

# Meet Me in the Middle Ep 08 Transcript

**Announcer:** From Curtco Media. Whatcha you gonna do about.

**Bill Curtis:** This is our last show of 2019. We'll be back arguing at full speed on January 2nd. But for now, welcome to our emergency episode of Politics. Meet me in the Middle, the impeachment show. This is a selfish thing because I personally want all of us to have some authority and knowledge to lead dinner table conversations with our friends. Almost no one is shy of emotions or political opinions these days. But that's not what we're here for, at least initially. And with me, we've brought back some of our favorite guests. Of course, we start with our Pulitzer Prize winning historian, author, professor and worldwide lecturer, Ed Larson. How you doing, Ed?

**Ed Larson:** Nice to see you again. I'm doing great.

**Bill Curtis:** We've also brought back Ed Warren, who was among Washington D.C.'s most influential Supreme Court attorneys with decades of experience as one of Washington's most insider, influential Supreme Court litigators with Kirkland and Ellis, where he has been of counsel since 2005. And to round us out, we have Jane Albrecht back, an international trade attorney who represented U.S. interests in Washington, D.C., Europe, Russia and beyond. She's worked with high level government officials in many countries, and she's been involved with several presidential campaigns and in full disclosure, she's also president of the local Democratic club. Ed, let's start, please, with a clear description of the genesis of Congress's right and rules for impeachment.

**Ed Larson:** The convention, the delegates in Philadelphia spent more time crafting the presidency than on any other issue. The president is like a prime minister picked by Congress and removable by Congress. Then it evolved into the powerful presidency, the almost king like presidents did that we ended up with. And when they moved to that sort of presidency, an independently selected presidency, they realized that impeachment powers were necessary because that's where it differed from England. In England, you could impeach any officer other than the king and royalty. And they realized we needed to be able to impeach the monarch.

**Bill Curtis:** So, Ed Warren. Tell us about the writings for impeachment and what type of guide we have for that process.

**Ed Warren:** When the constitution was ratified there was concern, we were right in the middle of the French Revolution or that was about to happen. And there was fear that either England or France would be able to control what was going on in the United States and that the executive could be a pawn of either one of those two great powers. And so I think historically, that's the context.

**Bill Curtis:** So it was more about protecting our country from foreign engagement than it was protecting us from a rogue president?

**Ed Larson:** They talked about both at Philadelphia, but just as Ed said, the main thing they talked about was foreign influence in our election or basically bribing an existing leader. And that had happened. They had the one great example of that in Charles the Second who was getting directly paid by the French government during his term of office and changing their position on the Netherlands, on their alliance with the Netherlands, solely in response to direct payment by the French government. And that was absolutely scandalous. And that issue, more than anything, drove this push that we have to have the impeachment power.

**Jane Albrecht:** My recollection, but again, you have delved in this much deeper was that when they went with the concept of a president as opposed to something like a prime minister, they weren't trying to create a monarch. In fact, they were very careful that they did not want to create a monarch. And so some of these protections came in precisely because of that.

**Ed Larson:** You're absolutely right because one thing that characterizes a monarch is a monarch is the law. There's no such thing as a monarch being above the law. The monarch is the law. The monarch cannot break the law. That was a important point. But impeachment is something different because impeachment is not just whether you break the law. Impeachment was holding a president accountable.

**Ed Warren:** This debate went on for a long time. And there were arguments to it make it much more pervasive, more broadly defined, then it ends up in the actual terms in the Constitution.

**Ed Larson:** Well, they do broaden it a little bit by adding treason and bribery. You can impeach for treason and bribery and high crimes and misdemeanor. They were afraid, particularly of treason and bribery. Treason is directly working with at times of war or in opposition when you're dealing with a foreign adversary. The classic example of the time would have been, that they all knew would have been Benedict Arnold. Benedict Arnold selling out West Point for money to the British. That was treason because we were at war.

**Ed Warren:** Let's take the example of the Steele dossier where the argument, at least in its most extreme form, was that Donald Trump was essentially an agent of the Russian government because he was compromised and was going to be unable to act in the national interest. I mean, at some extreme that would qualify, it seems to me, as treason. High crimes and misdemeanors is the vague part of the impeachment criteria. Bribery, because it stands out, does pose the question of what is bribery. And for example, the Supreme Court's recent decision with the Virginia governor - the O'Donnell case- suggests that bribery is pretty doggone hard to prove.

