

“brazen & unprecedented”

“lost the respect of our allies”

In Their Own Words

“job performance can’t be a test in an impeachment trial”

“plain old Kansas common sense”

Seven GOP senators’ past and present pledges of impartiality on impeachment proceedings.

“unbiased”

“if it looks suspicious, assume it is”

“the mom test”

“hiding legal evidence under the bed”



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This report was written by Mike Tanglis, Research Director for Public Citizen's Congress Watch division. The report was edited by Congress Watch Research Director Taylor Lincoln and Susan Harley, Deputy Director for Congress Watch.

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215 Pennsylvania Ave. S.E

Washington, D.C. 20003

P: 202-546-4996

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Background

On December 18, 2019, the U.S. House of Representatives approved two articles of impeachment against President Donald Trump. Article I alleges that Trump abused his power by attempting to make the release of congressionally approved foreign aid to Ukraine contingent on Ukraine helping his 2020 election campaign. Article II alleges that Trump blocked Congress from investigating his actions regarding the Ukraine affair by banning multiple key witnesses from testifying and refusing to hand over key documents.¹

Public Citizen has a clear position on impeachment. We support the impeachment and removal of President Trump from office.² Public Citizen is urging senators both to ensure a fair trial and to convict the president.³

¹ Amber Phillips, *The Articles of Impeachment Against President Trump, Explained*, THE WASHINGTON POST (Dec. 10, 2019), <https://wapo.st/36RSEFX>.

² Robert Weissman, *Impeach Trump*, PUBLIC CITIZEN (Dec. 2019), <http://bit.ly/389VeY3>.

³ *Eight Senators Pressured by Home State Billboards and Digital, Field Campaigns to Hold Trump Accountable for His Crimes*, PUBLIC CITIZEN (Jan. 8, 2020), <http://bit.ly/374XAY4>.

Introduction

President Donald Trump is the third president in history to face an impeachment trial in the U.S. Senate. His fate is now in the hands of a jury consisting of the 100 members of the Senate.

Unlike jurors in a civil or criminal trial, impeachment jurors play a role of dictating what evidence is admitted and which witnesses testify. While the initial trial rules have been decided, forthcoming votes in the Senate will likely dictate whether the Senate proceedings amount to a full and fair trial. Weeks after the Clinton impeachment trial had begun, for example, the Senate approved a motion to subpoena witnesses and admit new evidence.⁴ These motions are decided by a simple majority vote. Republicans currently hold 53 Senate seats.

In spite of their obligation to render impartial justice, most Republican senators, led by Senate Majority Leader Mitch McConnell (R-Ky.) are expected to reflexively vote against motions to introduce new evidence and call witnesses. Any motion put forth by a Democrat⁵ will require at least four votes from Republicans to pass.

This paper focuses on seven Republican senators who might be willing to offer the necessary votes to ensure that the impeachment trial of Donald Trump is fair and legitimate. For it to be legitimate, it must be a rigorous fact-finding mission that includes new evidence and new witness testimony from numerous individuals with firsthand knowledge of the president's actions from whom we have yet to hear.

Each of these senators has stressed the importance of rendering impartial justice in impeachment proceedings.

This analysis examines statements made by each senator regarding impeachment both past and present, the views of those they have said they admire, and the senators' views on proper governance. Based on this review, this analysis makes the case that in order to be consistent with their past statements, each of these senators should push for rigorous fact-finding during the Senate impeachment trial of President Trump. In some instances, we believe the evidence in the current matter would require the senators to vote to convict in order to remain consistent with their past statements.

⁴ Greg Sargent, *Sen. Susan Collins During 1999 Impeachment: 'I Need Witnesses ... to Get to the Truth'*, THE WASHINGTON POST (Dec. 17, 2019), <https://wapo.st/2QEolaF>.

⁵ The two independent Senators caucus with the Democrats.

Sen. Susan Collins Called for New Evidence, Witnesses and Impartiality During the Clinton Impeachment Trial. She Indicated That Actions Harming Public Institutions Were More Likely to Constitute Impeachable Conduct

In December 2019, in an interview with Maine Public Radio, Sen. Susan Collins (R-Maine) was asked what she could do as a senator to affect the process related to the upcoming impeachment trial of President Donald Trump. After noting that she was one of the few members of the current Republican caucus who participated in the 1999 impeachment trial of President Bill Clinton, Collins explained that she believed the “the approach to the Clinton trial worked well.”⁶

During the impeachment of President Clinton, Collins called for a nonpartisan inquiry based on abundant evidence. After the trial, in which she voted not guilty on both articles, she explained that her votes were largely based on her view that misdeeds that affect public institutions and the fabric of democracy were far more likely to warrant impeachment than those associated with private affairs, as was the case in the charges against Clinton.

Collins promised impartiality, pushed for new witnesses and evidence and did her own fact-finding during the Clinton impeachment trial.

Before the 1999 impeachment trial of President Bill Clinton, Collins worried that the senators, who would serve as jurors in the trial, would not be able to live up to role of role of impartial jurors. “Could we cast aside partisan labels and hear the evidence, not as Republicans and Democrats, but as American jurors,” Collins wrote in her diary, according to *The Breach, Inside the Impeachment and Trial of William Jefferson Clinton*, a book by journalist Peter Baker.⁷ In her view, in considering impeachment, the Senate must transform “from a body of partisan politicians into an impartial jury sworn to seek the truth.”⁸

Collins promised to be impartial, saying she would “travel the road wherever it leads, whether it’s to the conviction or the acquittal of the president.”⁹ Collins has made similar statements regarding a potential President Donald Trump impeachment trial.¹⁰

In order to “travel the road wherever it leads” during the Clinton impeachment trial, Collins said she needed “witnesses and further evidence to guide me to the right destination, to get me to the truth.”¹¹

⁶ Mal Leary, *Collins Says She’s Open To Witnesses In Impeachment Trial, But ‘It’s Premature To Decide Who’*, MAINE PUBLIC RADIO (Dec. 31, 2019), <http://bit.ly/2t5Wvkf>.

⁷ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 283.

⁸ *Id.*

⁹ Greg Sargent, *Sen. Susan Collins During 1999 Impeachment: ‘I Need Witnesses ... to Get to the Truth’*, THE WASHINGTON POST (Dec. 17, 2019), <https://wapo.st/2QEolaF>.

¹⁰ Mal Leary, *Collins Says She’s Open To Witnesses In Impeachment Trial, But ‘It’s Premature To Decide Who’*, MAINE PUBLIC RADIO (Dec. 31, 2019), <http://bit.ly/2t5Wvkf>.

¹¹ Greg Sargent, *Sen. Susan Collins During 1999 Impeachment: ‘I Need Witnesses ... to Get to the Truth’*, THE WASHINGTON POST (Dec. 17, 2019), <https://wapo.st/2QEolaF>.

