid, okay, and that was it.

And the Senate said, no, we're not going to vote impeachment on that. And, in fact, if you think about it, if you impeached or took everybody's job away from them who lied about sex, like the whole country would be in jail, right? (Laughter)

So you see in these three impeachments, right --

MR. DIONNE: The pure people in the world are going to sue Elaine after this.
(Laughter)

MS. KAMARCK: So you see in these three impeachments the tension that Susan is talking about. And I think read her excellent article which is in Lawfare on this. You want something that is clearly a step above ordinary misbehavior and that, high crimes and misdemeanors, abuse of power, seemed to make that cut.

MR. DIONNE: Thank you. Margaret, I'd like you, having absorbed all this -- and, Susan, I just want you to come back, before we move on, to talk about the multiple articles issue. But I want to talk to Margaret, a couple of questions.

You've spent a lot of time on foreign affairs, which even in this terrible time has had some moments of bipartisanship. There is conversation across party lines, or at least until this moment. I think it was Mike Murphy, a Republican consultant, is the first person I heard say, it may have been someone else, that if you had a secret ballot in the Senate, 30 Republican senators would vote to impeach Donald Trump.

I'd be curious if you could talk about what your sense is of where some or many Republicans are on this, and weigh in on the question of Democratic senators looking across to their House Democratic colleagues, if they could give advice on the House on what to do and not to do, not just about articles of impeachment, but also about how to conduct this, what might they say?

MS. TAYLOR: So in terms of where Republicans are on the Senate side, what I noticed is there's a lot of sort of saying one thing sort of anonymously to reporters and so sort of privately, but they're doing a different thing publicly right now, with a few very sort of minimal exceptions along the lines of Mitt Romney. I think Ben Sasse said, you know, maybe we shouldn't circle wagons so fast. So there is this dichotomy, it would seem, between what a fair number of Republican senators are saying privately and what they're saying publicly.

I think what the public process in the House of impeachment proceedings could do is help the American public, including Americans in red states, understand and hook up this conduct that the President has engaged in, hook all of that up with our basic foundational constitutional values as Americans, as people who -- you know, we revere our Founding Fathers and what they said.

So I think the challenge, and maybe this would be for Senate Democrats looking over saying make that case. Take enough time to make that case to the American people connecting these events up to our most foundational American values. Because that is what is going to bridge this gap between what Republicans are saying privately, a lot of them, and what they are saying publicly. It's really only through that public process, in my view, that really gets you to that place.

MR. DIONNE: And so how long should that be?

MS. TAYLOR: I think -- I mean, I think it takes at least five or six weeks, but I don't know. I mean, we don't know how this is going to unfold. We don't know how the momentum of the

narrative is going to unfold. We don't know if there are more shoes to drop. We don't know if more will be uncovered.

So it's going to have to be, I would imagine, for House Democrats, a process of really calibrating and understanding where they are, what is yet to explore, and when they need to cut the rope, take the vote, and send it to the Senate in the most powerful way. And that is something that's just going to evolve over time. It's not something that we up here I think can really make an accurate prediction about.

MR. DIONNE: Margaret's comment of politicians saying one thing off the record, another on the record, actually brings to mind somebody I just want to honor because I miss -- I wish she were here to cover this, is Cokie Roberts. And Cokie Roberts was covering the big event at the Vatican and someone asked her is this like covering Congress? And she said, oh, sure, there's a big dome, there's a lot of marble, and there are a bunch of guys saying one thing who mean another, said Cokie on NPR. (Laughter)

And so I want to bring that back to Susan, which is this really complicated dance that there are quite a few Republicans playing, you know, dancing, where they really don't want to go out there publicly against Trump. How would the conduct of this, and I just want you to go back to defend your somewhat longer list of impeachment articles and then we'll move on, just how might this move Republicans?

You've written powerful stuff that is thoroughly nonpartisan about national security and it hasn't moved that many people publicly. I'm curious how you read that.

MS. HENNESSEY: Yeah. So to start, I don't think anyone should sort of begin by letting Republicans off the hook by saying this is only going to be a symbolic impeachment and the Senate will never vote to remove. I think that's a live question and members of Congress, Republican members of Congress, swear their own oaths of office and they have to live with themselves at the end of the day. And so, you know, as this evidence comes out, I think we should continue to look at those people and expect them to uphold their oaths. And, you know, if they want to record their vote for history otherwise, depending on the evidence, then that's between them and their constituents and their

conscience ultimately.

I mean, look, there are real risks in being overbroad, either overbroad sort of in terms of things that aren't really impeachable and also overbroad even if you have a strong case, putting too many pieces in there. Right? You can undercut your messaging. You can alienate the moderates. You can make it more difficult for Republicans to support you.

There's a converse risk, which is there's also a risk in being too narrow here. Impeachment is the mechanism by which Congress says what is acceptable and what is not acceptable. And if we go back to the Convention debates, the framers talk about this a lot. We create this really astonishingly empowered executive and they talk a lot about the risks of that, the risk that the President might abuse his office, that there might be foreign influence. What are you going to do? How are the other branches going to stand up?

