

Dershowitz calls out House Dems in Trump's Senate impeachment trial after Bolton shock waves

Harvard Law School Professor Alan Dershowitz, delivering a spirited constitutional defense of President Trump at his Senate impeachment trial Monday night, flatly turned toward House impeachment managers and declared they had picked “dangerous” and “wrong” charges against the president — noting that neither “abuse of power” nor “obstruction of Congress” was remotely close to an impeachable offense as the framers had intended.

In a dramatic primetime moment, the liberal constitutional law scholar reiterated that although he voted for Hillary Clinton, he could not find constitutional justification for the impeachment of a president for non-criminal conduct, or conduct that was not at least “akin” to defined criminal conduct.

“I’m sorry, House managers, you just picked the wrong criteria. You picked the most dangerous possible criteria to serve as a precedent for how we supervise and oversee future presidents,” Dershowitz told the House Democrats, including head House impeachment manager Rep. Adam Schiff, D-Calif.

He said that “all future presidents who serve with opposing legislative majorities” now face the “realistic threat” of enduring “vague charges of abuse or obstruction,” and added that a “long list” of presidents have previously been accused of “abuse of power” in various contexts without being formally impeached.

The list included George Washington, who refused to turn over documents related to the Jay Treaty; John Adams, who signed and enforced the so-called “Alien and Sedition Acts”; Thomas Jefferson, who flat-out purchased Louisiana without any kind of congressional authorization whatsoever; John Tyler, who notoriously used and abused the veto power; James Polk, who allegedly disregarded the Constitution and usurped the role of Congress; and Abraham Lincoln, who suspended habeas corpus during the Civil War. Ronald Reagan, George H.W. Bush, and others would also probably face impeachment using the Democrats’ rules, Dershowitz said.

“Abuse of power,” he argued, has been a “promiscuously deployed” and “vague” term throughout history. It should remain a merely “political weapon” fit for “campaign rhetoric,” Dershowitz said, as it has no standard definition nor meaningful constitutional relevance.

Dershowitz then said he was “nonpartisan” in his application of the Constitution, and would make the same arguments against such an “unconstitutional impeachment” if Hillary Clinton were on trial — passing what he called the “shoe on the other foot” test.

“Purely non-criminal conduct such as abuse of power and obstruction of Congress are outside the range of impeachable offenses,” Dershowitz said.

He quoted Supreme Court Justice Benjamin Robbins Curtis — one of the two dissenters in the notorious 1857 “Dred Scott v. Sandford” decision and counsel for President Andrew Johnson during his impeachment trial in 1868 — as saying there can be no impeachable offense “without a law, written or unwritten, express or implied.”

Johnson, Dershowitz observed, was impeached for violating the Tenure of Office Act — a statute essentially designed to create the pretext to impeach Johnson. Bypassing the law first, lawmakers expressly recognized that criminal-like conduct was needed for impeachment, Dershowitz argued. (No president had ever been impeached for non-criminal conduct until Trump’s impeachment last year.)

Indeed, a “close review of the history” near in time to the founding of the United States, Dershowitz said, revealed that the founders explicitly wanted to avoid making impeachment so arbitrary and powerful that it effectively created a “British-style parliamentary democracy,” in which presidents served at the pleasure of the legislature.

Dershowitz further suggested that the “rule of lenity,” or the legal doctrine that ambiguities should be resolved in favor of defendants, also counseled toward acquitting the president. The Constitution permits impeachment and removal of presidents for “treason,” “bribery,” and “high crimes and misdemeanors,” but does not clearly define the terms.

Responding to reports that former national security adviser John Bolton has written in his forthcoming book that Trump told him he wanted to link Ukraine

aid to an investigation of the Bidens, Dershowitz argued that even an explicit “quid pro quo” would not constitute an impeachable “abuse of power.”

“Nothing in the Bolton revelations, even if true, would rise to the level of an abuse of power, or an impeachable offense,” Dershowitz said. “That is clear from the history. That is clear from the language of the Constitution. You cannot turn conduct that is not impeachable into impeachable conduct simply by using terms like ‘quid pro quo’ and ‘personal benefit.’”

“It is inconceivable,” Dershowitz said, that the framers would have intended such “politically loaded terms” and “subjective” words without clear definitions to serve as the basis for impeachment.

Fearing a partisan impeachment process, the framers had rejected the offense of “maladministration” as a basis for impeachment, Dershowitz noted, and “abuse of power” was similarly vague.