More evidence and witnesses would allow Collins to address the “significant gaps and unanswered questions” in the Clinton impeachment record at the time. Collins ended up voting in favor of a motion to depose witnesses and admit new evidence in the Clinton trial.¹²

Collins was even willing to meet with individuals outside of the trial to gain insight. Kathleen Willey, who volunteered in the Clinton White House in 1993, had accused President Clinton of groping her in November of 1993 in the Oval Office and had subsequently alleged there was a campaign to intimidate her into silence.¹³ Willey requested a meeting with Collins and Collins agreed to have Willey and her fiancé visit her at her D.C. house.¹⁴ When Collins met with Willey, she was a juror in the impeachment trial, and the first day of deliberations had concluded the same day.¹⁵

As journalist Peter Baker noted in his book on the Clinton impeachment: “In any ordinary court case, this would be clearly prohibited contact between a juror and a potential witness. But this was an impeachment trial, run by the senators as they saw fit.” Ultimately, Collins considered what Willey had told her to be troubling but was not directly before the Senate to consider, Baker reported.¹⁶

The fact that Collins met with Willey shows the length the senator was willing to go to gather information back in 1999. If Collins decided that Willey, who had information only tangentially related to the Clinton articles of impeachment, was worth talking to, it’s hard to imagine a scenario in which individuals such as acting White House Chief of Staff Mick Mulvaney and former National Security Advisor John Bolton would not be worth interviewing during the Trump impeachment proceedings. Mulvaney has admitted that aid to Ukraine was held up in part to advance President Trump’s political interests.¹⁷ Bolton allegedly referred to the pressure on Ukraine as a “drug deal.” He called Rudy Giuliani, who is Trump’s personal lawyer and at the center of Ukraine scandal, “a hand grenade who’s going to blow everybody up.”¹⁸ While Mulvaney has refused to testify, Bolton now says he is willing to do so if subpoenaed.¹⁹

In December 2019, Collins was asked by Maine Public Radio about Mulvaney and Bolton testifying in the Senate trial. Collins did not answer the question, saying it was “premature to decide who should be called,” and instead pivoted to blaming Democrats for not enforcing subpoenas in court.²⁰

¹² *Id.*

¹³ Dylan Matthews, *The Sexual Harassment Allegations Against Bill Clinton, Explained*, Vox (Oct. 9, 2016), <http://bit.ly/2R5IEck>.

¹⁴ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 395.

¹⁵ *Id.*

¹⁶ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 396.

¹⁷ Michael D. Shear and Katie Rogers, *Mulvaney Says, Then Denies, That Trump Held Back Ukraine Aid as Quid Pro Quo*, THE NEW YORK TIMES (Nov. 5, 2019), <https://nyti.ms/39WnNdu>.

¹⁸ Peter baker and Nicholas Fandos, *Bolton Objected to Ukraine Pressure Campaign, Calling Giuliani ‘a Hand Grenade’*, THE NEW YORK TIMES (Oct. 14, 2019), <https://nyti.ms/2FwmPXp>.

¹⁹ Nicholas Fandos and Michael S. Schmidt, *Bolton Is Willing to Testify in Trump Impeachment Trial, Raising Pressure for Witnesses*, THE NEW YORK TIMES (Jan. 6, 2020), <https://nyti.ms/2QBEOfo>.

²⁰ Mal Leary, *Collins Says She's Open To Witnesses In Impeachment Trial, But 'It's Premature To Decide Who'*, MAINE PUBLIC RADIO (Dec. 31, 2019), <http://bit.ly/2t5Wvkf>.

More recently, Collins released a statement describing her position on the Trump impeachment trial process. Collins noted that while it was “likely” she would support a motion to call new witnesses, she did not believe there should be any motion on the issue until after the case was presented.²¹

In voting to acquit President Bill Clinton, Collins articulated a view that actions harming public institutions are more likely to warrant impeachment than private conduct.

In 1999, Collins was a thorn in the side of the Republican Majority Trent Lott (R-Miss.) and his efforts to keep solidarity among Senate Republicans. Collins was the first Republican to declare to her colleagues she would vote not guilty on Article I.²²

In the end, even though she considered President Clinton’s conduct “contemptible” and “utterly unworthy of the great office he holds,”²³ Collins voted not guilty on both articles. In her speech announcing her not guilty votes, Collins described her view of the bar one’s actions must reach for her to consider it impeachable conduct – a bar she believed Clinton’s conduct did not meet.

Collins said that the founders “designed impeachment to protect our system of government against officials who lose their moorings in the law or who endanger our most basic institutions.”²⁴ Impeachment should not be used to remove an official based on policy differences, Collins believed, but rather as a “check upon rogue chief executives.”²⁵

Collins found the evidence presented in support of Article II, which accused the president of obstruction of justice, to be “more convincing” than the evidence presented in support of Article I. Collins even went as far as to say that she was satisfied that the case presented showed “the President did, in fact, obstruct justice” in a civil case that was related to his impeachment.²⁶ But, Collins wrote that she did not believe the president’s actions amounted to a high crime or misdemeanor.²⁷ Collins gave two main reasons for her conclusion.

First, Collins noted that “obstruction of justice is generally more serious in a criminal case, as opposed to a civil case, as it interferes with the effective enforcement of our nation’s laws and not solely with the adjudication of private disputes.”²⁸ Because Clinton’s alleged obstruction occurred in relation to a civil case, not a criminal one, it was a less serious offense in her view.

²¹ *Senator Collins’ Statement on Impeachment Trial Process*, OFFICE OF SENATOR SUSAN COLLINS (Jan. 16, 2020), <http://bit.ly/2RqwELT>.

²² Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 324.

²³ SEN. SUSAN COLLINS (R-MAINE), THE TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES, THE CONGRESSIONAL RECORD, Page 107, <http://bit.ly/37KQ1pw>.

²⁴ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 283.

²⁵ SEN. SUSAN COLLINS (R-MAINE), THE TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES, THE CONGRESSIONAL RECORD, Page 107, <http://bit.ly/37KQ1pw>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

The second reason Collins gave was that when it comes to impeachment, “obstruction of justice has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions.” Collins concluded that “neither occurred in this case.”²⁹

The conduct described by Collins in 1999 as impeachable appears to have occurred in the Ukraine affair.

Collins’ point that conduct that “poses a threat to our governmental institutions” would be impeachable is a theme she returned to multiple times in her 1999 Senate speech.

Removing a president, according to Collins, “is an extraordinary action that should be undertaken only when the president’s misconduct so injures the fabric of democracy that the Senate is left with no option but to oust the offender from the office the people have entrusted to him.”³⁰

Collins strongly suggested that she would impeach a president in order to protect our system of government from a rogue chief executive whose actions endanger our most basic institutions or injure the fabric of democracy. This is what she essentially told her Senate colleagues and the American people during the Clinton impeachment trial in 1999. The dilemma she faces now is whether to apply these principles to President Trump’s trial.

When President Trump withheld funds allocated by Congress for Ukraine in order to compel that country to help him with his 2020 re-election, he used public money in contravention of the law, according to a report by the Government Accountability Office,³¹ to advance his personal interest. Making matters worse, in putting his own interests first, Trump endangered our country’s most basic democratic institution – our elections.

It is difficult to view what Trump has done as anything other than the president injuring the fabric of our democracy for his own personal gain. That is the sort of conduct that Collins said in 1999 would warrant impeachment.

²⁹ *Id.*

³⁰ *Id.*

³¹ Emily Cochrane, Eric Lipton and Chris Cameron, *G.A.O. Report Says Trump Administration Broke Law in Withholding Ukraine Aid*, THE NEW YORK TIMES (Jan. 16, 2020), <https://nyti.ms/2v5jknk>.

Sen. Lisa Murkowski Has Always Touted Her Independence and Desire to do the Right Thing

When the impeachment trial of President Bill Clinton began in January 1999, current U.S. Sen. Lisa Murkowski (R-Alaska) was a member of the Alaska House of Representatives, having won her first election the prior November.³² Her father, then U.S. Sen. Frank Murkowski (R-Alaska), acted, like all sitting senators, as a juror in the U.S. Senate. He would soon cast a vote of guilty on both articles of impeachment during the Clinton trial.

Asked at the time about her father's role in shaping the rules that would govern the Clinton impeachment trial, Murkowski told the *Anchorage Daily News* that she was glad she was not writing them.³³ When asked about her own future, specifically the possibility of entering the U.S. Senate like her father, Murkowski responded with "we'll have to wait and see, the thought of Washington is a long ways away."³⁴

It turned out, it wasn't so far away. In 2002, Frank Murkowski was elected governor, and he appointed his daughter to fill his vacant Senate seat.³⁵ And while Lisa Murkowski understandably did not envy her father's role in shaping the procedures in the Clinton impeachment trial, she is in a position right now to play a pivotal role in shaping the Trump impeachment trial in the Senate.

Murkowski has long had a reputation as an independent, bolstered by her saving her seat by running as a write-in candidate in 2010.³⁶ She revered former Alaska Sen. Ted Stevens and, upon his death, celebrated Stevens' motto, "to hell with politics."