And again and again, the framers return to this idea, well, if the President abuses his office, if he abuses his oath, then the Congress will impeach him. And so this remedy, this very, very big stick is the thing that really undergirds, it's foundational.

And so I think there is a little bit of a risk here. If you say, okay, we're just going to move forward on Ukraine, even though we have an unambiguous record that the President of the United States pressured his White House counsel to create a false record in the Mueller investigation, something that in my opinion I think is clearly criminal conduct, very, very serious conduct, if you don't put that in an article, you are forfeiting the opportunity and the responsibility of saying this is unacceptable.

And there really are -- you know, the office of the American presidency has changed a lot over time and Presidents have changed the way that they've used and, in some cases, abused the power. And there are two mechanisms by which we can say we don't want the office to change, and one is the ratification of elections when the American people respond by saying we're not -- you know, we don't like this use of the office and we aren't going to reelect you. But every now and then Congress is called by their oaths to insert themselves into that process and to say we have to draw the line here.

And so I do think that there's a risk of sort of being overly strategic about it and saying

we're only going to proceed on this one thing because you risk sending the message to future Presidents that this other stuff is not impeachable conduct. And that really could have very, very serious long-term consequences on the office.

MR. DIONNE: That's really powerful. John, come back in on that, but I want to broaden the question, particularly to you and Elaine on both the impact of this on the presidential campaign, on Joe Biden, but also the impact back of the campaign on this impeachment discussion. And it would be a mistake if we continue this conversation without talking about Nancy Pelosi and her handling of this.

So go where you want it to go, but I'd like you and Elaine in particular to talk about this interaction between the campaign and the impeachment process.

MR. HUDAK: But I wanted to pick up on Susan's point, it actually cascades into that question anyways.

At the beginning of your last answer, Susan, you said it's a live question right now whether Republican senators are going to stay as no votes on impeachment, but also on conviction, or whether that's moveable. Right now, if an impeachment trial vote were held today, yes, the President would be acquitted.

But what's important to remember is that in 1972, Richard Nixon won reelection by an overwhelming landslide. He got about 200 more electoral votes than Donald Trump got in 2016. During his first and his second term, Richard Nixon had job approval ratings that were astronomically high relative to what even this President's best approval ratings have been.

To think on Election Day 1972, I was not around for it, but to think on Election Day 1972 that Richard Nixon would be impeached and removed from office, which but for his resignation he would have been, to think that that would have happened in less than two years, people would have laughed in your face. But alas, the evidence was built. The tapes came out and movement happened within the Republican Conference in the Senate.

And granted, our politics is different now than it was in 1974, but this idea that there is nothing that can come out that will move a Republican senator towards voting to convict the President I

think is foolish. I think Susan's point was a strong one. That is an open question. We're not there now, but the first day of the Watergate hearings, you know, we weren't there then either.

And so to answer the next question you posed, E.J., there's a big question mark about what this is going to mean for congressional elections in 2020, for the presidential election in 2020, what it's going to mean for Nancy Pelosi's standing nationally, in her party, and for her legacy. Because we just don't know how this plays out yet, how much more, as Margaret said, how much more we're going to learn as these inquiries continue. And what is going to happen with the American public's support for impeachment, which we learned from CBS News this morning is now at 55 percent.

MR. DIONNE: Support for an impeachment inquiry.

MR. HUDAK: Inquiry, yeah, is at 55 percent, and what the President's standing and what the party's standing is going to face. This could be something that is politically very challenging for Democrats come 2020, but if we end up in a similar situation to the one we were in in August of 1974, it's going to be a very difficult position for President Trump and for congressional Republicans who continue to offer him unwavering support.

So all that is to say we don't know, but obviously stay tuned. The next five to eight weeks is probably going to tell us a lot more about the 2020 presidential election than the last three years have.

MR. DIONNE: Elaine, just to cite those CBS numbers as you go into it, among Democrats, not surprising. The question is, does President Trump deserve to be impeached over Ukraine? Democrats, 75 yes, 8 no, 17 too soon to say; huge margin. Independent, 35 yes, 41 no, 24 too soon to say; not surprising, Independents are less certain. But then the Republican numbers are fascinating to read because, on the one hand, not surprisingly, 70 percent say he does not deserve to be, but 16 percent of Republicans say he does, and another 14 say it's too soon to say.

I read those numbers as not great for the President going into this right now. Am I wrong about that? And if you could take it forward from there.

MS. KAMARCK: No, I think there's two things to say about the Republicans and then I'll go to the Democrats. I mean, you have to remember that on the day Richard Nixon resigned from

office he had a 24 percent approval rating. Presidents don't ever go down to nothing, right? (Laughter) There's just too many people who are invested in their vote. Okay.

So the question, and I have tried this out with a couple members of Congress, the question is, at what point does it unravel? Now, the President goes between 38 and 45 percent approval ratings, right, in the public. Most people think that if he gets to 30 he's in big trouble. Okay, so keep that in your mind, keep 30 percent where his approval rating drops.

