



Lana Ulrich: [00:00:00] I'm Lana Ulrich, Senior Director of Content at the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. This week the National Constitution Center, in partnership with The Atlantic, launched a new web project: "The Battle for the Constitution," a year-long exploration of the major issues and controversies surrounding the Constitution today. At The Atlantic Ideas Festival yesterday, the NCC and The Atlantic celebrated the launch with a series of panels featuring scholars, journalists and legislators, who discussed the breaking news of the House's impeachment inquiry into President Trump, as well as what separation of powers means in government today.

Jeffrey Rosen, President and CEO of the NCC, kicked off the discussion in a conversation with Martha Jones, professor of history at Johns Hopkins University, John Malcolm, Vice President for Constitutional Government at the Heritage Foundation, and Quinta Jurecic, managing editor at Lawfare. Later, Representatives Lance Gooden and Adam Schiff spoke about their views on the impeachment question and the proper exercise of congressional power.

This episode is a crossover with our companion podcast: Live at America's Town Hall, live constitutional conversations held here at the NCC in Philadelphia and around the country. Here's Jeff to get the conversation started.

Jeffrey Rosen: [00:01:27] Ladies and gentlemen, welcome to The Atlantic and the National Constitution Center's Second Annual Battle for the Constitution Panel! [laughter]

During last year's panel, those of you who were here will recall, we had Senators Chris Coons and Jeff Flake, on the day that they were trying to prevent the Senate from blowing up during Justice Kavanaugh's nomination hearings! Today as soon as we announced the day of the panel, House Democrats decided to impeach the president. [laughter]

If you are invited for next year's panel, I suggest it may not be safe to show up!

[laughs]

One of the great benefits of last year's panel was that it was so successful, that the Constitution Center and The Atlantic decided to work together to launch today, a thrilling new web project called "The Battle for the Constitution." And over the next year, as Jeff Goldberg explains in his editor's notes, we will be convening the leading thinkers of all perspectives: conservative, libertarian, progressive and idiosyncratic to discuss, not political issues, but constitutional issues, to illuminate the constitutional clashes that are at the center of the news and a pervaded American history. And we're so excited to share with you, this launch panel, three of our distinguished scholars, to model for you what it means to discuss issues, not in political terms, but constitutional terms. In other words, asking not what the government should do, but what the Constitution allows or forbids it to do. And by putting that constitutional lens on all of the questions in the news, we believe we can elevate the country above some of the partisan rancor that is transfixing the nation, and help eliminating the underlying constitutional stakes.



We have to jump right in. Of course, the first question will involve the constitutional dimensions of impeachment, and the way to start our homework for this important class, is to consult the National Constitution Center's new and upgraded Interactive Constitution, which is linked on the Battle for the Constitution site. This phenomenal educational tool brings together the top Liberal and Conservative scholars, to write about every clause of the Constitution, describing what they agree about and what they disagree about. So, I can look to the Impeachment Clause and I can find our two scholars with a thousand word statement about what they agree the core meaning of the clause is, and also what they agree is open-ended. So, I'm gonna start with that, 'cause you can be assured that every word in this joint statement is accepted by scholars of both sides.

And after ... Beginning with the text of the clause, which is crucial. In Article II Section 4, and says that, "The President, Vice President and all civil Officers of the United States, shall be removed from Office if con- if convicted of, Treason, Bribery, or other high Crimes and Misdemeanors." The scholars go on to say that, "Although the framers decided to leave out a punishment for maladministration," which was Madison's proposal "and they took out the language about corruption. Nevertheless, debates remain about how broad or narrow the clause is meant to sweep." And in particular, the scholars say that those debates include, "Can a government official be impeached and convicted for innocent mistakes, or must they have bad intentions? Is it sufficient to justify impeachment and conviction if a government official commits acts that are disgraceful, contrary to the Trust and Duty of their office, or degrading to the honor of the United States?" That's all language from the founding era. Or, "Can impeachment only be justified when an official has committed criminal acts?" And finally, "Do high Crimes include only criminal offenses for which one could be prosecuted in a court of law, or can include other forms of misconduct?"

Quinta, to start us off with this crucial question: As you analyze the text and history of the Impeachment Clause, do you believe that the president's conduct, in his conversation with the President of Ukraine given the facts that we know now, would meet the framers understanding of Treason, Bribery, or other high Crimes and Misdemeanors?

Quinta Jurecic: [00:05:36] Yes.

[laughter] Do you ne- do you need more?

Jeffrey Rosen: [00:05:40] Yes, one or two, tell us why!

Quinta Jurecic: [00:05:41] I- Not only does it fit that definition, I think it's actually a paradigm of what we might look to as an impeachable offense. Charles Black, one of the great constitutional scholars, who's written about impeachment in his case he was writing in the context of Watergate wrote about impeachment as really focused on mitigating the abuse of power on the part of the Chief Executive. Particularly, the abuse of power for personal gain at the expense of the country, something that's not in the best interest of the country. He uses this wonderful phrase, "Something that's obviously wrong in itself to any person of honor."



And I think if you, if you look at the transcript that's been released, obviously we don't yet have all the information there's still this whistleblower complaint, but I would argue reading the transcript in context of everything we know from news reports, it really seems that the president was attempting to pressure the Ukrainian President Vladimir Zelinski to provide derogatory information about Vice President Joe Biden and his son Hunter. I would say first off that's not only a use of the president's foreign affairs power under article II for personal gain as opposed to the betterment of the country, but also that it's a gross civil liberties violation of Biden and his son.

You know, we in part because of actions taken by Richard Nixon, we bind our law enforcement agencies, and the CIA as well, very tightly in terms of what they can and can't investigate, and what processes they have to go through. And the idea that a president would reach out to a foreign government, sort of go around those normal processes in order to try to find derogatory information, I think is ... Really rings very, very similar to what President Nixon was accused of in the articles of impeachment against him.

Jeffrey Rosen: [00:07:40] Thank you so much for that. You mentioned Charles Black, as it happens, his grandson, Robert Black is a senior fellow in constitutional studies of the National Constitution Center, and I asked him to do a memo on the arguments for and against impeachment. And one of his conclusions was that the case that the president violated the criminal campaign finance laws is not clear, because it's not obvious that the withholding of aid or, or even the possible benefit in the election, was a thing of value as technically defined in the campaign-finance statutes.

John, if you conclude and, and others conclude that the president did not technically commit a crime. Do you still think that he could be impeached for high Crimes and Misdemeanors? And do you think that this conduct meets that standard?

John Malcolm: [00:08:24] Well, so, I have to respond to what Quinta just said. There are two things that she said, that I agreed with, which is an abuse of power can constitute an impeachable offense, and that we are going to learn more facts in the days ahead. I mean, this is largely a- an issue that is left up to the House and Senate. There is no role for the judiciary in this process at all other than, if the president is impeached in a trial, the Chief Justice presides over that trial. So, there is no role for the, you know, the, the Senate gets to determine itself, either for legal reasons or political reasons, what constitutes abuse. And they can set whatever procedures that they want to.

I think it is quite a stretch to say, based on just the transcript that was released today, that we are anywhere near that that threshold. There was no threat, implicitly or explicitly, to withhold aid from the Ukraine. Government during this call ... It is even unclear when the president says to President Zelinski, "Look, we want you to look into this," whether he's talking ... he clearly mentions Joe Biden and, and his son, Hunter, I'll get to that in just a moment but he also mentions Bob Mueller, who had just testified, he mentioned crowd strike. So, in the context of that call, Bob Mueller had just shut down his investigation. Attorney General Barr had just announced that he was going to initiate his own investigation, which is ongoing into how you know, the Trump investigation began in the first place.



And it actually seems to be that the mentioning of crowd strike, which is a company that was used involving the investigation of hack on the DNC. There were a lot of rumors that Ukrainians were involved in that hack ... That you know, in all likelihood what he was referring to in terms of conducting an investigation, was not so much an investigation against Joe Biden and his son Hunter, as much was an investigation into how the investigation of his campaign began. You know, with respect to, to Joe Biden, I'm not excusing what the president did, he often acts in an intemperate manner. But you know, look, let's be clear, when Joe Biden was the Vice President of the United States, the Senate had approved a billion-dollar loan guarantee. He went to Kyiv, Ukraine, and said I'm leaving six hours and you are not going to get that billion dollar loan guarantee, unless this particular prosecutor named Shokin is fired. Shokin had initiated an investigation against an energy company that had just appointed Hunter Biden, who has no experience whatsoever in the energy field, to its board, and Hunter Biden was paid \$1.6 million over the next 16 months. Now, you know, that is troublesome.

Now, I'm not with ... The Congress can do whatever it wants to, the Ukrainian government can do whatever it wants to but you know I- I- I think that it is very unclear from what we know now. You know, I- I think we are at the beginning of an impeachment process, we, we may be far from the end, there may be other facts that come out. But based on this transcript? I, I think it's up to Congress to decide whether to impeach the president, that is to say it is largely a political process, but I, I don't see it. And I certainly do not see the Senate being anywhere near having two thirds of the Senators required to throw the president out of office.

Jeffrey Rosen: [00:11:29] Thank you for all that. I hear you say that there was no explicit quid pro quo, and there's this ... lots of factual disputes about whether or not there was corrupt motives. And for those reasons, even if the president can be prosecuted for noncriminal offenses you don't think this meets the standard. Martha, give us some historical context, and I do want to read some striking quotations that Robert Black found from James Madison, about their specific concern over foreign intrigue in general and foreign influence over the president in particular. George Mason, the great Antifederalist who opposed the Constitution 'cause it contained no Bill of Rights said that "Shall the man who's practiced corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt." Madison says, "The president might pervert his administration into a scheme of percolation or oppression, and he might betray his trust to foreign powers." And then federalists two through five are all devoted to the fear of foreign force or influence. And Hamilton wrote that, "Nothing was to be more desired, that every practicable obstacle should be opposed to cabal, intrigue, and corruption. The most deadly adversaries of republican government might have been expected to make their approach from more than one quarter but chiefly from the desire and foreign powers to gain improper ascendant in our councils."

