

IN LATEST RUSSIAN PLOT, WIKILEAKS REVEALS HILLARY OPPOSES ISDS

Among the emails released as part of the Podesta leaks yesterday, WikiLeaks released this one showing that, almost a year before she was making the same argument in debates with Bernie Sanders, Hillary was opposed to Investor State Dispute Settlement that is part of the Trans Pacific Partnership. (h/t Matt Stoller) ISDS is the means by which corporations have used trade agreements to operate above the domestic laws of party countries (if you haven't read this three part series from BuzzFeed to learn about the more exotic ways business are profiting off of ISDS).

The email also appears to echo her later public concern that she had changed her mind on TPP because of KORUS.

After our last talk with HRC, we revised our letter to oppose ISDS and include her caution about South Korea.

Sure, other Podesta emails show Hillary supporting a broad region of free trade (and labor) in the Americas. But this more recent email confirms that the views she expressed in debate were more than just an attempt to counter Bernie's anti-trade platform.

Whether or not this is newsworthy enough to justify the WL dump, it is noteworthy in light of NYT's rather bizarre article from some weeks back suggesting that WL always sides with Putin's goals. As I noted, the article made a really strained effort to claim that WL exposed TPP materials because it served Putin's interests. Now, here, WL is releasing information that makes Hillary look better on precisely that issue.

That doesn't advance the presumed narrative of helping Trump defeat Hillary!

Then, as I noted yesterday, in spite of all the huff and puff from Kurt Eichenwald, the release of a Sid Blumenthal email used by Trump is another case where the WL release, as released, doesn't feed the presumed goals of Putin.

Which brings me to this Shane Harris piece, which describes four different NatSec sources revealing there's still a good deal of debate about WL's ties to Russia.

Military and intelligence officials are convinced that WikiLeaks is an ongoing threat to U.S. national security and privacy owing to its leaks of classified documents and emails. But its precise relationship with Russia has been a subject of internal debate. Some do see the group as being in cahoots with the Kremlin. But others find that WikiLeaks is acting mainly as the beneficiary of stolen documents, not unlike a journalistic organization.

There are some funny aspects to this story. Nothing in it considers the significant evidence that WL is (and has reason to be) affirmatively anti-Hillary, which means its interests may align with Russia, even if it doesn't take orders from Russia.

It also suggests that if the spooks can prove some tie between WL and Russia, they can spy on it as an agent of foreign power.

But those facts don't mean WikiLeaks isn't acting at Russia's behest. And that's not a trivial matter. If the United States were to determine that WikiLeaks is an agent of a foreign power, as defined in U.S. law, it could allow intelligence and law enforcement agencies to spy on the group—as they do on the Russian government. The U.S. can also bring criminal charges against

foreign agents.

WL has been intimately involved in two separate charges cases of leaking-as-espionage in the US, Chelsea Manning and Edward Snowden. The government has repeatedly told courts that it *has* National Security/Criminal investigations, plural, into WikiLeaks, and when pressed for details about how and whether the government is collecting on supporters and readers of WikiLeaks, the government has in part hidden those details under a b3 FOIA exemption, meaning a statute prevents disclosing it, while extraordinarily refusing to reveal what statute that is. We certainly know that FBI has used multiple informants to spy on WL and used a variety of collection methods against Jacob Appelbaum, including (according to Appelbaum) physical tails.

So there's not only no doubt that the US government believes it can spy on WikiLeaks (which is, after all, headed by a foreigner and not a US organization), but that it already does, and has been doing for at least six years.

Perhaps Harris' sources really mean they've never found a way to indict Julian Assange before, but if they can claim he's working for Putin, then maybe they'll overcome past problems of indicting him because it would criminalize journalism. If that's the case, it may be shading analysis of WL, because the government would badly like a reason to shut down WL (as the comments about the direct threat to the US in the story back up).

As I've said before, the role of WL in this and prior leak events is a pretty complex one, one that if approached too rashly (or too sloppily) could have ramifications for other publishers. While a lot of people are rushing to collapse this (in spite of what sounds like a continuing absence of directly incriminating evidence) into a nation-state conflict, things like this TPP email suggest it's not that

simple.

TUESDAY: DISINFOWAR DUST UP

In this roundup: Disinfowar, fossil fuels' finale, pipeline problems, and a longish short about evolving hope.

The embedded feature video here, *Dust* by Ember Lab, won a number of awards last year. It's a gritty blend of real and fantasy, and the closest thing to a American feature film with an Asian lead (there were no true feature-length films with an Asian/Asian-American lead or co-lead last year). It's a little exposition dense, but this is integral to the challenge of world-building for a sci-fi/fantasy story. I wouldn't be a bit surprised to see this story extended into a true feature or a series.

Disinfowar

If you haven't already read Marcy's latest piece today, you should do so soon. We are now deep in disinfo slung by multiple parties.

The one thing that niggles at me about WikiLeaks' involvement in this latest volley of disinfo: why didn't WikiLeaks release the Podesta emails when they originally said they were going to do so?

Or was skanky political operative Roger Stone blowing more disinfo out his ass when he tweeted about the impending Wikileaks' release?

