

How a Senate impeachment trial works

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A Senate impeachment trial is a rare thing — it has happened only two other times in American history and once in the modern era. Here's the nitty-gritty of how we believe each day will work, based on a reading of the Senate rules about how to hold trials, how President Bill Clinton's impeachment trial was run, and our current understanding of the expected schedule.

The ceremonial beginning: Wednesday and Thursday

After the House voted on sending the articles of impeachment to the Senate, the team of [House prosecutors known as impeachment managers](#) walked the charges across the Capitol to the Senate.

The managers will present articles of impeachment — literally by reading them — to a full Senate on Thursday at 12.

By Thursday afternoon, Chief Justice John G. Roberts Jr. will arrive and be sworn in as presider by Senate President Pro Tempore Charles E. Grassley (R-Iowa). Then Roberts will swear in the 100 senators who will serve as jurors. Here's the oath they take:

"I solemnly swear that in all things appertaining to the trial of the impeachment of President Donald J. Trump, now pending, I will do impartial justice according to the Constitution and laws, So help me God."

Source: Oath according to official Senate rules for a trial

(petekarici/Getty Images)

The senators take over and begin the process of starting the trial, which is, translation: paperwork.

During the Clinton trial, senators were able to move to change or tweak the rules. Will a Trump ally offer a motion to dismiss the trial at the outset? Will Democrats offer a motion to have witnesses? Or Senate Majority Leader Mitch McConnell (R-Ky.) could stop all motions he doesn't want from coming to the floor with a motion to do just that.

As long as McConnell has 51 votes, he has the power to shape the Senate trial as he sees fit.

During the Clinton trial, senators also took this time to vote on comparatively mundane motions to allow video equipment and microphones in the Senate chamber to make it more like a courtroom. Both sides, House Democrats and the White House, also have an opportunity to file briefs to bolster their cases. Any documentation each side gives will be printed out and set on senators' desks. It could contain key dates for both sides, key testimony from House impeachment investigators and whatever rebuttal the president's defense team wants to offer. During the Clinton trial, the process of setting up the trial lasted six days, though McConnell is signaling that this time it will last just a few days.

The opening arguments: Tuesday

After a few days of procedural work, the Senate invites the House managers to come back. This is when the actual trial part of the trial begins and senators assume the role of jury. They surrender their cellphones and aren't allowed to speak after this point. "So they have to sit there quietly, which in 2020 is a nightmare for any human being," said constitutional expert Sarah Burns with the Rochester Institute of Technology.

This is where McConnell has said the Senate will vote to start the trial with a resolution that sets up the rules of the trial, including how long it will last and how long everyone has to speak. This will not guarantee witnesses, and it is expected to pass with the support of Republican senators over the Democratic minority.

Each side will get a set amount of hours to present its case for or against the president. During the Clinton trial, each side got 24 hours spread out over a few days. "The Senate will now hear you" is what we can expect the chief justice to say when it's each side's turn to speak.

It's not in the rules which side goes first. White House Counsel Pat Cipollone and personal Trump lawyer Jay Sekulow will lead the team arguing for Trump's side. We don't yet know exactly what their official argument will be, because the White House declined to participate in the House trial, where it had an opportunity to defend the president and to call its own witnesses.

Democrats will start by laying out the evidence presented against the president. You'll hear something like what House Democrats argued in the House process as they impeached Trump. Here's House Judiciary Chairman and impeachment manager Jerrold E. Nadler (D-N.Y.): "It is an impeachable offense for the president to exercise the power of his public office to obtain an improper personal benefit, while ignoring or injuring the national interest."

After both sides give their arguments, senators can ask questions in writing for a predetermined amount of time. The rules prevent senators from speaking, probably to avoid grandstanding. They literally jot their questions down on a piece of paper and hand it to the chief justice, who reads each one out loud. If it's for the president's team,

the defense will answer it. If it's for the House, Democrats will answer it. During the Clinton trial, senators had 16 hours for questions and managed to fit in more than 100.

The debate over witnesses: A few weeks into the trial

Senators will vote on whether to dismiss the trial or whether to keep it going and call witnesses and introduce new evidence.