Martha, there is much to say about the history of impeachment both f- from the founding era, and also from the Johnson era, but what can that history teach us about our current fixations?



Martha Jones: [00:12:58] I think the first thing I'd say is that, even our beginning suggests how difficult it is to pull apart the constitutional questions from the political questions, right? And so if our thinking is murky about that, it's understandable, because these things are clearly intertwined. And at the same time, you know, one of the ways in which we reason through and interpret the Constitution, is by precedent, about what has come before. And impeachment happens to be, perhaps to our credit, one of those instances that we have rarely visited in our history. A number of us, quite a few of us if I'm gauging the room correctly actually recall the impeachment of President Clinton. I'm judging by the ... I don't know the-

Jeffrey Rosen: [00:13:45] Youthful glow!

Martha Jones: [00:13:45] Yeah! The youthful glow in this room! Thank you so much.

Jeffrey Rosen: [00:13:48] Yeah. No problem.

Martha Jones: [00:13:48] And and yet I would say, I think there's a caution, right? About turning to the instance place from which to analogize or reason. Yes, the president was charged with a wrongdoing lying under oath. Yes there was an important layer of partisanship that shaped the impeachment as it moved forward. But it is the Johnson impeachment in the reconstruction era, that I think is the better more thoroughgoing analogy for us today. Now President Johnson in the early years of reconstruction is indeed charged with a wrongdoing. He is charged with violation- violating the Tenure of Office Act a technical offense. But when we look through the 11 elements of the impeachment we see the way in which Congress then moves from that formal charge into what really is a battle between what sort of authority the executive is going to exercise over the future of the country, over the project of reconstruction, the remaking of the nation after Civil War. Is that going to be steered by the president from the executive branch, or is Congress going to be the body that is really going to stitch the nation back together reorganize it politically, constitutionally and otherwise?

And, I think this is an apt analogy, or a useful analogy, precisely because my sense is that, while we will approach this moment, and the seemingly impending impeachment of President Trump by way of these technicalities, the deep subtext is a question about in what direction we are headed as a nation? Who is going to steer us in that direction? And so, we will make the technical arguments, but we will find it hard to avoid the profound, I think ... and they're not simply political questions I would say, right? They are moral questions, right? That also run through law and politics, and that to me means reconstruction is a powerful touchstone for where we sit in 2019.

Jeffrey Rosen: [00:16:05] The Johnson ... You speak powerfully about the precedent of Andrew Johnson. As you suggest, he was impeached for the technical violation of the Tenure of Office Act, but was acquitted partly because the act was thought to be, and later found to be, unconstitutional, but as you suggest, and as a guest on a 'We the People Podcast' we had on the subject also suggested, ... We the People is the National Constitution Center Podcast, where every week I call up a Liberal and Conservative scholar to debate constitutional issues in history and the news.



And we did the Johnson impeachment and Joshua Matt said the Johnson impeachment was brought on the wrong charge, it should have been the subversion of the constitutional promise of reconstruction. The presidents willful attempt to undermine the reconstruction amendments, was impeachable. Even at a high crime, even if it wasn't a technical violation of criminal laws, and you're reinforcing that point. Reconstruction was clearly a constitutional crisis and Quinta, you have written a piece for The Atlantic, a really debate changing piece. Are we in a constitutional crisis? Tell us how you define a constitutional crisis and whether or not we're in one.

Quinta Jurecic: [00:17:14] Right, and I, I wrote that piece a couple of months ago. I don't know if it... my answer might be different today. [laughs] the thing about Constitutional crises is that no one really seems to know what they are. [laughs] And what it would mean if you're in one or not. Keith Whittington has I think a useful distinction between crises that are caused by sort of where the Constitution sets up a problem and then doesn't provide an answer, and crises that are caused when there is a constitutional answer, but one or both parties doesn't want to abide by it, right?

So into that latter category would fall the famous and probably apocryphal statement by President Andrew Jackson, "John Marshall has made his decision, now let him force it." About a decision of the Supreme Court. That framework I think is useful, I don't know if it entirely speaks to our current situation. The terminology that I think is more apropos is a "constitutional rot" which is a term used separately by John Finn and Jack Balkin, both constitutional scholars. The idea basically being that, rot is when the structures of the Constitution are all there, it seems on its surface, as if it's working properly, but there's something that's falling through. The, the faith in the underlying principles is gone.

And so we, we act out our fealty to constitutional structures. We elect the president. The Senate meets to advise and consent on nominees. But, the underlying commitment to core constitutional values is in dispute, or perhaps dissipating altogether. And I think that is really much more apropos to our current situation.

Jeffrey Rosen: [00:18:55] That is so well summarized. You helpfully remind us that Keith Whittington does have these two rather narrow definitions of constant crisis. A crisis of operational meaning, where it's not clear what the answers are, or where the branches literally break down 'cause they can't agree or operate. Like the S- Senate isn't funded or the Supreme Court has no members. Or, a crisis of fidelity were the president says, "I'm not gonna obey the Constitution." But then you introduce this third c- category that Jack Balkin has noted of constitutional rot, where the formal mechanisms are respected, but the norms are being undermined. John you are a great constitutionalist you been defending constitutional values valiantly, in a nonpartisan way. Are we in a constitutional crisis and/or are we s- in a period of constitutional rot?

John Malcolm: [00:19:39] Yeah. I couldn't cris- disagree with Quinta more actually. I didn't understand what her argument was, but now I do understand her, her argument. Look there has always been tension, particularly with a divided government in a closely divided country, which we are among the branches of government. You know when President Obama was,



was there, there were fights with Congress and with the courts about Obamacare. There were fights with Congress about whether he you know, his DACA program was lawful, that fight still continues. There were fights between the executive branch and the president about you know, getting documents for Benghazi or Fast and Furious may- ... These tensions in a divided government exist.

Nobody, to the best of my knowledge has followed up on Andrew Jackson's threat at the time, not even Andrew Jackson, in fact, didn't follow-up on, on his threat. The only person that I am really aware of was Abraham Lincoln who, after you know, Dred Scott came out, said, "Well, I'm to abide by the ruling in that case, but I'm continue to treat black freedmen as if they were citizens." So that was a certain amount of defiance of the Supreme Court.

But, but President Obama didn't do that. President Trump isn't, isn't doing that. There are tensions. And if you throw into it, the regulatory state that adds another dimension to that tension. And we muddle through it, we muddle through it with, with fidelity and with with legal arguments, and, and so far the courts have been respected. And I don't see any breakdown or rot that Quinta seems se- sees.

Jeffrey Rosen: [00:21:15] Thank you for that optimistic defense of muddling through, as an alternative to crisis. [laughter]

Martha, the historical perspective. There are certainly two periods of American history that everyone recognizes as constitutional crises: the Revolutionary War, which led to the original Constitution, and the Civil War. Others put different conflicts in different categories. Can you give us examples of the other constitutional crises you think America has experienced in the past?

Martha Jones: [00:21:43] So I, I'm gonna come at it slightly differently because we've begun by talking about reconstruction. And it's important, for me, to remind us that the crisis for the Constitution that follows the radical remaking of equality and citizenship that comes with reconstruction is very quickly undone; undermined by the U.S. Supreme Court itself. By 1873 slaughterhouse cases will be the beginning of a whittling away of the meaning, and the force, of the co- the reconstruction era amendments to arbitrate, right? A new democracy in the wake of slavery's emancipation.

So here, it's a sort of crisis. Because I would say that we then live through an era in which, not all Americans, but many Americans have no confidence in the Supreme Court to be the arbiter of their lives, of their rights of the Constitution and its amendments, as they were intended when it was enacted. That we live through a long era in which the court merely renders itself irrelevant. It's a period of social movements, right? Where people from the ground up, on the local level are themselves trying to breathe meaning into the Constitution.

Even against the ways in which the Supreme Court ... Plessy versus Ferguson, of course, is the most notorious of the decisions of this era. That case that puts separate but equal into constitutional jurisprudence. Americans have to go somewhere else, right? To counter that. And I think today we might wonder if this court isn't headed to, if not rot, to a kind of irrelevance, right? For the kinds of critical human questions that are troubling us as a nation.



Jeffrey Rosen: [00:23:55] Thank you for that. You've written so powerfully about the history of citizenship as you say, the whole point of the Civil War was to overturn Dred Scott's claim that "African-Americans had no rights, which white men were bound to respect." Citizenship was inscribed in the 14th amendment, but the Supreme Court undermined it. And you suggest that, by making itself irrelevant, and undermining its own legitimacy, the court may contribute to a sense of of, of, of crisis.

Quinta, let, let... I wanna ask each of you, and then we're gonna take your questions. What you identify as the fault lines in the current battle for the Constitution are? John mentioned the regulatory state well and I'll ask him about that in a moment. Where conservatives believe that the federal government got too much power during the New Deal era and that much of the regulatory state is unconstitutional and they wanna resurrect an originalist Constitution that would constrain it. But Qui- Quinta, would the- the, is that the line you would pick, or would you identify a different fault line in the current battle for the Constitution?

Quinta Jurecic: [00:24:57] I think right now, I ... The fault line that jumps out at me is, to what extent we believe in, or want to have, the Constitution at all, actually. It's something really pre-political in terms of how we think about it. I have been very struck by the current political landscape is an interesting one. Just in a time of polarization, there are also many unexpected alliances. [laughs] you know certain people on the right are a- aligning with certain people on the left on, on particular issues, often concerning presidential power. And I am, I'm very struck by how the president and many of his more vocal supporters in, in certain areas, often seem to point to a Constitution that ... doesn't enjoy the same separation of powers structure that we often think of.