Murkowski has been critical of colleagues' lack of impartiality around impeachment.

Recently, Murkowski expressed displeasure with some partisanship being displayed by her fellow senators. When Senate Majority Leader Mitch McConnell (R-Ky.) vowed "total coordination" with the White House on impeachment proceedings,³⁷ Murkowski responded saying "when I heard that I was disturbed," according the *KTUU News* in Anchorage Alaska.³⁸

Murkowski said she is undecided on how she will vote. "For me to prejudge and say there's nothing there, or on the other hand he should be impeached yesterday, that's wrong," she said.³⁹ The senator

³² David Whitney, *Alaska Delegation Play Second Fiddle to Clinton Fiasco*, ANCHORAGE DAILY NEWS (Jan. 7, 1999), copy on file with author.

³³ *Id.*

³⁴ *Id.*

³⁵ Sean Cockerham, *Murkowski Pick Daughter to Fill His U.S. Senate Seat*, ANCHORAGE DAILY NEWS (Dec. 21, 2002), copy on file with author.

³⁶ Susan Dominus, *How Lisa Murkowski Mastered Trump's Washington*, THE NEW YORK TIMES MAGAZINE (April 5, 2018), <https://nyti.ms/2sagSwc>.

³⁷ Zach Montague, *G.O.P. Senator 'Disturbed' by McConnell's 'Total Coordination' with White House*, THE NEW YORK TIMES (Dec. 25, 2019), <https://nyti.ms/35C36Qz>

³⁸ Sean Maguire, *Murkowski 'Disturbed' by McConnell's Vow for 'Total Coordination' with White House for Impeachment Trial*, KTTU (Dec. 24, 2019), <http://bit.ly/2sBY0GK>.

³⁹ *Id.*

said that she wanted a “full and fair process,” and indicated President Clinton’s impeachment trial could be used as a template.⁴⁰

Murkowski’s mentor on impeachment: “To hell with politics, just do what’s right for the nation.”

Lisa Murkowski has described former Senator Ted Stevens (R-Alaska) as a mentor, dear friend and a “remarkable leader whose dedication and commitment to our state was nothing less than extraordinary.”⁴¹

Stevens was also in the Senate at the time of the Clinton trial. In 1999, Stevens was skeptical of impeachment from early on, but still worked to ensure a fair trial.⁴² A day before the Clinton impeachment trial was set to begin, there were still many decisions up in the air. Republican Majority Leader Trent Lott appointed Stevens and two other “independent minded” Republicans to a small committee to work with three Democrats. The group, dubbed “The Gang of Six,” was appointed to “wade through the morass,” according to journalist Peter Baker.⁴³

Stevens was willing to go against Republican leadership, telling Republican Senate Leader Trent Lott that at some points he would vote against him during the trial.⁴⁴ He would make good on that threat. Stevens split his vote, voting not guilty on Article I and guilty on Article II, though his vote came with a caveat: he was against removing the president and would have voted not guilty on both articles had he been the deciding vote.⁴⁵

In his rationale for his votes, Stevens described his motto: “To hell with politics. Just do what’s right for Alaska.” But in the case of voting on impeachment, Stevens said he must modify his motto: “To hell with politics. Just do what’s right for the nation.”⁴⁶

When honoring her dear friend and mentor Stevens, who died in 2010, Murkowski noted Stevens’ “to hell with politics” motto.⁴⁷ Murkowski’s record in the U.S. Senate, as well as her record in the Alaska House of Representatives, suggest that at times she could rightly assign that motto to herself. While her record and statements on impeachment trial specifics are limited, her overall record may provide some insight into how she will approach an impeachment trial.

⁴⁰ *Id.*

⁴¹ Lisa Murkowski, *Honoring Ted Stevens*, FAIRBANKS DAILY NEWS-MINER (Dec. 24, 2018), <http://bit.ly/2t4SZq9>.

⁴² Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 276.

⁴³ *Id.*

⁴⁴ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 284.

⁴⁵ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 397.

⁴⁶ SEN. TED STEVENS (R-ALASKA), THE TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES, THE CONGRESSIONAL RECORD, Page 139, <http://bit.ly/37KQ1pw>.

⁴⁷ Lisa Murkowski, *Honoring Ted Stevens*, FAIRBANKS DAILY NEWS-MINER (Dec. 24, 2018), <http://bit.ly/2t4SZq9>.

Murkowski views herself as an independent thinker and has been willing to stand up to her party in the past.

It is no secret that Lisa Murkowski is one of the more moderate Republican senators today. In virtually every recent debate over a hot-button issues – the Affordable Care Act repeal, the vote on Supreme Court Justice nominee Brett Kavanaugh, the Trump tax cuts, etc. – one of first questions asked is always: What will Lisa Murkowski do?⁴⁸

While many in Alaska were angry about the nepotism involved when Frank Murkowski appointed his daughter to fill his vacant Senate seat, many conservatives were also angry for another reason: Lisa Murkowski was considerably more moderate than her father.⁴⁹ One of the main issues in which Murkowski differed with her father was abortion. Her position on the issue nearly caused her to lose her second re-election to the Alaska House in 2002 when she faced a primary challenge from a conservative who was supported by the anti-abortion group Alaska Right to Life. Murkowski won the primary by just 57 votes.⁵⁰

In an article published after her appointment to the U.S. Senate, a former Alaska House colleague recalled a story in which Republicans pushed an anti-abortion bill they knew to be unconstitutional to flush out Republicans who were not sufficiently anti-abortion for their tastes. It had no chance to become law, so a former colleague urged Murkowski to vote for the bill for purely political reasons, but Murkowski refused. “I may have a very short-lived political future here,” Murkowski allegedly said on the Alaska House floor at the time, acknowledging the potential consequences her vote.⁵¹ “I’m going to stand up for the Constitution and I’m going to stand up for the women of Alaska and vote no.”⁵²

After losing a challenge from the right in the primary for her Senate seat in 2010, Murkowski’s Republican colleagues in the Senate abandoned her. While Murkowski decided to run as write-in candidate, the Republican party spent more than \$1 million during the general election backing the Republican she lost to in the primary. During her write-in campaign, her Senate colleagues threatened as a punishment to remove her from her post as the ranking member of the powerful Energy and Natural Resources Committee.⁵³ Murkowski would go on to win her write-in campaign.⁵⁴ Having won re-election without the party’s support, according to Murkowski, gave her a “stiffer, straighter” spine.⁵⁵

⁴⁸ Susan Dominus, *How Lisa Murkowski Mastered Trump’s Washington*, THE NEW YORK TIMES MAGAZINE (April 5, 2018), <https://nyti.ms/2sagSwc>.

⁴⁹ Ben Spiess, *New Senator Known for her Independence*, ANCHORAGE DAILY NEWS (Dec. 21, 2002), copy on file with author.

⁵⁰ Sean Cockerham, *Murkowski Pick Daughter to Fill His U.S. Senate Seat*, ANCHORAGE DAILY NEWS (Dec. 21, 2002), copy on file with author.

⁵¹ Ben Spiess, *New Senator Known for her Independence*, ANCHORAGE DAILY NEWS (Dec. 21, 2002), copy on file with author.

⁵² *Id.*

⁵³ Susan Dominus, *How Lisa Murkowski Mastered Trump’s Washington*, THE NEW YORK TIMES MAGAZINE (April 5, 2018), <https://nyti.ms/2sagSwc>.

⁵⁴ *Id.*

⁵⁵ Alexander Bolton, *Critical of GOP on Jobs, Murkowski a Thorn in McConnell’s Side*, THE HILL (Jan. 21, 2011), <http://bit.ly/2T6lxKw>.