The second thing is, to switch to the -- and by the way, when his approval rating drops, at that point it does affect some Republicans. And you don't need all Republicans to impeach, you need 20 Republicans to impeach -- I mean, to convict, I'm sorry, 20 Republican senators to convict. You don't need any Republican House members to impeach because the Democrats have a large majority.

Switching to the Democrats, prior to last week, Nancy Pelosi looked at and looked after what she calls the "majority makers." The majority makers are the Democrats from marginal districts that won with the help of Republican women in 2018. She needs to hold them to hold her majority. When those seven defected, whew, 86 followed. Okay. It was a huge shift.

And at that moment she knew that, okay, two things were going on. A, this was a serious issue that reached the constitutional level and, therefore, you couldn't play politics with it. And B, that, frankly, if there were that many people with marginal districts, they were also betting, and they're doing this right now, that they could go back to their districts and explain the rationale behind their decision here. And that in explaining that, they would move the public.

So we haven't yet seen this go forward because in the next two weeks while all these guys are on recess, they're going to be doing town meeting after town meeting after, you know, coffee shop stops and deli stops, et cetera, and they're going to be talking about this. Right. They're going to be talking about this and they're going to educate the public. And when that happens, then we'll have a better sense of where we are.

MR. DIONNE: Real quick on that. I talked to a couple of members from those front-line districts, those majority makers, and they were very clear in where they stood. But they both ended

their conversations by saying, by the way, we are working on healthcare and listed a whole bunch of other things --

MS. KAMARCK: Yeah, right.

MR. DIONNE: -- which they really wanted to -- and it was their spontaneous sort of -- is there any worry about that in all of this?

MS. KAMARCK: Well, I'll tell you the worry. The worry is, A, the Democratic message gets obscured. The real worry is you impeach this guy, convict him, Mike Pence becomes President. And Mike Pence, you may disagree with his policies, but he's kind of a normal guy. (Laughter) He's normal. He's a nice guy. He's a conservative. Members of the House who served with him all like him. Okay?

In other words, the biggest problem for the Democrats may not be their impeachment. It may be the fact that they get Mike Pence and have to run against Mike Pence.

MR. DIONNE: Of course, if they impeach Pence, then Nancy Pelosi becomes President. (Laughter)

MS. KAMARCK: Well, I think, E.J. --

MR. DIONNE: Which, by the way, President Trump has been using as a threat.

MS. KAMARCK: Right, yeah.

MR. DIONNE: Margaret, I want you to elaborate on all of this, but I want to ask two sort of pointed, you know, particular questions. One is House Republicans -- Kevin McCarthy, Doug Collins, and others -- have been saying that there's some doubt about the legitimacy of this inquiry because there was no full House vote on calling it. Is there any legitimacy to that?

And second, let's say the House impeaches. And I think maybe all of us agree that, all things being equal, there probably are votes right now in the House to impeach the President. I think there may have been before all of this, but they weren't announced, but there certainly are now.

If the House impeaches, what are Mitch McConnell's options? Can he just say I'm not doing anything about this? If you could take those two questions.

MS. TAYLOR: Sure. So you're right, there has been this sort of ongoing discussion

because, if you recall, when Nancy Pelosi came out in support of an impeachment inquiry, there was no full House vote associated with a specific inquiry by the House. It was like Nancy Pelosi essentially coming out and throwing her weight behind the impeachment inquiry, you know, signaling to the Caucus that she would be inclined to vote yes on impeachment. But there was no sort of whole House vote.

I've written a couple of articles about this. The reason, one of the main reasons for that is that over time, so over the past several decades, how the House committees work and what powers and authorities they have changed. So it used to be that in order to give the House Judiciary Committee or a select committee the powers it needed to really conduct an appropriate impeachment investigation, so deposing people on the record, issuing subpoenas, that needed to be specifically given to the committee by a vote of the full House.

What's different now is a lot of those powers a lot of these committees already have. So they have the powers they need essentially to do this investigation anyway. So there's no real technical reason for a full House vote.

I think what House Republicans are saying there is, you know, this is sort of deviating from how this has been done with respect to Nixon and Clinton, and we're uncomfortable with that. It's also a political point I think they can make about, you know, making this seem like an illegitimate inquiry of some sort.

I just would say, though, the Constitution does not prescribe how the House impeaches. It gives the House the sole power of impeachment, but it does not give instructions about how to do that.

So just as an example, with President Johnson, when he was impeached, the impeachment vote actually -- there was no opening of an inquiry. There was no investigation. The House met and they impeached him. (Laughter) And it was after the impeachment vote that they then said, oh, gee, we kind of need some articles of impeachment to send over to the Senate. (Laughter) And so they actually --

MR. DIONNE: They knew how to do things back then.

MS. TAYLOR: But it was real speedy. So then a committee actually got together and got the articles of impeachment together. Those were then voted on and then sent over to the Senate. So it's not the case that, you know, doing things in sort of what we think of as maybe an unconventional way, but it's actually conventional to do it in unconventional way.