Trump has said you know, "Article II, It's a great thing. I can do whatever I want." [laughs] I wouldn't, I don't recognize the Constitution that I've studied, in that. And so it strikes me that the real question is whether we want to maintain the existing structure of some kind of separation of powers, and checks on the executive, versus having a much more robust executive with relatively unconstrained power, and perhaps, moving toward a different constitutional project altogether.

Jeffrey Rosen: [00:26:19] Okay. Thank you for that. Because this conversation's been so good, I've been negligent in my constitutional duties as a moderator- [laughter]

... and we have just about two minutes left. So, for lightning round, final thoughts. John, what do you believe the current fault lines battle for the Constitution are?

John Malcolm: [00:26:33] Well, I, I gotta respond to couple things that Martha said, and then I will gladly respond to couple things that Quinta said.

Jeffrey Rosen: [00:26:38] But, just quickly what and what [crosstalk]

John Malcolm: [00:26:39] I will.

Jeffrey Rosen: [00:26:39] [crosstalk]



John Malcolm: [00:26:39] So one is, I'm not so sure that judges should be deciding major social issues, in this country. That is a major decision about whether that should be left to the people and their elected representatives, or whether nine people in robes, sitting on courts with you know, or should be making all of these social decisions for us. And two eh, one of the reasons why people don't respect the courts is because critics of the court fear that the court is going in a direction that they don't like, attack it. And they attack it saying that people are, are bringing their personal politics into their judicial decisions, and that undermines the legitimacy, legitimacy of the court, and that is extremely dangerous.

I will agree with one thing tru- Quinta said, I don't believe I've ever heard Donald Trump say, "So, I can do whatever it is I want to under the Constitution." However, he cannot do whatever it is he wants to do under the Constitution. He has a large sphere of authority as the executive, but it is not boundless by any means, or stretch of the imagination. One thing I find very curious about, about Quinta's statement, and you're teeing up about the administrative state leads me to say this, which is that, undue deference to the administrative state is all about violations of separation of powers.

It is up to Congress to legislate. And it is up to judges to give their best interpretation of the law. The way things happen now, is administrative agencies are given basically blanket authority to write the laws, enforce the laws, and then interpret the laws, and apply them in particular cases. In other words, both legislative power and judicial power has been ceded to executive branch agencies. It has nothing to do with unwinding the New Deal. I might want to unwind portions of it; I might not want to, but it is all about separation of powers.

Jeffrey Rosen: [00:28:20] Thank you so much for that. Martha, last word for you. O- one brief eloquent paragraph about what you believe the current fault lines in the battle for the Constitution are.

Martha Jones: [00:28:31] I think the debate is partly about whether the Constitution of 1787, as amended, is up to the challenges of our present day. I've been known to say when it comes to the humanitarian crisis that is citizenship in 2019, that the Constitution, as it is written, is wholly inadequate, right? For ... To addressing that, and resolving it. On the other hand, you know, Eric Foner has a new book out where he has really urged us to come back to the 13th amendment, which abolished slavery, and the 14th amendment, which guarantees many things including equal protection of the laws. Foner's really advocating return to that, as a way of rehabilitating, and making the Constitution relevant again. We'll see.

Jeffrey Rosen: [00:29:15] Thank you for reminding us of irrelevance, what Foner has called the second founding, and for illuminating the stakes in our current battle over the Constitution. Please join me in thanking our panelists.

John Malcolm: [00:29:29] Okay. Thank you.

Jeffrey Rosen: [00:29:34] Thank you.

That was good, thank you. Thank you.



Lana Ulrich: [00:29:42] And now, please welcome the Editor in Chief of Gallup, Mohamed Younis.

Mohamed Younis: [00:29:56] Good evening, and welcome to Gallup. In 1935, our founder George Gallup said that, "If democracy was about the will of the people, somebody should go out and find without will is." [Laughter]

Eight decades later I'm here to report that, the will of the American people on the state of governance in our country, leaves a lot to be desired. Six in ten Americans are currently dissatisfied with the way the country is governed. Only 18% approve of the job the current Congress is doing. 68% of Americans say that the American political system, doesn't make them proud to be Americans. There's never been a more important time to have this conversation, tonight in this hall, and across our nation. So on behalf of the entire Gallup tribe. We welcome you here tonight.

Announcer: [00:30:54] And now, to speak about the newly launched Atlantic Project on the US Constitution, please welcome back to the stage Jeffrey Rosen, alongside Yoni Appelbaum, Senior Editor at The Atlantic.

Yoni Applebaum: [00:31:22] So, sorry about that. I think that, is the mic working now? Can you hear me in the back?

Audience: [00:31:25] No. No.

Yoni Applebaum: [00:31:26] Let's try this one more time.

Audience: [00:31:29] You're good.

Yoni Applebaum: [00:31:30] Excellent.

Jeffrey Rosen: [00:31:30] Wonderful.

Yoni Applebaum: [00:31:31] So, this morning we launched our, our series on the Battle for the Constitution. And, and I had thought that this was a great original title, but Jeff tells me this is the fourth Battle for the Constitution so, so we're, we're just repeating history here. Can you, a- and this is like a- an exam for the director of the National Constitution Center can you ... In 90 seconds, walk us through the previous three battles for the Constitution? It's just 200 years of constitutional history, you can do this.

Jeffrey Rosen: [00:31:54] The ninety- ... The, the 90 second test is good, a- and we're gonna start ... now.

So the first battle is over the ratification of the Constitution itself, and the question is how to balance the power of the big states and small states, and create a union large enough to achieve common purposes, but constrained enough to protect people from tyranny. And the main fear is mob rule, and the result is a system that slows down deliberation, but does not settle the fatal stain of slavery.



The second battle is an effort to efface that stain. It begins with the Civil War, fighting as a fight for the union, and the question of who is sovereign, the people, people of the United States as a whole, or the people of the states? And then it shifts to one over the new birth of freedom declared at Gettysburg, and culminates in the reconstruction amendments; the 13th, 14th and 15th amendments, which extend the promise of equality to African-Americans. But those amendments, as Martha Jones said so well, were thwarted by the Supreme Court, and by the terror of Southern Redemption, and it would take the Civil Rights Movement to make their promise a, a possibility.

The third battle is fought in 1936 and 1937. The Supreme Court is striking down the New Deal regulatory state, as exceeding the originalist Constitution and its limited powers. Roosevelt threatens to pack the court. The court retreats and upholds the New Deal, and ever since then embraces a broad vision of federal power to regulate the economy.

Is that the end of the 90 seconds? Or can I do the fourth battle? That was, that was it!
[crosstalk]

Yoni Applebaum: [00:33:22] You're gonna pause here. And, and I'm gonna applaud that, cause that was a heck of a summary. And that'll take us into the fourth battle-

Jeffrey Rosen: [00:33:29] Excellent!

Yoni Applebaum: [00:33:30] ... which is where we are today. How would you define this, this fourth struggle and, and stack it up against those earlier ones?

Jeffrey Rosen: [00:33:36] The fourth battle is fought over whether to revive the originalist Constitution, and repeal the post-New Deal administrative state. Ever since the 1940s, conservatives of many stripes: libertarians, Evangelicals, Catholics, natural law theorists have been convinced that the Supreme Court betrayed the original Constitution, when it blessed the delegation of congressional authority to the administrative agencies, and allowed the president to make laws and rules without congressional oversight.

And in 1980, President Reagan promised to appoint originalist justices who would essentially repeal that understanding. He nominated Robert Bork in 1987. If Bork had been confirmed, the fourth battle would've been resolved, and the originalist Constitution would have had five votes on the Supreme Court, and our understanding of federal power would've been transformed, but Bork was not confirmed. We've had an uneasy truce of 30 years. When Anthony Kennedy was the swing vote on the Supreme Court, now he's been replaced by Justice Kavanaugh. Chief Justice Roberts is in the uneasy center of accord, barely [inaudible] .

Speaking descriptively, as the nonpartisan you know, head of the National Constitution Center, I can say that the election of 2020 may well determine the fourth battle's resolution. If President Trump is reelected, and replaces a liberal justice with a conservative one, there'll be six votes, if not five and a half, to resurrect the originalist Constitution and meaningfully to restrict the scope of federal power. If he loses and a Democrat wins, the balance may continue. And yet, we could see extraordinary forms of Constitution conflict, ranging from



court packing, which as many of the Democratic presidents have endorsed, to a refusal by Republican Senate to confirm any nominee by a Democratic president.

Yoni Applebaum: [00:35:30] Just let me cut you off there because you're, you're pointing to something interesting. Much of that history was devoted to the fight a- among constitutional conservatives to restore the original meaning of the Constitution a- as they understand it. But it turned there at the end. I- if you go back and, and look at polls in 2016 somewhere between, depending on the poll, a quarter and a half of, of Trump voters said that getting good constitutional conservative judges onto the courts was decisive in, in their support.

Nothing like those numbers on, on the Democratic side of the aisle. But you're pointing out that that is changing in the run up to 2020. Now, really, for the first time in a long time, were hearing progressive candidates center the courts i- in their campaign pitches, talk about th- their plans for, for reform, are- articulat judicial visions is, is that an extension of the fourth battle? Or are we seeing sort of the birth of the fifth.

