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WHAT'S NEXT IN THE IMPEACHMENT PROCESS?

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## P R O C E E D I N G S

MR. WITTES: All right, while my colleagues are being mic'd up I will try to be efficient and use the time. Welcome to the Brookings Institution. My name is Benjamin Witten. I'm a Senior Fellow in Governance Studies. And joining me are -- well, three of the four people I was expecting to be joining me. The ones that you can see are Molly Reynolds, John Hudak, and Sarah Binder. And the invisible Bill Galston will be snapping into visibility momentarily and joining us on the stage.

A couple of reminders, please silence your phones. Don't be that annoying person -- in fact, I'm going to practice what I preach -- don't be that annoying person whose phone goes off and shows up on everybody's radar screens.

Welcome to those who are joining us remotely through the magic of our webcast. And on your chairs you will find evaluation forms on the theory that we should all be evaluating everybody all the time (laughter). And like the Uber drivers, you can fill out an evaluation form of this event and people will collect them from you at the door. So with that, let's get started.

I want to start with Bill, who has, as I predicted, snapped into visibility. We were making jokes about your absence a moment ago. So Bill has been following public opinion around impeachment since before impeachment was a real thing. It made you skeptical of the undertaking early on. And so my question to you to get us started is what do the numbers look like now, how are they changing, and are you still, based on them, skeptical of the wisdom of the impeachment undertaking?

MR. GALSTON: Well, as I was sipping my morning coffee -- is this on by the way?

MR. WITTES: We don't have audio on Bill. Okay, let's try again.

MR. GALSTON: As I was sipping my morning coffee, a news flash from the *Washington Post* flashed across my screen and I thought, as the text for my remarks, I'd read the first two paragraphs.

As the House prepares to vote on two articles of impeachment against President Trump, Americans remain both deeply divided and locked into their positions over which course lawmakers should pursue, according to a *Washington Post* ABC news poll. Weeks of public testimony and days of rancorous committee hearings on the President's efforts to pressure Ukrainian leaders to investigate a political rival have had no impact on how Americans see the charges pending against the President.

That phrase, "no impact", sums up the gravamen of my brief opening remarks. This is the most remarkable example of the dog that didn't bark that I believe I've ever seen in all of my decades of watching public opinion.

As this effort began in September, to discipline my thinking I created a metric of three numbers that I would be looking at in order to determine the basic political underpinnings of the impeachment effort.

Metric number one, the President's approval rating. The President's approval rating has not changed since the beginning of October, has literally not changed.

Metric number two, support for the effort to impeach and remove the President. That number has not changed since the first week of October.

Metric number three, signs of bipartisanship (laughter) at either the public level or the elected official level, or both. Bipartisanship at the public level has actually eroded since the beginning of this controversy. The number of Democrats opposed to impeachment has diminished a bit. The share of Republicans in favor of impeachment diminished by more than a little bit. It's fallen by about half, as a matter of fact, from the low double figures to the mid single digits. And the evidence at the level of elected officials of party line crossing in response to the dictates of conscience or evidence, or what have you, is hard to find.

Now, let me conclude with a fourth metric, which I think is increasingly important. Having noted the positions that the American people and their representatives have taken, how likely are people to change their minds in the future if they haven't changed their minds in the past 10 weeks? Well, a survey that came out yesterday from the Quinnipiac organization asked the following question, is your mind made up or do you think you might change your mind. About nine in ten Americans say that their minds are made up and that there's no chance that they'll change their minds. And that number is about the same for Democrats and Republicans, a little lower for Independents, but not hugely lower.

And so my bottom line on public opinion is what you see now is what you're going to get. I think it's extremely unlikely that anything that happens from this moment forward is going to have an impact on public opinion that the past 10 weeks of hearings and public controversy have not. Does that mean that this effort is not worth undertaking? Well, it depends on the standards that you use of worth in

these matters. I have much to say about that, but for the purposes of this opening statement I will not say them. (Laughter)

MR. WITTES: But before we move on, I just want to probe you on one point related to this. You've chose October 1st as the relevant start date for this. These numbers and change metrics, at least the one favoring impeachment, look quite different if you say, use July 1 or August 1. And so I guess the question is why October 1, i.e., the advent and the public disclosure of this scandal rather than a longer wave on at least the impeachment question where you can say many, many more people support impeachment and removal now than they did when we were only dealing with the Mueller stuff or when we were talking about emoluments. Why shouldn't we see these questions as cumulative over time rather than sort of a discreet window within the period in which we've been talking about this particular Ukraine scandal?

MR. GALSTON: That's a perfectly fair question. And, you know, if you want me to lengthen out the optic, all of the change in public opinion related to this phase of controversy over impeachment, the Ukraine phase as opposed to the Mueller phase, occurred in the 10 days between September 23 and October 2. There has been no change since then. And so, yes, there were people who were moved by the first wave of information, the revelation itself. Those people a have not moved back. I think the relevant fact in evaluating where we are now politically, is that no other people net have moved since October 2. And my judgment is that they are unlikely to do in the next 10 weeks what they failed in the past 10 weeks. And they say they won't.

So I think the relevant political baseline for judging this entire episode is where we are right now, for better or for worse. And the idea that because there was a leap in the past there's going to be another leap in the future, I think is contrary to the evidence as I read it.

MR. WITTES: All right. Molly, we are now leaving the House tomorrow and going to the Senate. And so for those of you who do not know Molly, Molly knows more about House and Senate rules than just about anybody else, except for maybe Sarah Binder. And so walk us through -- there are a gazillion Senate rules that are possibly at issue. There are a few that are the pivot points on which this trial is going to contend.

So as you look forward to a Senate trial, what are the key rules questions on which we will have determined the question of what sort of trial we're going to see happen?

MS. REYNOLDS: Thanks, Ben.

So, I'll say one thing at the start about the House before we move to the Senate, which is that we'll know more in a few hours about exactly what the House debate on the articles is going to look like. In 1998, by comparison, the House spread its consideration of the Clinton articles of impeachment over 2 days, about 14 hours of deliberation. I don't know how much time we'll see, I don't know how many members will wish to speak. It is relevant that in this case the House has waiting for it after the articles of impeachment a probable vote on the trade agreement with Canada and Mexico, not to mention the fact that they would like to get home for Christmas.

So assuming that the House does approve one or both articles this week, then we will move over to the Senate. And as Ben said, we know some things about what a Senate trial is likely to look like, but there's a lot that we don't know. That's in large part because while the Senate does have some rules for impeachment trials that are written down on paper, they leave a lot of room for maneuvering between the parties. And we also simply don't have a lot of precedent on which to look back and think about how have other Senate impeachment trials operated. And they said that we have historical precedent, they've occurred in very different political circumstances than the ones that we have now. The level of sort of partisanship and polarization the current Congress is experiencing is quite large, even in comparison to where we were in the late '90s.