**Bill Curtis:** So just if you do this, I'll give you that is not enough to.

**Ed Warren:** ,I don't think so.

**Bill Curtis:** I can't help it. I didn't want to get right into our current day situation, but it seems like we have to. So in this case, where the primary subject at hand is the concept of bribery, where a delay, at least in about 400 million dollars in aid was presented simultaneously with the concept of would you do me a favor? Do you see that rising to the level of a bribe?

**Ed Warren:** I guess my reaction is this. The president has authority in foreign affairs, which is his authority under the executive powers and deals are constantly being made in foreign affairs with a quid pro quo. Quid pro quo is hardly a novel idea. I mean, we heard President Obama speaking to Medvedev, off mike, saying, hey, leave me alone

till after the election and then we can do business. Now. I mean, what could be more clear than the trade there? I don't find it nefarious or bad in any respect, but I think there's lots and lots of trades that go on all the time.

**Jane Albrecht:** There's the significant difference.

**Ed Warren:** There is a difference on.

**Jane Albrecht:** The differences when you're negotiating on behalf of U.S. interests, which I've done, you're advocating for U.S. interests. It's quite a different thing when you're advocating for your own personal gain, which is what was involved here.

**Ed Warren:** I think you're right. But I think whenever you, let's don't treat presidents or anybody who's negotiating in foreign affairs as some kind of pristine folks that don't ever consider their private and personal and political interests because I think that's common.

**Jane Albrecht:** I don't think you should assume that. I've been involved in trade negotiations and I didn't see anything like that.

**Ed Warren:** Well, today we see the president negotiating with China. And it would seem to me that he's always got in the back of his mind exactly what's going to happen in the next election.

**Jane Albrecht:** I think it's very interesting that when he admitted to this phone call with Ukraine, he publicly invited China to look into Hunter Biden as well. And a week later, there was an interim agreement announced. If Trump were to ask Xi Jinping to do a favor like that, Xi Jinping would be happy to do it. But you better believe he will exact a price. And it could be in terms of position of the United States in the South China Sea, geopolitical interests were very important or trade concessions which would never come out. So it's very important that that president or anyone else negotiating on behalf of the United States is advocating for the U.S. and not their own personal interest.

**Ed Warren:** I think I think presidents always have their personal interests in mind, and that's part of deals that are made on any kind of relation, foreign affairs, trade negotiations, all these sorts of things. The thing about Trump, where he's so flat footed

and does things in such a clumsy way, that he opens himself up for essentially open ended and wild charges that other presidents could carry out without difficulty.

**Jane Albrecht:** It's normal when a president is negotiating with a foreign power. Yes, they may take positions that they believe are good for them in their party, but it's quite a different thing when they're negotiating for their own personal gain. And that is not normal.

**Bill Curtis:** But just so that we can we can hold on to the goals of this particular conversation. I would venture that a lot of what you're talking about is absolutely correct. But it's about whether or not you allow that president to continue for a second term as opposed to, you have the authority, an obligation to impeach that president. Here we have a single issue of I will release 400 million dollars if you do me this favor. I'm not sure whether or not that's an impeachable offense. I'm not sure.

**Ed Warren:** I'm not sure I have problems with the facts wholly apart from the question of whether it's an impeachable offense. If you concede all the facts, there are people with firsthand knowledge. People that talk to the president every day. And if you're going to if you're going to try to impeach the president on this basis, you got to get that evidence out and you've got to impeach on that basis.

**Jane Albrecht:** If it doesn't technically meet the criteria of bribery, depending upon what statute they pick. It's what he did with Ukraine, is a high crime and misdemeanor. We can argue about whether there is right now sufficient evidence. I personally believe there is, the four legal experts or three the legal experts agreed with that. But then when you get down to the facts, well, you should have. You should be talking to Pompeo and Barr and Mick Mulvaney and others and the president, whatever. But if they simply refuse, I think to me that is in this context, that is absolutely obstruction of Congress. And that's another grounds for impeachment. The president doesn't have the right, just as Ed pointed out, this is not an imperial presidency. This is not a monarch.