What I would say about the Senate side, it's a little complicated. It's not, strictly speaking, a yes or no question. Again, the Constitution gives the Senate the sole power to try the impeachment, but it doesn't require it and it doesn't say exactly how to do it.

Mitch McConnell actually said back in March that he viewed himself as not having the discretion not to try the case in the Senate. So he's not talking there about the Constitution itself. He's talking about the Standing Rules of the Senate. And the Standing Rules of the Senate strongly imply that an actual trial is required.

The caveat is that those rules could be ignored with a majority vote in the Senate. They could also be changed by a majority vote in the Senate. So the question really is for Mitch McConnell, I think, what is his best play politically at that moment? He's got some vulnerable Republicans in purplish states, people like Cory Gardner, Susan Collins.

I suspect, you know, the most important thing to Mitch McConnell is to guard his majority in the Senate, so that he can remain Majority Leader. So he will be looking to his vulnerable Republicans to see what it is that they want to do, to what extent will this -- you know, how thorough will a trial -- what will that look like exactly? He will be looking to them to understand how it is that they, the vulnerable Republicans, will be able to make the case to their constituents about how they voted.

MR. DIONNE: Thank you. I've got a couple more questions and then I'm going to open it up to the audience.

I wanted to ask Susan, you have done an extraordinary amount of work with people in our intelligence services and people who are career people inside the Justice Department. And you have a good sense of sort of how they think, what their concerns are.

Any situation like this, a situation like this gets broken open sometimes when people we didn't expect to hear from come forward with information, with new information, with new perspectives

on existing information. What's your read about what the chances are over the next month or so that we're going to learn more from people inside the government?

Because you're seeing some rumblings of that. Now in the *Post* today, Greg Meeks saying to the person or people who wrote that op-ed a year ago about the President, come out now, it's time for you to say who you are. What's your sense of the mood among professionals? And perhaps, and I don't want you to give away any sources, I mean, perhaps they have already been at work to some degree reading between the lines in some of these stories. What's your sense of their mood?

MS. HENNESSEY: I don't know that I can speak to the mood of people who might actually have relevant information here. I would make a few points, though. One is we shouldn't undiscuss the extraordinary acts of this whistleblower who is a member of the U.S. intelligence community, not just to blow the whistle when no one else would, but to persist in it even when it would appear as though his agency counsel wasn't prepared to stand behind him, and to follow the rules.

It would have been so much easier for this person to have anonymously leaked this to the press. They would be sitting comfortably in their office right now, hoping that this would spark an impeachment inquiry. The fact that they followed the rules, that they upheld their own oath, that is what pressured the White House to release the transcript. That is what empowered other branches to essentially have the courage to use their own institutional tools in response.

So I do think that we should recognize sort of that this was -- it's a brave act. It's an act that is certainly going to have consequences for this person. And by doing that, it's what set this all-in motion.

The flip side of that is it's pretty astonishing as we hear more and more that there was only one whistleblower. And to think that all of this was going on for this period of time, including representations being made to Congress about why appropriated funds were being frozen. The Executive Branch appears to have not been candid with Congress about why these funds to Ukraine were on hold, representing that it was sort of an inner-agency process issue. That's a very, very serious violation. And so it is a little bit troubling that there was only one person without sort of taking away their extraordinary courage.

This brings us to the question of who might step forward now? We've seen this White House use this notion of executive privilege as a sword and a shield. And every time Congress comes up and tries to subpoena somebody or tries to demand answers or document production, the White House says executive privilege. And they assert it in legitimate cases and they assert it in frivolous cases and they assert it in bizarre cases where you can't even understand what the argument is; for example, Corey Lewandowski and others.

And so executive privilege as a stonewalling technique is a really, really powerful tool because it leaves Congress in the position of what are we going to do? We can go to court. We can try and litigate and pry these documents, but it's going to take months and months.

But executive privilege only works when the person who is supposed to testify agrees with you. Executive privilege, you can't use it to prevent someone from testifying. And so whenever we're talking about former officials, so people who have already been fired by the White House or have left the White House, Congress has a valid legal argument that there is no privilege and that they have an obligation to testify. The White House will make its legal argument that they shouldn't be testifying under executive privilege. And those people are going to have to make a choice about whether or not they want to talk to Congress.

And so I do think that we are going to see a potentially different set of choices being made. That's one of the things that's so significant about this impeachment inquiry, whether it's formal or just sort of having a momentum of the Speaker's endorsement behind it. It shifts the burden because now instead of Congress saying pretty please comply with our subpoenas, they can demand that people provide this testimony. And if they refuse to do so, can use that refusal by the White House as the basis for additional articles of impeachment.

So I do think that we will start to see a dramatically different amount of people sort of being willing to testify and leaning forward into the process.

MR. DIONNE: I've just decided I should circulate a petition to see if we could make Susan an ex officio member on one of these committees. (Laughter) Thank you so much.

I have two questions, they are unrelated, but I want to just put them to the rest of the

panel. The one is, does anyone want to take a crack at defining high crimes and misdemeanors, which is basically compromise language put in during the Constitutional Convention? Or do high crimes and misdemeanors mean whatever Congress decides high crimes and misdemeanors are?