So in terms of sort of key things to watch, I would kind of put them into two categories. One is simply this notion that senators -- and I would say that Leader McConnell particularly falls into this category -- aren't big fans of procedural uncertainty. So there's some element of what is likely to be worked out in an agreement or try to be worked out in an agreement between Leader McConnell and Minority Leader Schumer that is simply meant to reduce the amount of uncertainty among senators about what's going to happen over the next several weeks.

So here I'm thinking about things like how much time will the House managers and the President's counsel be given to make their opening statements, if there are witnesses, how much time would they be questioned for, how long would closing statements last -- those sort of things. So very

mechanical logistical questions. I would be very surprised if McConnell and Schumer can't get to an agreement on something at least of that nature simply to reduce the uncertainty among senators. Again, Leader McConnell in particular likes to have control over what unfolds on the Senate floor. If you think back, for example, to the 2017 debate over healthcare repeal, one of the things that was so shocking to everyone about how that unfolded is that McConnell actually let something come to the floor and then just have the process unfold in front of the Senate with very little knowledge of what was going to happen. It's very atypical for him. So I expect that the very least, we'll get some kind of arrangement around scheduling. Senators aren't necessarily going to want to sit for a long periods of time on the Senate floor without having a sense of how long this might take, that sort of thing.

Beyond that, there are more substantive questions that are also I think open for potential agreement between McConnell and Schumer. And here we get into meatier questions about things like will there be witnesses, if there are witnesses, who might those witnesses be, when might we decide about who those witnesses are. So in 1999, for example, the agreement that was reached towards the beginning of the trial between Democrats and Republicans set up a process to kind of punt the question of which witnesses a little bit farther down the road. Schumer has indicated that's not his preference this time. He has put a request to McConnell for four specific witnesses and said he wants to resolve the question of witnesses before they begin. There is some reporting out this morning that suggests that Republicans are much more comfortable with a kind of Clinton style approach that would say we will have a vote later on whether to hear witnesses. Also the question of whether there will be new evidence not already in the record introduced. That was also a question that was dealt with during the Clinton impeachment trial.

And in the case of these more substantive questions, we're really looking at what are 51 senators willing to support. I think to me it's pretty clear that McConnell doesn't have the votes of 51 Republicans in his own party for either no trial whatsoever -- that was something folks floated for a bit and then he, you know, came out and said that the rules required the Senate to hold a trial, which I took as a sign that he didn't have the votes to not hold a trial. I think it's also clear to me that he doesn't have 51 votes to only hear from sort of the most controversial of Republican favored witnesses, so the kind of

Hunter Biden types. If he had the votes for that kind of scenario, we would probably know it by now. And so then the question is what might he have the votes for. And I think that really remains to be seen.

So for me it really comes down to some elements of the rules that need to be -- we need some more clarity around for simply logistical uncertainty management reasons, and then some of these more substantive questions truly come down to what are 51 Senators willing to vote for.

MR. WITTES: All right. We are going to return to the counting to 51 game in a moment. But, John, before we do, talk to us about the incentive structures facing both parties with respect to the competing calls of speed and thoroughness in this. You know, with both parties you have this kind of tension between a sort of more capacious presentation of the evidence, whether the evidence in question is getting John Bolton and Mick Mulvaney and Rudy Giuliani to give testimony that they refused to give in the House, or on the Republican side, you know, actually going full Hunter Biden and kind of trying to defend the President by kind of justifying the proposition that his interest in an investigation in this area was reasonable. So you have that on the one hand.

And you also have the desire on the part of each party to get it done quickly -- on the Republican side because it's embarrassing for the President to be in an impeachment setting, and on the Democratic side both because there's a lot of residual fear of doing impeachment, and because a bunch of presidential candidates are going to be stuck in that room for as long as this goes on, not being able to campaign in the month before Iowa.

So is it clear that ultimately Democrats support a longer trial and Republicans support a shorter trial? And what are the sort of competing incentives that both parties face on that question?

MR. HUDA: Thanks, Ben.

I think you're right that there are members of both parties within the Senate who have incentives for a speedy process and have incentives for a slower process. I think on the whole though -- and I have to disagree with Bill on one point, about this idea that there's no bipartisanship -- I think there's a lot of bipartisan agreement not to turn this into a circus and not to drag this out for an extraordinary amount of time.

Now, the reason why Democrats and Republicans would prefer a speedier trial, but still a trial nonetheless, is the case for different reasons. But ultimately -- and as you articulated in the question, Ben -- there is really not much of a win Democrats or Republicans for this to be a two month process.

For the Republicans, there are risks the longer that this drags on. One, something new could come up. I think a lot of Republicans recognize that while it is effectively a foregone conclusion that the President will not be removed from office, they're probably about 22 votes short of having a President Pence. The reality of this presidency is that it is wildly unpredictable. I think there are a lot of Republican senators who frankly have no idea what the President said and to whom and what those actions might actually create within the party. And so the risk of removal still exists, just not within the information and evidence that we currently have. And so the longer that this drags out, the more of an opportunity there is for the President to put his foot in his mouth (laughter), to go on Twitter, to say something that Republican senators ultimately deeply regret the President having the opportunity to say. And while surely until Election Day, and probably until his dying breath, the President is going to be talking about impeachment and the impeachment trial, the quicker it is off the front page, the easier it will be for the President to pivot to talking about other issues, whether they are substantive issues, whether they are distraction issues. The less that the President talks about impeachment, the better it is going to be for him and also for the Republican brand, for those senators who are in vulnerable states, for would be senators who are fighting uphill battles, and the battles that will rage within the House.

On the Democratic side, as Bill said, the needle isn't moving much from where we're at right now, and that's certainly true barring some new explosive information. And so for Democrats, the trial is over. We know how this is going to end given what we know now, and so dragging this out doesn't benefit them in a significant way. And, if anything, wrapping this up can benefit them because they can go back on the campaign trail. As you said, Ben, you don't want to keep four or five presidential candidates off the campaign trail to sit through a long Senate trial.

But also the candidates can go back on the campaign trail and say, listen, the reason we have a corrupt man in the White House is because Republicans were complicit in that corruption in keeping him in office. That's a talking point you're going to hear from a lot of Democrats, from presidential

candidates, from Senate candidates, to House candidates, and Democrats across the country. They can't really make that argument wholly until the President has been acquitted.