**Ed Warren:** He may be he's a terrible guy, but the best way to get rid of him is to vote him out of office. And I think if you look at previous impeachments, like Ed says, you've got to get all that evidence out there in order to do it rather than doing it on a on a record that's created by the House Intelligence Committee. And when there are

firsthand knowledge witnesses from the heart of the administration who ought to be testifying and all. Well, I agree. They should be testifying.

**Bill Curtis:** At the end of the day what is the true goal of this impeachment process? If there's absolutely no chance of a conviction in the Senate.

**Ed Warren:** I think there's a pretty good argument that you get an acquittal in the Senate and you might have a couple of Democratic votes to go acquittal in the Senate. And then Trump is going to be able to say they did it again. You know, they made all this storm and I am innocent once again.

**Bill Curtis:** ,If the Democrats make it very clear that this acquittal is on party lines and has nothing to do with the fact that he is impeachable or not, I believe that the American public is smart enough to understand.

**Ed Warren:** I think there is no doubt there's 35, 40, 45 percent of the people that certainly will agree with that because they've hated Trump from day one. They want to get rid of him from day one. So they certainly are going to accept that line. The question is, what happens to the people if we have 40 percent, 40 percent and 20 percent in the middle? What are people in the middle going to do? And I guess my feeling is that if played correctly, it could really redound to the benefits of Republicans. I don't know. I don't think they want to do this. And I think they see some risks in doing it.

**Ed Larson:** I think both sides see a potential upside and potential downside. I think what Ed is saying is right. This could redound to the Republicans. But it could be like the Clinton impeachment and the Clinton impeachment actually hurt the Democrats a lot. It's hard to see, in my opinion, Al Gore losing. But for the fact that the Clinton impeachment. If it goes to trial, remember that the Republicans and Mitch McConnell control the Senate and will control the trial and they will make this a total show to their advantage,. You know, including.

**Bill Curtis:** Which the Democrats have so far.

**Jane Albrecht:** Yeah, but he'll do it, Mitch is shrewd and savvy, and he will do it very well.

**Ed Larson:** And shameless.

**Jane Albrecht:** and shameless.

**Ed Warren:** Well, one thing we might you might add into the mix here is John Roberts is going to be running the show, too. And it's not clear to me how John is going to play this. I mean, he is nothing but a institutional guy. And he is not going to want to look like he's a pawn of Mitch McConnell here.

**Jane Albrecht:** I don't think he would he he will do certain things. I don't think he can stop them from doing other things.

**Ed Warren:** Well, that's different in terms of calling witnesses. Yes. But, you know, just take hearsay testimony would be one example. My guess is that even though I don't think that testimony should be allowed in a trial because it's hearsay. I think he probably would let it in. I mean, I think they will be able to build their case, the same case they've built so far with Roberts. Now, maybe I'm wrong.

**Jane Albrecht:** If it did go to a Senate trial, to what degree could the administration continue to stonewall and not let any of this? If the Senate subpoenas Pompeo and Barr and whatever, it may go to Supreme Court, it may drag out. And that means this goes through the elections.

**Ed Larson:** They won't subpoena them.

**Ed Warren:** I don't think they're going to subpoena them . That seems to be.

**Jane Albrecht:** So that makes it hard for them to say they care about more facts and then not subpoena them.

**Ed Warren:** That's the problem, because I mean to me, those facts are the key facts. And that, you know, however much you think you think these foreign affairs people in the foreign service people are fine people, which I do to. They don't make foreign policy.

And they were working on a presumption that all these bad things were happening. Well, if they were happening, guys that know about it are John Bolton and Pompeo.

**Jane Albrecht:** Ed I understand what you're talking about that. And I don't think there's anyone in the house that doesn't understand this, that this is not about a difference in foreign policy. And I will say this. It gave me great hope for this nation when I saw the testimony of the ambassadors and the foreign service professionals, because they had the strength of character, the knowledge, the commitment to doing it right that has made this country great, actually. And it gave me hope that that is still there despite the current administration. But this is not about... And I also understand what you mean when you talk about, you know, the State Department process can and the people can get jealous of administration. They don't agree with the policy. But that's not, they knew what was going on. And it wasn't all second hand. And there's no question that Gordon Sundland and others didn't make up this criteria. This came from the President and there's plenty of direct evidence on that.