Jeffrey Rosen: [00:36:21] No, it's the fourth because the question is, who gets to control the meaning of the Constitution? And ever since Roosevelt, the president has controlled the meaning of constitutional change through transformative Supreme Court appointments, and Democrats were very, very slow to wake up to this fact. It was remarkable that election after election passed with people warning you know, focusing just on Roe V. Wade! Well, Roe V. Wade is just one case. What we're talking about is the very nature of, of the, of federal authority and individual rights.

And the reason Democrats finally woke up, is both is, is partly because of frustration over of the Garland nomination, which they consider a stolen seat, and then frustration over the Kavanaugh nomination, and a sense that the court itself may not be legitimate. That it may be politicized, that it doesn't deserve respect. And that's why you see formerly moderate ... I see heads nodding. Formerly mod- formerly moderate Democrats saying, "If Republicans are gonna play constitutional hardball so are we. And we will take back our stolen seats, and pack the court."

It's, it is the fourth battle. Because now, Democrats understand that it's not just few decisions that are at stake, but the very meaning of the Constitution. And that's why this was that discussion of constitutional crisis was so interesting. The New Deal the crit- the New Deal conflict, was a averted crisis. It- It was looking like a crisis when Roosevelt promised to pack the court, but because the Supreme Court stepped back, the crisis was averted.

If this conflict culminates in court packing, it would be both a transformative constitutional moment and a crisis. And given the fact that we are more polarized than at any time since the end of the Civil War, according to the extraordinary statistics of of Norbert Mc-McCarthy I think it's fair to place this conflict in the context of the Revolutionary era the Civil War and the New Deal.

Yoni Applebaum: [00:38:16] So, in some sense that's comforting to me, because I can look back at earlier crises and realize that things aren't so bad right now. You know th- there is



not, in fact, open fighting in the streets of Washington. On the other hand, it's, it's a little bit unnerving, because you're pointing us back to moments ... Shays' Rebellion happened around that, that first crisis. You had the Civil War and, and the thousands slaughtered during redemption in the South, during the second crisis. The third crisis also saw violence in, in the 1930s.

These have not been moments of social order and, and respect for process. These have been moments that have tested the fabric of democracy. Are you concerned that as we accelerate into this fourth battle, we could be back in a place like that?

Jeffrey Rosen: [00:38:58] It's very important that you know the centrality of violence in the previous eras. The Constitution Center just opened this very moving exhibit on the constitutional legacy of the Civil War and Reconstruction, and it has Thaddeus Stevens' cane. Stevens proposed the 13th amendment, and it's like the one that was used to cane Charles Sumner on the floor of the Senate. And Joanne Freeman has this amazing book reminding us that during that era, people would run for Congress on the platform, "I have a better right hook than the other guy!" [Laughter]

"I'm gonna beat up my opponent! I'm going to cane him, and crush him, and kill him on the floor of the Senate." That's how violent things were then, and were not-

Yoni Applebaum: [00:39:34] There's this great scene in that book where a, a representative's denouncing slavery, and, and a southern representative stands up in cocks his pistol and levels it at him whereupon he's joined by two other gun toting congressmen, and then there's two other gun toting congressmen on the other side. You've got something like the gunfight at the OK Corral unfolding on the floor of the U.S. House. I, I find moments like that illuminating because they show us that the battle for constitutional control and meaning, which is what that was a fight over has often been a literal battle, and not just the metaphor that were employing right now.

Jeffrey Rosen: [00:40:07] Well that raises the question, and we didn't resolve it on the last panel, the the ... Even would, would court packing, in the future, actually be a crisis? According to the Keith Whittington definition that Quinta mentioned, it wouldn't. It would take the president saying, "I'm not going to obey the law," open violence, or literally the branches not being able to function. So, it would be more likely to be a crisis, if, if Republicans refused to confirm any Democratic nominees.

The court can function with four- with eight justices, as we saw when Justice Scalia died. There were more unanimous opinions 'cause they didn't wanna have ties that would reaffirm lower court. But if more justices leave the court, and the court shrinks to seven or something like that and more significantly, if the court is so delegitimized that people don't obey its commands, both citizens protesting and refusing to obey its commands, or the president threatening to do so. A Democratic president refusing to obey the commands of a conservative court that strikes down climate change regulation under the Anti-Delegation Doctrine of the Green New Deal, I think that would be a crisis, even though it didn't contain violence, but history does suggest we should set a high bar.



Yoni Applebaum: [00:41:20] If- If we're not scaring you, we're not doing this right.
[Laughter]

Jeffrey Rosen: [00:41:23] That's the goal of the website, but-

Yoni Applebaum: [00:41:25] I, you know, o- one interesting academic study that, that I saw a- about six months ago used an algorithm to try to sort, just based on the language they were using statements about the Constitution by Democratic and Republican Congressmen. And 40 years ago it couldn't do it. And today it, it has better than, than 95% accuracy. You can throw the words in, and just based on the language they're using to talk about the Constitution without any analysis of the meaning of those words the algorithm can tell which side of the aisle they're on.

So I think that one of the things were trying to do with this project, is to rebuild some kind of common vocabulary. I'd like to break that algorithm. I, I'd like to make it so that as members of the Congress, and members of the public, discuss the Constitution ... I don't pretend that they're going to agree, but, but at least they're using the same words. And, and I think that that kind of vocabulary has shrunk a little bit, that kind of shared understanding.

Jeffrey Rosen: [00:42:16] That is beautifully put. And I, when I said we're- that our goal is to scare people, it's, it's the opposite. It's just what you said! How meaningful, in this polarized time, to provide a platform for citizens of different perspectives, to disagree without being disagreeable, thoughtfully to air their serious disagreements, but to do so, not in political, but in constitutional terms. There's nothing like it on, on any media site in the United States. And now there is. It's what the Constitution Center tries to do every day with our educational materials, with our podcast, with our videos for high school kids, with these thrilling new constitutional exchanges that unite students in classrooms across the country, for discussions about the Constitution, moderated by judges and master teachers!

But it's premised on this act of faith, that all of you citizens and that ever- citizens of all ages, have the capacity to distinguish between their political, from their constitutional views. To think like constitutional lawyers and Supreme Court Justices, and to reach conclusions about the Constitution that might clash with their policy preferences. Yoni, shoot is a deep scholar of these issues. He j- knows the substance, and he completely shares my belief that our common project may not just illuminate the issues in the news, but could actually elevate civil discourse in America. Which is why I'm so thrilled about our joint enterprise.

Yoni Applebaum: [00:43:35] The fact that you're all here tonight, gives me great confidence that there is an audience for this kind of work. And I hope that you'll all be reading along in the months to come. Thank you Jeff.

Jeffrey Rosen: [00:43:42] Thank you.

Lana Ulrich: [00:43:50] And now, for a conversation on the limits of congressional power, please welcome Congressman Lance Gooden, here with Atlantic White House correspondent, Elaina Plott.



Elaina Plott: [00:44:10] Hey y'all, thanks for joining us-

Rep. Lance Gooden: [00:44:12] Hey.

Elaina Plott: [00:44:13] Congressman.

Rep. Lance Gooden: [00:44:14] Hey y'all, I'm from Texas, she's from Alabama.

Elaina Plott: [00:44:16] [laughter] Kind of a slow news day, so we appreciate you making time.

Rep. Lance Gooden: [00:44:20] Yeah, it was. Very dull.

Elaina Plott: [00:44:21] Yeah.

Rep. Lance Gooden: [00:44:22] How is everybody?

Elaina Plott: [00:44:23] [laughter] So, my first question-

Rep. Lance Gooden: [00:44:26] Yes?

Elaina Plott: [00:44:26] Have you read the transcript?

Rep. Lance Gooden: [00:44:29] I, I have skimmed through it, and read most of it, but I will admit it was such a busy day, I was ... We were just saying this is, it's such a strange time, because usually you have a lot of time to process things. So I've read through it. My general consents ... full disclosure: I'm a Republican. I noticed on the list of speakers there weren't a ton of us that were here. So I I'm very much a pro Trump Republican, I represent a district that is very pro-Donald Trump. And so, I say that only to give you perspective of where I'm coming from.

But what I had heard yesterday, was that the president was guilty of offering something in exchange for something. I didn't see that today. And one of the points of contention in the complaints that we on the Republican side have, is that yesterday Democrats are just so quick to say, "Let's officialize this." And Nancy Pelosi came out and said, "Let's make this official. The president is obviously guilty of XYZ." Why not wait until everything came out today? And so, today I saw a kind of some statements backing her up, but there's not outrage in the street like I thought there'd be. Tulsi Gabbard, who's running for president, I don't think anyone questions her liberal credentials, she came out this afternoon and said that the transcript doesn't justify an impeachment.

So we're tryin' to figure out, on the Republican side, what the plan is next for Democrats. Because it's seems to be ever-changing. But the constant is that, there is a contingency that wants to impeach the president, and they wanna keep this going. You can interrupt me at any time.

Elaina Plott: [00:46:07] No that was ... I'm transfixed. Based on what you did skim, did you feel there is anything untoward that was said?

Rep. Lance Gooden: [00:46:14] Any anything un- what?



Elaina Plott: [00:46:15] Untoward, bad ...

Rep. Lance Gooden: [00:46:16] Oh,

Elaina Plott: [00:46:17] Not ideal.

Rep. Lance Gooden: [00:46:18] I, I don't love ... So, and I would tell, I've told the president, I don't agree 100% with anyone, including my wife. Doesn't mean I don't support my wife 100% ... Maybe that's a bad example. But I use that back home, when people say, "You're just in lockstep with the president." Well, I support the president a hundred percent but occasionally there are things that I don't agree with. And the president doesn't expect anyone to agree with him a hundred percent, contrary to the narrative.

