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December 9, 2019

Hon. Jerrold Nadler, Chairman
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Hon. Doug Collins, Ranking Member
U.S. House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

Re: Testimony before the U.S. House Committee on the Judiciary
The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds
for Presidential Impeachment, Dec. 4, 2019

Dear Chairman Nadler and Ranking Member Collins:

I write to augment the written and oral testimony provided by the four witnesses invited to participate in last week's Judiciary Committee Hearing entitled "The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment." I respectfully request that this statement be included in the official record of that hearing.

I am the Henry Salvatori Professor of Law & Community Service, and former Dean, at the Chapman University Fowler School of Law, where my teaching and scholarship focus primarily on the structural aspects of the Constitution.¹ I am also a Senior Fellow at The Claremont Institute, and as director of the Institute's Center for Constitutional Jurisprudence, have participated as amicus curiae or on behalf of parties in more than 150 cases of constitutional significance before the Supreme Court of the United States. I have also testified before various committees of Congress and state legislatures on more than twenty occasions involving a variety of constitutional issues. Most directly relevant to my statement for the record today, I testified last summer at this Committee's Hearing on "Lessons from the Mueller Report, Part III: 'Constitutional Processes for Addressing Presidential Misconduct,'" and previously testified

¹ I am submitting this statement for the record on my own behalf, and not on behalf of the Institutions with which I am affiliated.

opposite Professor Jonathon Turley, one of your witnesses at last week's hearing, at a 2006 hearing before the House Permanent Select Committee on Intelligence addressing "Obligations of the Media With Respect to Publication of Classified Information" and the constitutionality of various actions taken by the Bush administration in response to the War on Terrorism. Significantly, Professor Turley and I disagreed at that hearing about the First Amendment implications for possible legal actions against major news outlets that had published sensitive classified information; indeed, he was invited as a witness by Ranking Member Jane Harmon (a Democrat), if I recall correctly, while I was called by Chairman Pete Hoekstra (a Republican). Despite our disagreement then, I find myself in almost complete agreement with his testimony last week.

I would nevertheless like to add to or elaborate on a few significant points of that testimony. The "sole power of impeachment," which the Constitution assigns to this House of Congress,² is one of the most awesome and solemn powers provided anywhere in the Constitution. The President of the United States was not to be a law unto himself, as the King of England had been,³ but was instead accountable to the people, through elections, and in extraordinary circumstances also accountable to the people through their representatives, via the impeachment process and potential removal from office. Nevertheless, the Founders rightly recognized that such an awesome power might be abused if the bar for its use was set too low, which is why they rejected "maladministration" as one of the grounds for impeachment,⁴ instead limiting impeachment to cases of "treason, bribery, and other high crimes and misdemeanors."⁵ The President was not to be subordinate to the Congress, as is the case in the parliamentary systems of Europe. Instead, the Executive and Legislative branches were to be co-equal (along with the third branch, the Judiciary). Each was to be a check on the others, to be sure, but each was also provided with ample power to resist encroachments by the others, if need be.⁶

The basic narrative for impeachment of the President currently⁷ under consideration, as articulated by Chairman of the Intelligence Committee Adam Schiff, is this: The President

² U.S. Const., Art. I, Sec. 2, Cl. 5.

³ I use the phrase, "law unto himself," instead of the phrase that is often used, "above the law," because technically the King was not "above the law" since he was the embodiment of the law.

⁴ Max Farrand, Records of the Federal Convention, Vol. 2, p. 550 (Sept. 8, 1787), at <https://bit.ly/356ppOZ>.

⁵ U.S. Const., Art. I, Sec. 2, Cl. 4.

⁶ This is the reason why, for example, claims that the President has obstructed justice merely by asserting executive privilege in response to subpoenas that he views as attempts to encroach on the executive authority he has directly from Article II of the Constitution are invalid; they undermine the separation of powers and the co-equal status of the legislative and executive branches.