**Bill Curtis:** I think I'm going to have to cut us off right now, because we got to take a break. We'll be back in 30 seconds. I promise.

**Promo - Robert Ross:** Hi, I'm Robert Ross, host of Cars That Matter. You might be wondering what makes a car matter and I have a feeling you already know the answer. Some cars have changed history. Some you can hear a mile away. Some have lines that make your heart skip a beat. If a car's ever made you look twice, then I think you know the ones that matter. Join me as I speak with designers, collectors and market experts about the passions that drives us and the passions we drive. Cars that Matter. Wherever you get your podcasts.

**Celleste:** Whatcha gonna do about it?

**Bill Curtis:** Which president since Nixon has not been subject to the other party looking for impeachment material?

**Ed Warren:** There are no examples of that. I mean, there's always a fringe. And this, I think, would distinguish what's going on now. There's always been a fringe that said we're going to impeach this person, we're going to impeach Earl Warren and we're



going to impeach, you know, going back as far as we can remember, there's been a fringe that wanted to impeach a president because of differences of opinion or whatever. So I think it's common. I think that's one of the big problems, though, is that I just think there has to be a very high bar for impeachment, because otherwise we're going to turn it into a politicization which can result in effective coups and to turn over leadership on that basis.

**Ed Larson:** In answer to your question, I would say that with both Herbert Walker Bush and also with Obama, you never had truly serious, certainly had some partisans talking impeachment, but you never had anything that would suggest impeachment. Reagan would not fit that because Iran Contra there was serious discussion, but then they realized it's so late in his term. And how connected was he? And there's a lot of reasons not going forward. I don't think there was any serious talk of impeachment with Jimmy Carter either. People may have disagreed with him. So I think you do have examples. Reagan would probably be, Reagan and Clinton would be the two clearest examples of when impeachment became really viable. And if you go before that, it really had never happen.

**Bill Curtis:** As a tool, not as an insurance policy.

**Ed Warren:** Right. I think the question then has to be, though, how significant was the Nixon impeachment is setting a precedent because we this is now the third since 1973, 74. And I think it's not a good thing, especially when we're on the eve of election. I mean, if this guy is so, what's going to happen if let's just say for a minute that Trump does get impeached, what do you think that 45 percent of the electorate or 43 or 40, whatever it is, is going to think if Trump is thrown out of office? I mean, you're asking for a practical revolution by people who feel so strongly about it. The best way to get rid of this guy is to vote him out of office if you don't like him.

**Ed Larson:** I would agree that that's a good practical issue to raise up. And I have the exact same worry and fear. I'm having to think, though, that what the Democrats are thinking is that this would finally focus the issue, not that they were going to remove him, but it would focus the issue and serve as a lead in to the political campaign. Also, I think they had a hope that by bringing an impeachment hearing, they would have better effect of subpoena witnesses and documents. It turned out it wasn't true, but that they

would have better grounds for getting information and getting it before the public. But I don't think anyone ever thought it would lead to removal, because if it did, it would raise, I believe, precisely the dangers that Ed Warren is talking about.

**Jane Albrecht:** You know, I think you really have to look at really underneath it all what is the impeachment about? In Nixon's case, it was about breaking into a party headquarters.

**Bill Curtis:** actually it was about a cover up

**Jane Albrecht:** and the cover up and the cover up that followed. I'm saying what's really underneath it all. It was very serious. It was very serious in terms of our democratic process. It should have been taken seriously. And I don't care whether the president was Republican or Democrat. When you, in Clinton, it was largely, it was very political. And we don't have time to go into all the details of that. But essentially, it was you know, you had the Starr investigation and we can have a whole nother podcast on that.

**Bill Curtis:** But God forbid, we go back to the Kennedy administration and have this same conversation,.

**Jane Albrecht:** But again with Trump. And there was talk at the time and among Republicans that were involved that this this was still they resented what happened with Nixon. And this was the certain element of we're going to get you back. And that's no reason to impeach. But again, I'm talking at this point, not as a Democrat, Republican, just looking at what impeachment is for and how important it is to keep the integrity of our system. And when you look at what's involved here, I think it's very important for the integrity of our country and our system. You have a president who even his own attorneys have basically said is a pathological liar. You've got a president who showed a pattern of corruption, a pattern of obstruction of justice. And at what point do you have to say, like it or not, we've got to draw a line? And I understand what everybody.