And how does the concurrent "Trump pussy grab" video story interleave with the WikiLeaks' disinformation? Let's take a look at the timing.

Early September – WikiLeaks' Julian Assange claims to have documents damaging to Hillary Clinton which would be released before the election.

30-SEP-2016 Friday – WikiLeaks cancels release of an info dump on Hillary Clinton due to alleged security concerns. The info dump has been framed by some as a potential ‘October surprise’.

02-OCT-2016 Sunday – 12:52 am: Roger Stone tweets “Wednesday@HillaryClinton is done”.

03-OCT-2016 Monday – Unspecified time: Producer at an NBC entertainment outlet Access Hollywood remembers video of Trump with Billy Bush.

03-OCT-2016 Monday – 5:55 pm: AP publishes story, “‘Apprentice’ cast and crew say Trump was lewd and sexist.”

04-OCT-2016 Tuesday – Date of canceled WikiLeaks’ info dump.

Midweek (no date/day given) – Access Hollywood’s executive producer Rob Silverstein and team have reviewed the video. A script is prepared for airing of video, but it will not appear Friday evening before the next presidential debate on Sunday.

05-OCT-2016 Wednesday – No WikiLeaks’ info dump.

07-OCT-2016 Friday – First thing in the morning, Access Hollywood was still working on story; an NBC source said the story “wasn’t quite finalized.”

07-OCT-2016 Friday – Noon: Washington Post’s David Farenthold asks NBC for a comment on the Trump/Billy Bush tape which had been leaked to him by unnamed source(s).

07-OCT-2016 Friday – 2-4:00 pm (approximately, exact publication time to be confirmed): Washington Post runs Farenthold’s story, “Trump recorded having extremely lewd conversation about

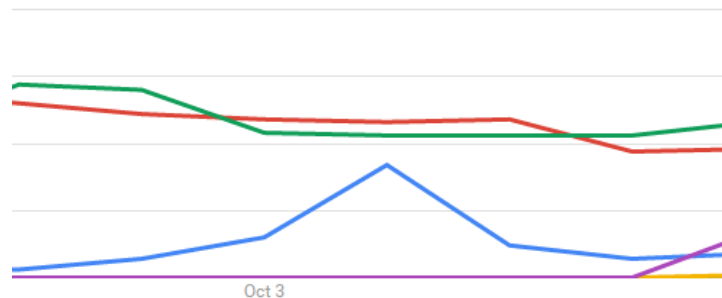
women in 2005.”

07-OCT-2016 Friday – 11:03 pm: WikiLeaks tweets link to “The #PodestaEmails Part 1.”

09-OCT-2016 Sunday – 9:50 pm: During the second presidential debate, Wikileaks tweets, “Hillary Clinton just confirmed the authenticity of our #PodestaEmails release of her paid speeches excerpts.”

10-OCT-2016 Monday – 9:36 am: WikiLeaks tweets link with “RELEASE: The #PodestaEmails part two: 2,086 new emails.”

A Google Trends snapshot of key words from these two stories also tells the story. To be fair, though ‘pussy’ spiked on Friday, it’s a pretty popular internet search term (in case this had not occurred to some of our readers).



[Source: Google Trends – compare terms: ‘wikileaks’ (blue), ‘hillary’ (red), ‘podesta’ (yellow), ‘pussy’ (green), ‘billy bush’ (purple) – click to expand]

Really convenient timing, no matter the validity of the content in the emails.

Wheels

- Germany’s upper house of parliament wants combustion engine cars off the roads by 2030 (Reuters) – This is one

of the most important stories so far this year: one of the largest single nation economies in the world wants to end use of gasoline- and diesel-fueled vehicles within its borders inside 18 years. How will this impact Volkswagen Group, the largest automaker in EU? At least VW now has impetus to move completely away from its failed passenger diesel engines. Political parties across the Bundesrat, the upper house, support ending sales of combustion engine vehicles. What next steps Germany will take is unclear as is the next possible response by the EC in Brussels.

- VW's CEO Matthias Mueller knew nothing about passenger diesel vehicle scandal (Reuters) – Might be plausible that Mueller didn't know anything about VW and Bosch tweaking engine control units to defeat emissions standards since Mueller was the head of Porsche before VW Group appointed him to replace Martin Winterkorn. And we all know Porsche isn't the first brand you'd seek when

shopping for either passenger diesel vehicles or fuel efficiency.

- Fiat Chrysler and Canadian union Unifor avoid a strike (Detroit Free Press) – The deal includes updates to two plants and a restructuring of workers' wage scale while working around the impending demise of the Chrysler 200 and Dodge Dart car models. No mention of self-driving/autonomous cars in FCA's future lineup, if any.

Pipe meets face

- Russian facial recognition software IDs 73% of people of of million-person database (Wall Street Journal) – This application developed by startup NTechLab beat Alphabet's facial recognition software. This gives me the fecking creeps, especially considering the countries interested in buying this software.
- Facial recognition app failed when used at pipeline protest (Indian Country) – A Crow Creek Tribe activist found he had been 'identified' as a pipeline protester by facial

recognition software though he had been at a family event elsewhere during the time he was alleged to participate in the protest.