The second question is on the obligations of the media in all of this and particularly in light of critiques of the media during the 2016 election. You had, for example, just to pick one example, Joe Biden's campaign, some people wrote a letter saying every time you got to stop having Rudy Giuliani on because he's telling the same things that are untrue. And if you have him on, you need somebody from us. What are the media supposed to do in all this?

So real quick with each of you and then we will open it up. I will only ask people, I don't blame you for wanting to give speeches on this. And we are lucky enough to be up here, so we can sort of do that. Please keep your questions short so other people can come in because there are a lot of people who want to do that. I honor your citizenship rights, but please help us out. (Laughter)

So let's --

MS. KAMARCK: You want to start with --

MR. DIONNE: Oh, you want to go up this way.

MS. KAMARCK: Yeah, why don't we start with Margaret?

MS. TAYLOR: Sure. So, you know, on the high crimes and misdemeanors question, I will just say again, because it needs to be said out loud and over and over, it is not the case that a crime must be committed in order for the President to be impeached. Even though it's high crimes and misdemeanors, like don't be confused that there has to be an actual crime under the laws of the United States.

It's also not the case, in my view, that the House could say we're going to impeach the President today because he's wearing a yellow tie and we do not like yellow ties. That is not a legitimate exercise, in my view, of the impeachment power, even if sort of technically they could do it. I don't think that would be consistent with the oath of office that members of Congress have taken.

So what is a high crime and misdemeanor? It has elements of sort of legal issues undergirding it. It has a large policy overlay.

And then I would just quote Alexander Hamilton who says, "There are those offenses which proceed from the misconduct of public men or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political as they relate chiefly to injuries done immediately to the society itself."

So that was Hamilton when they were going around trying to convince the states to ratify the Constitution. So that was how he was explaining it, and I think that's a good way to think of it.

MR. DIONNE: Thank you. Elaine.

MS. KAMARCK: I think Margaret hit it. I mean, I think when you get to that question of abuse, okay, remember that the entire structure of the Constitution and the entire history is about preventing the President of the United States from being able to be a king or an autocrat or a dictator.

MR. HUDAK: Or a foreign agent.

MS. KAMARCK: Or a foreign agent. (Laughter) Yeah.

MR. HUDAK: Just randomly, yeah.

MS. KAMARCK: Randomly, right. And so the whole structure is the checks on presidential behavior. And when you have a President seeking to put himself above the law or above Congress, then I think you are violating sort of the core of the Constitution, even though it doesn't necessarily constitute an individual statutory crime, although they start with that.

As for the media, E.J., I think that's a really, really hard one because the media itself, thanks to Trump's and Fox News' actions here, has really come under suspicion. And I would urge reporters, and particularly television personalities, to be really just the facts, just sticking to the facts as much as they can. Because the media's already in trouble on this. We're already in a polarized world. And, frankly, if you have too much hysteria one way or the other, I think it's going to be bad.

The good thing about what Pelosi has done, and I hope the House will move very, very quickly, is that Pelosi now has to control the narrative. She has to keep rolling out information, information along with the kind of revelations Susan was referring to coming perhaps from the Executive Branch. There needs to be hard news, hard news, hard news and not the endless speculation which lets people say, oh, that's just their opinion, they're just lying to us as usual.

MR. HUDAK: Quickly, E.J., on the point of the media, I think the high crimes and misdemeanors has been covered quite well. The media needs, I think, to take a step back and look at this moment that we have, particularly with regard to the whistleblower and with regard to what Susan just said about the whistleblower. This is an individual with tremendous loyalty to the Constitution. It is someone who is patriotic and who has taken an historic step toward keeping our government accountable.

The media needs to recognize and respect that and make sure that nothing that the media does makes it harder or more intimidating for another whistleblower in the future of this administration or the future of a Democratic administration or another Republican administration to have that kind of faith and confidence and loyalty and patriotism to do this again. It may not be the media's intention of muddying the waters for future whistleblowers, but they certainly have the capacity to do so. And so that is my advice for what media should take as a lesson from the moment we're in right now. (Applause)

MR. DIONNE: Thank you, John. I'm going to come back to Susan, but do we have mics going around the room. Who wants to raise a hand? There's -- gee, why don't we start on this side, those two hands? Could you bring up a mic? And then we'll bring up a mic to the other side of the room, the gentleman. But hold off, I want to give Susan a chance to come back and then I'll go to you.

Two issues. Obviously, you are in the media. You have been explaining all of this to people for a long time now, sort of to comment on that, and also I think you wanted to say something about whistleblowers. So please, come back.

MS. HENNESSEY: So I would agree with all the comments of my colleagues. I think there's one really specific lesson that the media should learn from what happened in the 2016 election to the current environment, and that's whether or not they're changing in the threshold.

So one of the reasons why the President is doing this, and Rudy Giuliani is on television sort of whipping up this story, is because they want people to start talking about what Joe Biden or Hunter Biden might have done in Ukraine. And so even if it's just to fact check that, the fact

that we're discussing it in some way is actually accomplishing their goal.