This will be split up into two votes and will be among the most consequential parts of the trial. That's because there are Republican senators who could cross party lines and help Democrats subpoena Trump's top aides, such as former Trump national security adviser John Bolton, to share what they know about Trump's intentions on Ukraine. The Senate would be introducing new evidence that House Democrats couldn't get access to because Trump prohibited his current and former aides from cooperating with House impeachment investigators.

Other witnesses who Democrats have said they want to call are acting chief of staff Mick Mulvaney and two White House budget officials involved in freezing Ukraine aid, Robert Blair and Michael Duffey. Here's what the four could know:

1. Mick Mulvaney: He is Trump's acting chief of staff.

Impeachment witnesses have said Mulvaney knew about the leverage Trump wanted to use to apply pressure to Ukraine; Mulvaney even said as much publicly. "[Did Trump] also mention to me, in the past, that the corruption related to the DNC server? Absolutely, no question about that. But that's it. And that's why we held up the money." He later said there was no quid pro quo for the Ukraine aid. Now the New York Times has reported he was involved in trying to get the aid frozen starting in June.

2. John Bolton: He was serving as Trump's national security adviser as Ukraine negotiations were going on during the summer.

People who worked directly under Bolton testified that he called Mulvaney's Ukraine efforts a "drug deal" that he wanted no part in. He has indicated that he knows more than what was said in the impeachment hearings.

3. Robert Blair: He's the top adviser to Mulvaney.

When Mulvaney asked if it was possible to hold up the aid, it was Blair he was talking to. Blair seemed to carry out much of the action. "We need to hold it up," he told budget officials at one point, the Times reported. Blair, like Mulvaney, may also know more about why Trump wanted the aid held in the first place. The Times reported he was in meetings with Trump when Trump expressed skepticism of Ukraine.

4. Michael Duffey: He's a top White House budget official.

A new email shows he told the Defense Department that Trump wanted it to stop the process of giving the money to Ukraine — and to keep it quiet. This happened less than two hours after Trump’s July call with Ukraine’s president in which Trump asked for political favors. “Clear direction from POTUS to continue to hold,” Duffey wrote in an email obtained by the Just Security blog over the holidays. When the aid freeze was out in the open, other obtained emails show he pinned the blame for the aid freeze on the Defense Department. “You can’t be serious. I’m speechless,” was the Pentagon’s reply.

It will take four Senate Republicans to join all Democrats to get a majority vote and keep the trial going. Or, a majority of senators could vote to end the trial and hold a final vote to acquit or convict the president.

If the Senate votes to allow witnesses, we don’t know exactly how things could work, because senators haven’t yet agreed on how they would do it. Trump’s legal team would also get to call witnesses, and Trump has advocated for calling people tangentially related to the allegations, like the whistleblower or Hunter Biden.

The Clinton impeachment trial required witnesses to first be deposed by lawyers behind closed doors for several days. (The Clinton impeachment also allowed one senator from each side to be present.) So the Senate trial could break for a few days. The Senate would then reconvene and vote on which witnesses, if any, to have testify live. Or they could decide to air videotaped depositions. Or they could make the transcripts of the depositions available to senators.

If there are any debates about whether the Senate is following its own rules, senators can ask the chief justice to chime in. Roberts could even cast the deciding vote in 50-50 split. But the chief justice doesn’t set his own rules.