- Pipeline construction work resumes after appeals court ruling against tribes (ABC News) – In a stunningly callous move, U.S. Court of Appeals for the D.C. Circuit issued a decision Sunday evening – before Columbus Day, the observation which offends Native Americans – denying Native American tribes' request for an injunction to stop construction of the Dakota Access Pipeline. Work on the pipeline picked up again today, though the tribes vow to continue their protests. Protesters were arrested yesterday for trespassing, including actor Shailene Woodley. Woodley may have been selected in particular because of her high media profile and because she was streaming the protest online.

Longread: Asymmetry's role in Trump's rise

Worth reading NYU's Jay Rosen on media's inability to deal with asymmetry in the U.S. political system, and how this permitted Trump's elevation as a presidential candidate.

Personally I take issue with the concept that the “GOP has become an insurgent outlier in American politics.” In a two-party system where nearly half the population identifies with either one of these parties, neither of the two parties can be insurgent or an outlier.

Instead, this asymmetry – the departure from the past equivalency of either of these two major parties – results from the application of the Overton Window over decades to move nearly half the population toward a more conservative consensus. Applied too much, too often, and nearly half the population has adopted an ideology which is incompatible with the values espoused by a critical mass of this nation before the Overton Window was applied.

And the media, like meteorologists focusing on the day’s weather – is it cloudy or sunny? rain or shine? – missed the entire shift of the political climate toward fascism. Rather like the financial crisis of 2008, for that matter, when they failed to adequately look at the big picture before the entire economy went over the cliff.

That’s a wrap. Make sure you’re registered to vote as many states have deadlines today. Check in with housebound and with college students to see if they are registered and encourage use of absentee ballots where appropriate. Absentee voting has begun in some states.

SECOND PRESIDENTIAL DEBATE — OPEN THREAD

This is an open thread for the second presidential debate between major party candidates. It’s open to topics related to the debate topics and questions; let’s avoid other

topics like sports or food, etc., unless they relate directly to the candidates.

Debate location: Washington University, St. Louis, Missouri

Time: 9:00 p.m. to 10:30 p.m. EDT (Missouri, however, is in CDT.)

Debate moderators: Martha Raddatz, ABC News, and Anderson Cooper, CNN

Participants: Hillary Clinton and Donald Trump (Gary Johnson and Jill Stein did not qualify per Commission on Presidential Debates which organizes these events.)

The format for this debate is a town hall. I have no idea as I type this what questions will be put to the candidates.

Or I should say I can only imagine a couple questions the moderators may ask based on the release of a certain audiotape on Friday.

ADDER: Looks like Trump has gone nuclear winter on Clinton, having a panel in advance of the debate with Juanita Broaddrick, Paula Jones, Kathleen Willey.

TRUMP IS WHO HE'S ALWAYS BEEN, AND TRUMP IS THE EPITOME OF THE GOP; THEY HAVE TO OWN HIM

The Washington Post's David Fahrenthold has come up with another scoop. While scraping for video clips does not seem to be Fahrenthold's strength, like the KFile boys who bolted BuzzFeed in the middle of the night for the

apparently greener pastures of CNN, this clip posted by the Washington Post is bigger than anything that has come before. It doesn't matter if it is by weight, timing, or the clear combination of the two, it is simply huge. Game changing.

The most striking thing, however, is not that this video exists, nor that it has emerged to public view, it is that the Republican party worthies and press seem to think it is shocking. Seriously, this information, and the Donald Trump it reflects, is exactly who Donald Trump is, and has been, for decades.

Donald Trump is a once and forever informationally ignorant, self serving jackass extreme narcissist. But he has been that for decades to anybody paying attention. Trump was the leader from the start in the Republican primary, and was the easy winner of their nomination. Why? Because the votes on the ground count, much to the consternation of supposed "sane party elders", and the votes on the ground made Trump an easy winner. He is exactly what the current Republican GOP party embodies at its heart.

Watching holier than though instant moral compasses (well oiled craven weathervanes?) like Jason Chaffetz, Mitch McConnell, John McCain, Mitch McConnell, Orrin Hatch and Paul Ryan squirm and proclaim their shock, like grubby kids with their hand stuck in the cookie jar, is hilarious. What convenient souls they are to suddenly have the inclination of what they have all sowed and reaped for years. They doth protest too much; Trump is them, and they are Trump.

I came home late, but still managed to hear at least two tellings of the story of how John Rhodes, Barry Goldwater and Hugh Scott went down the Hill and gave the hook to Nixon when it was time, with the ideation that such a similar scene could end the Trump moment now. Those are the crazy fever dreams of people like Chris Matthews, David Gergen, Mark Halperin and the

rest of the Beltway cocktail weiner gobblers.

Not gonna happen. Rhodes, Goldwater and Scott were men of a different time and more stout character. There are no analogues today. Jason Chaffetz and Mike Lee can conveniently preen and bluster all they want. It is bullshit, as it is with almost all of the rest of today's Republican party. They do NOT get to suddenly walk away from the monster their party has spent decades creating. They own Trump, Hannity, Roger Ailes, Fox News, Breitbart and Limbaugh. It is who they are, and nobody should forget it.

