



New Book Reveals Democratic Decision to Abandon Due Process and Historical Precedent to Impeach Trump

Description

USA: “They’re going to argue we don’t have due process for Trump. Why make that argument real?” Those words from House Judiciary Committee Chair Jerrold Nadler, D-N.Y., stand out in the shocking disclosures in the recently released book, “Unchecked: The Untold Story Behind Congress’s Botched Impeachments of Donald Trump,” Politico Playbook co-author Rachael Bade and Washington Post reporter Karoun Demirjian recount how House Intelligence Committee Chair Adam Schiff and Speaker Nancy Pelosi overrode objections from Nadler that the lack of witness testimony was a denial of due process for then President Donald Trump. Nadler reportedly put it plainly and correctly: “It’s unfair, and it’s unprecedented, and it’s unconstitutional.”

It was a strikingly familiar objection. I testified at the first Trump impeachment before Nadler and criticized the lack of any factual witnesses or Judiciary Committee hearings supporting the articles of impeachment. The book details a position of the House Judiciary that is strikingly similar to my own testimony.

The book, however, has not brought a sense of vindication as much as frustration. Nadler publicly toed the line with Pelosi to support a process that he reportedly viewed as abusive and “unconstitutional” even as some of us were set upon by a legion of irate pundits. Worse yet, the book indicates that the bar on witnesses was not compelled by the schedule, as claimed by Pelosi and Schiff, but raw politics. It was, I wrote, a decision to follow the rule of Franz Kafka’s character that “my guiding principle is this: Guilt is never to be doubted.”

On the second impeachment, they went one better. They jettisoned any witnesses (including legal experts) in what I called a “snap impeachment.”

During the impeachments, I suggested that the reason was not any limitation of time but tactical advantage. In both rushed impeachments, Pelosi then held back the articles of impeachment before sending them to the Senate – destroying even the pretense of exigency as the reason for abandoning due process.

The book appears to confirm the Kafkaesque logic. It states that neither Pelosi nor Schiff wanted to risk a witness or member going off script by allowing true due process. When Nadler raised historical and constitutional objections, Schiff reportedly barked back that he needed to change “his tone” and complained “you’re putting us in a box.” That box is an effort to guarantee fairness and Nadler reportedly and correctly observed that “if we’re going to impeach, we need to show the country that we gave the president ample opportunity to defend himself.”

In my testimony in the only hearing held by the Judiciary Committee (over the two impeachments), I objected that “this is wrong. It is not wrong because President Trump is right...No, it is wrong because this is not how an American president should be impeached.”

I relied primarily on the Nixon and Clinton cases to show how far the House was outside any historical navigational beacons. It turns out Nadler and his staff reached the same conclusion and cautioned Schiff and Pelosi to “stick close to the Nixon and Clinton cases.” They refused.

Dan Goldman, Schiff’s lead counsel and the Democratic nominee to represent New York’s 10th District in the House, scoffed and mocked Nadler: “Jerry Nadler? With him, everything is negotiable.” When Nadler’s team argued for an approach (as I did) “more like Nixon,” Schiff’s team reportedly dismissed due process and said, “F— Donald Trump.”

People can disagree on the merits of the impeachments, but both impeachments were an abusive use of the Article I authority in the denial of any substantive hearings before the Judiciary Committee. While it was constitutional in the sense that there is no required process, it was wrong from both a historical and procedural perspective. Of course, the public was not allowed to either hear from witnesses or know that even Democrats like the Judiciary Chair objected on these same grounds.

Indeed, when the House elected to pursue the January 6th investigation, they followed the same playbook with Schiff as a member. Traditionally, each party is allowed to pick its own members on such committees. However, Pelosi rejected two of the Republican members and the rest of the party (except for outgoing Reps. Lynne Cheney and Adam Kinzinger) boycotted the hearings. The result was a one-sided production without a hint of fairness or balance in exploring possible defenses or counterarguments.

What is most sad about this account is that, for a critical moment, Nadler rose to the occasion. He defended not just the historical authority of his committee but the constitutional norm, even for a president despised by Democrats. That twilight moment of clarity was soon lost. The book recounts how Nadler made an “effort to get back into Pelosi’s good graces.” When I testified, there was not a hint of concern or dissent. Nadler and the Democrats scoffed at the notion that the impeachment departed from core historical precedent or legal protections.

They had, as Nadler predicted, made the due process arguments “real,” but no one cared. To paraphrase Goodman’s reported observation, in Washington, “everything is negotiable.”

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