More recently, when Murkowski was considering voting against a motion on a health care repeal bill in 2017, the Trump administration, through then-Interior Department Secretary Ryan Zinke, threatened to retaliate with policies that could harm Alaska. Undeterred, Murkowski still voted no.⁵⁶

Being labeled as “independent” has been one of the most consistent themes of Murkowski’s career. In a 2002 article titled “New Senator Known for Her Independence,” published shortly after her father appointed her to the Senate, Murkowski revealed that her family had once given her for Christmas a T-shirt that read “Knee-jerk Moderate.”⁵⁷

When asked about her image as an independent-minded senator recently, Murkowski said, “if it means that I am viewed as one that looks openly and critically at every issue in front of me rather than acting as a rubber stamp for my party or my president, I’m totally good with that.”⁵⁸

If Murkowski uses her power as a Senate juror to say “to hell with politics” and ensure a legitimate trial in which relevant evidence is considered and relevant witnesses are heard, it would be another example of the senator earning the independent label.

⁵⁶ Susan Dominus, *How Lisa Murkowski Mastered Trump’s Washington*, THE NEW YORK TIMES MAGAZINE (April 5, 2018), <https://nyti.ms/2sagSwc>.

⁵⁷ Ben Spiess, *New Senator Known for her Independence*, ANCHORAGE DAILY NEWS (Dec. 21, 2002), copy on file with author.

⁵⁸ *Id.*

Sen. Mitt Romney Called Trump's Conduct at the Heart of Impeachment "Politically Motivated," "Wrong" and "Appalling"

In September 2019, Sen. Mitt Romney (R-Utah) speculated on the potential seriousness of the allegations regarding the Ukraine affair before many details had emerged. He indicated that if the president pressured Ukraine's leaders and if there was a quid pro quo, those facts would be "troubling" and possibly at a "more extreme level."

In the time since, the hypotheticals upon which Romney speculated have been confirmed as realities.

Prior to assuming his Senate seat in January 2019, Romney wrote a scolding op-ed about Trump. In it, he took umbrage at Trump's general conduct and pledged to speak out if, among other things, Trump acted in ways that are "dishonest or destructive to democratic institutions."⁵⁹

Romney did not speak in depth on his views of the Clinton impeachment trial during that time. He did write in his 2002 book, that he believed Bill Clinton "had disgraced our nation and himself."⁶⁰

Before most of Trump's actions on Ukraine were fully revealed, Romney believed "clearly if there were a quid pro quo that would take it to an entirely... more extreme level."

"If the President of the United States asks or presses the leader of a foreign country to carry out an investigation of a political nature, that's troubling," Mitt Romney told *The Washington Post* in September 2019, as allegations over the Ukraine affair were emerging.⁶¹ "Clearly if there were a quid pro quo that would take it to an entirely... more extreme level."⁶²

Romney made these comments just days after Trump acknowledged he brought up Joe Biden in his phone call with Ukraine's president, and one day after House Speaker Nancy Pelosi (D-Calif.) announced a formal impeachment inquiry.⁶³ Since then, much more evidence has come to light. The existence of a quid pro quo that Romney equated with an "extreme level" has been demonstrated.

Less than two weeks later, on October 3, 2019, Trump urged China to "start an investigation into the Bidens because what happened in China is just about as bad as what happened with Ukraine."⁶⁴

⁵⁹ Mitt Romney, *Mitt Romney: The President Shapes the Public Character of the Nation. Trump's Character Falls Short*, THE WASHINGTON POST (Jan. 1, 2019), <https://wapo.st/304ZR2N>.

⁶⁰ Mitt Romney, *Turnaround: Crisis, Leadership, and the Olympic Games*, (Washington, D.C., Regnery Publishing, Inc, 2002), Page 231.

⁶¹ "Troubling": Romney Reacts to Rough Transcript of Trump's Ukraine call, THE WASHINGTON POST (Sept. 25, 2019), <https://wapo.st/2QBjJHQ>.

⁶² *Id.*

⁶³ Weiyi Cai, K.K. Rebecca Lai, Alicia Parlapiano, Jugal K. Patel and Kenneth P. Vogel, *Trump's Efforts to Push Ukraine Toward a Biden Inquiry: A Timeline*, THE NEW YORK TIMES (Oct. 4, 2019), <https://nyti.ms/2Tb8x6j>.

⁶⁴ Peter Baker and Eileen Sullivan, *Trump Publicly Urges China to Investigate the Bidens*, THE NEW YORK TIMES (Oct. 3, 2019), <https://nyti.ms/2G55Col>.

In response, Romney's criticism of Trump's actions took a harsher tone. In a series of tweets the following day, Romney wrote "When the only American citizen President Trump singles out for China's investigation is his political opponent in the midst of the Democratic nomination process, it strains credulity to suggest that it is anything other than politically motivated."⁶⁵ He then followed up by tweeting: "By all appearances, the president's brazen and unprecedented appeal to China and to Ukraine to investigate Joe Biden is wrong and appalling."⁶⁶

Romney has already acknowledged the accusations at the heart of the case to be true. The question is whether he views it as rising to the level of warranting removal from office. Making that decision without hearing all the evidence and witness testimony would be a dereliction of duty.

Romney has promised to be impartial and indicated he wants to hear from additional witnesses.

Thus far, Romney has pledged to fulfill his oath of impartiality for the Senate impeachment trial. "I will act as a juror and will be unbiased in evaluating the cases that are presented," he told *The Salt Lake Tribune* in December 2019.⁶⁷ Romney was more wishy washy, however, when asked about whether the Senate should call its own witnesses to supplement the House investigation. "On that and all matters relating to impeachment, I'm talking with colleagues; we'll continue deliberations. I don't have anything for you on that now. But I will eventually," he said.⁶⁸

More recently, in early January 2020, Romney said he would like to hear from former national security advisor John Bolton: "I would like to be able to hear from John Bolton. What the process is to make that happen, I don't have an answer for you," Romney told reporters.⁶⁹

Mitt Romney is not up for re-election until 2024. This, a 2019 analysis by *The Washington Post* suggests, increases the likelihood Romney will be critical of Trump during the trial. *The Post* found that since 2011, Romney has spoken positively about Trump when Romney was running for office, and has spoken negatively about him when he was not running⁷⁰ *The Post's* headline publishing its findings is cutting in its clarity: "Romney's criticisms of Trump have always been moderated by his own ambitions."⁷¹

Romney is now approaching a crossroads similar to one his father once faced – between principle and party.

In November 1973, Mitt Romney's father, former Michigan governor and Nixon cabinet member George Romney, called on Richard Nixon to wait through impeachment proceedings rather than

⁶⁵ @MittRomney. (2019, Oct. 4), <http://bit.ly/377Xsrb>.

⁶⁶ @MittRomney. (2019, Oct. 4), <http://bit.ly/2RqTRxM>.

⁶⁷ Thomas Burr, *Sen. Mitt Romney Isn't Taking Sides Ahead of Senate Trial*, THE SALT LAKE TRIBUNE (Dec. 17, 2019), <http://bit.ly/309XFaA>.

⁶⁸ *Id.*

⁶⁹ Jordain Carney, *Romney Wants 'to Hear from John Bolton' in Impeachment Trial*, THE HILL (Jan. 6, 2020), <http://bit.ly/2QB4Aqc>.

⁷⁰ Philip Bump, *Timeline: Romney's Criticisms of Trump Have Always Been Moderated by his Own Ambitions*, THE WASHINGTON POST (Jan. 2, 2019), <https://wapo.st/2ZZLEEy>.

⁷¹ *Id.*

resigning. “For him to just resign would leave so many things unsettled. Impeachment would result in a thorough determination of all the facts,” George Romney said, according to *The Lowell Sun* in Massachusetts.⁷² The potential impeachment of Nixon, according to George Romney, should focus on “questions of violation of law” rather than “political differences.”⁷³

George Romney, a Republican, had a famously poor relationship with his party’s president, Richard Nixon.⁷⁴ He resigned as Nixon’s Secretary of Housing and Urban Development after a series of public and private clashes with the president.⁷⁵ The disagreements were in part over Romney’s support of housing integration. When Nixon refused to allow Romney to institute his vision for housing policy, Romney resigned out of principle.