The Republican party of today has relentlessly stood against women's rights and ability to control their own bodies, equal rights and protections for LGBT citizens, fair treatment for minorities and immigrants, and the right to vote for anybody other than middle aged fat white men. The current Republican party think that they are the only "suspect class" due "equal protection", and not the minorities, races, genders, sexual identities and other endangered classes the civil rights laws were designed to protect.

This is exactly what makes the instant kvetching in the GOP aisle over Trump last night so fatuous. It is a boatload of opportunistic self serving fraud. Not for one second should anybody accept that Trump is the sudden exception, he is unequivocally what the GOP has been growing into for years. The modern Republican party has long championed racism, bigotry and misogyny; Donald Trump is just the point of their spear. To the extent there are any "honest brokers" left in the GOP, they are still guilty of benign neglect that allowed the ugliness that is the Trumpian GOP to fester.

The GOP cannot run from Donald Trump, he is who they are now. The last minute panicked contrition of the very women blaming and shaming, racists, bigots and oligarchs that claim to speak for the GOP cannot shed the snake skin of who they are, and what they have created.

Oh, and by the way, the fever dreams of the Chris Matthews and Mark Halperins of the pearl clutching Beltway set are not going to get their wish. It is too late for Trump to be replaced on the ballot by the grand poohbahs of the GOP. As election litigator extraordinaire Marc Elias points out, the ballots for the military and overseas voters have already been sent out pursuant to the UOCAVA, i.e. the Uniformed and Overseas Citizens Absentee Voting Act. Locally, the Arizona ballots are putatively at the printers and being mailed out within five days. Many other states are either on that timetable or ahead of it. In short, the voting has begun. The die is cast.

Also, via Philip Bump and Dave Weigel of the Washington Post:

More than 34,000 Republican voters have already cast their ballots for the 2016 general election according to the U.S. Election Project, 8,000 of them in the battleground state of North Carolina and another 5,000 in Florida. Not all of those ballots were cast for Donald Trump, it's safe to assume, but it's more than likely that most of them were. And that, in a nutshell, is why it's far too late for the Republican Party to dump Donald Trump from their ticket.

More from Bump, Weigel and the WaPo:

Josh Putnam, a University of Georgia lecturer and expert on the machinations of the parties, told me at the time that the rule at issue was Rule 9. Rule 9 reads:

The Republican National Committee is hereby authorized and empowered to fill any and all vacancies which may occur by reason of death, declination, or otherwise of the Republican candidate for President of the

United States or the Republican candidate for Vice President of the United States, as nominated by the national convention, or the Republican National Committee may reconvene the national convention for the purpose of filling any such vacancies.

Death, declination or otherwise. No “because we want to” clause.

“Let’s be clear here: The rule is intended to fill vacancies, not to lay the groundwork for a replacement,” Putnam said. “Some have speculated that ‘otherwise’ is ambiguous. Taken out of context it is. However, under the provisions for filling vacancies, it clearly fills in any gap between death and declination (i.e.: an incapacitating illness, but one that leaves the nominee neither dead nor able to decline to run further). And that was the intention.”

Weigel and Bump are superb reporters, and put up a compelling article on a short deadline. But, when it comes to election law, there is nobody better than Rick Hasen. Rick actually contemplated this scenario back in August, over two months ago, when the switch would have been far easier than it is now with ballots already outstanding. His conclusion was that it would be beyond difficult. And that was then, much less now.

But what if the ballots stood as is, could the GOP “electors” find the unanimity to cast enough electoral votes for some person other than Trump? Hasen, at his excellent *“Election Law Blog”* linked to some thoughts on that effectively imaginary scenario by Ned Foley:

As I write this on Friday night October 7, there is renewed talk

of GOP leadership disavowing Trump. True, Trump will still be on the ballot that we citizens cast. But suppose the GOP leadership publicly announces that it will ask GOP electors, when they meet and vote on 12/19, to cast their presidential vote for Pence. Then some GOP-leaning superPACs spend a lot of money before 11/8 informing voters of this plan.

Suppose this plan is successful, insofar as it causes on Election Night, 11/8, the media to announce that GOP electors were chosen in enough states to amount to 270 Electoral College votes. Then on 12/19, the GOP electors all do as intended according to this plan: they cast their official Electoral College votes for Pence, not Trump. Pursuant to 3 U.S.C. 9-11, these electors all sign their certificates showing Pence as their choice and send the certificates to Joe Biden, as President of the Senate.

Now, someone might claim that some of these electors violated a previous pledge they made to cast their Electoral College votes for Trump. Maybe this claimant even arranges to send to Biden a separate set of Electoral College votes cast by replacement electors who were substituted because the faithless electors violated their pledge. (This move would be reminiscent of 1876.) We can assume that the claimant wouldn't send to Biden 270+ Electoral College votes for

Trump, but some number short of 270 in the hope of depriving Pence of the presidency.