Closing arguments and deliberation

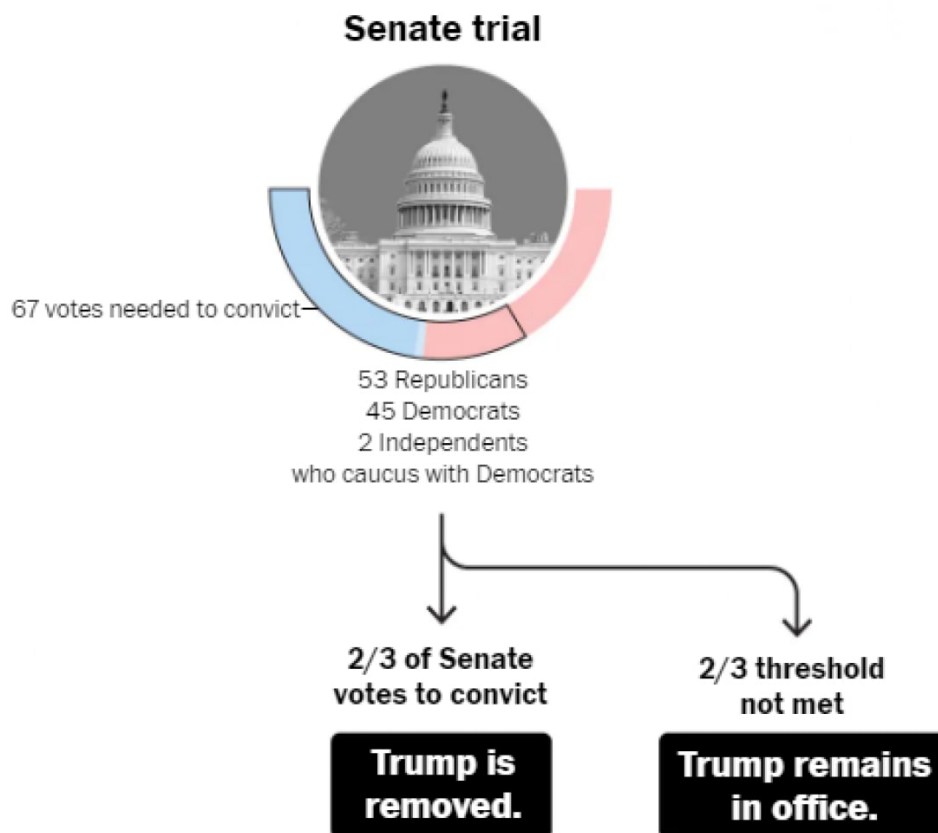
After both parties present the evidence — or after the Senate votes to end the trial before witnesses, whichever comes first — both sides will present their final arguments, much like closing arguments in a trial.

All of this is being done in the open, but the Senate can vote to deliberate behind closed doors with a simple majority. The Senate went into a closed session to debate the actual articles of impeachment against Clinton, with each senator allowed 15 minutes to address everyone else. That could take several days if each senator takes the entire time. (“I remind all senators that Lincoln gave his Gettysburg Address in less than three minutes, and Kennedy’s inaugural address was slightly over seven minutes,” said Sen. Tom Daschle (D-S.D.) before they went to debate.)

Once senators are done debating, they will hold two votes on each article of impeachment. Senators will be voting on whether to convict the president of each article. If he’s convicted of even one, he would be thrown out of office. Or they can vote to acquit, which would allow him to stay in office with his name cleared. Another option:

Any senator could introduce a separate resolution to censure the president, as a compromise to avoid voting on impeachment. (That's what Democrats did during the impeachment trial.) A censure wouldn't remove the president from office, but "it's a procedure they can use to show their displeasure without reaching arguably the highest level of constitutional hardball, which is what impeachment is," Burns said.

It takes a two-thirds majority to kick a president out of office, or 67 votes out of 100 to impeach him. Another, more partisan way to look at that is 20 Republicans will need to vote with all Democrats to convict him.



If the Senate votes to convict Trump, it can take another vote to prevent him from running for office ever again. That would require only a majority, or 51, senators.

The Senate can also vote on whether to allow each senator to place into the official record a statement explaining his or her vote.

The end of the trial: Sometime in February

To close out the trial, there are a couple of procedural motions and closing speeches. One fun one during the Clinton trial: Senators presented then-Chief Justice William Rehnquist with a golden gavel award, a tradition in the Senate going to anyone who presides over the Senate for 100 hours. Rehnquist got a standing ovation. During the Clinton trial, the Republican and Democratic leaders both spoke to thank the other for his cooperation, and they got a standing ovation.

But senators who have grievances about the process can also air them in speeches after the trial. That's what Senate Democrats did who wanted but never got a vote on a censure resolution against Clinton in lieu of impeachment.