Dershowitz wrapped up his argument, steeped in historical and textual analysis of the constitution and founding documents, by urging senators to reject the “passions and fears of the moment,” as the framers had similarly warned.

A series of Republican senators lined up to shake Dershowitz’s hand after his presentation concluded.

Hunter Biden in the crosshairs

Separately, Pam Bondi, in a methodical presentation earlier Monday at the impeachment trial, took the fight directly to Hunter Biden — underscoring, again and again, how even media outlets with a left-wing “bias” questioned the younger Biden’s lucrative service on the board of the Ukrainian natural gas company Burisma Holdings while his father oversaw Ukraine policy as vice president.

A 2014 Washington Post report, Bondi noted, asserted that the “appointment of the vice president’s son to a Ukrainian oil board looks nepotistic at best, nefarious at worst.”

A 2014 BuzzFeed News article stated that “serious conflict of interest questions” were raised by Biden’s appointment.

A June 2019 ABC News report called it “strange” that Burisma, which was widely accused of corruption, had agreed to pay Hunter Biden’s company “more than a million dollars a year,” just after Biden was kicked out of the Navy allegedly for cocaine possession.

HUNTER BIDEN AGREES TO PAY CHILD SUPPORT IN ARKANSAS CASE

It was hardly surprising given all the media attention, Bondi went on, that career State Department official George Kent flagged Biden’s apparent conflict of interest, but was told essentially not to bother the vice president’s office — or that the Obama administration had prepped former U.S. Ambassador to Ukraine Marie Yovanovitch for questions about Burisma ahead of her Senate confirmation.

Bondi’s point-by-point defense of Trump’s concerns about the Bidens’ potential corruption came on the second day of Republican arguments.

Fox News has been told that Trump’s defense team will wrap up on Tuesday within a few hours after the trial resumes at 1 p.m. ET. “Everyone should be able to go home for dinner,” a source close to the team told Fox News.

The next phase of the trial, involving 16 hours of written questions that the senators can submit to be answered by Democratic House managers and Trump’s lawyers, will not start until Wednesday. Then, there will be a vote on whether to hear more evidence or witnesses.

The written questions could focus either on legal issues, like the theoretical ones raised by Dershowitz, or factual matters that could prove uncomfortable for Democrats.

“Hunter Biden was paid over \$83,000 a month, while the average American family of four during that time each year made less than \$54,000,” Bondi, the former Florida attorney general, said incredulously in her remarks.

In his own comments to the Senate, Trump lawyer Eric Herschmann argued that Burisma couldn’t even get its story straight concerning Biden’s duties.

In a May 2014 Burisma news release, the company claimed Biden would head up the country’s “legal unit,” Herschmann observed. “But, on October 13, 2019, Biden’s lawyer said that ‘at no time’ was he in charge of Burisma’s legal affairs.”

Even Hunter has admitted, speaking to ABC News, that he “probably” would not have been on the board of Burisma if he were not the vice president’s son, Bondi noted.

Bondi and Herschmann were arguing that Trump did nothing wrong when, in a July call with Ukraine’s leader, he called for the country to look into Joe Biden’s on-camera admission that he successfully pressured Ukraine to fire its top prosecutor by withholding \$1 billion in U.S. assistance to Ukraine.

What Biden didn’t reveal, Bondi said, was that the prosecutor was investigating Burisma at the time — or that Hunter Biden was serving in a highly lucrative role on Burisma’s board.

Republicans reinvigorated

The Trump team’s aggressive arguments on Monday heartened Republicans both inside and outside the Senate chamber.

“Pam Bondi is on the Senate floor nailing Hunter Biden, Joe Biden, and the Obama White House for their role in/handling of Ukrainian corruption,” North Carolina Rep. Mark Meadows tweeted. “If it wasn’t obvious already... President Trump was right to press for reform” in Ukraine, he wrote.

In a heated news conference, Republican Texas Sen. Ted Cruz said the proceedings had offered just the “beginning” of “serious evidence of corruption” involving Burisma. Reporters repeatedly interrupted Cruz, and at one point a questioner suggested that Cruz’s children had also benefited from nepotism in obtaining lucrative board roles — even though they’re in elementary school.

Using Democrats’ logic, a stronger case for impeaching former President Obama could be made, Herschmann argued later. He noted that Obama had been caught on camera promising Russia’s president that he would have more “flexibility” on missile defense issues after the 2012 election — an apparent instance of a “quid pro quo” involving politics influencing foreign affairs.