⁷ I say "currently" because this is only the latest in a series of asserted grounds for impeachment that have been offered by members of Congress and outside groups dating back to before President Trump was even inaugurated. *See, e.g.*, Rachael Revesz, "Donald Trump Impeachment Effort Already Underway," Independent (Jan. 20, 2017) (noting that a website, ImpeachDonaldTrump.org, pushed by two liberal advocacy groups, Free Speech for People and RootsAction, was already up and running before the inauguration); Matea Gold, "The campaign to impeach President Trump has begun," Washington Post (Jan. 20, 2019) (same); Emily Jane Fox, "Democrats Are Paving the Way to Impeach Donald Trump," Vanity Fair (Dec. 15, 2016). Just three weeks after the Inauguration, Representative Jerrold Nadler (D-NY), currently the Chairman of this Committee, filed a resolution of inquiry that was widely viewed as a first step toward impeachment. H. Con. Res. 5 (115th Cong., Feb. 9, 2017); *see also, e.g.*,

withheld military aid to Ukraine and a coveted White House meeting sought by newly-elected Ukrainian President Volodymyr Zelenskyy in exchange for President Zelenskyy initiating an investigation that would “make up dirt on [President Trump’s] political opponent,” former Vice-President Joe Biden. This was, Schiff claimed, “the essence of what [President Trump] communicate[d]” to Zelenskyy in a telephone call on July 25, a call that Schiff himself described as “read[ing] like a classic organized crime shakedown.”⁸ Schiff’s characterization was bolstered by claims made in a letter written by a purported “whistleblower,”⁹ in which the individual alleged “that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election” by, “among other things, pressuring a foreign country to investigate one of the President’s main domestic political rivals.” “[A]fter an initial exchange of pleasantries,” the “whistleblower” continued, “the President used

Deniqua, “Congressman Jerrold Nadler Takes First Steps Toward Impeachment of Donald Trump,” The Source (Feb. 10, 2017), at <https://bit.ly/2RE53se>. Representative Al Green (D-TX) called for President Trump’s impeachment in a floor speech on May 17, 2017, less than four months after the President had taken office. <https://www.youtube.com/watch?v=F9Au1cwXN8M&feature=youtu.be>. Articles of Impeachment were drafted and circulated by Representative Brad Sherman (D-CA) on June 12, 2017, and then formally introduced on July 12, 2017 as H. Res. 438. See Lindsey McPherson, “Democratic Rep. Sherman Drafts Article of Impeachment Against Trump,” Roll Call (June 12, 2017), at <https://bit.ly/2qFH5C4>; H. Res. 438, 115th Cong. (July 12, 2017). Representative Steve Cohen (D-TN), with 17 cosponsors, introduced Articles of Impeachment on November 15, 2017. H. Res. 621 (115th Cong., Nov. 15, 2017). Representative Green introduced his own Articles of Impeachment Resolution on Dec. 6, 2017, but the effort was immediately tabled by an overwhelmingly bipartisan vote of 364 to 58. H. Res. 646 and Roll Call No. 658 (115th Cong., Dec. 6, 2017). He tried again in January 2018, but his renewed resolution was again tabled by an overwhelmingly bipartisan vote, 355-66. H. Res. 705 and Roll Call No. 35 (115th Cong., Jan. 19, 2018). Other bills dripping with the threat of impeachment were also introduced. Representative Jamie Raskin (D-MD) introduced the Presidential Disclosure of Foreign Business Transactions Act in May 2017, for example, demanding that the President provide a report off all his business transactions of \$10,000 or more with a foreign government for the ten year period prior to assuming office, and asserted that “A violation of this Act shall constitute a high crime and misdemeanor for the purposes of article II, section 4 of the Constitution of the United States”—the impeachment provision. H.R.2440 (115th Cong., May 16, 2017). The next day, Representative Adriano Espaillet (D-NY) introduced the “Drain the Swamp and the President’s Assets Act,” prohibiting the President from holding certain assets (unless placed in a blind trust) and likewise specifying that “A violation of the amendment made by this Act shall constitute a high crime and misdemeanor for the purposes of” the Impeachment Clause. H.R.2494 (115th Cong., May 17, 2017). Representative Earl Blumenauer (D-OR) even introduced a bill that would create a new body to exercise the power to determine that the President was unable to perform the duties of office, in addition to the temporary removal authority already provided to Cabinet officials by the 25th Amendment. H.R. 2093 (115th Cong., April 14, 2017).

Once Democrats regained control of the House in January 2019 following the November 2018 midterm election, calls for impeachment began again in earnest. Representative Sherman reintroduced his first-out-of-the-gate Articles of Impeachment resolution on January 3, 2019, the very first day of the new Congress. H.Res.13 (116th Cong., Jan. 3, 2019). Representative Rashida Tlaib (D-MI) introduced a resolution in March directing the Judiciary Committee to open an impeachment inquiry. H.Res.257 (116th Cong., Mar. 27, 2019). Representative Sheila Jackson Lee followed suit two months later. H.Res. 396 (116th Cong., May 22, 2019). Representative Green tried again (unsuccessfully) with his impeachment resolution in July. H.Res.498 and Roll Call No. 483 (116th Cong., July 17, 2019). Hearings were held by this Committee in March, May, June, and July to consider whether various actions of the President (the use of the pardon power, claims of executive privilege, and conduct described in the Mueller Report) warranted impeachment proceedings. None of those *fifteen* prior formal efforts bore any fruit.