And I think too the politics of this is baked in now. You know people will lose their seats over this, surely. I think one of the most remarkable things we've seen over the past day or two days are the number of moderate Democrats who are going fully on board with impeachment. And I think the reason for that actually has nothing to do with impeachment. I think the best lesson to draw this from is from the Affordable Care Act vote. You saw a lot of moderate Democrats vote no on that law. And a bunch of them still lost their seats. Heath Shuler is perfect example of this. And so I think a lot of these moderate Democrats understand they are going to be branded with democrats impeaching the President whether they vote for impeachment or not, in the same way that moderate Democrats were branded with the passage of the Affordable Care Act whether they voted for it or not.

And so what you have now are a bunch of Democrats who are saying politics be damned, maybe I'll be a one-term congressperson or a two-term congressperson, maybe I'll lose my seat over this vote, but I'm going to vote in the way that I see is principled. And they're voting to impeach. And so for Democrats, like I said, because the politics of this is decided, there's no reason to drag it out in the off event that something new happens and something dramatic changes.

And I'll end with this by prefacing all of that to say I don't know what would have to come out to move those 22 or 23 Republican senators. I would have thought the allegations about Ukraine would have been enough. They're not. And I think one of the most honest that the President ever said was that I could shoot someone on Fifth Avenue and I wouldn't lose any support. I think he's absolutely true. I think Lindsay Graham would start trying to pass laws about murders on Fifth Avenue being legal (laughter). And ultimately I don't think we have even in our capacity to think a situation or a set of behaviors that will come out where enough Republican senators will defect and vote to remove the President.

MR. WITTES: All right. So, Sarah, let's zoom way out. We're going to have this vote tomorrow, we're going to go to the Senate, we're going to have whatever process people can come up with and agree to or climb their way to 51 to get to in the Senate. At the end of the day, is this

impeachment process going to reflect well on the Congress of the United States, or is it going to reflect badly on the Congress of the United States?

MS. BINDER: Well, thanks, Ben. (Laughter)

So before we got 36,000 feet, I think you should clarify that person who gets shot on Fifth Avenue will still also vote --

MR. HUDA: Yes.

MS. BINDER: Okay. (Laughter) Let's just be clear. Let's just be clear.

So I think it's important just as we start here to recognize the Senate is not a healthy institution. And impeachment is not the cause of that. Impeachment and the way it's been handled so far probably reflects the difficulties in that chamber. So maybe it would be helpful if we think about what the dilemma is here for the Senate and how that will shape what we think about the Senate coming out of here.

The immediate problem for the Senate is just this intensity of partisanship that has been driving and rising for two plus decades does not sit well with the history of that chamber as at least a place where individual senators can make a difference. And there is some notion in the past of some collegial decision making environment. That is long gone. And if we think back to the Senate during the Clinton impeachment trial -- and we had these notions that it was more bipartisan, well, that's probably a little rosy. I don't think the Senate in 1999 was terribly bipartisan either. They were able to sort of come together behind closed doors and work out an initial set of agreements on how they're going to run the trial that 100 senators votes. But as the process went on, it devolved into more partisan votes.

So that said, partisanship in the Senate has probably, if anything, by our metrics gone up exponentially since then. Far more ideologically polarized, just more partisan, just partisan team playing that goes on in the chamber. And why is that important for how we think about the Senate here? That's a chamber that's not been legislating. And that doesn't mean that it's simply just not taking up bills that are coming from the House side, from the Democrats, it's not really doing much on the issues that Republican senators care about, prescription drugs, several other questions that they've been percolating around. So the chamber is not working. Impeachment is going to be sort of -- my guess is sort of a sore point going forward, and the related problem here for the Senate that we'll see during impeachment and after, is just

it's a more centralized institution than it has been in the past. And this isn't Nancy Pelosi style centralization where the rules empower the speaker with a strong majority to act how the majority wants, this is a majority leader who had his rank and file Republicans defer to him. They don't challenge him, they really give him leeway to make these sorts of decisions. And in that environment the Senate is not really going to speak here. They're not going to debate the question that I think there was some debate over 20 years, is if you're going to -- if he's not going to be convicted, what does fairness demand. That's not the question that's going to be asked in this type of a (a) partisan and (b) highly centralized institution.

The one thing to keep our eye on here, subject to the caveat that John has laid out, that everybody I think really does most want this to disappear quickly, these are slim majorities, and slim majorities can't command and control. And so this leads to the uncertainty that Molly was referencing, that slim fracture is -- very slim fractures matter in slim competitive majorities, even slim partisan majorities. And we've seen that in the House, right, these divisions between the centrists from the purple or swing districts, what were they going to do. Them coming out in favor of an inquiry at the end of September really launched the impeachment inquiry. So those fractions matter, they shape the nature of the articles, the slim skinny impeachment that's coming out of the House. And we think they might matter in the Senate -- at least at the margins. Does McConnell really have 51 votes to really streamline this with no witnesses at all? Or will there be some residual resentment or resistance for Republican senators who could side with the Democrats on even small issues about witnesses?

My guess is in the end they fold because this is at the end of the day a centralized, pretty partisan institution. And it doesn't seem to have the will to make its own stamp on these questions.

And so I think at the end we will almost -- I don't want to say we're going to forget about impeachment, but the Senate will move on to confirming judges and onto the election.

MR. WITTES: All right. So let's talk about those slim majorities and let's deal with the easy one first, which is the House majority, which is less slim, first of all, and generally a little bit more disciplined than the Senate. So I'm going to throw this open to anyone who wants to make a prediction. How many Democrat defections are we going to see tomorrow and how many, if any, Republican defections are we going to see tomorrow? (Laughter)

MS. BINDER: Well, I stopped making predictions on November 8, 2016.

MR. GALSTON: Yeah, but you started again today.

MS. BINDER: Yes, I did. Perhaps one or two Democrats -- Collin Peterson from Minnesota and --

MS. REYNOLDS: The fact that Jeff Van Drew from New Jersey basically looked at his political circumstances and said that the best thing for me to do is change parties I think reflects just how strong the incentives are for members to stick with their parties on this.

And to a point that John raised earlier, I think that in a lot of cases, many of these Democrats from more vulnerable districts, once they went to the floor and voted to sort of formally open this particular state of the impeachment in late October I guess that vote was, that then meant that regardless of what they did the rest of the time, you know, if someone is going to run an ad against you saying you voted for impeachment, there's evidence that they can point to saying you voted for impeachment.

So once you've done that, I think it makes the sort of choice -- it changes the politics of the choice that those folks have to make this week.