Mitt Romney’s relationship with Trump is in some ways reminiscent of his father’s relationship with Nixon. In March 2016, before Trump had secured the Republican nomination for president, Romney gave a speech in which he lambasted the future president as a con man who was wholly unqualified to be president.⁷⁶ “If we Republicans choose Donald Trump as our nominee, the prospects for a safe and prosperous future are greatly diminished,” Romney lamented.⁷⁷

On January 1, 2019, just prior to being sworn in as a U.S. Senator, Romney published an op-ed explaining that Trump’s conduct since his election was “evidence that the president has not risen to the mantle of the office.”⁷⁸

Mitt Romney has referred to his father as “a person of unshakeable principle.”⁷⁹ George Romney, according to Mitt, was a man who was “complete in his dedication to his beliefs, with a total lack of concern of what people thought of him and without guile,” he continued. “And I wish I could have the same attributes to the same degree he had.”⁸⁰ Pushing for a legitimate Senate trial would be a step in that direction.

Romney pledged to speak out if Trump was “dishonest of destructive to democratic institutions,” the impeachment trial gives him an opportunity to do just that.

In his op-ed accompanying the start of his Senate career, Romney wrote, “I will support policies that I believe are in the best interest of the country and my state, and oppose those that are not.”⁸¹

⁷² Romney: *Impeachment Better Than Resignation*, THE LOWELL SUN (Jan. 2, 1973), on file with author.

⁷³ *Id.*

⁷⁴ Robert Gehrke, *Nixon, Romney Relationship Came to Frosty End*, THE BOSTON GLOBE (June 27, 2007), <http://bit.ly/37Num03>.

⁷⁵ *Id.*

⁷⁶ *Transcript of Mitt Romney’s Speech on Donald Trump*, THE NEW YORK TIMES (March 3, 2016), <https://nyti.ms/2NaXNkN>.

⁷⁷ *Id.*

⁷⁸ Mitt Romney, *Mitt Romney: The President Shapes the Public Character of the Nation. Trump’s Character Falls Short*, THE WASHINGTON POST (Jan. 1, 2019), <https://wapo.st/304ZR2N>.

⁷⁹ Sridhar Pappu, ‘A Very Different Nation’: *The Romneys on Life with George and the Lesson of his Derailed Presidential Bid*, POLITICO (Jan. 31, 2012), <https://politi.co/372EGBe>.

⁸⁰ *Id.*

⁸¹ Mitt Romney, *Mitt Romney: The President Shapes the Public Character of the Nation. Trump’s Character Falls Short*, THE WASHINGTON POST (Jan. 1, 2019), <https://wapo.st/304ZR2N>.

He continued: “I will speak out against significant statements or actions that are divisive, racist, sexist, anti-immigrant, dishonest or destructive to democratic institutions.”⁸² Trump has given Romney ample opportunity to act on all of these faults. This trial will give Romney a chance to prove he meant what he said with regard to democratic institutions.

⁸² *Id.*

Many of the Defenses Trump Is Using Are the Same as Those That Sen. Mike Enzi Dismissed as Weak When Clinton and His Allies Invoked Them in 1999

Sen. Mike Enzi (R-Wyo.) has been largely quiet regarding impeachment trial of President Donald Trump. Enzi operated in the same manner in the weeks before the impeachment trial of President Bill Clinton in which he also served as a Senate juror. According to the *Casper Star Tribune* in early 1999, Enzi declined any media interviews beginning on January 7 of that year through the impeachment trial.⁸³

Enzi voted to impeach Clinton in 1999 in part based on what he called the “mom test,” which essentially boiled down to Enzi concluding that Clinton’s behavior was inappropriate. Decisions on impeachment, he counseled, should not be influenced by polls, politics or assessments of the president’s job performance, but based on what’s best for institution of the presidency in the long term.⁸⁴

Enzi criticized Clinton supporters for cherry picking which accusations to attempt to rebut and failing to hold the president to the highest standard.

In his statement published in the *Jackson Hole Guide* on February 17, 1999, explaining his decision to vote to convict Clinton, Enzi said the evidence led him to conclude that the president’s actions constituted “high crimes and misdemeanors,” he said.⁸⁵

Clinton’s defense came up short in Enzi’s mind because Clinton’s defense team limited their rebuttal to the “limited charges for which they felt they could answer,” according to Enzi, “skipping the tough issues is not an answer.”⁸⁶

After voting to convict Clinton on both counts in February 1999, Enzi told the *Casper Star Tribune*, “we are talking about a man who can send our children into war, and I feel like he needs to be held to the highest possible standard.”⁸⁷

In 1999, Enzi lamented that he wished his Democrat colleagues had said “he didn’t do this,” rather than lower the standard for what one should expect out of a president.⁸⁸ Enzi believed that some of his colleagues “felt he was guilty, but didn’t want to remove him from office.”⁸⁹

⁸³ Charles Davant, *Thomas, Enzi Vote to Convict*, CASPER STAR TRIBUNE (Feb. 13, 1999), on file with author.

⁸⁴ Nick Reynolds, *Sen. Enzi Might be Keeping Quiet now, But he’s Had Plenty to Say About Impeachment in the Past*, CASPER STAR TRIBUNE (Dec. 21, 2019), <http://bit.ly/2QTD1Y3>.

⁸⁵ Mike Enzi, *Enzi: Facts Support ‘High Crimes, Misdemeanors’*, JACKSON HOLE GUIDE (Feb. 17, 1999), on file with author.

⁸⁶ *Id.*

⁸⁷ Charles Davant, *Thomas, Enzi Vote to Convict*, CASPER STAR TRIBUNE (Feb. 13, 1999), on file with author.

⁸⁸ Mike Enzi, *Enzi: Facts Support ‘High Crimes, Misdemeanors’*, JACKSON HOLE GUIDE (Feb. 17, 1999), on file with author.

⁸⁹ *Id.*

The question of whether to remove the president from office was not what senators should have focused on, in Enzi's view. The trial should have focused solely on whether the president was guilty or not guilty of the charges presented.⁹⁰

Enzi believed “circumstantial evidence was enough” during the Clinton impeachment trial, applying what he referred to as the “mom test.”

In criticizing the defenses made by Clinton's supporters, Enzi articulated what in his view are the questions people should ask themselves when thinking about impeachment. Enzi described these questions as the “mom test.”⁹¹

The mom test, according to Enzi, required asking oneself: “When you were growing up, did your mom need proof ‘beyond a reasonable doubt’ before punishment?” Enzi asked. “Did she ever say, ‘Don’t put yourself in a position where it even looks like you did something wrong?’” or “Act so I won’t be embarrassed tomorrow reading the front page of the paper about what you did today?” According to Enzi, under the mom test, “circumstantial evidence was enough.”⁹² The mom test, according to Enzi, meant that he didn’t need “proof beyond a reasonable doubt” before administering a punishment.

Enzi believed Clinton should apply the mom test to himself. To be consistent, Enzi should apply the same standard to President Trump.

Enzi believed Clinton’s complaints about being “the most investigated president in history” were irrelevant to impeachment.

Enzi was critical of Clinton's complaints about the relentless investigations into his actions. “The president has complained that others are out to get him, that he is the most investigated president in history,” Enzi told his Senate colleagues at the time, according to the *Casper Star Tribune*.⁹³ Enzi believed that President Clinton's complaints about the investigations were irrelevant to the impeachment trial.

President Trump's responses to impeachment and other criticisms of him echo the strategy Enzi accused Clinton of using. Trump has called virtually every investigation into him or his administration a “witch hunt.” A search for tweets from President Trump's twitter account for the exact phrase “witch hunt” reveals more than 150 tweets from his account that include that phrase since January 2019.⁹⁴ He has called his impeachment specifically a “witch hunt” or a hoax many times.⁹⁵ Trump believes the impeachment investigation into him amounts to “presidential harassment.”⁹⁶

⁹⁰ *Id.*

⁹¹ Nick Reynolds, *Sen. Enzi Might be Keeping Quiet now, But he's Had Plenty to Say About Impeachment in the Past*, CASPER STAR TRIBUNE (Dec. 21, 2019), <http://bit.ly/2QTD1Y3>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Search, “*impeachment witch hunt*,” @realDonaldTrump, TWITTER.