But the transcript, I didn't really love bringing that up because I th- in my mind, I have moved on from the 2016 fight. But I understand where he was coming from. He shoots from the hip, he's not traditional, he's not someone that is a politician. That has a, a watchful eye in the way that a seasoned politician thinks about things. So I understood where he was coming from, I, I don't think he said I don't think his intention, or his statement said "I'm going to withhold funding until you do XYZ."

And I also think there's a slight double standard because if you had Donald J Trump under investigation, and the president had a prosecutor fired, which was something similar with President or Vice President Biden at the time, there would be just outrage if things were flipped. And the outrage doesn't seem to be there that Vice President Biden would be bragging about getting a prosecutor fired in another country. And there just seems to be double standards, and that's a narrative that plays well with the American people, because it's not a narrative as much as it is factual.

The American people ... The average American is not sitting in a fancy room spending a lot of money to hear people like me talk. The average American is at work, and they ... maybe they watch the news, but they don't keep up with things like we do. And they don't support impeachment, as a whole, and the polling doesn't support that, that's why Nancy Pelosi has been so against moving in the direction that she moved until yesterday. And that's also why the Democrats are not going to put up a- for a vote this impeach a resolution. This is the first time in the last 25 years the U.S. House has begun an impeachment inquiry three times,

Elaina Plott: [00:48:34] Okay, before we get into history-

Rep. Lance Gooden: [00:48:36] Sure.

Elaina Plott: [00:48:36] ... I got a lot I wanna ask you. I-

Rep. Lance Gooden: [00:48:37] Yeah, go ahead. You've got 15 minutes and 28 seconds.

Audience: [00:48:39] [laughter]

Elaina Plott: [00:48:41] To talk about, or to frame what you read in the transcript as, "You know, I don't agree with everything the president says." We're not talking about you know, the capital gains tax or something. This is not sort of about the nuance of policy. And you



know, one thing that was laid out ... it was not just related to 2016, President Trump very explicitly asked the Zelinski to look into Joe Biden and Joe Biden's family you know?

That ... it, s- seems pretty clear that he wanted aid in investigating a political foe. So, my question then for double standards would be, if you were to learn that Barack Obama had asked the leader of a foreign power, to look into Mitt Romney, would you not be up in arms about that?

Rep. Lance Gooden: [00:49:32] well, let's move forward and say if we were-

[crosstalk]

I haven't even answered the question. Don't ...Calm, Calm down. Calm down. The- the transcript ... If I, and I should've brought it with me, I don't have it with me. But if I recall the exact words weren't, "Please investigate my political opponent." The president was talking about a history of corruption that he ... the president has been on a ev- evaporate, eviscerate corruption-kick since he took office. That's why got elected, and the-

Audience: [00:50:01] [laughter]

Rep. Lance Gooden: [00:50:02] ... the message, I believe-

Elaina Plott: [00:50:03] Hey y'all, stop.

Rep. Lance Gooden: [00:50:05] The message was that the president wanted this corruption allegation to be investigated, and seen through. And he said it, but he didn't say I'm gonna withhold this, these funds. There wasn't a quid pro quo. What he did was not impeachable. It may be something that Mitt Romney doesn't like, he said that.

But I don't think when you have the presidential candidates running against him, saying this is not an impeachable offense, I don't think it's something that if Nancy Pelosi knew yesterday, that she would've come out and said we need to open up this impeachment inquiry.

Elaina Plott: [00:50:36] If asking, again, the leader of a foreign nation, to investigate your political rival is not grounds for impeachment, or at least a statement saying this was wrong, what is?

Rep. Lance Gooden: [00:50:51] High Crimes and Misdemeanors. That's not, that's not what that was. If it was then, that's all you'd be hearing today from Democrats. The Democrats are not saying there's a smoking gun here. When you've got leaders in the Democratic Party who won't even put up a vote for impeachment, then I would tell you that you should ask Speaker Pelosi that same exact question. Because Democrats ... A senator, I don't even remember who it was, it was a good quote. He said, "If Democrats want to impeach the president, than they should go on Amazon and by spine, and actually do it."

Because what you saw yesterday, was not any change in what's been happening. The last six to nine months of this have ... Nothing changes by what Nancy Pelosi said yesterday. What she did yesterday that was different then what's happened, is Nancy Pelosi, formally herself,



came out and said she supports what's been happening. Because an official impeachment inquiry, a formal one, has to be voted on by the House. So I would ask you, to ask the Democratic Committee the Caucus the same question. If this is not impeachable offense then what is?

Because if this is so impeachable, why aren't they putting it up for a vote? And the answer to that question is, Democrats are not genuine in their desire to fo- do a formal inquiry for impeachment of the president. We hear a lot of things about these, these purity reasons for impeaching the president. People say it's our moral obler- obligation to have oversight. Well if that's the case put up for a vote. Force people to actually go on record and say, "Yes. We need to open this inquiry."

Maybe you're not to the impeachment actual impeachment vote yet, but why not put it up for a vote. And the answer to that question is, The Speaker wants to protect the 31 Democratic members that are in districts that voted for President Trump. They want to continue to litigate the 2016 election, as long as they can while protecting those 31 members, and not forcing them to go on record. And I think that's what they're going to do as long as they can.

Elaina Plott: [00:52:47] So do you think Pelosi, in making public that she formally supports the impeachment inquiry, which procedurally, you're correct has been happening with Nadler-

Rep. Lance Gooden: [00:52:56] Mm-hmm [affirmative].

Elaina Plott: [00:52:57] ... you think she's just bluffing, in terms of actually setting a timeline for that vote-

Rep. Lance Gooden: [00:53:00] Oh no, no, no. I don't think she- I don't know that she's bluffing, she hasn't set a timeline for a vote-

Elaina Plott: [00:53:04] No, that's what I'm saying, you don't think she will, though?

Rep. Lance Gooden: [00:53:06] I think she- I don't think she- I don't think she genuinely wanted to be on stage yesterday. Because I think she has put off as long as she possibly could, and it got to the point where the majority of her members, certainly not all of them ... because those 31 members are who they're trying to protect because impeachment is such a low polling negative idea in, across the country, there's just not support for impeachment. Both sides would agree with that, and privately, it's something that those Democrats in those 31 swing districts talk about. They say, "We're not quite there yet. We're not quite there yet." but I, I believe that the talk about, we want to do this quickly. That's just not accurate because they know that if they quickly impeach the president, then it goes to the Senate where it dies. It's over. He's either acquitted or it's not taken up.

I'm not a constitutional lawyer, I don't know if they can even not- if they can let it linger. But I am confident, and I think just about everyone in this room, no matter your political persuasion would probably agree that the Senate is not going to convict Donald Trump. So, if that's the case, and you know the Senate's not going to convict the president, then from a



strategic perspective, if you're the Democrats, then you just want to drag this out as long as you can. And make it political, and make sure that if you're gonna go down this route, if you're far left wing, if your party's gonna force you to go down this route, then let's see if we can get some good dirt that will stick. And so far they have- it's too- difficult to defend the transcript that were talking about but it's not an impeachable, it's not an impeachable thing. If it was everyone would be saying, "Oh, this is it. He's finished." No one's saying that.

But the Democrats know that even if they choose to go down that road, formally impeach the president, they're not gonna get a conviction in the Senate. And so, the thinking among the Democrats is, we've either got to carry this out and hopefully we'll get lucky and get something on him that sticks, or were gonna just keep this going so we can bloody him up as much as we can through the next election cycle. Because there's nothing passing. If you recall, three weeks ago there were Democrats saying we need to cancel the recess, come back to Washington and pass XYZ, gun control bill. None of that has happened. Nothing. That was a crisis three weeks ago. No one is even talking about it now.

The US-Mexico-Canada trade agreement. Canada is going into elections in a month or two, I believe. What happens if Trudeau loses? We, do we start all over? That's a bill that has broad bipartisan support. Speaker Pelosi won't bring it up, because it would declare a victory for the president. No one is talking about passing any of those things now.

Elaina Plott: [00:55:46] Well, but ... I mean-

Rep. Lance Gooden: [00:55:47] and I'll [crosstalk]

Elaina Plott: [00:55:47] A big thing, a big thing changed today. I mean we, it was revealed to us, in this transcript, and you said it's difficult to defend. So I, you know, I do wanna be clear: you think ... Do you think it was wrong that Trump asked Zelinski to look into Joe Biden?

Rep. Lance Gooden: [00:56:03] I don't know the his- the background for everything that was said in that transcript, and I will be honest I haven't read it in depth, so I'm hesitant to comment and say this was wrong.

Elaina Plott: [00:56:13] It's interesting. You should give it a read. [Laughs]

Rep. Lance Gooden: [00:56:13] ... or that was wrong. No I, I ... absolutely. I've, I have not had anything to eat all day I'm actually, but anyway ... The it's been a busy day. Unusually busy. Most days are not like the last 48 hours have been even though days in Washington are usually pretty busy. But the the interference in elections, I believe the something that foreign powers don't need to be involved in, in any way form, or fashion.

But the problem is, is a credibility problem by Democrats. Because, we heard so, for so long that once the smoking gun came out with the Russia investigation that everyone would be on board. And then, we heard that once this transcript came out that there would be some huge smoking gun. There's really not a smoking gun. If there was then everyone would be saying here's the smoking gun we've gotta impeach him. If it's so bad, as you say it is, why won't Democrats take a vote on it? Why won't they take it up for a vote? Why is t- is one of



the presidential candidates, who's in the next debates, she's a legitimate candidate, saying that this is not an impeachable offense?

The answer is, because it's not. And so, because you don't like something the president did whether you think it's wrong or right, the answer is, was it legal? And there is no laws broken. If there were, then you would've heard about it. And so Democrats are now thinking about, what do we do next? What can we investigate, that we haven't already found to hopefully see if something sticks?

