

United States Senate

WASHINGTON, DC 20510

December 23, 2019

Dear Colleague:

As the Senate prepares for the impeachment trial of President Trump, there has been a great deal of discussion regarding the need for the testimony of witnesses. I believe it is essential that the Senate hear from certain witnesses in order to conduct a full, fair and speedy trial in this case, and I made this clear to Leader McConnell both in my written proposal of December 15th and when we met in person on December 19th.

I am writing today to ask all Senators to consider another, equally important aspect of the trial that has thus far received less attention: the need for the Senate to review documentary evidence. In my December 15th letter, I proposed that the Senate subpoena both a short list of four witnesses and a limited set of relevant documents from the Administration. These documents fall into three evidentiary categories: (1) the effort to induce and pressure Ukraine to announce certain political investigations; (2) the withholding of a White House meeting desperately sought by the newly-elected President of Ukraine; and (3) the order to hold, and later release, \$391 million in military assistance to Ukraine.

The House of Representatives amassed a tremendous amount of evidence in support of the Articles of Impeachment, including extensive testimony, given in public and under oath, by senior Administration officials appointed by President Trump. However, the House was unable to gain access to a body of additional relevant evidence because of President Trump's unprecedented, Administration-wide directive to defy all subpoenas issued by the House, notwithstanding the fact that the House issued those subpoenas lawfully and pursuant to its constitutional impeachment power. As a result of this directive, the White House, Department of State, Office of Management and Budget and other agencies refused to produce a single document in response to the House's duly-issued subpoenas. This directive not only deprived the House of relevant evidence, it will also prevent the Senate from seeing the available evidence unless the Senate takes action to obtain it. By way of comparison, in the impeachment trial of President Clinton, the Senate had the benefit of thousands of pages of documents from the Department of Justice investigation by Independent Counsel Kenneth Starr.

There simply is no good reason why evidence that is directly relevant to the conduct at issue in the Articles of Impeachment should be withheld from the Senate and the American people. Relevant documentary evidence currently in the possession of the Administration will augment the existing evidentiary record and will allow Senators to reach judgments informed by all of the available facts. To oppose the admission of this evidence would be to turn a willfully blind eye to the facts, and would clearly be at odds with the obligation of Senators to "do impartial justice" according to the oath we will all take in the impeachment trial.

The following examples illustrate why it is so important that the Senate obtain these materials for consideration in the upcoming trial.

The White House

The White House is in possession of highly relevant records and communications involving officials within the West Wing and the National Security Council who have direct knowledge of the key events in question. These records include:

- Email communications, messages, memoranda and other records related to meetings and/or calls between President Trump and the President of Ukraine, including those related to the scheduling of, preparation for, and follow-up from the President's July 25th and April 21st telephone calls with the Ukrainian President.
- Relevant email communications and other records created or received by White House officials, including Acting Chief of Staff and OMB Director Mick Mulvaney, then-National Security Advisor John R. Bolton, Senior Advisor to the Chief of Staff Robert B. Blair and others relating to efforts to induce Ukraine to conduct or announce investigations, or schedule or withhold a White House meeting for Ukraine's President, as well as the decision to hold and then release the military assistance to Ukraine.
- Email communications and other documents related to the six or more occasions on which NSC officials reported their concerns to the NSC legal advisor about the decision to delay the military assistance to Ukraine and about the July 10th meeting at the White House between NSC officials, Ambassador Sondland and Ukrainian government officials.
- “[H]undreds of documents” that, according to press reports, the White House Counsel's office collected and reviewed through an internal investigation. These documents reportedly “reveal extensive efforts to generate an after-the-fact justification” for the hold on military assistance to Ukraine, including early August email exchanges between Mr. Mulvaney and White House budget officials.^[1]
- Email communications and other records regarding the whistleblower complaint.

^[1] *White House Review Turns Up Emails Showing Extensive Effort to Justify Trump's Decision to Block Ukraine Military Aid*, Washington Post (Nov. 24, 2019).