⁹⁵ @realDonaldTrump (2020, Jan. 6), <http://bit.ly/376sEXB>.

⁹⁶ @realDonaldTrump (2020, Jan. 9), <http://bit.ly/2u5yjPd>.

In 1999, Enzi believed “popularity can’t be a defense in an impeachment trial ... job performance can’t be a test in an impeachment trial.”

In 1999, Enzi vehemently argued that politics and polls should not affect the outcome of an impeachment trial. While others favored censuring Clinton in lieu of an impeachment trial, for example, Enzi viewed such action as a dereliction of duty: “We in the Senate should not put political expediency or temporary public opinion polls above our twin oaths to uphold the Constitution and do impartial justice in this impeachment trial,” he said.⁹⁷

The trial, Enzi said afterward, “wasn’t even about politics. It was about our country. It was not about Bill Clinton, it was about the future of the presidency.”⁹⁸

“This wasn’t an issue of spin or polls. It wasn’t a popularity contest. Popularity can’t be a defense in an impeachment trial,” Enzi wrote in 1999.⁹⁹ Clinton’s job approval rating was close to 70 percent during the trial, according to Gallup.¹⁰⁰ But Enzi said that job performance was not a reason to acquit Clinton.¹⁰¹

Trump has argued that he should be immune from impeachment on the basis of his job performance. “How do you impeach a President who has created the greatest Economy in the history of our Country,” Trump tweeted in October 2019.¹⁰² In 1999, Enzi thought this same rationale, when presented by those defending Clinton, was plainly wrong.

In 1999 Enzi believed “those who would disregard this rule of law for their own personal or political ends ... must not be allowed to remain in offices of public trust.”

According to the *Casper Star Tribune*, while Enzi acknowledged impeaching and removing President Clinton would be serious move, “it is an indispensable remedy in our government for those public officers who have so violated their public trust as to be unworthy to continue holding offices of public trust.”¹⁰³

Enzi said that Clinton’s impeachment was warranted because “those who would disregard this rule of law for their own personal or political ends ... must not be allowed to remain in offices of public trust.”¹⁰⁴

Enzi should hold Trump to the same standard.

⁹⁷ Karen Branch, *The President on Trial, In Judgment*, THE MIAMI HERALD (Jan. 17, 1999), on file with author.

⁹⁸ Mike Enzi, *Enzi: Facts Support ‘High Crimes, Misdemeanors’*, JACKSON HOLE GUIDE (Feb. 17, 1999), on file with author.

⁹⁹ *Id.*

¹⁰⁰ *Presidential Approval Ratings - Bill Clinton*, GALLUP, <http://bit.ly/2R1C3u6>.

¹⁰¹ Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton*, (New York, Scribner, 2000), Page 400.

¹⁰² Catherine Rampell, *Trump Thinks the Economy Makes him Impeachment-Proof. It Might be the Opposite*, THE WASHINGTON POST (Oct. 3, 2019), <https://wapo.st/35G2Cc2>.

¹⁰³ Nick Reynolds, *Sen. Enzi Might be Keeping Quiet now, But he’s Had Plenty to Say About Impeachment in the Past*, CASPER STAR TRIBUNE (Dec. 21, 2019), <http://bit.ly/2QTD1Y3>.

¹⁰⁴ *Id.*

In 1999 “Plain Old Kansas Common Sense” Led Sen. Pat Roberts to Vote to Convict Bill Clinton

When *The Salina Journal* in Salina, Kansas, reported in January 1999 that Sen. Pat Roberts (R-Kansas) had been receiving many phone calls from constituents regarding the Clinton impeachment, Roberts’ press secretary put out a statement: “As a juror in an upcoming trial, he feels he should refrain from public judgement and comment and remain impartial and objective at this time.”¹⁰⁵

Roberts recently announced he will not seek re-election in 2020.¹⁰⁶

During the Clinton trial, Roberts pledged to be judicious and guided by the facts.

Roberts was critical of his fellow Republican senator from Kansas, Sam Brownback, for calling on Clinton to resign the day before Independent Counsel Ken Starr submitted his report to the U.S. House of Representatives. “If you are an impartial jurist, I think you shouldn’t be indicating how you’re going to feel about this or be making any specific statements,” Roberts told *The Salina Journal* in 1998.¹⁰⁷ “It’s just that I think it’s a little untoward and very premature to be making statements before the charges are even brought and you’re going to be sitting as a potential juror.”¹⁰⁸ From early on, Roberts was quiet about his opinions on how he would vote but did express his hope the Senate would approach the Clinton trial with some measure of calm: “I think in the Senate, you’re finding we’re trying to not get to that level of speech,” referring to the contentiousness that animated the House deliberations, “the adjectives and adverbs may be a little more under control.”¹⁰⁹

Roberts has already strayed from the views he once held on the sanctity of impeachment trial process. When asked about the impeachment inquiry in the House in October 2019, Roberts reportedly dismissed it as “political theater.”¹¹⁰

In 1999, Roberts voted to convict Clinton based on “plain old Kansas common sense.”

Roberts voted to convict Clinton, voting guilty on both articles. “The president has lost the respect of our allies,” Roberts said shortly after President Clinton’s acquittal. “His actions have emboldened our potential enemies, creating opportunities for them to act adversely to U.S. interests.”¹¹¹

According to *The Salina Journal*, Roberts said he found testimony alleging misleading a witness to be the most compelling.¹¹²

¹⁰⁵ Sharon Montague, *Impeachment Keeps Roberts’ Phone Ringing*, THE SALINA JOURNAL (Jan. 5, 1999), on file with author.

¹⁰⁶ Jonathan Martin, *Kansas Senator Pat Roberts Will Not Seek Re-election*, THE NEW YORK TIMES (Jan. 4, 2019), <https://nyti.ms/2TjT9VF>.

¹⁰⁷ John Hanna, *Roberts Quiet on Impeachment Front*, THE SALINA JOURNAL (Oct. 20, 1998), on file with author.

¹⁰⁸ *Id.*

¹⁰⁹ Libby Quaid, *Kansans Hope for Bipartisan Action*, THE SALINA JOURNAL (Jan. 8, 1999), on file with author.

¹¹⁰ *Kansas Senators See Impeachment as Partisan Distraction*, WOWT NBC OMAHA (Oct. 2, 2019), <http://bit.ly/2Tab9Se>.

¹¹¹ Libby Quaid, *‘Common Sense’ Guided Sen. Robert’s Vote*, THE SALINA JOURNAL (Feb. 13, 1999), on file with author.

¹¹² *Id.*

Roberts said his vote to convict Clinton in 1999 was guided by “plain old Kansas common sense.”¹¹³

Roberts’ common sense led him to see through the fog of Clinton’s defense.

In Roberts’ view, anyone with common sense, whether Kansas common or just simple common sense, could see that Clinton was guilty of gross misconduct. In a statement at the time, Roberts held back no punches, rattling off a series of statements dismissing any doubt of ambiguity in the case against Clinton:

“We in Kansas know that you don’t call witnesses in the middle of the night unless you want to sway them. The President did so,” Roberts wrote.¹¹⁴

“We in Kansas know that you don’t urge hiding legal evidence under the bed unless you want to affect the outcome of a legal proceeding. The President did so,” he continued.¹¹⁵

“We in Kansas know that you don’t hide behind the meaning of ‘is’ when you are asked a direct question. The President did so,” he concluded.¹¹⁶

If Roberts saw through the semantics around things like the definition of the word “is” during the Clinton trial, it will be interesting to see how he approaches President Trump’s defense of asking the president of Ukraine: “I would like you to do us a *favor* though.”¹¹⁷

Most would believe there is a common sense answer to that question.