⁸ Opening Statement of Chairman Adam Schiff (D-CA), House Permanent Select Committee on Intelligence, Hearing on “Whistleblower Disclosure” (Sept. 26, 2019), official transcript available at <https://bit.ly/38m8oSG>.

⁹ I put the word “whistleblower” in quotes, because in my view, the individual does not qualify as a whistleblower under the relevant statutes.

the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid” by pressuring President Zelenskyy to “initiate or continue an investigation into the activities of former Vice President Joseph Biden and his son, Hunter Biden” and “assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine.”¹⁰

The counter narrative, which I and numerous others have been able to piece together from publicly-available sources, is as follows: After the fall of the Berlin Wall and the collapse of the Soviet Union in 1991, there was a feeding frenzy for profits as the various economies of the old eastern bloc transitioned from socialism to privatization. Because many of these efforts were corrupt and outside the boundaries of law, the frenzy earned the nickname, “gangster capitalism.”¹¹ Ukraine was not immune from this corruption; indeed, Ukraine has regularly been regarded as one of the most corrupt nations in the world.¹² U.S. diplomats even called it a “kleptocracy,” according to reports based on documents published by Wikileaks.¹³ It appears that politicians, businessmen, and consultants from across the ideological-political spectrum in the United States may have been tempted by the easy profits that such corruption offered to the well-heeled and well-connected.¹⁴ After one reportedly corrupt Ukrainian President, Viktor Yanukovich, was ousted in the “Euromaiden Revolution” of February 2014 and the Russian army occupied Crimea that same month, legislation was introduced in Congress in March 2014 and quickly approved in early April to provide substantial aid to Ukraine—\$50 million in direct aid via the Secretary of State to assist with *anti-corruption efforts* and the diversification of *energy* supplies, \$100 million for security assistance, and an additional \$1 billion in U.S. loan guarantees, to be used to promote government, banking, and *energy sector* reform.¹⁵ Less than two weeks later, on April 16, 2014, Devon Archer, a major supporter of the 2004 presidential bid of Senator John Kerry, who was then serving as President Barack Obama’s Secretary of State,

¹⁰ The unclassified version of the “whistleblower” complaint is available at <https://bit.ly/2PtKIDh>.

¹¹ See, e.g., Nancy Holmstrom and Richard Smith, “The Necessity of Gangster Capitalism,” *Monthly Review* (Feb. 1, 2000), at <https://bit.ly/38nfpTk>.

¹² Ernst & Young reportedly listed Ukraine as one of the three most corrupt nations in the world in 2012, and the second most corrupt nation in the world as determined by a poll of experts in 2016. See Viktor Tkachuk, “People First: The latest in the watch on Ukrainian democracy,” *Kyiv Post* (Sept. 11, 2012), at <https://bit.ly/2LCmvcS>; Ernst & Young, *Corporate misconduct—individual consequences: 14th Global Fraud Survey*, “Detailed Results,” p. 44 (2016), at <https://go.ey.com/2LByPdx>.

¹³ Yuriy Onyshkiv, “Clearer Picture,” *Kyiv Post* (Sept. 2, 2011), at <https://bit.ly/2qwXHM8>.

¹⁴ In addition to Republican consultants Paul Manafort and Richard Gates, who were convicted or plead guilty to a number of charges arising out of their dealings in Ukraine, former Obama White House Counsel Gregory Craig reportedly grossed millions from an oligarch allied with Yanukovich through his firm, Skadden Arps, via a confusing series of offshore accounts. See, e.g., Sharon LaFraniere, “Paul Manafort, Trump’s Former Campaign Chairman, Guilty of 8 Counts,” *New York Times* (Apr. 21, 2018), at <https://nyti.ms/342DATE>; Devlin Barrett and Spencer S. Hsu, “Former Trump campaign official Rick Gates pleads guilty to 2 charges,” *Washington Post* (February 23, 2018), at <https://wapo.st/38mdYVp>; Sarah Chayes, “Hunter Biden’s Perfectly Legal, Socially Acceptable Corruption,” *The Atlantic* (Sept. 27, 2019), available at <https://bit.ly/33Yk5Mh>. There are reportedly many others.

