Twitter Thread by Akiva Cohen



Akiva Cohen
@AkivaMCohen



OK, let's start talking about the House's 80 page brief on impeachment. It really is an incredibly well-done piece of work. There are some things I'd do differently and some pieces I didn't love, but overall, it's very very good.

Again - this thread will happen in fits and starts. I'm swamped at work and this will come in 10-15 minute chunks as I take a break

Let's start by taking a look at the table of contents. After a 4-page intro (that's relatively long, don't love it), the brief spends a solid 30 pages walking through the facts underlying the impeachment - and, the subheadings tell us, tying in Trump's general refusal to accept

INTRODUCTION 1

STATEMENT OF FACTS 5

A. President Trump Refuses to Accept the Results of the 2020 Election 5

B. President Trump Encourages His Followers to Come to Washington on January 6, 2021 and "Fight" to Overturn the Election Results 12

C. Vice President Pence Refuses to Overturn the Election Results 18

D. President Trump Incites Insurrectionists to Attack the Capitol 20

E. Insurrectionists Incited by President Trump Attack the Capitol 22

F. President Trump's Dereliction of Duty During the Attack 29

G. The House Approves An Article of Impeachment with Bipartisan Support 34

ARGUMENT 36

I. PRESIDENT TRUMP COMMITTED HIGH CRIMES AND MISDEMEANORS 36

A. President Trump Violated His Oath of Office 37

B. President Trump Attacked the Democratic Process 38

C. President Trump Imperiled Congress 39

D. President Trump Undermined National Security 40

II. THERE IS NO DEFENSE FOR PRESIDENT TRUMP'S CONDUCT 42

A. Fair Impeachment Process 42

B. Criminality 43

C. Election Results 44

D. Free Speech 45

the election results with everything that followed. This is a strong rhetorical approach, but it comes with dangers: the President not only had a legal right to contest the election results, but the GOP Senators pretty much all backed that right, strongly.

It's going to be important to thread a needle of saying "this set the stage for what came after" without putting yourself in a place where you're trying to convince the Senate that the challenges themselves were impeachable. That won't fly

Also - 30 pages is an incredibly long statement of facts. Most full-length briefs aren't that long. So expect it to be very, very detailed. That's important, because the primary argument on incitement is "given the context, these words incited the attack" - so the context is key

The argument section is broken up - smartly, I think - into three separate chunks.

1) Why, on their own merits, Trump's conduct requires conviction
2) Why Trump's defenses don't fly
3) The Senate can convict Trump even though he's out of office

Again, there are some key strategic choices being made here. The section on Trump's conduct conspicuously - and, I'd have to assume, deliberately - does NOT identify any supposed statutory crime. These are purely political offenses

Another (smart) strategic choice: Attacking the defenses in separate sections, rather than interweaving the response with the affirmative case. Those defenses are likely to be the core of the Trump response, not factual argument, so they need to be addressed prominently & head on

Last (for this break, we'll be back) take a look at the page counts. They spend 6-7 pages (36-42) on the affirmative case. Another 6-7 pages (42-48) on the various defenses *other* than "but I'm an ex-President!"

And 27 pages - again, a whole brief by itself - on "ex-President"

That tells you a lot about where the House is losing votes.

They're pretty confident that they can get whatever R-votes are gettable on the basics; after all, those Senators lived through the Capitol assault, they know what's what. But ...

They may need to convince a bunch of even those unicorns - GOPers who'd be willing to convict on the merits - that they can't acquit based on "he's already out of office"

So that's where they'll spend their substantive time

OK, client work awaits. We'll pick this up again later