What would happen when Biden receives two conflicting sets of Electoral College votes from some states, one set for Pence, and the second set for Trump?...

Long story short: There is no way out from Trump for the GOP. They are stuck, and they got there the old fashioned way: they earned it. The Republican Party cannot hide from this event or pretend it is a mistake. It is the culmination of where the Republicans have been headed since the days of Nixon and Lee Atwater. The GOP has tried to mask it with duplicitous bleating about social conservancy and family values, but the truth is out now. It is all about preservation of white bigotry and privilege, and shifting of income and wealth to oligarchs and corporations. When Trump feigned to support that, and the maintenance of women in second class subservient status, the Republican party was willing to ride that horse. Now they want off. Don't let them.

It is time for change, and that will not, and cannot, be furthered by letting the party of bigotry, hate, misogyny and income inequality off the hook because their avatar has been exposed.. Make them own what they built and earned.

TUESDAY: OPEN TO DEBATE

This is an open thread for use during and after this evening's vice presidential debate. Duke it out here, though comment policy is still in effect.

The
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today: UK's Prime Minister Theresa May and Home Secretary Amber Rudd, and a demand to shame companies employing foreign workers by insisting these workers must be listed.

This is beyond the pale, just short of asking for badges denoting religion. I hope the financial industry takes a stick to these fascists.

"But, but the foreigners! Taking (white's) jobs!" one may say. Right – all those financial industry jobs in London for which the UK does not seem to be educating and training enough people. Healthcare jobs likewise, while the NHS is under pressure to cut services and reduce spending.

The answer to the lack of job opportunities for the under-educated and under-trained isn't limiting immigrants. It's more investment in education and training to increase the pipeline to higher paying jobs, combined with a higher minimum wage to encourage movement to jobs requiring lower skills.

Okay, have at it.



IS TRUMP'S \$915 MILLION TAX LOSS

CONNECTED TO AN EXOTIC TAX SHELTER?

Guest
Post
by
Robert
J.
Lord



The news is out about Donald Trump's \$915 million of tax losses.

The real question is whether those losses were real economic losses, or just a tax artifice created by a clever planner.

Real estate developers like Trump benefit tax-wise from provisions that allow them to claim losses attributable to borrowed money. But those provisions are not a complete giveaway if the borrowing ultimately is repaid.

If the borrowing is not repaid, as we know to be the case of Trump's casino debt, the tax law generally requires the person whose debt is forgiven to recognize income, which typically erases the tax benefit of those earlier losses. Even in those situations where debt forgiveness does not result in income, the borrower's tax attributes are reduced by the amount of debt forgiven, and unused losses are at the top of the list of those tax attributes to be trimmed.

Could Trump have figured out how to have his cake and eat it too – that is, keep his losses for tax purposes, even while being excused from having to repay the borrowed money on which those losses were based? Yes, it is possible!

One possibility is that Trump's lenders agreed not to expressly forgive Trump's debt, but instead to sell their rights as lender for pennies on the dollar to an individual or entity

close to Trump, such that it would never be enforced. This strategy is referred to as “parking” the debt. Some tax professionals like John Hempton at Bronte Capital and commentators like Josh Marshall at TPM have speculated this is the artifice Trump and his advisors engineered to preserve Trump’s huge losses and thus shelter close to a billion of future income from tax.

Does the tax law permit the parking of debt that effectively has been forgiven? Certainly not by design. If Trump parked the debt with a close relative, the tax code would have treated it as if the debt was forgiven.

Trump could have parked the debt with someone not so closely related or with a friend, but not if had an agreement that said person would not enforce the debt. Which means he’d be at severe risk, as the person could turn on him and enforce the debt. That would have been almost a billion dollar risk. It is hard to imagine Trump, his accountants and attorneys permitting that.

Could Trump have parked the debt with a corporation, trust or partnership he controlled? In a word, yes. Congress tried to prevent debtors from circumventing the law this way as well, but they inadvertently created a small crack in the law, which Trump just may have been able to squeeze through.

The tax code expressly identifies corporations, partnerships and trusts deemed too close to a debtor to purchase his debt without causing the debt to be deemed forgiven for tax purposes. Those rules were well written. After they were written, however, and not long before Trump faced his financial difficulties, Congress created a new type of entity for tax purposes only, the “real estate mortgage investment conduit,” or REMIC. Those rules state, in no uncertain terms, that certain partnerships, corporations and trusts become something else for tax purposes. They are expressly NOT to be treated as partnerships, corporations or trusts.

Thus, unwittingly, Congress created a gaping yet little noticed hole in the rules that prevent parking debt with a controlled corporation, trust or partnership.

And Trump may have seized on Congress' mistake.

The REMIC rules were enacted in 1986 to facilitate investment in mortgage-backed securities (yes, those securities that crashed the economy in 2008). A REMIC is a partnership, corporation or trust under the law of the state in which it is formed (usually, Delaware) that holds almost exclusively interests in mortgage debt, and satisfies a few additional statutory requirements related to the type of ownership interests (for example, corporate stock, partnership interests, or beneficial interests in a trust) it issues.