MR. GALSTON: I think the right number for Republicans is zero.

MR. WITTES: Okay, so we're all predicting essentially a party line vote with minimal Democratic defections and no Republican defections, other than Justin Amash. Is that --

MS. BINDER: Who is no longer a Republican.

MR. WITTES: Who is no longer a Republican. He already defected.

All right. So my question is to go back to Molly's earlier comment that McConnell does not feel good about having 51 votes on these basic procedural questions. Why not? You know, given that the House caucus is perfectly unified, why shouldn't we assume that the Senate Republican caucus will be whatever noises Mitt Romney might make or Susan Collins might make? When it actually comes down to a motion to dismiss or a motion to exclude witnesses, the Republicans are going to behave with the same discipline in the Senate that they are behaving in the House. And, in fact, McConnell will have the votes and therefore the trial will be extremely truncated and actually he will not have much incentive to make a kind of deal because he can count to 51 and Schumer can count to 51 and they both know with

some reasonable degree of confidence that McConnell is going to have the votes to make this thing go away.

Discuss. (Laughter)

MR. HUDA: Well, personally, I think one of the big differences is that there are a set of Republican senators who are not afraid of the President. I don't think there are many House Republicans who can say the same thing. The fear I think -- Elise Stefanik is a perfect example. The fear of what the President can do via Twitter to disrupt your political future within the Republican Party is significant. For Susan Collins, for Lisa Murkowski, I think they look at it as the opposite, that if they do not approach this in a reasoned and fair way, there will be a lot of Alaskans and a lot of Mainers who decide that that is not the person or the type of person they voted into office. It's important to remember Lisa Murkowski is a United States senator, Susan Collins is a United States senator because of a lot of moderate and Democratic votes. And they are looking to depend on those, particularly Susan Collins, moving forward. I think you might say the same about Cory Gardner, although by most accounts Cory Gardner's race is over. But he may be going through the same sort of thought processes.

For Mitt Romney, Utah is a very different place. It is a deeply conservative state in which the President's job approval rating is not as high as you would expect given how conservative it is. Mitt Romney is loved by the State of Utah in a way that Donald Trump is not. And so it gives them that leverage to buck the President, ultimately vote to acquit him probably, but to approach the rules and the procedures with which a Senate trial will proceed in a manner that is less Republican evangelical than we've seen coming from House members and from some of the President's biggest cheerleaders in the Senate.

MR. WITTES: All right. So there is a great statement of the thesis that Chuck Schumer can count to 50, but it is not 51, right, because he's got 47 votes, you've just added 3 and you've said well, maybe Cory Gardner. But maybe is not good enough. And so in that formulation he needs the chief justice to break a tie in his favor. Are there any other Republicans who you look at and say I can see a realistic scenario in which this is a block so that Chuck Schumer doesn't actually need John Roberts to agree with him? Or is this really you can count to 3, maybe you can count to 3 3/4, but you're not getting to 4?

MR. HUDA: I was going to say, you know, there's rumblings about Lamar Alexander, my mild senator. I don't think he's going to buck the party line in a significant way. I mean it would make sense if you're going to get that. Last vote that it might be him. I think it's tough. But I think too Chief Justice Roberts is not as predictable of an actor in this as you would expect. He's going to take this role in a very serious way. I think he's going to despise having to do this, but I think he's not going to just be someone who kowtows to the President and the President's desires and what Mitch McConnell wants. I think he's going to think about fairness, he's going to think about this truly as a trial and to just be a political theater.

MR. WITTES: Yeah, I want to take that point a step further, because I actually think John Roberts, to the extent he is called upon to actually make substantive judgments -- and there are two ways that that could happen -- one is that under the rules he gets to rule as an initial matter if he chooses to or he can simply refer things to the Senate. But also in the event of a tie vote in the Senate, he casts a tie breaking vote.

And I think one thing you can predict about John Roberts is that first of all, if he has to cast a substantive vote, that is a substantive vote on one of these procedural questions, he will make it on the basis of the closest thing to law that exists, which is the standard -- there is no law here, but there are precedents in these impeachment trials. And he will not be making votes on the basis of like whether he wants this trial to go away. If there's a witness relevance question, he will actually make a relevance assessment. And so there will be one person in there -- now, you may disagree with that -- but there will be one person in there that will be consulting very different bodies of material than their home state public opinion and their party's interest.

Okay, does anybody want to make a case that there are more Republicans at play in the Senate on these procedural matters than this very small number? And does anybody want to make the argument that if there isn't, this is a constellation that isn't very favorable for Mitch McConnell at the end of the day? He's got to break off one, Schumer needs all three, and the Chief -- like it seems to me that's a substantial advantage that McConnell has right now going in.

MS. REYNOLDS: So I would say a couple of things. One is that I think the possibility that we end up where you started this question, Ben, with every sort of Republicans all voting together

and Democrats all voting together and this not being a particularly long or deliberative trial is a real possibility. I don't think we're there yet, because I think if we were, we would know. Like I don't think --

MR. WITTES: And break that down. How would we know?

MS. REYNOLDS: I don't think McConnell would be going on Fox News and saying, like, we're not going -- like saying the kinds of things that he said about how we have to have a trial, I'm going to talk to Schumer. I think that if I -- there was reporting maybe last week or the week before that Ted Cruz had gone to the White House and told the White House negotiators that there weren't 51 votes for the kinds of witnesses the White House was asking for.

So I think that we would have a better sense of McConnell's strength if it was all there.

MR. WITTES: In other words, he would be doing the full Merrick Garland? There's not going to be a trial with witnesses, there's not going to be a vote on Merrick Garland, right? He's perfectly capable of being blunt.

MS. REYNOLDS: Yes. And I think that we would see something much more like that, if that's where we were. And maybe that's where we end up, but I just don't think that's where we are right now.

In terms of the question of, you know, who else might be in play, there are a couple of other folks who are also retiring who people have talked about, people like Mike Enzi, who are strong partisans, but also have been around for a long time, have kind of a different sense of the Senate.

I think another real possibility to contemplate is the idea -- and I've referenced this before -- that there is -- and Sarah referenced it kind of comparison to '99 -- is that there's an initial agreement that basically says oh, we're going to have another vote later on which witnesses we would actually call and that that -- and so they start the trial, there are opening statements, and then there is ultimately another vote on witnesses that does just break down along party lines.

The Senate is, particularly in recent years, apt to set up situations in which there are votes that everyone knows is going to fail, but people want to be able to say I had the vote. And so I could imagine a scenario, again, where they start the trial, there's a subsequent vote in the middle of the trial on sort of which witnesses to call that does just break down along party lines.