Elaina Plott: [00:57:37] I have one final question before we open it up to questions from the audience. What do you think that oversight, properly exercised, looks like? Because the White House counsel's office has been pretty total in its refusal to turn over documents to comply with subpoenas, I mean, to the point that you know, Hope Hicks won't even answer where her office was in the White House. You know, at what point is it ... At what point is Congress simply unable to do its job.

Rep. Lance Gooden: [00:58:08] So the answer to the, "Unable to do its job," is the last, as long as I've been alive, it seems, the last 20 years they, they've been unable to do their job. I've only been in office for nine months, I am not an expert by any stretch of the imagination. I don't have a wonderful answer for you about what proper oversight is, but I can talk all night about what it's not. And I'll give you an example?

Hiring a special prosecutor to investigate whatever your topic is if there's an officer of the federal government that you think has done something wrong, if you go out and you hire a special prosecutor and then they come back and say there is nothing that warrants impeachment in this in these, in my findings, then you don't disregard that and continue a witch hunt. And that's what's been happening here. We were told that there would be some smoking gun, we were told what a wonderful man Robert Mueller was, and how we need to respect him and his ruling, and that whatever he came out with would be, would be fair.

It's unbelievable to just, to re-, to think about how disappointed Democrats were the day that he rolled out that report. There was visible frustration and sadness among many of them that there wasn't something juicy in there that would warrant a good impeachment. And we move forward to today, again, there's nothing that warrants impeachment and they know that. If they had something that they can impeach the president on, and justify, they would bring it up and vote on it. They won't even vote on it.

... And I think it's sad that we've got a president who should be meeting with leaders in the United Nations. He should be coming from a position of strength, instead, three and a half hours south, the US Congress is talking about impeaching him. It's difficult to have meetings with foreign leaders when the the, the dialogue is that you're being impeached. People in other countries don't really understand our process works the hear the word 'impeachment' they think that means you're just gonna be kicked out of office. But I- the answer to your oversight question is, what's been happening for the last nine months, is just not it. If the House majority were capable of proper oversight, than they woulda wrapped this up long ago.



Elaina Plott: [01:00:17] Alrighty. Let's open it up for questions. I'm sure you all can give great speeches, I don't wanna hear 'em right now. So make sure you're asking an actual question, and please be respectful.

Audience: [01:00:28] Okay. Thank you. Hi my name's Ed, and I'm just a curious person. I'm not with an organization. Oh, you want me to stand up?

So we talked about the transcript. What was your perspective on the withholding of the whistleblower report, which Congress required to be provided? We- is that impeachable if the administration refused to do something that Congress enacted in law?

Rep. Lance Gooden: [01:00:55] So it's my understanding that the whistleblower report is going to be released. Is that your understanding?

Elaina Plott: [01:01:01] Today the White House said that it might do that. And I think as early as tomorrow, is possible.

Rep. Lance Gooden: [01:01:06] yeah so it's ... to comment on the hypothetical what-ifs would be not a great use of anyone's time. But I, I believe that it's going to be released and that should help things out. And I'm, I'm not calling on people. So, whoever gets the mic, gets the mic I think.

Audience: [01:01:24] Okay. Yeah ... Seven hours ago you tweeted about, about this you, you stated that they got the report, no violations of the law, Donald Trump [inaudible] ... You know what you said, you hadn't read it. How, how could you be [crosstalk]

Rep. Lance Gooden: [01:01:36] No, I said I have kinda skimmed through, I haven't read it in detail. It's very long.

Audience: [01:01:40] But you didn't read it? That, that seven hours ago you were reading it?

Rep. Lance Gooden: [01:01:43] I think I answered the question for you.

Audience: [01:01:44] Oh, I don't think so, but go ahead. [Laughter]

Sure. Should I just stand or sit. Okay. Hi, my name is Serena. Thank you for being here today. So you, in your last answer alluded to the fact, or you said verbatim that you believed "the Russia investigation to be a witch hunt," and kind of alluded that you felt the same way about this newly released document. And you did make clear your thoughts about whether technically, this document constitutes an impeachable offense, but it seemed ... Sorry I'll make it a question not a statement.

Elaina Plott: [01:02:15] Thank you.

Audience: [01:02:16] Do you believe that Congress should be giving presidents the benefit of the doubt, concerning whether or not they intend some kind of malintent in their communications with a foreign government? Like, do you believe that any measure of investigation into seemingly suspicious acts is warranted, or as suggested in your last answer, you know, the president should speak to the UN from the position of power, etc.



Congress should step down and defer to the president, and give them the benefit of the doubt, saying, "Okay, they probably meant well by this." 'Cause, you know?

Rep. Lance Gooden: [01:02:50] Yeah. So, so, the problem is, is, you're talking about a body, led by a group; the body is the U.S. House, the group is the Democrats that doesn't have credibility with the president or with the other half of the chamber, which is me and Republicans. And when I say that, I point to recent experience. A recent experience is that the 2016 election results have not been respected, they're angry and they're just unhappy about it. And because they haven't been able to defeat the president at the ballot box. And they're not sure they're gonna get him next time that they need to go down this investigation route.

Which they did; hired a- an independent prosecutor he conducted a very lengthy special investigation and didn't come up with what they wanted to come up with. So yes, Congress needs to over- needs oversight. Congress needs to investigate wrongdoing. The problem is, is you've got a group that won't even admit that what they're doing is something that is not even approved, you got an impeachment inquiry, that's not even a real impeachment inquiry. If there were if there were something actual some meat behind this. If people in Congress were really on board, and this was for pure values and the intentions were really that great then they wouldn't have a problem takin' a vote on it. But it's not, it's not about that. It's all political.

The reason they're not taking a vote is to protect some of their members from having to take a difficult vote, and also because they couldn't cobble the votes together. Back in July, we took up an impeachment vote, it failed. A majority of the Democrats didn't even support it. So the problem is this is not a matter of a typical investigation by a respected body. They've lost credibility because this wonderful man, Mr. Mueller who did his investigation, came back with facts that they didn't like. And there was nothing to it.

So that's why we use the term 'witch hunt', is because the results came back, they weren't what Democrats wanted and they've continued down this path of 'witch hunt', and smearing the president. They're not sure they're gonna be able to beat them in the next election, and I predict that after what they did yesterday that they won't. I'll also give you some insider information: As disgusted ... We're getting an inside an inside ... Do we have to stop?

Elaina Plott: [01:05:04] Yeah, that means we have to stop.

Rep. Lance Gooden: [01:05:05] Okay, well, you won't get the insider information then, sorry.

Elaina Plott: [01:05:08] You have like a five second thought you want to wrap up really fast?

Rep. Lance Gooden: [01:05:10] I was gonna say this: Republicans, as disgusted as we are with the process, as an American as a member of Congress, I'm disgusted with the process. I'm frustrated the Democrats have chosen to go this route, that they don't even have the nerve to put it up for vote. If you're a Democrat in this room shaking your head at everything that I'm saying, then you should call your member of Congress, if they're a Democrat, and say, "If this case is so strong, why aren't you guys putting it up for a vote? Why would you



give the Republicans that great talking point?" That for the first time in 25 years, we're gonna open an inquiry without even putting it to the fi- to the vote of the people? That's something everyone in this room should be for.

And the reason I bring that up is, as an American, I'm outraged. As a strategist who wants to win back the majority for my party, Republicans are quietly loving every bit of this. Why? Because we believe it will ensure that Donald Trump gets reelected next year. And as outraged as Republicans are, privately we're thinking to ourself, "Well, at least we're going to keep the White House."

Elaina Plott: [01:06:09] Well, let's see if that prediction ends up true. Thank you so much Congressman.

Rep. Lance Gooden: [01:06:22] Thank you.

Lana Ulrich: [01:06:23] Next up, for a conversation on the power to impeach, please welcome Congressman Adam Schiff, Chairman of the House Intelligence Committee. And here to lead the conversation, Jeffrey Goldberg, Editor in Chief of The Atlantic.

Jeffrey Goldberg: [01:06:42] Thank you. Thank you everyone for being here. And let me just say at the outset, this is the first event in a new partnership between The Atlantic and the National Constitution Center, Jeff Rosen, and it's going wonderfully well. Helped a little bit by the news, perhaps but were looking forward to a long and and fruitful relationship. Congressman Schiff how's your week been?

Audience: [01:07:05] [laughter]

Rep. Adam Schiff: [01:07:05] Slow.

Jeffrey Goldberg: [01:07:05] Slow? Slow, slow.

Rep. Adam Schiff: [01:07:06] Yeah.

Jeffrey Goldberg: [01:07:06] Imagine it fast! So can you just bring us up to speed? I, I wanna get to some larger issues about eh, the stress on eh the Constitution, stress our systems eh, and the various issues that impeachment raises. But why, why don't we talk for a minute about one of the latest developments, the release, to you at least, of the whistleblower complaint? You have now seen the actual whistleblower report. Eh, did it surprise you? Can you say anything about it to this group about what you've what you understood about it so far?

Rep. Adam Schiff: [01:07:38] Well I don't know that I'm authorized tonight, and this may change first thing in the morning

Jeffrey Goldberg: [01:07:43] We can wait.

Rep. Adam Schiff: [01:07:44] We can wait? [laughter] Conversation goes on long enough, we may well [crosstalk]



Jeffrey Goldberg: [01:07:48] We'll just bring in snacks. It's fine.

Rep. Adam Schiff: [01:07:50] I don't know that I can even confirm or deny whether the subject of the complaint, involves the subject of the call. Because the, at this point, the director has made no declaration that any of it is unclassified, or any of it could be shared. Presumably when he's coming in to testify, he's gonna wanna be able to talk about some of the substance.

Jeffrey Goldberg: [01:08:14] Right.