Congress anticipated that REMICs would hold entire pools of mortgage interests, but never specified a minimum number, which means a REMIC might hold only one mortgage – for example, the mortgage on a Trump casino – and still qualify. Or it could be multiple similar obligations.

A few clever tax lawyers realized that by qualifying a partnership, corporation or trust as a bastardized form of REMIC, they could circumvent the rules that prevent the parking of debt with a controlled entity to avoid debt forgiveness income.

Trump's situation quite clearly lent itself to this exotic strategy. If he used a REMIC he controlled to purchase the mortgage debt on one or more of his casinos (and/or other properties) at a deep discount, the rules that prevent debt parking would not have applied to him.

The bottom line: Trump indeed could have used a debt parking strategy to preserve close to a billion dollars in losses for tax purposes even though he avoided the economic loss on which those tax losses were based.

Did Trump employ this strategy? Nobody knows yet, but it would explain why those losses still

showed up on his tax return in 1995 and how he gamed the system for an enormous tax windfall.

The secretive and shady nature of whatever avoidance scheme Trump has used, which would clearly be on the edge of legality, even if putatively legal as Trump claims, would also very easily explain why Trump steadfastly refuses to make public any more of his tax return information.

It is also exactly why the public is entitled to see his convoluted machinations and judge for themselves his honesty. And, remember, all statutes of limitation, both criminal and civil, have long ago expired as to the 1995 and surrounding years tax returns. There is no legitimate reason whatsoever Trump cannot release them. Other than fear that what he is hiding is exposed.

Robert J. Lord, a tax lawyer and former Congressional candidate, is an associate fellow at the Institute for Policy Studies. Bob previously served as an adjunct faculty member at the Arizona State University School of Law. Bob's work focuses on the relationship of tax law to inequality. He contributes to both the Inequality.org website and to OtherWords, the Institute's national syndicated editorial service. Bob also is a staff member at Blog For Arizona, the leading political blog in Arizona.

TRUMP CHARITY A CONTINUING FRAUD ON THE PEOPLE OF NEW

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tems of breaking news (no, really!) over the last 24 hours is the cease and desist order issued by the New York Attorney General's Office to Donald Trump's vaunted "charity". The full text of the official letter can be found [here](#).

The New York Times described it thusly:

The office of New York Attorney General Eric T. Schneiderman has issued a "notice of violation" to Donald J. Trump's foundation, ordering it to immediately stop soliciting charitable donations in New York.

The letter, which was sent on Friday and released on Monday morning by Mr. Schneiderman's office, said its charities bureau had determined that the Donald J. Trump Foundation had been fund-raising in New York this year when it was not registered to do so under state law.

"The Trump Foundation must immediately cease soliciting contributions or engaging in any other fund-raising activities in New York," wrote James Sheehan, the chief of the charities bureau.

I want to focus on one particular clause in the letter however. The part identifying the "fraud". To wit:

"The failure immediately to discontinue

solicitation and to file information and reports required under Article 7-A with the Charities Bureau shall be deemed to be a continuing fraud upon the people of the State of New York.”

Now, in fairness, that is likely boilerplate/template language for such a cease and desist letter in New York, but that makes it no less true. What has occurred is that the Donald J. Trump Foundation, by not properly registering and being accountable for its activities, has been perpetrating a fraud on the People of the State of New York.

A state government is entitled to regulate, oversee and audit such activity occurring within its borders. As appears to be a pattern with Mr. Trump, he and his organization seemed to think they were simply above such common regulation. The willful non-compliance itself is a fraud, the size of the fraud perpetrated can only further be determined via full registration and full accounting for the multiple years of non-compliant activity the “charity” has engaged in.

There has been a fraud under the statutory and regulatory framework of the State of New York, we are only yet to ascertain the relative scope of it yet. And given the dogged reportage of David Fahrenthold of the Washington Post, which depicts rampant self serving and dealing by Trump as to personal debts via his charity, there is every reason to believe there are very serious issues to be dealt with.

But the ability of the NY Attorney General’s Office to actually deal with these questions depends on the prompt registration and disclosure by Trump of his offending and illegal charity.

Trump and his ill begotten “charity” have 15 days to comply with registration and disclosure. What do you think the odds are he will actually comply in good faith instead of hiding behind some bogus baloney, or submitting patently non-

responsive filings, until after the election is over? I'd rate the odds at 100%.

The same odds that exist for Trump turning over his tax returns. Even the one from 1995, that has been beyond the statute of any limitation, whether criminal or civil, for over 15 years.

THE QUESTIONS THAT SHOULD BE BEING ASKED ABOUT TRUMP'S TAX RETURNS

[Editor's Note – this is a guest post by a friend



of ours here at the Emptywheel Blog, Bob Lord. Bob is a longtime tax attorney with some very salient thoughts on Trump's taxes, and lack of production thereof]

By Robert J. Lord

A lot has been said about Trump's refusal to make his tax returns public. But despite the volume of commentary, it's not clear the right questions even are being asked.