Now, we actually can't ask the press, and I think we shouldn't ask the press, to ignore true and newsworthy information. And so this is where the lesson of 2016 comes in. What we saw in 2016 was the hacking and dumping of emails actually changing the thresholds of media reporting. Right?

So ordinarily, if the press got a tip that somebody in the Clinton Foundation said something mean about Chelsea Clinton, nobody would run with that. It's idle gossip. It's not the kind of thing that would be newsworthy. It's a little tidbit.

But because it became part of this story about these hacked and leaked emails, all of a sudden the threshold's lowered. And the media decided that they could report on any and everything that was going on because it felt like it connected to this larger story. And so we saw a lot of really irresponsible coverage.

I think we're in a similar moment right now. The answer to the media is not to plug its ears and say we aren't going to report on anything about the President's accusations against anyone no matter what if they're illegitimate. But the media should not fall into the trap of saying, well, ordinarily we wouldn't report on these specious allegations against a U.S. citizen in Ukraine and there's nothing to it or there's some tiny piece of information that has nothing to do with criminal wrongdoing, but maybe he sat on this board or that board. It's tempting for them to now say, well, we wouldn't have reported it before, but now the President is Tweeting about it. Now it's this big story. Is there anything to it? And so once again, lower the threshold in a way that suddenly becomes sort of open season.

And so what I would urge people in the media to do is make sure that they are continuing to preserve the same thresholds for what is genuinely newsworthy coverage and not to sort of indulge in the President's game of sort of lowering those thresholds to spark lots of negative coverage.

MR. DIONNE: Thank you so much. Sir, yes.

SPEAKER: Hi. Could you all speak to --

MR. DIONNE: Could you identify yourself?

SPEAKER: I'm a real live resident of Baltimore. (Laughter)

MR. DIONNE: Bless you, sir. A citizen, highest honor.

SPEAKER: Could you all please speak to another issue that came up in the whistleblower matter, and that is the hiding of the record of that call and other significant things in super classified areas?

MR. DIONNE: And could you pass the mic to the gentleman next to you so we can collect a few questions at a time to get as many people in as we can? Sir.

MR. LADD: Sure. John Ladd. I'm a political scientist at Georgetown.

MR. DIONNE: Great to have you here.

MR. LADD: Quickly, I want to give everyone else a chance. I totally agree with Susan's criteria for what should be in impeachment articles and what shouldn't. And I just wanted to press her slightly on whether emoluments or some aspect of emoluments pass those. Because it seems like they do to me in that there's a very clear clause of the Constitution forbidding them. There's even a slight connection to this scandal in the fact that the beginning of the call, the Ukraine president mentions that he's paid the requisite bribes at the Trump Hotel, so maybe we should be all set. He mentions that and it's been ongoing fairly in the open.

So I wondered why you think that doesn't fit because you mentioned you thought it doesn't fit the criteria.

MR. DIONNE: And John, in light of the media question, please tell people the title of your recent book on that subject. Go ahead.

MR. LADD: Well, we have -- me with seven other people, we have a Brookings Press book that's coming out at the end of the January about news coverage of the '16 campaign called *Words That Matter: News Media Coverage of the 2016 Campaign*, which I love to plug. And you can preorder on Amazon right now. (Laughter)

MR. DIONNE: But the previous --

MR. LADD: I have a previous book, *Why Americans Hate the Media*, which is about trust in the media over time. But thank you. I didn't mean to plug that, but you told me to, so I did.

MR. DIONNE: No, I wanted people to know. Two good questions and then we'll go to the other side of the room. Who wants to jump in first?

MS. KAMARCK: Can I jump in?

MR. DIONNE: Go ahead, Elaine.

MS. KAMARCK: I mean, one of the things about investigations is how you never know where it's going to take you. So for the first 24 hours after the Ukraine story broke there was an effort to get the whistleblower report. The whistleblower report came out and it took people a while to read the appendix. The appendix of the whistleblower report says in it this has happened before, meaning that politically sensitive issues were put into that secret server in order to hide them essentially from the rest of the government. And it is very interesting how this issue may begin with Ukraine, but end with Russia or Saudi Arabia or another country because it has now come out that there are hidden communications.

And so it reminds me of the revelation of the White House taping system during Watergate. Again, it was a throw-away. Okay. It was something that nobody ever even knew about, nobody knew it was going to happen. Once it was out there, everybody said, oh, my god, this can do it.

Now, I would assume that at some point in this process, say a subgroup of Democrats and Republicans with the properly high security clearances, are going to have a look at that server and they're going to have to look at it and say, okay, what's in here? Right? Is it all covert operations and military movements or is it something else?

What makes you suspicious is that that server began to be used the day after the famous meeting between Trump and the Russian foreign minister and the Russian ambassador where they threw out the Americans and let the Russians stay. So there's just a lot more to happen here.

MR. DIONNE: Susan.