MR. WITTES: So, Bill, if you were Chuck Schumer, what is the optimal trial from your point of view? Is it (a) presumably not one where you just do opening arguments and closing arguments and no presentation. You stipulate to the record and then you vote. But I could make the argument that it's you present the entire case in a narrative format, including all the witnesses that appeared before the House, you bring back Yovanovitch and Fiona Hill and you do the whole presentation that took place in the House, plus the witnesses that did not take place in the House. And you really treat it like a litigation.

I could also see the argument that actually repeating stuff that already went on in the House is suboptimal and all you really want is the stuff that you didn't get in the House, the Boltons, the Mulvaneys, and the Giuliani, if you can taunt him into testifying. (Laughter)

What is, from your point of view, the optimal House presentation or Senate presentation for the House managers?

MR. GALSTON: Well, I agree with Chuck Schumer on this point. I think his opening bid reflects his judgment as to what best serves the interests of the Democratic Party as he understands those interests, and the Constitution and the country as he understands those interests. And I don't think there's a lot of --

MR. WITTES: And walk us through what that was.

MR. GALSTON: Well, the essential point that he made was that there are witnesses that the House did not hear from who have the capacity to testify directly as to what the President was saying and doing on the key and most controversial items. And that the record will be incomplete and perhaps distorted in the absence of their testimony. That's the case he made. And I think he would be -- this is just following on a point that you made rhetorically, Ben -- I think he would be very ill advised -- and I don't think he's even contemplating this -- to put the country through a rerun of the House hearings. There is no appetite in the country for that. The level of interest in what has happened in the past 10 weeks -- I just saw a very good survey on this point -- is much, much lower than the level of interest in the comparable phase of the Clinton proceedings, by a margin --

MR. WITTES: There is less sex. (Laughter)

MR. GALSTON: Well --

MR. WITTES: So far.

MS. BINDER: Depends on the meaning of --

MR. HUDAQ: I see what you did there.

MR. GALSTON: Well, I could tell you stories about my teenage son and the Starr report, but in the interest of the dignity of this proceeding and also his own reputation, I think I will suppress them.

So, yes, fair enough, but the idea that people are going to get more interested the second time around strikes me, and I suspect strikes Senator Schumer, as farfetched. He has declared what he thinks is optimal and the question is how much of it will he be able to get.

MR. WITTES: All right. So now this brings me to what I think is the sort of central conundrum for -- if you think about this like a trial lawyer. I agree with everything Bill just said. There's no point in repeating what you've already done. On the other hand, if the only thing you have is what's new, which is to say the witnesses you haven't heard from, then you are constructing an entire trial out of interrogating for the first time witnesses who you have not had the opportunity to interview. And any trial lawyer will tell you, that is a super fraught proposition.

So, Sarah, this is like the dog that catches the car situation. Let's say Schumer gets what he wants, as Bill hypothesized, I think correctly, what he wants and we have opening statements and then we have several witnesses who they've never interviewed before who are to one degree or another loyal to the President and you have very little opportunity to reality check in real time. You know, it's live, in public, there's no deposition before you do the testimony in public. Does this blow up in the impeachment managers' faces?

MS. BINDER: Well, that's certainly obviously a potential difficulty for sure. (Laughter) I think I would point to two things first.

So in '99, with the agreement on the witnesses were for videotaped I think -- I don't know technically -- depositions or interviews.

MR. WITTES: Yeah, they were depositions.

MS. BINDER: Which then got interspersed and shown on a video screen in the Senate. I don't know who let that happen, but -- I want to say overcame their technical difficulties and you saw a little bit of Monica Lewinsky. So there is some ability to sort of vet what would go on there.

But the second question is in fact whether Bolton -- but I think Mulvaney in particular -- would actually answer questions of the sort that the Democrats want. And I'm not sure why Mulvaney would suddenly decide that he -- part of a double negative -- but why would decide that he was no longer constrained by the President's admonition that he's got absolute immunity, or whatever the hocus pocus of the -- I'm not a lawyer, I don't know. The type of excuses that and reasons that the White House staff were given for not testifying.

So the Senate impeachment rules are pretty clear, they give some power to the Senate and the sergeant at arms to -- not arrest, but to compel witnesses who are called, but I don't know, you can't make them talk. So I don't know whether you just end up in another legal dispute, in which case the problem is obviated because they're not going to actually give you what you want.

MR. WITTES: Please, Bill.

MR. GALSTON: I mean this is --

MR. WITTES: And then, John, just jump in.

MR. GALSTON: Right. You know, to the best of my knowledge -- but I'm stepping way outside my comfort zone now in what I'll call the Lawfare zone -- to the best of my knowledge, there is an unresolved controversy on the following point. A witness goes before the Senate in an impeachment trial. The witness refuses to answer a question, citing executive privilege. Query, does the Senate in its impeachment trial capacity serve as the supreme arbiter of the question of executive privilege, or is it appealable to ultimately the Supreme Court of the United States?

MR. WITTES: Or I think more likely is it a assertible in a district court and subsequently appealable --

MR. GALSTON: That's what I mean.

MR. WITTES: Yes, that is not merely an unresolved question, it's a question of first impression. And it would present in a particularly interesting fashion, which is the witness in question would have been ordered to testify -- to answer the question by the chief justice of the United States, who would then -- and that order would then be potentially subject to challenge by a mere district judge somewhere else. And so it's a situation that could very much arise and it's a really interesting question on which there is essentially zero law.

But one thing before I turn it over to John. Sarah mentioned Monica Lewinsky and I just want to say that Monica Lewinsky had a truly fabulous tweet on this subject the other day. It says newsflash, you can talk about impeachment without tagging me. #curtsies. (Laughter)

John?

MR. HUDA: So to pick up where Sarah left off, I agree with everything that Sarah said. I can't imagine a scenario in which you have these witnesses come before the Senate and suddenly the President waives privilege or suddenly they have a different change of heart. Ultimately, they are going to be questioned by House managers, and so it would be the same political setting as if they were appearing the Judiciary Committee or the Intelligence Committee.

That said, if, I don't know, everyone hit their head that morning and suddenly Mick Mulvaney was going to be forthcoming in a Senate trial, I think not having the time to examine that witness in advance is surely problematic. Any attorney would want that ability to talk to a witness in advance. But I don't think it would be as devastating as it might be in other settings because that would underestimate the capacity of particularly the House Intelligence Committee's counsel and their preparation for such an event. I imagine there were discussions about what will we ask if X appears before our committee. There may be questions already drafted, but certainly conversations were had, I'm sure. And I think what we saw, again particularly the questioning before the Intelligence Committee from the majority staff, these are serious professionals who did a really effective job at getting through the ideas and drawing out the information from the witnesses who did appear.