Trump claims he can't release his returns because he's under audit. At some level, that's a legitimate concern. It would hardly be fair if thousands of tax professionals who oppose Trump politically helped the IRS by publishing their own analyses of the returns. Ultimately, however, it's a phony excuse.

But rather than challenge the logic behind Trump's refusal to release returns, a series of questions should be asked:

First, what tax years are under audit? Does it go back beyond 2012? If not, can the 2011 return be released? After all, the statute of limitations on the audit of that year has passed, so there's no exposure to Trump by releasing that return. If not 2011, how about 2010?

Second, why haven't the audit notices been released? An audit notice is a short, generic letter from the IRS stating that a taxpayer's return has been selected for examination. There's nothing so sensitive in such a generic notice that it could not be made public. At this point, Trump has not even offered up this most basic evidence that he is really even under audit. Why hasn't proof been demanded?

Third, for the tax returns that are under audit, why can't the first two pages be released? After all, those first two pages simultaneously contain the information most relevant to the public about a presidential candidate and contain no information that reveals the issues under audit. Although an audit ultimately impacts the numbers that appear on the first two pages of the return, it's the schedules and other information that the IRS analyzes in an audit. For example, the first page of Trump's return states the income or loss he received from partnerships and real estate investments, but it's a schedule attached to the return, and the returns of the partnerships in which Trump is a partner, that contain the information the IRS would scrutinize in an audit.

Fourth, if for whatever reason the first two pages of the returns can't be released, could Trump at least release five numbers from each of his returns: his gross income, his adjusted gross income, his taxable income, his self-employment tax liability, and his income tax liability? If not, then why not?

Fifth, is the sensitivity of Trump's IRS audit the only reason behind his refusal to release the returns? Is Trump also under audit by any other tax agency, such as New York State's Department of Revenue?

These questions would force Trump to take one of two approaches: Either continue to evade or allow the exposure of an uncomfortable (and intuitively obvious) reality – that the sensitivity of his audit is not the real reason for his refusal to release his returns. In all likelihood, he'd take the first approach, probably claiming that his tax advisors have told him not to release any information publicly. But, again, that cannot explain his refusal to release returns up to 2011, for which the statute of limitations have all expired.

What is the real reason Trump does not want to release the returns, even the first two pages? It could be that there's some embarrassing piece of information in there somewhere and Trump learned from Romney's refusal to go beyond a limited release of his returns that eventually people forget about a candidate's refusal to come clean. More likely, however, the problem he's facing is his own lack of credibility. The tax return of a real estate magnate like Trump paints a very distorted picture. Income will vary wildly from one year to the next. Important items might be buried in the return of a partnership or corporation that can't be released because of minority partners or shareholders. Taxpayers in Trump's position tend to bunch their charitable contributions, making them in the years they provide the most tax benefit. Unfortunately for Trump, that practice could make him appear incredibly tight-fisted if his returns over too short a period are seen in isolation.

And that's where Trump could be trapped by his own lack of credibility. It may well be that there's a perfectly reasonable explanation for whatever Trump would prefer not to be out there for public comment. Trump's problem is that if

the explanation comes from him, nobody will believe it. And he knows it.

At a minimum, however, the above critical questions must be asked. Even if Trump has to explain a few items on his returns, that is no greater fear or burden than every other previous Presidential candidate has faced. Certainly Trump may have varied financial interests, including charitable trusts. But so have other candidates before, including Hillary Clinton this election, and all have engaged in public transparency but for Trump.

Hopefully the press, including the debate moderators, will force Mr. Trump to answer these basic questions.

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9/11: A STORY OF ATTACKS, HORROR, VICTIMS, HEROES AND JINGOISTIC SHAME

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, 2001 is now 15 years in the mirror of life. Like the two Kennedy assassinations, the Moonshot and a few other events in life, it is one of those “yeah I remember where I was when...” moments. Personally, being on west coast time, I was just waking up thinking all I had was a normal morning court calendar. When my wife, who gets up far earlier than I, shouted at me to rub out the cobwebs and watch the TV because something was seriously wrong in New York City. She was right. It was a hell of a day, one of unspeakable tragedy and indescribable heroism. It was truly all there in one compact day, unlike any other, save maybe December 7, 1941.

2,996 people lost their lives, and their families and history were forever altered in the course of hours on an otherwise clear and beautiful day in Manhattan. Most were simply innocent victims, but many were the epitome of heroes who charged into a hellscape to try to salvage any life they could. There were other heroes that altered their lives in response, and either died or were forever changed as a result. One was a friend of mine from South Tempe, Pat Tillman.

No one can speak for Pat Tillman, and, save for his family, those who claim to only prove they never met the man. All I can say is, I wish he were here today. The one thing that is certain is he would not give the prepackaged trite partisan reaches you are likely to hear today. It would be unfiltered truth. Which the US did not get from its leaders after September 11, 2001, and is still missing today.

Instead of rallying and solidifying the oneness of the American citizenry that was extant immediately after September 11, 2001, the Bush/Cheney Administration and GOP told us to go shopping and that we needed to invade Iraq, who had nothing whatsoever to do with 9/11. It was a fools, if not devil's, errand and a move that threw away an opportunity for greatness from the country and exploited it in favor of war crimes and raw political power expansion and consolidation.