Rep. Adam Schiff: [01:08:14] But frankly they're not gonna tell us until the morning what they consider classified or unclassified. I should say frankly, that this complaint, we consider to be the property of our committee, that's where it was intended to be. And we ought to make the decisions about the release of information from it. Frankly, we have much more concern, I think, over the welfare of this whistleblower than anyone in this administration has shown and I don't think-

Jeffrey Goldberg: [01:08:39] Do you know the identity of the whistleblower?

Rep. Adam Schiff: [01:08:41] I don't.

Jeffrey Goldberg: [01:08:41] You know the identity?

Rep. Adam Schiff: [01:08:42] I don't.

Jeffrey Goldberg: [01:08:42] Okay, when will you find out? Or will you find out?

Rep. Adam Schiff: [01:08:45] Well presumably I'll find out before he or she comes to testify, I hope.

Jeffrey Goldberg: [01:08:50] One hopes? Well when is that?

Rep. Adam Schiff: [01:08:50] Were trying to arrange that as soon as we can. And but ... Here's the challenge and the danger facing whistleblower, which is, the acting Director of National Intelligence says, "I'm determined to protect the whistleblower." Well, I appreciate that sentiment. But where were you when the president was suggesting the whistleblower may be a traitor? Remaining mute in the face of that, to me, does not seem like protecting the whistleblower from reprisal, because the reprisals have already begun. But more than that, the Department of Justice wrote, what I consider a sham of a legal document, to justify the non-transmittal of that complaint to Congress.

But the way the Justice Department did it, by saying in this contorted legal reasoning that the "Director of National Intelligence has no responsibilities, when it comes to protecting against foreign interference in our election," that should come as a revelation to the director. It certainly came as a revelation to me! And but by using that basis, saying this is outside of the director's jurisdiction, basically Department of Justice has said, "whistleblower, you're outside of the protections of the statute. You're not covered. You're at peril." and so, we wanna make sure that we do everything to protect that person. And it



may be to protect her from a Justice Department that is now run by someone who views his mission as serving the interests of the president, not the interests of justice.

Jeffrey Goldberg: [01:10:16] Right. Let's talk about your reaction to the transcript, so called. It's not actually a word for word transcript memorandum, of the call. The call that is still at the center of this, of this controversy. Tell us, tell us what you think about it, the, the, the White House released it in the hopes that it would allay people's fears, or show them that it's less than, than meets the eye.

We now ha- are hearing from many Republicans privately, that they are appalled that the White House released it. Because it is so damaging in their eyes. At least privately. They won't, they won't say that publicly. Talk about, talk about the, the, the content o-of, of, of that, and talk about your reaction to it.

Rep. Adam Schiff: [01:11:00] Well, you know, when the White House announced, and they sort of vacillated about this in the last couple days, that they were to release the transcript to Congress, we started ... the not transcript even, well, even though they called it a transcript, while they were going to release something to Congress. We started to wonder whether, what they were going to read- release was a selective excerpt of this conversation, that is, as I understand, how the process works. There could be many people on a call between the president and foreign head of state. Many people separately take notes that get written up as a report of the call and that maybe what the White House was going to do, a la the misleading Barr summary, is cherry pick the one that contains the least incriminating information about the president.

Because, as I understand, not necessarily the policy, but sometimes the practice, those that are writing up the notes of the call don't want to include things that are just embarrassing to the president. And, and that may extend to things that are beyond embarrassing, that could go into illegality or corruption.

Jeffrey Goldberg: [01:12:05] Right, these are people who work for the president.

Rep. Adam Schiff: [01:12:06] They're people who work for the president. So, I have to say I had low expectations for what they were gonna actually release. I got a chuckle out of a, a news story, although it's kind of dark humor that came out today, that was a press report of overhearing two White House staff talking to each other saying "Won't it be embarrassing if what we release doesn't even include the part of the conversations, the president has admitted to?"

[Laughter]

And I mean, it one that was funny, at another level it's, it's terrifying. That's that-

Jeffrey Goldberg: [01:12:37] That's very Alice in Wonderland.

Rep. Adam Schiff: [01:12:38] Yes, it is! [laughs]

Jeffrey Goldberg: [01:12:39] That's that's really rabbit-hole-ish. Yeah.



Rep. Adam Schiff: [01:12:40] Wh- when it came out, I was shocked at how bad it was, how blatant it was. And I can only think that either they were just so terribly misled by the president's own sense that he can persuade anybody of any alternate reality that, right? They have their alternate facts, truth isn't truth, and they could spin this into any meaning they want. Either they had fully bought into that, or they were convinced somebody else had this record, somebody else was going to release this record, and better than they do it early. Because the one advantage they had, in the course of the Mueller investigation, is the facts came out drip by drip by drip by drip.

If the facts we knew at the end of the Mueller investigation were released on a single day, if we learned about that illicit meeting at Trump Tower, and those emails where the Russians, literally promised dirt on Trump's opponent, as part of the Russian government effort to help the Trump campaign, it would've had a completely different reaction from the country. So I, I don't I don't know what it is, but obviously I think people's reaction to it, and now you're actually starting to see some of the Republicans in the Senate speak out publicly.

Jeffrey Goldberg: [01:13:48] Right.

Rep. Adam Schiff: [01:13:48] It's hard to imagine a worse abuse of office than this. And then- and this of course what the framers feared-

Jeffrey Goldberg: [01:13:56] Go into that. Go into what, what is the eh, we'll come to that in a minute. But what, what is, specifically, the most blatant violation of, of, of the law, perhaps, and certainly presidential norms and behav- norms and behavior.

Rep. Adam Schiff: [01:14:07] Well the, you know, the ... The first obligation of the president, is to protect the country. That, I think means quite literally, protect the country. It also means uphold the Constitution, that's part of the oath, it's really the, the essence of the Oath of Office. And here the president betrays both. It's in our national security interest that Russia not invade its neighbors. It's our national security interest that when we promise Ukraine, as we and our other allies did, when they give up their nuclear weapons, that we will help assure their territorial integrity, that we stand up for what we promised.

And here that a president of the United States would withhold military aid to a nation that is still occupied, in part, by Russian forces, Russian irregulars, Russian green men, withhold that even as he is pressing that leader to intervene, to manufacture dirt to help his political campaign. It makes our country less safe, it jeopardizes our national security, but in terms of his Oath of Office, of, of faithfully executing the laws ... We passed a law that said, we want this, these millions of dollars in military assistance to go to Ukraine. He's not faithfully executing if he's withholding that support for personal political reasons. So to me it, it, it is the most flagrant abuse of his Oath of Office.

Jeffrey Goldberg: [01:15:27] Right. I asked The Speaker, yesterday, if she believed that the president understands right from wrong. Do you believe the president understands right from wrong?



Rep. Adam Schiff: [01:15:39] Not always, no. I don't believe he does. Because there's sometimes when he will say, say things. In, and this is a president who deceives all the time, but sometimes he will say things that are so damning, I think because he doesn't understand how truly incriminating they are. Which suggests that there are times when he doesn't know right from wrong, or his view of the world is, everybody is completely in it for themselves. That's how he operates. That's how he expects everyone else to operate and for anyone to suggest otherwise is a charade.

Jeffrey Goldberg: [01:16:21] Right.

Rep. Adam Schiff: [01:16:21] You know you, you meet people in life who assume that everyone is like they are, and when they lack a moral compass, they assume everyone else lacks a moral compass, you know? I would still imagine that somewhere in the back of his head he understands right from wrong, but that switch doesn't always seem to be flipped on or even when it is, it's always secondary to his immediate personal need.

Jeffrey Goldberg: [01:16:47] I asked the question because he, he ... This phone call happened right after the Mueller, right after Mueller's testimony. He's not unaware of the fact that you're not supposed to ask foreign leaders to interfere in American elections. I- It's been discussed in public for quite a while now, and yet, he did this. And so it strikes me as not Nixonian. I think Nixon understood right from wrong and did wrong, sometimes or often but would I ... This, this question goes to the question of whether he is competent to be president? And I want to ask you that directly. Do you think he has the cognitive abilities, put aside the the, the, the, the, the moral compass, does he have the cognitive abilities, in your mind, to be president of the United States.

Rep. Adam Schiff: [01:17:28] I don't, I don't think he has the character to be president of the United States, and I've often said, and I don't mean it as an exaggeration, but you could pluck someone off the street and they'd be a better president. And I say that because, if you pluck somebody off the street at random, they would be patriotic. They would be decent and they would have the common sense to know that if they didn't know someone-something, they should find someone who did. These are qualities all lacking in the president. And, but I think what has our Republic really shaking right now, is not that the president lacks these the, the central element of character, but rather that my GOP colleagues are so willing to fall in line, no matter how serious the depravity. You know we had a, a resolution on the floor today to urge the complaint to be provided to the Congress. You know, this would be laughable if it wasn't so serious. Yesterday when we took it up with the rules committee the Republican representative of Intel Committee said it's premature. We shouldn't ask for the complaint until the director comes in and tells us why he's not giving it to us. And then, today, he argued it's post mature, 'cause now they've agreed to provide it so it's premature postmature. It's apparently never mature [laughter]

... for Congress to insist that the law be obeyed. And when I listen to my colleagues just tie themselves into knots, to explain how this obvious shakedown on this call was some somehow, "Nothing to see there," you know, I was reminded once again, as we've been



reminded over the last two and half years, that there is no depth to which they will not go to avoid being tweeted at by the president, attacked by his cronies on Fox Prime-time-

Jeffrey Goldberg: [01:19:27] Well, you can testify that you can get tweeted at the president survive because-

Rep. Adam Schiff: [01:19:31] Yes, in fact, I have to tell you because I thought this was quite hilarious, I didn't get a chance to watch the president's press conference today. So I, I missed that show but one of my staff came in right after was over and he said, "The president just called you smart!" And I said, "Really?" And he said, "Yeah but then he said, you lie and lie and lie!" And I was like, "You kind of buried the lead there." But yeah, you know, I can attest to the fact that you can be attacked by the present, you can survive it, and I obviously, it's different as a Democrat, but a great many of my Republican colleagues could stand up to this president, and their constituents would applaud them for it.