¹¹³ *Id.*

¹¹⁴ *Excerpts: Senators Offer Some Reasons for Their Decisions in Clinton’s Trial*, THE NEW YORK TIMES (Feb. 13,1999), <https://nyti.ms/305UsbX>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Michael D. Shear and Maggie Haberman, ‘Do Us a Favor’: Call Shows Trump’s Interest in Using U.S. Power for His Gain, THE NEW YORK TIMES (Sept. 25, 2019), <https://nyti.ms/2QDV5q3>.

In 1998, Lamar Alexander Thought Bill Clinton Should Resign

Sen. Lamar Alexander (R-Tenn.) was first elected to the Senate in 2002.¹¹⁸ During the Clinton impeachment trial, Alexander was running for the Republican nomination for president.

In February 1999, when asked by *The New York Times* whether Clinton should be convicted by the Senate, Alexander demurred, saying “let the senators decide.”¹¹⁹ Alexander told *The New York Times* that Republicans “should be concerned” about the political fallout that could result from the Clinton trial, but he believed that such political considerations “shouldn’t affect how Senators vote.”¹²⁰

Alexander has characterized his decision-making process as guided by a simple test: “What’s the right thing to do?” One of Alexander’s mentors was former Tennessee Sen. Howard Baker (R-Tenn.), who acknowledged that he was persuaded by the evidence presented regarding the Nixon impeachment that there was far more to the Watergate allegations than he originally believed.

Republican Tennessee Senator Howard Baker, who asked the iconic Watergate question, was Alexander’s mentor.

Alexander considered Senator Howard Baker (R-Tenn.) a mentor and “one of our country’s finest leaders.”¹²¹ Baker, who is now deceased, was famous for his time as the ranking Republican on the Watergate committee.¹²² During televised hearings in 1973, Baker asked the question that struck at the heart of the Watergate scandal: “What did the president know, and when did he know it?”¹²³ When Alexander eulogized Baker, he noted that Baker’s work on the Watergate committee and the famous line that had made him a “national hero.”¹²⁴

Baker was an unlikely person to emerge as hero of the Watergate investigation because he had long been an ally of President Richard Nixon.

Lamar Alexander said that presidents should be held to the highest standard, thought Clinton should resign.

If Alexander had his way, a Clinton impeachment trial would have never occurred because Clinton would have stepped down before the trial. “The world badly needs an effective United States

¹¹⁸ Lamar Alexander, *Biography*, OFFICE OF UNITED STATES SENATOR LAMAR ALEXANDER, <http://bit.ly/2QXvlyg>.

¹¹⁹ Richard L. Berke, *Presidential Candidates Are Saying Little About Impeachment Trial, for Now*, THE NEW YORK TIMES (Feb. 7, 1999), <https://nyti.ms/35DNPPm>.

¹²⁰ *Id.*

¹²¹ *Senator Lamar Alexander on Senator Howard Baker*, C-SPAN (Dec. 8, 2014), <https://cs.pn/39ZbMDW> and Lamar Alexander, *Howard Baker, Jr.: Tennessee’s Favorite Son and One of Our Country’s Finest Leaders*, OFFICE OF UNITED STATES SENATOR LAMAR ALEXANDER, <http://bit.ly/30d4Q1x>.

¹²² David Stout, *Howard H. Baker Jr., ‘Great Conciliator’ of the Senate, Dies at 88*, THE NEW YORK TIMES (June 26, 2014), <https://nyti.ms/39XRnPK>.

¹²³ *Id.*

¹²⁴ Lamar Alexander, *Howard Baker, Jr.: Tennessee’s Favorite Son and One of Our Country’s Finest Leaders*, OFFICE OF UNITED STATES SENATOR LAMAR ALEXANDER, <http://bit.ly/30d4Q1x>.

president,” Alexander said in September 1998. “To stay in office sends the wrong message to the country and to our children.”¹²⁵

Alexander urged Democrats to tell Clinton to resign “for the good of the country.” In Alexander’s view, “the president’s job is to set an example for the country and behave a little better than the rest of us do, not a lot worse.”¹²⁶ Alexander said he believed that the character of our elected officials was hugely important.

Alexander spent much of his career urging elected officials to do the right thing.

Before announcing his run for president in 1998, Alexander published a book titled *Lamar Alexander's Little Plaid Book: 311 Rules, Reminders, and Lessons About Running for Office and Making a Difference, Whether It's for President of the United States or President of your Senior Class*. A former Alexander speechwriter recently cited the book as reason to believe Alexander could be a potential ally to Democrats during the impeachment. Specifically, she cited Alexander’s rule 151, “When stumped for an answer, ask yourself, ‘What is the right thing to do?’ Then do it.”¹²⁷

Public Citizen obtained a copy of Alexander’s book to see what other rules could also provide insight into the standards Alexander held politicians to, as well as ones that could arguably be used to guide his thinking as it relates to Trump’s actions that spurred impeachment.

Alexander’s rules include some that are applicable to the Trump impeachment trial: “Tell the truth. It’s the right thing to do, and it will confuse your opponent” ... “If it looks suspicious, assume it is” ... “Know when to stop campaigning and to start governing” ... “Listen” ... “Don’t have many secrets.”¹²⁸

Reading through each section of Alexander’s book, it becomes abundantly clear that President Donald Trump is not a subscriber of Lamar Alexander’s rules about running for office and making a difference. For the most part, Trump conducts himself in a manner that is the antithesis of what Lamar Alexander says make for a good leader. Further, many of Trump’s actions at the heart of the impeachment articles are squarely at odds with what Alexander says he believes amounted to good governance.

Alexander has sent mixed signals about how he will approach the Trump trial.

Howard Baker, Alexander’s mentor, initially believed Watergate was just “a political ploy of the Democrats, that it would come to nothing.”¹²⁹ But after a few weeks, Baker changed his tone. “It began to dawn on me that there was more to it than I thought, and more to it than I liked,” Baker said.¹³⁰

¹²⁵ Penny Bender, *Alexander: Clinton Should Step Down*, BATTLE CREEK ENQUIRER (Sept. 10, 1998), on file with author.

¹²⁶ Paul English and David Zizzo, *Republican Hopeful Calls for President to Leave Office*, THE DAILY OKLAHOMAN (Sept. 11, 1998), on file with author.

¹²⁷ Jenny Armini, *Will Lamar Alexander Turn on Trump?*, THE ATLANTIC (Feb. 7, 2019), <http://bit.ly/2scyMyp>.

¹²⁸ *Id.*

¹²⁹ Connie Cass, *Remembering Howard Baker, Whose Famous Question Embodied the Watergate Hearings*, PBS NEWSHOUR (June 26, 2014), <https://to.pbs.org/36L1ANi>.

¹³⁰ *Id.*

Baker was compelled to change his mind because he was presented with new information. Trump and his defenders appear inclined to do everything they can to keep a lid on new information to avoid that outcome. Senators such as Alexander will be decisive in determining whether the truth emerges or is suppressed.

Recent comments from Alexander have cut in both directions on whether his true loyalties will be to ascertaining the truth or to advancing short-term partisan interests. While Alexander has called the president's phone call with the Ukrainian President "inappropriate," he has also said "impeachment would be a mistake."¹³¹

When asked about Mitch McConnell's announcement that he was working in "total coordination" with the Trump White House on impeachment, Alexander refused to raise a critical voice. "That's between the leader and the White House," he stated, according to the *Nashville Post*. McConnell "talks with them every day," Alexander continued.¹³²

Calling impeachment a mistake and failing to push back against McConnell's clearly inappropriate comments would certainly lead one to believe that Alexander may have already made up his mind on acquittal. But Alexander also said that he and his fellow senators "have a constitutional responsibility to hear the case and I'm prepared to do that."¹³³

More recently, Alexander has said he was open to additional witnesses.¹³⁴ If he provides the votes necessary to compel witness testimony, perhaps he will have an epiphany similar to the one that Howard Baker had during the Watergate scandal.