Instead of gelling the United States to make ourselves better as the "Greatest Generation" did sixty years before, America was wholesale sold a bill of goods by a determined group of unreformed and craven Neo-Con war criminals left over from the Vietnam era, and we were led down the path to a war of aggression that was an unmitigated disaster we have not only not recovered from today, but are still compounding.

The 2000's will prove to be a decade of American shame when history is written decades from now. Not from the attacks, but from our craven response thereto. So, pardon me if I join Colin Kaepernick and choose not to join, every Sunday, just because the Madison Avenue revenue generating NFL of Roger Goodell cravenly exploits it, the jingoistic bullshit of rote dedication to a racist National Anthem. Also, too, shame on opportunistic and Constitutionally ignorant whiny police unions who scold free speech and threaten to abandon their jobs in the face of it.

But
that
is all
over
now
surely
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Taking
the
United
States



, nee the world, to a forever war on the wings of a craven lie is universally recognized, condemned and scorned, right?

No. The Neo-Cons are unrepentant and still trying to advance themselves on the lie that their once and forever war justifies more than their prosecution and conviction in The Hague. Here is a belligerent and unrepentant Dick Cheney passing the torch of evil to his spawn Liz Cheney in the august pages of the Wall Street Journal:

We are no longer interrogating terrorists in part because we are no longer capturing terrorists. Since taking office, the president has recklessly pursued his objective of closing the detention facility at Guantanamo by releasing current detainees—regardless of the likelihood they will return to the field of battle against us. Until recently, the head of recruitment for ISIS in Afghanistan and Pakistan was a former Guantanamo detainee, as is one of al Qaeda’s most senior leaders in the Arabian Peninsula.

As he released terrorists to return to the field of battle, Mr. Obama was simultaneously withdrawing American forces from Iraq and Afghanistan. He calls this policy “ending wars.” Most reasonable people recognize this approach as losing wars.

Times may change, but the bottomless pit of Cheney lies and evil do not. As Charlie Savage pointed out on Twitter, the two terrorists the Cheneys refer to were actually released back to the “field of battle” by Bush and Cheney, not Obama. Was Obama involved in the story? Yes, he would be the one who actually tracked them down and killed them.

And then there is the failure to learn the lessons of the failed torture regime Bush and

Cheney instituted as the hallmark of the “War on Terror”. Our friend, and former colleague, Spencer Ackerman has a must read three part series over the last three days in The Guardian (Part One, Part Two and Part Three) detailing how the CIA rolled the Obama Administration and prevented any of the necessary exposure, accountability and reform that was desperately needed in the aftermath of the torture regime and war of aggression in Iraq. It will take a while, but read all three parts. It is exasperating and maddening. It is also journalism at its finest.

And so, as we glide through the fifteenth anniversary of September 11, what are we left with from our response to the attacks? A destabilized world, an ingraining of hideous mistakes and a domestic scene more notable for jingoism and faux patriotism than dedication to the founding principles that America should stand for.

That is not what the real heroes, not only of 9/11 but the totality of American history, died to support and protect. In fact, it is an insult to their efforts and lives. If America wants to win the “War on Terror”, we need to get our heads out of our asses, quit listening to the neocons, war mongers, and military industrial complex Dwight Eisenhower warned us about, and act intelligently. This requires a cessation of adherence to jingoistic and inane propaganda and thought, and a focus on the principles we are supposed to stand for.

WHEREIN MOSE ALLISON PRESAGED THE BLIGHT

OF THE DONALD TRUMP MOUTH

One of my favorite artists of all time, going back decades, is Mose Allison.

Turns out Mose wrote a song about Donald J. Trump decades before the intellectual and political blight actually arrived. Mose always was way ahead of his time.

Trump is a loudmouth, say anything, to anyone, at any time, that, first, makes him feel good, and, second, that might help himself.

In short, the ultimate clinically narcissistic jackhole. I doubt even Mose Allison figured how much his words might one day describe a blight on the American citizenry, if not humanity. Like in the form of Donald J. Trump.

But, here it is in it's total prescient glory:

Sittin here and yakkin right in my face
You comin' on exactly like you own the
place
You know if silence was golden
You couldn't raise a dime
Because your mind is on vacation and
your mouth is workin' overtime

You quotin' figures and droppin' names
You tellin' stories and playing games
You're overlaughin' when things ain't
funny
You tryin' to sound like the big money
You know if talk was criminal
You'd lead a life of crime
Because your mind is on vacation and
your mouth is workin' overtime

You know that life is short
Talk is cheap
Don't be makin' promises that you can't
keep
You don't like this little song I'm
singin'
Just grin and bear it

All I can say is if the shoe fits wear
it
If you must keep talkin
Please try to make it rhyme
Because your mind is on vacation and
your mouth is workin' overtime.

So, sentient voters can vote their own
conscience, and should. I can only hope they
don't do so in a manner that leads to the
election of the Triumphstag.

Seriously, Americans are smarter than that,
right?

Right??