So I think more time would be helpful, but I think what we saw during the House part of this process would suggest that impeachment managers and counsel would be more than ready for Mick Mulvaney to appear before the Senate.

MS. REYNOLDS: And just one thing I would add that we haven't talked too much about is that Schumer's letter to McConnell is not just a request for four witnesses, it's also a request for additional documentary evidence, particularly around the decision to withhold the security assistance from Ukraine and how at the decision was made at OMB and the State Department.

So to the extent that we're talking about things that might be negotiated, we're also talking about documents in addition to talking about witnesses.

MR. WITTES: Yeah, just for the record, I actually disagree that if these witnesses were to show up that they would likely simply refuse to testify, for two reasons. The first is the issue that Bill raises, which is that I think it is a very different matter to refuse to testify citing executive privilege in front of what is clearly a highly partisan House investigation than to defy an institutional call from the Senate as a body with the chief justice presiding. I think that's a very -- the optics of that are extremely different.

But the second reason is that it is possible to frame questions, particularly to Mulvaney, that would be very difficult to assert executive privilege about, not least because he waive executive privilege by having a press conference and talking about it. But even if you exclude that, you know, you could ask him did you communicate OMB's -- did you order OMB to put the hold on this aid and he would of course have to say that he did. And that's not covered by executive privilege. Then you can ask him why. And the assertion, I cannot answer that question because of executive privilege is itself very damning.

And so I actually think once you have them up there, there's a lot of that you can make that you can't make if they're not there, for which reason I really expect that the central question will be over whether they show up at all, not what they say once they're there.

All right. Let's go to audience questions. As per usual, please introduce yourself, please wait for the mic, please frame your question in the form of a question. I don't see any roving -- oh, there's a roving microphone. And the way we do this -- put up your hand, Gary (laughter) -- no, he raised his hand -- and Gary traditionally gets the first question because he is such a loyal attendee of Brookings Events. And while Gary is posing this question, if you flag me I will flag you down and send the microphone your way.

Please.

MR. MITCHELL: Thank you very much. I'm Garrett Mitchell. I write the Mitchell Report.

What I've been thinking about in listening to all of this is what the sort of narrative will be when this is over, operating on a couple of presumptions, which is that it pretty much goes the way we pretty much think it's going to go, and we know what Trump will do and how he will play it, et cetera. But I'm interested to know whether we are dealing with an actual -- whether this is a moment of something

that could be called constitutional crisis or some other phrase of that sort that will capture this experience that we've been through and the way we came out of it.

I noticed that Bill referenced earlier Arthur Conan Doyle I think it was with the dog that didn't bark, but I'm interested whether from a substantive point of view, is this a constitutional crisis or is this something less?

MR. WITTES: Who wants to take that? Crisis, sub crisis?

MR. GALSTON: I'm not sure what the right noun is, so let me give you a sentence or two. If you look back to the actual founding period and the presumptions underlying the constitutional framework that James Madison helped conceive and everybody else helped perfect, the presumption was that the interests of individuals would be linked to the interests of the institutions in which they served. And there's explicit language to the effect that that is how tyranny is warded off. Because people are located in different places, institutions have different interests, they will associate themselves with the powers of the institutions in which they reside. And there will be many bumps along the road, but the dangerous concentration of power will be averted. That was the presumption.

None of that took into account the possibility of a party system, which the Founders neither expected nor wanted, or the kind of polarized party system that in effect nullifies institutional loyalties and subordinates them to partisan loyalties.

Is this a constitutional crisis? I don't know whether that's the right term, but it is a constitutional moment that reveals the ways in which partisan polarization can nullify and overturn the basic presumptions on which our institutions were assumed from the beginning to operate. And it is a moment surely of deep reflection because the impeachment process is reduced to a nullity under these circumstances.

As Sarah pointed out earlier, the traditional functioning of the Senate is subverted under these circumstances. And increasingly, the judiciary is swept up into this polarized vortex.

So the kind of polarization that we're now experiencing is a threat to our constitutional order as we have traditionally understood it. Where we take the argument and the politics from there, I don't know, but that's I think the analytical point of departure.

MR. WITTES: The gentleman in the back.

MR. COCHETTI: Yes, my name is Roger Cochetti. I work with private equity in the technology sector and claim no expertise or great knowledge on this subject. But the topic that I find most perplexing, and you all have discussed a little bit, the topic of executive privilege. But I'm hoping someone can expand on the very important aspect of this, and it has to do with the second article of impeachment.

As I understand it, the Judiciary Committee is asserting that the President's blanket claim of executive privilege is itself an impeachable offense. And the President asserts that if I believe that a subpoena from the Congress is unconstitutional, whether it's 1 subpoena or 1,000 subpoenas, I have an obligation to refuse to comply with an unconstitutional subpoena. And the way to address this is not to declare that my refusal is impeachable, but rather to have the courts resolve the conflict.

So if I understand the two sides, that's what -- just from press reports, I understand they're saying. The questions I have are, first of all, was the assertion of executive privilege considered an impeachable offense in any of the three previous impeachments, Johnson, Nixon, Clinton? And, secondly, if the assertion of executive privilege is itself an impeachable offense, whether it's 1 subpoena or 1,000 subpoenas, does that not create a circumstance in the future when any president who asserts executive privilege can be accused based on precedent of committing an impeachable offense by refusing to comply with a congressional subpoena. And easily the congressional committee would know we just don't submit 1, we submit 1,000 subpoenas that are all similar to each other so we can make the case that this is blanket, not just an individual.

So I find the whole subject perplexing and I'm hoping you guys can expand a little bit on this I think fairly important topic of what are going to be the consequences of the classification -- the whole second article.

Thank you.

MR. WITTES: So I can address that, unless one of you wants to.

So first of all, it's an excellent question and the parameters of the notion of obstruction of Congress is, as your question suggests, a genuinely perplexing one, that there is no -- I think no clear doctrinal answer to. So let me give you some guide posts as to where the answer will lay.

First of all, nobody but except the most extreme congressional would argue that the assertion of executive privilege itself is an impeachable offense. And it's not the number of subpoenas that's the issue, it's the -- so what is the issue? The issue is the blanket refusal to cooperate with a duly authorized congressional investigation. And so one example of that is the refusal to comply with lawful subpoenas or even to really respond to lawful subpoenas.