**Bill Curtis:** You go to the polls.

**Jane Albrecht:** I agree that, I do believe the ultimate thing to do is to vote him out of office. I think that's the best thing to do. There was obviously much discussion and debate within the Democratic Party whether they wanted to go forward in impeachment. For me personally, I would have liked to have seen a process where they investigated many, many, many of his unethical, corrupt practices, abuse of power, you know, including holding the G7 at the Doral. But I'm not in Washington making those decisions. So ideally, I would have liked to have seen this gone on beyond the next election. And then if he didn't get voted out of office,.

**Bill Curtis:** But he got voted into office with people knowing that he was a bad actor.

**Jane Albrecht:** Well, this is what I've always said. I've always said the problem is.

**Bill Curtis:** That you can't impeach him for that. You know, we knew who he was. We voted him in. He lied during the campaign. He is not made up a bunch of stuff.

**Jane Albrecht:** He's not being impeached for lying,.

**Bill Curtis:** But I've liked to impeach him for embarrassing us. But that's a whole different question,.

**Jane Albrecht:** I've always said the real problem we're having is not Trump. It's the fact that 63 million Americans voted for him and found him acceptable.

**Ed Warren:** The way to solve that problem, though, is with another election.

**Jane Albrecht:** I think that's important, too.

**Ed Warren:** I mean, it's , you can't disenfranchise this 40 percent, 45 percent by essentially removing the guy from office without creating a huge mess.

**Jane Albrecht:** Well, I don't think that this really, that's the administration talking point. This isn't about the Democrats overruling the election. This is about corruption and integrity.

**Ed Warren:** Right. And I think the question there is, you know, apart from the fact that he is a terribly clumsy guy that does a lot of stupid things like the Doral thing is a perfect example. What he could have done is say, oh, you know, I'm concerned about corruption because there's certainly a long cesspool history of corruption in Ukraine. And I'm reluctant to turn over lethal weapons to Ukraine until we have real assurance that this is not going to be a repetitive process and it could just stop at that.

**Jane Albrecht:** And you're apologizing him because he's he's clumsy. I think there's more going on here than just clumsiness.

**Ed Warren:** If we go back to the founders when they created the impeachment provision other than the other possible things a person could do. Alexander Hamilton specifically said that one area why we needed the impeachment is we could find out after the election that the election itself was corrupt, that the president did something, directly worked with a foreign power or other corrupt things to get elected. And so the election itself was fraudulent. But he said the reason why we need this, one reason we need this, is we find out the prior election was corrupt. Now, if it was found out that Trump was actively conspiring with Russia during the election for the release of Hillary Clinton tapes and getting them, that would be a classic example fitting Hamilton's definition

**Ed Warren:** I mean, there's no doubt, it seems to me. I think we're all in agreement that if the worst readings of the Steele document and the allegations that were being made against Trump early on in the administration turned out to be true, that that would be an impeachable offense. I don't think there's any question about that. But that didn't turn out to be the case. And I think that adds to the suspicion that this is just a convenient make over when we couldn't prove the case that really everybody would agree is an impeachable offense.

**Bill Curtis:** We have this unique situation that is so clearly divided on partisan lines. And one of the reasons for it is that the Republicans are unprepared. There is no Republican candidate that's prepared to come in and take over in the event that Trump goes away. And let's not forget how the Republicans initially felt about him running in the first place. But he's now put himself in a position of the ultimate power because there is no other Republican alternative that is set for an election. So the Republican

Party, all of the Republicans in the Senate are sitting there and saying we will completely lose power, completely. And many of them will get voted out of office and they will have nothing to say about how this country is governed. In the event that they lose this particular president, that's put himself in a position of being the only solution for the Republican Party. It's a unique place that we're in.

**Ed Warren:** Right. Republicans, Republicans in the Senate and even in the House don't have a choice, because then there could be a landslide for Democrats if they they pushed him out.