Department of State

The State Department also is in possession of highly relevant documents and communications involving officials in the Office of the Secretary as well as officials covering Ukraine who have direct knowledge of the key events in question. Like the White House, the State Department has already collected these records. They include:

- Detailed notes, emails, text and WhatsApp messages, memoranda to file, and diplomatic cables pertinent to the investigation that State Department witnesses told the House are being withheld.
- WhatsApp messages involving State Department officials and Ukrainian government officials.
- Correspondence and other records involving Ambassador Gordon Sondland, who testified that his testimony was hampered by his inability to access his written records, including his email correspondence with other relevant Administration and Ukrainian government officials, which he asserted would refresh his recollections. This assertion was validated by the small number of documents he was able to retrieve and reproduce over the objection of the State Department, which demonstrated that senior White House officials, including Mr. Mulvaney, and senior State Department officials were “in the loop” about Sondland’s efforts to secure the President’s desired investigations from Ukraine.

Office of Management and Budget

OMB is also in possession of highly relevant documents and communications related to this case. These include communications involving or referring to Mr. Mulvaney, Mr. Blair, and OMB Associate Director Michael P. Duffey, all of whom defied lawful subpoenas for their testimony.

For instance, because of a Freedom of Information Act lawsuit, we now know that there exist email communications between Mr. Duffey and Department of Defense officials regarding the aid holdup. These include an email communication that Mr. Duffey sent approximately 90 minutes after President Trump’s July 25th call with the President of Ukraine, in which Mr. Duffey requested that the Department “hold off” on obligating additional military aid to Ukraine and that officials keep “that information closely held to those who need to know to execute the direction” because of the “sensitive nature” of the request. The December 21st release of partially-redacted versions of these communications in response to the FOIA lawsuit further underscores why the Senate must review all of these records in unredacted form.

In demanding these documents, the Senate would not be requesting a new or time-consuming document production effort because the relevant agencies have already collected documents and records responsive to the House’s subpoenas. Production of these documents for the Senate would also ensure fundamental fairness and transparency, since the President could otherwise

seek to selectively introduce documents before or during the trial in a manner that Senators could not independently evaluate as credible or reliable. The White House must not be permitted to selectively use documents it is withholding because the President should not be allowed to wield his obstruction of Congress as a shield and a sword.

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During our meeting on December 19th, Senator McConnell again suggested that the Senate proceed with the trial in the absence of an agreement regarding witnesses and documents, an approach he argues is consistent with the Clinton trial model. That claim is misleading because this case is completely different.

In 1999, the Senate could not reach an initial agreement on witnesses because a number of Senators on both sides of the aisle, including then-Majority Leader Lott, believed that the facts in the Clinton case had been fully established before the trial. The House Managers' proposed witnesses had already testified multiple times under oath, and transcripts of their testimony were available to the Senate. It was widely understood that calling witnesses before the Senate would only result in redundant testimony. In addition, there was bipartisan reluctance about calling Monica Lewinsky to testify about the details of her relationship with President Clinton.

In this case, by contrast, the President has ordered that witnesses with direct knowledge, and documents containing directly relevant evidence, be withheld. No good reason has been offered as to why the Senate should not hear all of the available evidence in this trial. The Majority Leader has suggested that the Senate should begin the trial and decide later whether to call witnesses or obtain documents. The practical effect of that approach, however, would be to foreclose the possibility of obtaining such evidence because it will be too late. Leader McConnell has made it clear that he intends to move as quickly as possible to a final vote, without any willingness to admit testimony or documents.

At the conclusion of our meeting on Thursday, I urged Senator McConnell to reconsider his position and think about my proposal over the holiday recess. I urge every Senator to reflect on whether it is possible for the Senate to conduct a fair trial and reach a just outcome without reviewing all of existing evidence and considering all of the available facts.

Sincerely,



Charles E. Schumer