¹⁵ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, H.R.4152 (introduced Mar. 5, 2014), Pub. L. 113-95 (Apr. 3, 2014); see also Ukraine Support Act, H.R.4278 (Mar. 21, 2014).

met with Vice President Joe Biden just days before Biden traveled to Ukraine on April 21, 2014. The very next day, Archer was named to a seat on the Board of Directors of the reputedly corrupt Ukrainian *energy* company Burisma Holdings, Ltd.¹⁶ Biden's own son, Hunter, was named to the same Board in early May 2014, a move which the Washington Post reported at the time as highly problematic.¹⁷ The U.S. then signed a \$1 billion loan guarantee for Ukraine in May 2014, and by the end of the year, more than \$320 million in direct aid had also been committed.¹⁸ Some portion of those and other funds appears to have been laundered to Hunter Biden via an excessively lucrative salary as a board member,¹⁹ and to the company he co-managed with Devon Archer, Rosemont Seneca Partners.²⁰

Moreover, top ranking Ukrainian officials reportedly collaborated with operatives of the Democrat National Committee as well as U.S. law enforcement and intelligence agencies to undermine *candidate* Trump's 2016 presidential campaign.²¹ These efforts included a high-level meeting in Washington, D.C. in January 2016 between Ukrainian prosecutors and officials from the FBI, Department of State, Department of Justice, and National Security Council, the purpose of which was to encourage Ukrainian prosecutors to re-open an investigation into alleged corruption involving Trump's soon-to-be-named campaign chairman Paul Manafort, which had been closed back in 2014.²² Ukrainian prosecutors then returned to Ukraine and reopened the investigation in earnest. Manafort joined the Trump campaign on March 29, 2016, and became Chairman on May 19, 2016. Ukraine's National Anti-Corruption Bureau (NABU) then leaked the existence of a ledger purporting to show under-the-table payments to Manafort on May 29, 2016.²³ Although Manafort has denied the veracity of the ledger and the claims of illicit payments, the controversy nevertheless forced him to resign from the campaign in August 2016, shortly after portions of a black ledger depicting payments to him were made public.²⁴ A Ukrainian court subsequently found that the whole escapade of the leaked (and perhaps

¹⁶ See, e.g., Echo Chambers, "Vice President Joe Biden's son joins Ukraine gas company," BBC News (May 14, 2014), at <https://bbc.in/2LDpYYF>.

¹⁷ Adam Taylor, "Hunter Biden's new job at a Ukrainian gas company is a problem for U.S. soft power," Wash. Post (May 14, 2014), at <https://bit.ly/2sdlBN5>.

¹⁸ The White House, Office of the Press Secretary, "Fact Sheet: U.S. Assistance to Ukraine" (Nov. 21, 2014), at <https://bit.ly/2t19JOZ>; see also Ukraine Freedom Support Act of 2014, H.R.5859, Pub. L. 113-272 (Dec. 18, 2014).

¹⁹ John Haltiwanger, "A Ukraine gas company tied to Joe Biden's son is at the center of the Trump-whistleblower scandal," Business Insider (Nov. 19, 2019) (Biden "reportedly received compensation up to \$50,000 a month"), at <https://bit.ly/2sahzFv>; Kenneth P. Vogel and Iuliia Mendel, "Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies," NY Times (May 1, 2019), at <https://nyti.ms/2RyxbwX>.

²⁰ John Solomon, "How the Obama White House engaged Ukraine to give Russia collusion narrative an early boost," The Hill (Apr. 25, 2019), at <https://bit.ly/2qG1AyA>; see also, e.g., *United States v. Galanis*, No. 16-371, Gov't Ex. 301 (depicting cash transfers into the Rosemont Seneca Partners LLC account at Morgan Stanley of nearly \$2.5 million on March 25, 2014), at <https://bit.ly/38iW9GB>.

²¹ See, e.g., Kenneth P. Vogel and David Stern, "Ukrainian efforts to sabotage Trump backfire," Politico (Jan. 11, 2017), at <https://politi.co/2E37Y66>; John Solomon, *supra* at n. 21.

²² John Solomon, *supra* at n. 20.