**Jane Albrecht:** I would refine what you said, Bill. Trump has taken over the Republican Party in no small part because there's not a lot of backbone but also because he's a very effective fundraiser and he's got his base. And the base is very active and he's very effective fundraiser. So they are very worried about getting primaried if they don't kiss up to Trump. I don't think Trump has many friends on Capitol Hill. He's not the kind that sort of generates real friends. So they will turn on him the minute it suits their purposes. But they are so loyal to him because he's tremendously powerful. He's taken over the Republican Party. He's a phenomenal fundraiser. And he, they will they will be attacked if they don't fall in line. If he's reelected, how much they turn on him will depend upon what happens after that. It could be he will still be a primary fundraiser. And powerful.

**Ed Warren:** I agree with that. But they've got to find new candidates. They're going to have to, Some people are going to have to stand up and be counted.

**Bill Curtis:** So my hope that this session would turn into a very clear message to our listeners of what is an impeachable act. What is this case? Obstruction of Congress, bribery, abuse of power? And is there a direct answer to the question of , it were provable that these actions rose to that level then is this a impeachable offense? And I think you've all said yes. If it were provable that this is an impeachable offense, is that correct?

**Ed Warren:** Turley's basically got it right. It seems to me if you could prove all these things, then you've got a pretty good argument.

**Jane Albrecht:** I think none of us ever had the time to read the the Intelligence Committee's report. But based on what I've been able to watch, none of us can watch all of it, and listen to I think there's plenty of evidence for an impeachable offense.

**Ed Larson:** It's not what they're going to do, I believe. But one way out of this by the Democrats that they could still pull off would say, all right, we need this further evidence. We are going to push these subpoenas. We're going to push this testimony all the way to the Supreme Court. We're going to try to get a ruling and we're going to wait and not do anything until that happens knowing full well that that will preclude them from actually acting, but keep the matter alive. That would be one way out. But I don't think they're going to take that out on you.

**Jane Albrecht:** I don't either. I don't think Nancy would have said draw up articles of impeachment. She's already canvassed her Congress.

**Ed Warren:** I agree with that too

**Bill Curtis:** If the founding fathers were here at the table and we asked them about this action that Trump has apparently taken in Ukraine, what would they say about that action and would they call that impeachable?

**Jane Albrecht:** The men who founded our country were truly extraordinary. And I'm not saying that with rosy glasses on, they were real men and there were very hot fights, but they were extraordinary in terms of their abilities. And I think they understood the importance of the integrity of our government for it to work right. One thing I've learned, working with governments from many countries in different systems, lack of integrity, if you have any system, communist, dictatorship or democracy, if you do not have a system with integrity, it will not work. And they understood what it took to make a government work.

**Ed Larson:** If truly Trump or Trump's organization had directly worked with the Russians or with WikiLeaks to get these e-mails. And then time their release to bury the tape he gave where he talked about abusing women. If he had done that, then the founders would have thought that was. I'm not as sure about this one.

**Ed Warren:** I mean, we can concoct easily facts. That's exactly what you're doing. That's exactly what I'm doing, where it would be clear cut, I think. But I don't think these facts personally rise to that level. But that doesn't mean that I disagree with what you're saying about integrity and how important it is in our government.

**Bill Curtis:** There's that word integrity in government. We're going to leave that right there. And I'm going to think the two Ed's that are better than one. Ed Larson and of course, Ed Warren, thank you both for coming in. And Jane, it is always a pleasure having you here. And I hope you'll come back in a few weeks because this is going to the Senate and we're going to have plenty to talk about. And hopefully you'll come back and we'll have another emergency episode of the impeachment show, Politics. Meet me in the Middle. Thanks so much for coming. So we're going to take the holidays off to hug our friends and family, but we'll be right back on January 2nd with our Supreme Court attorney, Ed Warren. And we'll be talking Roe versus Wade. Turns out that he's a friend of Bret Kavanaugh. So this should be another thriller of a fight. See you then.

**Bill Curtis:** If you like what you heard, please help us by telling your friends. And, of course, subscribe to Politics. Meet me in the Middle. And if you have time, please leave a review. It really matters to us. You can also check us out at [Curtco.com](http://Curtco.com). This episode of Meet Me in the Middle was recorded at Curtco Media's Malibu Podcast Studios and it was produced and edited by Mike Thomas. Audio engineering was by Michael Kennedy and our theme music was composed and performed by Celleste and Eric Dick.

**Announcer:** From Curtco Media, Media for your mind.