Now, you're correct that one way to respond to that would be to move to enforce on an individual basis each of these subpoenas. The problem with that from a congressional point of view is each one of those is an enormously time consuming undertaking and enormously labor intensive undertaking in the face of quite clear doctrine. So there is simply no case law for the proposition that if Congress wants to investigate something, the President gets to say I don't really accept that you have the due authority to conduct this impeachment investigation, therefore I'm not going to cooperate at all. And so the congressional position here is there is some level of blanket refusal to engage our authority that is an affront to the nature of the authority itself, and thereby obstructive in exactly the sense in which, you know, a corrupt obstruction of justice is a crime.

And so where one bleeds into the other, really unclear. And I actually agree with you that there is room for mischief if you really establish the doctrine that noncooperation with congressional investigations is impeachable. There is room to abuse that. I think this is a sufficiently outlined case that this would not -- in my view is not an abuse, but could it be used to sort of carve out doctrinal space for sort of abuse of impeachment? Yeah, I think it probably could.

And then in answer to your specific question, has obstruction of Congress been part of past impeachments, the answer is yes. It was a component of the Nixon impeachment articles on somewhat the same theory actually. And there was an obstruction of Congress article against Clinton on a more expansive theory that he had frivolously asserted privilege, which this case is more dramatic than that. Congress voted that impeachment article down. It was passed out of the Judiciary Committee, it was not passed on the floor.

Ma'am?

QUESTIONER: My name is Ann Sulkofsky.

In today's *Washington Post* I read an article by a constitutional -- buy a Harvard professor who specializes in the Constitution and he made the statement that there's no constitutional timeline after an impeachment has been reached to send it over to the Senate. And in today's environment it might be better to leave it within the House.

Now, what is your opinion of the likelihood of the House holding onto it for a while and what about the wisdom of doing so?

MR. HUDA: I'll start. I think there's no wisdom in doing so. I think it's a foolish argument, frankly. I don't understand how someone would play through the politics of that and see some win for Democrats. As we've talked about now for 70 minutes, there is little that is changing things right now, there is little likelihood that the House, by sitting on articles of impeachment that have passed the full House and trying to restrict them from going to the Senate will somehow move heaven and earth and bring all new information and new witnesses to come to light.

And so all that does is allows Republicans to stand up and say first the Democrats created a witch hunt and now they won't allow the President to have his day in court. It is a political disaster for Democrats to do that and I think it's disastrous for advice to be peddled by snake oil salesman, frankly. (Laughter)

MR. WITTES: Anybody else want to comment on Larry Tribe's argument? (Laughter)  
No, I'm just flagging it for the audience.

MS. BINDER: Like the game of hot potato, Nancy Pelosi is not holding on to the tubers, right. The whole point of packaging it with end of the year spending and trade deals is so that we can just move on.

MS. REYNOLDS: But I think that as we've seen more and more of the House Democrats in vulnerable districts say they're going to vote for the articles, the more I'm confident that, you know, Pelosi has said to them we're going to do this, we're also going to do these other things that Sarah has just referenced, and then impeach -- we will have fulfilled our constitutional responsibility and then it becomes the Senate's constitutional responsibility.

MR. WITTES: Yeah, everybody wants to get rid of this one.

Marvin?

MR. KALB: Marvin Kalb, Brookings.

Ben, you raised the possibility that the President could after a decision say I'm not going to live with that, I'll go and do my own thing. In the search for precedent, when you're dealing with impeachment, that may prove to be a fruitless enterprise. He can determine what it is that he wants to do depending on how he feels, depending on what advice was given to him that morning.

So where in the U.S. government and who in the U.S. government has the power established at this point to say to the President you must obey a certain rule that we are going to reach? Where is that person and where is that part of the U.S. government?

MR. WITTES: So I'm not entirely sure I understand the question. Do you mean if the Senate were to vote to remove him, who's the person who says you must leave? Or do you mean if there were a court order to comply to produce evidence, who's the person who says you must comply with that order? Like what's --

MR. KALB: A variation of all of that. But at the end of the day somebody says you are out of power and he says no, I'm not, and who then says yes, you are.

MR. WITTES: All right. So let's take the pure case of that question. And if you could give the mic to the woman with her hand up over there. Yeah, I gotcha.

Let's take the pure case of that question, which is the election that he refuses to accept the results of. And I think all of these questions are ultimately variants of that one. And I actually think that one has a pretty neat and simple answer to it. So imagine the situation in which the president loses, the president does not concede defeat, the secretaries of state of the respective states certify the electors, pledge to the other candidate. I don't know if you're an Elizabeth Warren fan or if you want the Pete Buttigieg era to begin, you have your slate of electors. And then the Electoral College meets and it meets sometime in December -- I think December 12 -- and the electors cast their votes and that vote is the election. And at that point, the person who wins that vote actually is constitutionally entitled to take the oath of office. And when that person takes the oath of office -- well, notice that all of this is automatic and does not depend on Donald Trump's consent -- when that person takes the oath of office, that person is president and is entitled to have the White House cleansed (laughter) of alien presences that are not entitled to be there. I mean at that point he's trespassing.

Now, the more complicated question is --

MR. GALSTON: Wait, then there's one more step, the Congress has to certify the electoral votes.

MR. WITTES: Correct.

MR. GALSTON: that's the one step where there can be challenges that come up.

MR. WITTES: There can be challenges to that. But there is a great deal of automaticity in -- at least in an election where the result is actually clear, you get much more complicated situations where you have a Florida-like situation where there's actually a doubt, right. But in the case in which there's no doubt but the president simply refuses to accept it, there's a lot of automaticity to it. But the much more difficult question is a court order that the president sitting in his capacity as president doesn't want to accept. And that, you know, the backstop is ultimately the impeachment process and ultimately the courts, which supposedly have neither force nor will, but in fact have a lot of both soft and hard power.

Yes, sir.

MR. MURRAY: My name is Don Murray; I'm writing a book about Adlai Stevenson and the former senior lobbyist at the National Association of Counties.

Newt Gingrich, when he took over GOPAC from the governor of Delaware, du Pont, turned it into a wedge issue at the grass root level. His appeal was a wedge type approach. He talked about abortion or people taking your guns and so on, immigration. The number of rural counties in the United States defined by the Census Bureau as less than 50,000, is 2,400. It could mean the difference in a state like Pennsylvania where the President won Luzerne County, which was majorly a Democratic county in Pennsylvania, to everyone's surprise. The coal mining place.

So in terms of appealing to rural people, Gingrich ignored what good government stands for by getting rural --

MR. WITTES: Okay, we need to get this to a question, sir.