MS. HENNESSEY: Yeah, to answer that sort of quickly. So there is one factual question that we still don't know about, the use of this code word system, which is a segmented system for highly classified materials to go into. And that's that we don't know whether or not what the White House did was they classified something, let's say, at the secret NOFORN levels. I mean, it would be

typical for a call with a foreign leader. They left that classification marking and then they put it on a system that usually doesn't handle that lower classification. Or whether or not they actually took the step of upping the classification. It would take a long time to walk down the different paths, but that's a very critical sort of question at the outset.

But there's a bigger question to ask that encompasses both of those, and that's that we have particular processes and rules that are in place to protect national security information for national security purposes. There's lots of things a White House might not want to become public, might not want to leak. Right. So, you know, calls like this with foreign leaders, healthcare policy, tax policy, anything that you could sort of imagine for political purposes or even valid purposes the White House might not want to make public. But using the tools and processes of the national security community to achieve those goals that are actually not about national security purposes, that starts to become abusive.

Then if there's any suggestion that some of these actions were undertaken to actually conceal crimes or to do things like put the information in a place where even federal investigators who had security clearances would not have access to, people like Robert Mueller's investigators, then we're down a much more serious path. But again, we still lack sort of some of the initial factual information there, and so we sort of have to hold off on precise judgment.

On the emoluments question, I agree, it's a borderline one. You know, I'd make two points. I think that there is a reasonable and I would actually subscribe to the argument that the President is in violation of the emoluments clause. That said, I think we have to concede that it's an open constitutional question, in part because multiple courts at this point have weighed in differently on different sort of definitional issues of what qualifies as an emolument, if there's a requirement to divest things like that. And so I think we have to concede that there is an openness to the constitutional question.

Two, Congress could pass laws. Unambiguously, Congress could pass laws sort of restraining the President's ability to engage in conducting foreign business. They haven't done that because they haven't been able to build a legislative coalition. And so I do think that it becomes really

perilous if you see Congress impeaching for something when they haven't taken those preliminary steps because then it does start to look like an end run around the ordinary constitutional processes.

So I would emolument not in saying it's not serious, not in saying that I don't personally believe he's violating it, but impeachment is a remedy of last resort and I don't think Congress can go there if it hasn't used the additional remedies first.

MR. DIONNE: Thank you. Anyone else want to come in? Mike, again, if you could stay up. Oh, there you go. Let's take the three hands here in geographical order and all three of you come in. Please.

MR. PEACE: Thank you. Leon Peace. My question is since the impeachment is a political versus a legal trial, in the previous impeachments -- unlike previous impeachments, this President has the ability to communicate directly with each and every voter throughout the process. So how do you think that that might impact proceedings, his ability to, in essence, work the jury throughout the entire impeachment process?

MR. DIONNE: Next person nearby. Thank you. Greetings. Good to see you.

MS. ORCHOWSKI: Hi. Peggy Orchowski. I'm with Hispanic Outlook. A lot of young people are so fervent about gun control and some of these other issues. I think so many people see this as an incredible waste of time. So I'm curious what do you think about your colleague Bill Galston's suggestion to go for censorship?

MR. DIONNE: Yeah, a censure. And this -- thank you. Good question. And then this gentleman over there.

MR. XIAOLAI: Hi. Deng Xiaolai from China's Xinhua News Agency. Just a follow-up question on the role of the media. *The New York Times* first revealed, partially though, the identity of the whistleblower and it also said in a story that what has been revealed has already been known to the White House. So I'm wondering what is your comment on *The New York Times'* conduct? Do you think this is inappropriate or appropriate? Thank you.

MR. DIONNE: So three questions. Margaret, why don't you start?

MS. TAYLOR: Sure, I'll take the first one. It's a really good question. At Lawfare

we've done some interesting work I think on sort of understanding of the role of the presidency over time. And I think our Founding Father I don't think would have envisioned the President sort of speaking directly all the time to the American public. What they envisioned were the Congress and the President sort of working together, speaking to each other about important policy issues and managing the government of the country.

Obviously, that has changed drastically over time and is amped up even more in this presidency because of Twitter. So I think it is a very serious question.

In the process of doing the trial in the Senate, the jurors are actually the senators. And so what they are hearing from home, what the media messages are, will play a big role in this, which I think is why everyone's talking about the media so much.

So I think how those key Republican senators, what they are hearing from home is going to be dependent on what their constituents are hearing through the media. So there's just no -- and through Twitter. So there's just no question that that is going to play a big role here. And it's why, in my view, the way the impeachment in the House is laid out, how it's connected to fundamental, is so key. Because in order to overcome that, all of the noise of the Twitter and of media, there has to be a way for these more fundamental messages to sort of get out there. And that's going to be absolutely crucial, in my view, in this process.

MS. KAMARCK: I'll take the censure question since my colleague, Bill Galston, is not here, but he's written a very interesting *Wall Street Journal* piece on this.

One of the advantages of censure is that it's majority vote, not two-thirds. So you can see this process going forward. You can see a vote in the Senate that doesn't quite get to two-thirds but being replaced by a censure vote.