“The president exercises official power. In his role as head of state during a nuclear security summit after asking the Russian president for space, he promised him missile defense can be solved? What else can that mean than in a

way that can be solved for the Russians?” Herschmann asked. “He was asking an adversary for space for the express purpose of furthering his own election purposes... ‘after my election, I have more flexibility.’ Obama knew the importance of missile defense in Europe but decided to use it as a bargaining chip.”

Herschmann accused Democrats of overreach by attempting to remove the president by a vote of the Senate.

BOLTON MANUSCRIPT LEAKS JUST AS AMAZON BOOK PREORDERS GO LIVE; TRUMP FIRES BACK

“We, on the other hand, trust our fellow Americans to choose their candidate... and let the American people choose,” he said. “Maybe they’re concerned that the American people like historically low unemployment, maybe the American people like that their 401(k)s have [grown].”

Also speaking on behalf of the president, Ken Starr, whose independent counsel investigation into then-President Bill Clinton resulted in his impeachment, bemoaned what he called an “age of impeachment.” Impeachment, he said, required both an actual crime and a “genuine national consensus” that the president must go. Neither existed here, Starr said.

“It’s filled with acrimony and it divides the country like nothing else,” Starr said of impeachment. “Those of us who lived through the Clinton impeachment understand that in a deep and personal way.”

Trump’s team further challenged Democrats’ claims that Trump’s fears of Ukraine meddling were a “conspiracy theory” — noting that Schiff, D-Calif., had spent years accusing the Trump team of colluding with Russia without any evidence.

Although Democrats — and some news outlets, including The Associated Press — repeatedly claimed that the idea of Ukraine meddling was a “conspiracy theory,” a Ukrainian court has ruled that officials in the country did illegally meddle in the U.S. election. Additionally, a 2017 investigative report by Politico found extensive efforts by Ukrainians to hurt Trump’s presidential campaign.

Biden campaign rapid response director Andrew Bates shot back quickly in a

statement to Fox News.

“We didn’t realize that Breitbart was expanding into Ted Talk knockoffs,” Bates said. “Here on Planet Earth, the conspiracy theory that Bondi repeated has been conclusively refuted. The New York Times calls it ‘debunked,’ The Wall Street Journal calls it ‘discredited,’ the AP calls it ‘incorrect,’ and The Washington Post Fact Checker calls it ‘a fountain of falsehoods.’ The diplomat that Trump himself appointed to lead his Ukraine policy has blasted it as ‘self-serving’ and ‘not credible.’ Joe Biden was instrumental to bipartisan and international anti-corruption victory. It’s no surprise that such a thing is anathema to President Trump.”

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Democrats have accused Trump of seeking to “make up dirt” on the Bidens, and alleged that Trump himself delayed sending aid to Ukraine until the country took a public look at the issue.

Bolton looms large

Meanwhile, senators faced mounting pressure Monday to summon Bolton to testify at the trial, after an excerpt from the former national security advisor’s forthcoming book apparently leaked. According to the manuscript, Trump told Bolton he had suspended aid to Ukraine in exchange for an investigation of the Bidens. The White House strongly denied the claim.

“We deal with transcript evidence, we deal with publicly available information,” attorney Jay Sekulow said. “We do not deal with speculation, allegations that are not based on evidentiary standards at all.”

Prior to his presentation Monday, Dershowitz said that the Bolton issue wouldn’t affect his presentation, centering on constitutional law.

Republican senators have faced a pivotal moment, and pressure was mounting for at least four to buck GOP leaders and form a bipartisan majority to force the issue. Republicans have held a 53-47 majority, and a mere majority vote would be

required on the question of witnesses.

“John Bolton’s relevance to our decision has become increasingly clear,” Utah GOP Sen. Mitt Romney told reporters. Maine Sen. Susan Collins, a key moderate swing vote, said she has always wanted “the opportunity for witnesses” and the report about Bolton’s book “strengthens the case.”

At a private GOP lunch, Romney made the case for calling Bolton, according to multiple reports. Other Republicans have said that if Trump’s former national security adviser is called, they will demand reciprocity to hear from at least one of their witnesses. Some Republicans have wanted to call the Bidens.

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Senate Majority Leader Mitch McConnell, R-Ky., appeared unmoved by news of the Bolton book, telling Republicans they would take stock after the defense team concluded its arguments.

McConnell’s message at the lunch, said Indiana GOP Sen. Mike Braun, was, “Take a deep breath, and let’s take one step at a time.”

Fox News’ Brooke Singman, Chad Pergram and The Associated Press contributed to this report.

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