¹³¹ Stephen Elliott, *Lamar Alexander Still Reluctant to Talk Impeachment*, NASHVILLE POST (Dec. 13, 2019), <http://bit.ly/35CdXKq>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Manu Raju, Phil Mattingly and Ted Barrett, *White House Wants Senate Trial Rules to Include Ability to Dismiss Trump Charges*, CNN (Jan. 13, 2020), <https://cnn.it/2tndpLb>.

Sen. Richard Burr Voted Guilty on Clinton Impeachment Out of Conscience, Believed No One is Above the Law

In December of 1998, then U.S. Rep. (now Sen.) Richard Burr (R-N.C.) was aware of the gravity of the vote he would soon take on the Clinton articles of impeachment: “This is probably the most important vote I’ll cast in public life,” Burr said according to an Associated Press report published in the *Rocky Mount Telegram* at the time.¹³⁵ “This is a decision that will affect this country for generations to come. It will set a precedent for how this Congress interpreted its constitutional responsibilities,” Burr continued.¹³⁶

More recently, in November 2019, Burr appeared somber about a potential Trump impeachment trial: “I’ve been through impeachment. Nobody wins, period, end of sentence. No party wins. The American people don’t win,” Burr told an audience at Wake Forest University.¹³⁷

Burr styles himself as being guided by his conscience, no matter how it affects his political career and has cited the words of former North Carolina U.S. Sen. Sam Ervin admonishing the country to “seek truth, keep faith and have courage.”

When he ran for re-election in 2016, Burr said he would retire in 2022.¹³⁸

Burr has touted his bi-partisan work on the Senate Intelligence Committee as proof he can remain impartial, and has pledged to be an honest juror.

Burr’s most extensive remarks on Trump’s impeachment were made at an event at Wake Forest University in November 2019 where he answered questions next to his colleague Sen. Mark Warner (D-Va.). Burr spoke for three minutes about his thoughts on impeachment, at times indicating that he believed an impeachment trial should be run with the same efficiency and fairness with which he and Warner had run Senate Intelligence Committee investigations.

Burr was careful to qualify his extended thoughts with a disclaimer: “Now I’m not going to make a statement about what the outcome is because the likelihood is, he and I [Warner] are going to be jurors.”¹³⁹ But he did indicate his thinking on certain issues that will no doubt arise in a Trump impeachment trial.

Burr also gave some indication – though this is strictly reading between the lines – that he may believe the current public evidence is insufficient: “I don’t know. Maybe we will learn something as this goes public tomorrow, but everything has been public up to this point.”¹⁴⁰ Stability is one of the reasons “the bar for impeachment was extremely high,” according to Burr.¹⁴¹ “So I would only say to

¹³⁵ *N.C. Delegation Mirrors House on Impeachment*, ROCKY MOUNT TELEGRAM (Dec. 17, 1998), on file with author.

¹³⁶ *Id.*

¹³⁷ *Senators Burr and Warner Conversation on Bipartisanship*, C-SPAN (Nov. 11, 2019), <https://cs.pn/37NFQAC>.

¹³⁸ Colin Campbell, *US Sen. Richard Burr Says 2016 Will be his Last Run for Elected Office*, THE NEWS & OBSERVER (July 20, 2016), <http://bit.ly/2QFh6EZ>.

¹³⁹ *Senators Burr and Warner Conversation on Bipartisanship*, C-SPAN (Nov. 11, 2019), <https://cs.pn/37NFQAC>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

you is the test we're going to have and I think we'll be presented with it is does it reach the level of removal from office?" he concluded.¹⁴²

Burr explained his vote on Clinton impeachment was one of conscience.

In 1998, Burr voted guilty on two of the four Clinton articles of impeachment in the House. The two articles Burr voted for were the two articles approved by the House and sent to the Senate.

Burr was clear in claiming that his vote on impeachment would be one of conscience, not politics. "I'm not keeping a scoresheet to see how many people in my district are on one side and how many on the other side, Burr said in 1998.¹⁴³

"If this vote is what people want to judge me on in the next election, I'm willing to accept that, but I'm not willing to vote differently than what my conscience tells me is the right way."¹⁴⁴

Burr underscored how much he values treating everyone equally under rule of law during the Clinton impeachment.

Explaining his guilty votes in a speech on the House floor, Burr said: "I believe the charges outlined in I and III go to the very heart of our system of justice."¹⁴⁵

Quoting the first U.S. Supreme Court Justice and founding father, John Jay, Burr said: "If we knowingly allow our president to break laws while some Americans sit in jail for having violated the same statute, we weaken the very rule of law protecting us."¹⁴⁶

The protection of the rule of law was a constant theme of the remarks Burr made announcing his guilty votes on the Clinton impeachment. He cited a 1788 quote from North Carolinian James Iredell on why the power of impeachment was so important: "If this power were not provided, the consequences might be fatal. It will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him."¹⁴⁷

When voting guilty during the Clinton impeachment Burr praised "folk hero" of the Watergate hearings, Sam Ervin.

Burr spent a large portion of his floor speech explaining his Clinton impeachment vote in 1999 quoting other politicians who came before him. The wisdom of these men, Burr implies, helped shape his decision making.

¹⁴² *Id.*

¹⁴³ *N.C. Delegation Mirrors House on Impeachment*, ROCKY MOUNT TELEGRAM (Dec. 17, 1998), on file with author.

¹⁴⁴ *Id.*

¹⁴⁵ *House Session*, C-SPAN (Dec. 18, 1998) <https://cs.pn/2N8iVbu>.

¹⁴⁶ *Id.*

¹⁴⁷ *House Session*, C-SPAN (Dec. 18, 1998) <https://cs.pn/2N8iVbu> and *Impeachment Grounds: Part 2: Selected Constitutional Convention Materials*, CONGRESSIONAL RESEARCH SERVICE (Oct. 30, 1998), <http://bit.ly/3510jfc>.

He closed his remarks by citing “one of North Carolina’s most favorite sons the late Senator Sam Ervin.” When Senator Sam Ervin (D-N.C.) died in 1985, the *Los Angeles Times* referred to him as a “Watergate folk hero.”¹⁴⁸ Ervin headed the Senate Select Committee that presided over the Watergate hearings in 1973.

Early in the Watergate hearings Ervin said that if the accusations against Nixon were true, it amounted to a conspiracy to “steal from Americans their most precious heritage, the right to vote in a free election.”¹⁴⁹ Ervin’s quote is certainly applicable to the accusations at the center of the impeachment of Donald Trump.

Burr closed his remarks on Clinton’s impeachment by quoting Ervin as having said “if we seek truth, keep faith and have courage, I have no fear that this nation can overcome all challenges from within or without.”¹⁵⁰

The integrity of the Trump impeachment proceedings might rely on whether Burr casts key votes in favor of seeking the truth.

¹⁴⁸ *Former Sen. Sam Ervin, 88, Watergate Folk Hero, Dies*, THE LOS ANGELES TIMES (April 24, 1985), <https://lat.ms/39ViQSF>.

¹⁴⁹ *Id.*

¹⁵⁰ *House Session*, C-SPAN (Dec. 18, 1998) <https://cs.pn/2N8iVbu>.

Conclusion

This analysis makes the optimistic assumption that we should reasonably expect to be able to take elected officials at their word. There are many reasons to be skeptical of putting too much stock in the featured senators' past statements, not the least of which is that politicians are often unwilling to go against their own party. But history has shown that in times of great turmoil, some elected officials have put their oath of office over party loyalty.

These seven senators have all pledged impartiality in impeachment proceedings. Such impartiality would inherently require welcoming relevant new evidence and questioning witnesses with the potential to offer facts important to the case.

We will soon find out if these senators' past words came from a place of true conviction or simply amounted to empty rhetoric.