I remember a conversation I had, actually at a forum I think that you and I participated in, when Senator McCain and I were backstage. This was before the midterms, and I said I don't understand why there's not a single Republican in the House who feels they have a constituency, but they- the, to be, the John McCain of the House. I would think that's a good place for any number of my GOP colleagues to be. And his response was, "Well, if it stays that way, they'll soon be calling you chairman." and obviously it did and you know, while I'm glad that I'm the chairman and not the ranking member I would prefer that my Republican colleagues did the right thing. And while I understand at a very kind of pedestrian level why they don't. That they're worried about a primary, they're worried about future career plans. At another level, I don't understand at all. What's what's the point of their being there.

Jeffrey Goldberg: [01:21:08] Well ... You know I, I mean, obviously you're- you know many of your Republican colleagues really well. Probably friends with some of them. And I, I want to just press on this point, you know, you read the, you read the transcript, as it's been called and it is not, it is not ... "I will not give you money unless you dig up this dirt and send it to me in this Post Office Box." it's a little bit more vague, at least in the description. Is there any possibility that someone could read what you've read in a slightly more benign matter, and give the president the benefit of the doubt.

Rep. Adam Schiff: [01:21:43] It, it depends I guess on what you're drinking or smoking.

[Laughter] I don't how you can read that, I don't, I don't know any of them could read that, and if they didn't know there was an R next to the president's name instead of a D that they could reach any conclusion other than, "This man is corrupt."

Jeffrey Goldberg: [01:22:02] You said it reads like a, a mob shakedown. Go into that a bit.

Rep. Adam Schiff: [01:22:05] It does. And you know I- I'm continually reminded of something James Comey said a year or two ago about how when he was asked by the president "Can't you see fit to let this Flynn thing go?" He didn't need to be told this was a directive. When the Commander-in-Chief says that he hopes something happens, it means: I want you to make it so. That the president speaks in Comey's experience, like an organized



crime figure. Now I've got my issues with James Comey, but not on this score. Because time and time again, we see this is exactly how the president talks Michael Cohen talked about it as well. How the president would talk in code. And you read that call record it's got everything you'd expect from a mob boss it's got the "You know we do a lot for you. We do a lot for you. We do more for you than any other country does for you, but there's not much reciprocity here. There's not much reciprocity, and I've got a favor I wanna ask of you and let me just say Ukraine's a nice country." is kind of like, "It'd be sad if something happened to it. Like, like, nobody defended you from Russia invading your soil." y- you don't need to club the president of Ukraine over the head.

The president of Ukraine goes into that call knowing, "I am totally dependent on this country against a powerful and malignant neighbor. I'm dependent militarily. I'm dependent diplomatically, I'm dependent economically. His, his court jester of a lawyer has made it clear what he wants even before this meeting. My staff has certainly told me exactly what the president wants and president makes waste no time in getting to the point and goes back to it and back to it and back to it." Ukraine is not stupid and neither are we. It's clear what's going on here, and if you're going to look for the president or anyone else to spell it out in graphic terms like I think any good organized crime figure they know how to talk in a way where the message is clear and the threat is implied-

Jeffrey Goldberg: [01:24:22] Is he is he Michael Corleone is a Fredo? No?

Rep. Adam Schiff: [01:24:27] I always thought Don Junior was a dead ringer for Fredo, but I don't, I don't, I don't know I, I-

Jeffrey Goldberg: [01:24:39] Michael wouldn't get caught with a transcript. You know, that's all I'm sayin'.

Rep. Adam Schiff: [01:24:45] You know, I, I mean ... I guess these days you have to laugh or you go mad. But this is a terrible tragedy for the country you know, I mentioned John McCain earlier and I had the chance to travel with him to couple security national security conferences. And one of them, and the wonderful thing about traveling with him is he could invite anyone to dinner and they'd come. We had dinner with Bono and Bill Gates and as the night wore on we started telling jokes and Bono told a joke about being Irish and then got very serious and he said, "I'm very proud to be Irish and very proud of Ireland but Ireland likes most countries is just a country. America is also an idea. And I remember thinking at the time that this is really what's at stake right now, the idea of America but, but I thought a lot about that conversation over the last two years and and for much of those two years I thought about that conversation the context of the idea of America as the bastion of democracy, as the champion of human rights, as the, as the torch for freedom loving people all around the world. But I've come to realize there's another part of the American idea that is also now so deeply at risk. And that's the idea of America as a melting pot the idea of America as a place that's welcoming of refugees that that you can come to that you can belong in. And when the president tells my colleagues to go back to where they came from, and inspires crowds to make that hideous chant, you realize everything about the American idea is at risk right now. And that, I don't think you can capture well in a in a movie role.



Jeffrey Goldberg: [01:26:34] Right. So my last, my last question for you is a large question-

Rep. Adam Schiff: [01:26:37] But you know, as a representative of Hollywood. I always appreciate the opportunity to cast people.

Jeffrey Goldberg: [01:26:42] Exactly, exactly. The large question, maybe is the largest question is: Is this a political crisis, a moral crisis, or is it a constitutional crisis? We're here to talk about the Constitution, is the Constitution, constitutional norms, constitutional behavior. Is it are we ... is this under threat in some way, that the subject that is the preoccupation of the National Constitution Center a lot of people in Washington beyond.

Rep. Adam Schiff: [01:27:10] Well, I think it's really all three. It's certainly a moral crisis when so much of the values of the country are being tested. What is the country stand for? What do we still stand for? What it says on the Statue of Liberty, or are we some different country now? So morally, we were being tested, politically our system is showing enormous strain. Lots of things we thought were inviolate norms turnout you can violate with near impunity. Whether we're in a constitutional crisis, I've always thought that we'll be in that crisis when the courts finally adjudicated against the Trump administration vis-à-vis the oversight we're doing and Donald Trump says what I think President Jackson said once before when the Supreme Court ruled against him, "Well, that's your opinion. Now let's see you enforce it." If we ever get to that point, we are in a full-blown crisis, because there is no one and nowhere to appeal. I don't think we're there yet but I do think well, the framers conceived that a man like Donald Trump might become president. I think they had more confidence in the Congress and its willingness to, when the Constitution itself was at stake, overlook party interests and do what was right. And in that respect they may have overestimated.

Jeffrey Goldberg: [01:28:41] Well, let me, let me follow that up with a final question. Because you're you're forcing me to asked this question, do you ... If the president ever said to the Supreme Court, to a Supreme Court ruling, "Well, that's your opinion. Go enforce it." How much faith do you have that your Republican colleagues in the House would say "Okay, that's the redline. Thank you very much. This, this whole thing is over." And how much you, and how much faith do you have that they would do that or do you doubt whether it would rise to that?

Rep. Adam Schiff: [01:29:10] It is, is very difficult for me to see the circumstances in which this current crop of representatives is willing to stand up to the president. I think what we've learned is the flipside of something we knew, and that is, we knew that courage was contagious during the presidency of Donald Trump, we've learned that so is cowardice. And there's a kind of a groupthink going on where if no one speaks up no one speaks out. And no one was speaking out with any conviction right now in the GOP. And therefore, no one is speaking out.

And you know, after time, after time where we thought, "Okay. Surely now," only to be disappointed. I've given up any expectation of that changing. But you know, I do want to say, so that we don't run on such a gloomy note, I also have every confidence were going to get through this. I think the country's been through far worse. We've been through far greater



times of division, and nothing was worse than the Civil War, but even Vietnam, I think were far more profound divisions and far more deadly divisions than today. So were gonna get through this. There were certain things that will be an indelible blight, even when we do get through it.

What we've done to these migrant families will be I think the darkest stain on our country some damage can't be mitigated. Family a parent that's lost their child, whose child has died, is never going to get the child back. And, but I do believe that when we have a new president, they can quickly mitigate much of the damage, and the size of the repudiation at the polls next year is going to be very important in telling the rest of the country whether this was a bout of momentary insanity or something for more serious. And maybe more importantly, in telling ourselves, in reminding ourselves that the country is much better than this. That this president, this presidency, these collective failures in Congress, that were better than this and were going to demand better in the future.

Jeffrey Goldberg: [01:31:25] Congressman Schiff, Thank you very much.

Rep. Adam Schiff: [01:31:27] Thank you, thank you, thank you very much. Thank you.

Lana Ulrich: [01:31:38] Today's show is engineered by Greg Scheckler and produced by Diana Allen and the Constitutional Content Team. Research was provided by Lana Ulrich and Robert Black. Special thanks to The Atlantic and The Atlantic Live Team for their collaboration on this program. If you enjoy this constitutional conversation, and want to learn more about the Battle for the Constitution Project visit: [The Atlantic.com/projects/battle-constitution](https://www.theatlantic.com/projects/battle-constitution) and, please rate, review, and subscribe to We the People, and recommend our show to friends, colleagues or anyone you may enjoy a weekly dose of constitutional debate. And remember the National Constitution Center is a private nonprofit. We rely on the generosity of people from across the country, who are inspired by our nonpartisan mission of Constitutional Education, and you can support our mission by becoming a member at [Constitution.org/membership](https://www.constitution.org/membership) or give a donation of any amount to support our work, including this podcast at [Constitution Center.org/donate](https://www.constitutioncenter.org/donate). On behalf of the National Constitution Center, I'm Lana Ulrich.