MR. MURRAY: Okay, yes. The question is, instead of talking about getting rural counties to work together, to intergovernmental agreements, though, for example, indigent defense. You could have a public defender ride several counties and provide competence services where they can do it alone.

MR. WITTES: Sir, I'm going to have to ask you to wrap up please.

MR. MURRAY: Okay.

MR. WITTES: We need a question.

MR. MURRAY: The question is, what advice would you give to the Democratic Party in dealing with rural America?

MR. WITTES: All right, that's a little bit far afield of the subject today.

So, ma'am?

MS. McCANN: Yes, my name is Eva McCann. I'm with Spectrum News.

So this morning on the Senate floor we heard the Senate majority leader completely knock down Senate minority leader's request to hear from these witnesses. I'm wondering if it looks there is going to be an acquittal in the Senate, was Speaker Pelosi's concerns of President Trump sort of baiting Democrats into impeachment, did that materialize? And by moving forward with impeachment, will Democrats lose the House, Senate, and the presidency?

MR. WITTES: Bill, give us a -- or whoever wants to -- I mean there was a time when Democrats were really afraid of impeachment. Now Democrats seem a lot less afraid of impeachment. My question is, are they right to feel less afraid of this. And as the question reflects, have they been baited into a situation where they did precisely the thing that you've been warning them would be potentially a very dangerous thing for them to do?

MR. GALSTON: Look, from a strictly political standpoint, I think Nancy Pelosi was right the first time, and then her hand was forced. It is easy to list House Democrats who could lose because of the proceedings that are now unfolding. It is much harder to list House Republicans who are going to lose because of these proceedings. It's all up for the Republicans and it's all down for the Democrats in the House of Representatives. And Pelosi understood that from the start.

I do not know what the net effect of this is going to be, but let me share with you I think a reasonable evidence based fear. The midterm election of 2018 was a wave election. Why? Because there was an asymmetrical mobilization. You know, the Democratic turnout was overwhelming. Democrats were aroused, Republicans less so. I believe that a foreseeable impact of the proceedings that are now unfolding is that that mobilization gap will narrow. Republicans will be aroused as a result of

these proceedings. And I don't think that's going to make life easier for Democrats in November. I say that with no pleasure, right, because I've never seen such a stark divide between legal and constitutional merits on the one hand and the political merits on the other.

And then that raises a very deep question of political responsibility. Where do you think the greater threat lies? I will share with you my view, and that is it is not -- our constitutional order has taken a battery in the past four years. I'm not sure it could endure another four years like the past four years. If so, the overriding political imperative is to ensure that that does not happen, or at least reduce the odds that that will happen. I do not believe that the course on which the Democrats have embarked, in many cases quite reluctantly, is the most likely to produce that outcome. And therefore I am worried.

MR. WITTES: Any of you others have thoughts on the likely political ramifications here?

MS. REYNOLDS: So I'll say one thing, which is that I think one of the challenges in comparing what might be the political ramifications of this in a presidential election year to the 2018 midterms is that the dynamics of our contemporary presidential elections are different than the dynamics of our midterm elections in that the number of voters who go to the polls in a presidential year and vote for different party down ballot than they do at the top of the ticket is very small. We used to see much more ticket splitting than we do.

And so to me most of what will happen in the 2020 presidential election will be about whether people are going to vote for the Democratic candidate, largely because they see themselves as Democrats, versus votes for the Republican candidate because they see themselves as Republicans. And I think that to a large degree people's feelings about Donald Trump, of which impeachment is one part, are baked into that scenario.

And so I also am inclined -- so Bill used the phrase sort of Pelosi's hand was forced, but I do think it's important to recognize that when Democrats changed their strategy, it was because that is what the rank and file of the House Democratic caucus wanted to do. I spent a lot of time at that moment thinking about a thing that John Boehner used to say all the time, where he would say that if you're a leader and you have no followers you're just a guy taking a walk. (Laughter) And Pelosi was in danger of getting to a point where she was taking a position that was at odds with even where many of the more

moderate members of her caucus were and she didn't want to just be a woman out there taking a walk without the caucus behind her.

MR. GALSTON: As I said, her hand was forced. Do you disagree?

MS. REYNOLDS: That has a more negative connotation than I would assign to her strategic decision making in this case.

MR. GALSTON: All right.

MR. HUDA: And on the point of mobilization, very quickly, I agree with Bill that impeachment risks motivating Republicans to come out in a way that non impeachment maybe would not have. But there's two parts to the mobilization and that is if Pelosi stood firm while the entirety -- almost the entirety of the House Democratic caucus said we want impeachment, there's a concern over what mobilization among Democrats would be like. There are Democrats who have been screaming for impeachment for a long time, democrats, some of them far on the left who are already skeptical of the Party. And I think if you don't move in response to what the Party wants, there's a risk that they vote third-party, that they stay home, that they choose not to vote down ballot and only vote for the president. And so there are two competing forces Pelosi was dealing with. And previously she was more concerned about Republican mobilization. And I think with the Ukraine allegations she then became concerned about a drop in Democratic motivation if she didn't act.

MR. WITTES: All right. We have time for one more question. The gentleman with the microphone in the back.

QUESTIONER: Hi there, my name is Mac Phifer; I'm an attorney here in DC.

I just had a question because the panel talked a lot about the procedure in the Senate and a lot about witnesses. And while we were here, Mitch McConnell came out and said the concept is dead wrong, and that, you know, came out and rejected the Democrats and Senator Schumer's request for witnesses that he had made. Said it was a strange request and we certainly do not need jurors to start brainstorming witness lists for the prosecution. That's his quote. It was reported by the *Washington Post*.

So just my thought, I just wanted to ask you guys what does this look like now if you don't have those first-person witnesses, the Mick Mulvaney's, and things like that?

MR. WITTES: Okay. Sarah, Molly, why don't you guys wrap us up on this. How do you read McConnell's response?

MS. BINDER: Show me 51 Republican votes and then, great, then we'll scream onto trial and we'll be out of here in 2 weeks.

MS. REYNOLDS: Yup, that's --

MS. BINDER: And it may yet get there, but just because McConnell says it is, doesn't mean it is. Yeah, so to say --

MS. REYNOLDS: To return to the definition of what does "is" mean.

MS. BINDER: Is, is.

MS. REYNOLDS: I agree completely with what Sarah said and I think that's a good place to turn it back to Ben.

MR. WITTES: All right. Show me the votes.

Thank you all for joining us. (Applause) And please do give your evaluation forms to the people who will collect them at the front.

\* \* \* \* \*

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