²³ *Id.*

²⁴ *Id.*

fabricated) ledger was illegal and, according to the court’s press service, “led to interference in the electoral processes of the United States in 2016 and harmed the interests of Ukraine as a state.”²⁵

The January 2016 meetings also addressed ongoing corruption investigations of Burisma Holdings, but to opposite purpose. Instead of encouraging the investigation into potential corruption involving well-placed U.S. citizens, U.S. officials reportedly told the Ukrainians to drop the Burisma probe. After the Ukrainians declined, then-Vice President Joe Biden threatened to withhold more than \$1 billion in U.S. loan guarantees if the lead prosecutor looking into the matter, Viktor Shokin, was not fired. Biden later bragged at a January 23, 2018 meeting of the Council on Foreign Relations that his threat to withhold the \$1 billion loan guarantee resulted in Shokin’s firing in March 2016.²⁶ The Burisma case was then transferred to NABU, and shut down.²⁷

These scandals raise quite a stink. So when the latest round of military aid to Ukraine was approved by Congress, the Trump administration placed it on hold to insure compliance with long-standing federal law, as it was arguably required to do. Section 102 of the Foreign Assistance Act of 1961, for example, provides that bilateral aid “shall be carried out in accordance” with various principles, including “progress in combating corruption.”²⁸ And appropriations for aid to Ukraine have, since 2014, tied such aid to, among other things, “improvements in borrowing countries’ financial management and judicial capacity to investigate, prosecute, and punish fraud and corruption”²⁹ and a certification “that the Government of Ukraine has taken substantial actions to make defense institutional reforms, ... for purposes of decreasing corruption”³⁰ It was therefore perfectly appropriate for the President to insure the new administration in Ukraine was adequately addressing longstanding corruption concerns before releasing a new round of military aid. Those efforts were potentially furthered when President Zelenskyy’s party won control of Parliament on July 21, 2019, and solidified when the new Parliament passed a spate of anti-corruption legislation in early

²⁵ Matthew Kupfer, “UPDATE: Publication of Manafort payments violated law, interfered in US election, Kyiv court rules,” Kyiv Post (Dec. 12, 2018), at <https://bit.ly/38qdgpZ>.

²⁶ “Opinion: Joe Biden Forced Ukraine to Fire Prosecutor for Aid Money,” Wall Street Journal (Sept. 23, 2019), at <https://on.wsj.com/2LENMeZ>. A recent story by the Washington Post has challenged Biden’s memory on the exact timeline, but not the underlying point that Biden threatened to withhold the loan guarantee if Shokin was not fired. Glenn Kessler, “Correcting a media error: Biden's Ukraine showdown was in December 2015,” Washington Post (Oct. 2, 2019), at <https://wapo.st/38fBYcC>.

²⁷ John Solomon, *supra* at n. 20.

²⁸ Pub. L. 87-195, Sec. 102(b)(4)(G), codified at 22 U.S.C. § 2151-1.

²⁹ *See, e.g.*, Pub. L. 113-235, § 7029(e) (Dec. 14, 2014).

³⁰ *See, e.g.*, Pub. L. 114-328, § 1237(c). That the Department of Defense had already issued a routine certification does not prevent a second look by the nation’s chief executive, to whom the Secretary of Defense reports.

September.³¹ U.S. military aid was released shortly thereafter.³² President Trump’s call with Ukrainian President Zelenskyy on July 25, 2019, therefore appropriately mentioned investigations dealing with Ukraine’s meddling in the 2016 U.S. presidential election as well as potential corruption involving Burisma and the Bidens. There was no mention of the military aid in that call (and Ukrainian officials reportedly did not learn that it had even been help up until more than a month later, when an article was published by Politico³³ disclosing the hold), nor any quid pro quo. Instead, the President’s requests were well in line with established Congressional policy on the release of appropriated funds. Indeed, to have ignored the substantial evidence of 2016 election meddling would have encouraged future such meddling, and to have ignored the substantial evidence of corruption swirling around Burisma and the Bidens would have effectively placed Joe Biden “above the law.”³⁴

So which of these two narratives are we to believe? Undoubtedly, both have a measure of spin to suit the respective political objectives of the opposing sides. But the evidence we have available strongly favors President Trump. First, Representative Schiff has already had to acknowledge that his description of President Trump’s call was a “parody.”³⁵ Most of the witnesses who testified in open hearings before Schiff’s committee had to acknowledge they had no first-hand knowledge of any quid pro quo, but rather had based their conclusions on hearsay or presumptions. The only first-hand testimony that was provided stated unequivocally that President Trump had demanded that there be no quid pro quo.³⁶