And I think that if you look at the Democratic numbers and then you add in Mitt Romney, a couple other, Ben Sasse, maybe a couple other ones, Cory Gardner, you could definitely see a censure of this President. That has happened before and I think it is an option that will be on the table depending on where the Senate votes go.

MR. HUDAK: So I'll jump on the first two questions quickly to follow up. I think the

President's ability to move public opinion on Twitter is wildly overrated. If his ability to use Twitter moved public opinion, he'd have a 90 percent approval rating. (Laughter) He doesn't.

He communicates with a certain set of his supporters via Twitter, which I would argue is also actually quite overblown in terms of the size of the people he's reaching and who are effectively viewing that. But other sources, Democrats, Democratic presidential candidates, and others, are going to have just as much power to reach people via the same means. And so it will be a communications war, an impeachment will be and the trial, as well.

And yes, the President has a unique approach to Twitter and, in many ways, I think he's built his own popularity in part because of it. But I think it is a moment that his -- if he hasn't been able to resuscitate his presidency so far with this, I don't think given the seriousness of the allegations that Twitter's going to help him all that much here.

With regard to the second question about Bill's piece on censure, I disagree with Bill vehemently on this. I think that, yes, we have been at moments when censure has been applied and, yes, maybe it will be an easier route. We have not been at a point in our nation's history where we have had a President facing the types of allegations that he is currently facing right now: bribing a foreign nation, withholding funding that, as Margaret pointed out at the beginning, is the lifeblood of that country's sovereignty in some ways. We have been at other points in our history where censure was important or maybe meaningful. This is not one of them. This risen to such a significant point that the constitutional mechanisms are important.

And I think it's also important to note that partisanship should be stripped away from this. If Barack Obama did what Donald Trump did on that call with Ukraine, John would have gotten up at the beginning of this event and give the same speech about his former boss and former commander in chief and we would be saying the same things about the seriousness, illegality, and impropriety of those behaviors. And because of that, it rises to that level of a constitutional mechanism needing to intervene rather than just slapping the President on the wrist and saying go ahead and do this again with whatever country you want to do because the worst thing that's going to happen is we're going to vote something out that says shame on you.

MR. DIONNE: Lastly, to close, Susan.

MS. HENNESSEY: So I'll do sort of a rapid fire. So first on the question of Twitter, I don't know any criminal defense attorneys who have ever said it would be a real strategic advantage if only my client could communicate directly with the jury whatever they were thinking at all times.

(Laughter) So I don't know that that really sort of helps the case.

I agree with John sort of in the response to Bill Galston's proposition that censorship is the appropriate mechanism here. I think it goes back to the oath. Every senator swears an oath to protect, preserve, and defend the Constitution of the United States from enemies foreign and domestic, to bear true faith and allegiance to the same, and to well and faithfully execute the duties of their office. I don't believe that you can look at the conduct on the record, confirmed on the record, and look at the Constitution of the United States and say that censorship would fully discharge those duties.

Impeachment is a very, very serious thing. It's a scary thing. And whenever we're facing down this very, very frightening national moment, it feels tempting to reach for those exits, right, and say there has to be some off ramp here where we really don't have to do this. I think the only way out of this is through and to take on sort of the obligations that the Constitution asks of us specifically.

On this question of how the media should treat the whistleblower, this is a difficult question. So *The New York Times* has been really criticized for giving some details about where this person worked. Ordinarily, we think of it as the government's job to protect whistleblower identity or the identity of covert intelligence agents or government officials. And usually the media would print that information unless the government could really convince them there was a very, very serious credible threat against someone's life essentially. This wouldn't really sort of meet that threshold.

Whenever I put that argument out there on Twitter over the weekend, a *New York Times* -- a *New Yorker* journalist, Ben Taub, who covers Syria, responded by saying this person is actually -- they're a dissident. Whenever your government is attacking the person, failing to uphold their obligations, the media's obligation is to treat them as a dissident. I actually thought that was a really, really powerful counterargument and one the media might want to grapple with of what exactly are the rules that apply in this kind of situation.

MR. DIONNE: So I'm going to close in two ways. First to say Bill Galston was very sorry he couldn't be here. He is celebrating Jewish holidays, so I hope he's praying for us all.

(Laughter)

And for those of you who want to look at his piece, it's on the website. And what's good about this is it shows that there are no lockstep positions here at The Brookings Institution and we do argue with each other.

Secondly, John Allen began with Hamilton, so I thought I'd end with Hamilton. And unfortunately, I can't rap it. I'm not good at that. (Laughter) So I'll just read it straight up. This is from the famous "65."

"The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs speak for themselves. The difficulty of placing it rightly in a government resting entirely on the basis of periodical elections will as readily be perceived when it is considered that the most conspicuous characters in it will from that circumstance be too often the leaders or the tools of the most cunning or the most numerous faction. And on this account can hardly be expected to possess the requisite neutrality toward those whose conduct may be the subject of scrutiny."

And for that reason we have made impeachment a rather complicated process. And because of that, I want to thank my awesome colleagues for trying to help us understand it today. Thank you all so much. (Applause)

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