Even if the evidence were in equipoise (as it is not), the normal presumption in the law is that government officials act in accord with their legal responsibilities, not contrary to them. In the face of much stronger evidence of illegality and/or partisan political motivation, this was the presumption that ostensibly led former FBI Director James Comey to “exonerate” Hillary Clinton’s trafficking in classified information on a private, unsecured server, and the Department of Justice’s Inspector General to largely exonerate FBI employees for the conduct of that

³¹ See, e.g., “Ukraine’s Rada passes bill on incentives for corruption whistleblowers,” Unian Information Agency (Sept. 13, 2019), at <https://bit.ly/2E49WTu>.

³² See, e.g., Joe Gould, “White House releases \$250 million in Ukraine military aid,” DefenseNews (Sept. 12, 2019), at <https://bit.ly/2sZSLAh>.

³³ Caitlin Emma and Connor O’Brien, “Trump holds up Ukraine military aid meant to confront Russia,” Politico (Aug. 28, 2019), at <https://politi.co/38pA0X4>.

³⁴ Contrary to Lt. Col. Vindman’s testimony before the House Intelligence Committee, it is not “improper” to ask foreign governments for assistance in investigations of potential criminal conduct by U.S. citizens. Requests for foreign government cooperation in criminal investigations of U.S. citizens are routine. Such cooperation is even specifically part of a “Mutual Legal Assistance in Criminal Matters” treaty that former President Clinton negotiated with Ukraine back in 1998, and which the Senate ratified in 1999.


³⁵ Ellie Bufkin, “Schiff says his summary of Trump’s Ukraine call was ‘at least part in parody,’” Washington Examiner (Sept. 26, 2019), at <https://washex.am/2ryUiNt>.

³⁶ Text message from Gordon Sondland to William Taylor and Kurt Volker (Sept. 9, 2019, 5:19 a.m.)

investigation and the launch of Special Counsel Robert Mueller’s investigation into alleged collusion between the Trump campaign and Russia.³⁷

In other words, this President is as much entitled to the benefit of any doubt as other presidents, and as other high-ranking government officials, the virulence of the opposition to him notwithstanding. To allow exaggerations based on hearsay and presumptions to form the basis of impeaching proceedings risks a perpetual state of political warfare between the two principle political parties in our country, much to the detriment of the people’s business. Indeed, if this Committee were to proceed with formal articles of impeachment based on a record as sketchy as this one, I can only assume that, during any “trial” in the Senate, the President would be well within his rights to explore evidence of collusion between the principal parties and witnesses in this case. Representative Schiff publicly claimed on September 17, 2019, for example, that “We have not spoken directly with the whistleblower,”³⁸ but that claim was later proved to be demonstrably and blatantly false, as we subsequently learned that Schiff’s own committee staff had not only spoken with the “whistleblower,” but had advised him and referred him to friendly anti-Trump attorneys prior to the filing of his complaint.³⁹ The President would likewise be well within his rights to explore just how it came to be than an exaggerated version of his call got leaked to someone in the CIA; our CIA is not supposed to be spying on American citizens, least of all the President of the United States. And most importantly, I think it would be fair game for the President to demand a full exploration of conduct on the other side of the political aisle that occurred at the very advent of current controversy and that continues to reverberate through our politics, namely, the spying on the Trump campaign by U.S. law enforcement and intelligence agencies that was initiated by the Obama administration, based on a false dossier prepared by a former British spy using highly-placed Russian sources, that was bought and paid for by the Hillary Clinton campaign using funds illegally laundered through the campaign’s law firm. That is perhaps greatest political scandal in American history, and Trump’s actions with respect to Ukraine, even in the highly exaggerated version propounded by Representative Schiff, were not only legal but pale in comparison.

Respectfully submitted,



John C. Eastman

³⁷ See, e.g., Office of the Inspector General, Department of Justice, “A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election,” Review and Oversight Division 18-04 (June 2018), at <https://bit.ly/2YxHKSt>.

³⁸ “Morning Joe,” MSNBC (Sept. 17, 2019), at <https://bit.ly/38g5bnM>.

³⁹ See, e.g., Julian E. Barnes, Michael S. Schmidt and Matthew Rosenberg, “Schiff Got Early Account of Accusations as Whistle-Blower’s Concerns Grew,” New York Times (Oct. 2, 2019), at <https://nyti.ms/36l7hkB>.