

BILL BARR'S OLC TREATED HIS IMPLICATION IN THE WHISTLEBLOWER COMPLAINT AS TOP SECRET

Because I was on my epic road trip with June Bug the Terrorist Foster Dog, I'm just now reading some of the documents underlying the whistleblower complaint closely. Doing so makes it clear that Bill Barr's DOJ (specifically, the Office of Legal Counsel) treated his implication by the whistleblower as Top Secret, even though the White House considered the fact only Secret.

This post relies on these documents:

- The TELCON of the Trump-Zelensky call, treated throughout as Secret/NoForn
- The unclassified whistleblower complaint with classified appendix, the latter of which has one paragraph marked Top Secret, one redacted, and other paragraphs marked Secret
- ICIG Michael Atkinson's letter to Director of National Intelligence Joseph Maguire; the letter itself, four paragraphs, and one footnote are marked Top Secret and something redacted (probably NOFORN), with a longer classification

mark as a whole

- The first version of the OLC memo dated September 3 deeming this not urgent; the memo itself, eight paragraphs of it, and three footnotes are marked Top Secret and something redacted (probably NOFORN), with a longer classification mark as a whole
- The official version of the OLC memo dated September 3 currently available on DOJ's website; it explains that after the underlying documents were declassified, it was released as an unclassified memo
- A September 24 version of the OLC memo, described in the currently official September 3 one as an "unclassified version"

Here's the editor's note that describes why there are three versions of the OLC memo:

Editor's Note: This memorandum was originally issued in classified form on September 3, 2019. An unclassified version was signed on September 24, 2019, and publicly released in slip-opinion form on September 25, 2019. That unclassified version avoided references to certain details that remained classified at the time it was signed. After the underlying documents were themselves declassified, the September 3 memorandum was declassified in its entirety and publicly released on

September 26, 2019.

That suggests we can compare either September 3 version of the OLC memo with the September 24 one to identify what OLC itself (the name of the person who classified the memo is classified) claimed to be classified on September 3.

The ICIG letter makes clear that Atkinson had not yet read the TELCON when he wrote his letter. The whistleblower letter doesn't say whether or not he read the TELCON (I'm using "he" to refer to the whistleblower because that's the pronoun the NYT used). He explains that he believes all classified information in the letter is in his enclosure. He also reiterates that marking the information included in his unclassified letter with classification marks would,

violate E.O. 13526, Part I, Section 1.7, which states: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; [or] (2) prevent embarrassment to a person, organization, or agency."

Among the information the whistleblower included in his unclassified letter is that Trump:

[S]ought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid. According to the White House officials who had direct knowledge of the call, the President pressured Mr. Zelenskyy to, inter alia:

- *initiate or continue an investigation into the activities of former Vice President Joseph*

*Biden and his son,
Hunter Biden;*

- *assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine, with a specific request that the Ukrainian leader locate and turn over servers used by the Democratic National Committee (DNC) and examined by the U.S. cyber security firm CrowdStrike, which initially reported that Russian hackers had penetrated the DNC's networks in 2016; and*
- *meet or speak with two people the President named explicitly as his personal envoys on these matters, Mr. Giuliani and Attorney General Barr, to whom the President referred multiple times in tandem.*

The ICIG letter marks the paragraph describing that part of the complaint as Top Secret, though it doesn't include the specific allegations naming Rudy and Barr, It describes the gist of

the complaint this way:

Here, the Complainant's Letter alleged, among other things, that the President of the United States, in a telephone call with Ukrainian Volodymyr Zelenskyy on July 25, 2019, "sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid."

But DOJ *did* see the TELCON of the call. Therefore, they would have known that the White House – the original classification authority for the content of the call – had deemed the entire thing Secret/NOFORN. Nothing in it was deemed Top Secret.

Among the things removed from paragraphs marked Top Secret in the September 24 memo are:

- The date of the call
- Zelenskyy's identity and country
- Approximately a dozen officials had listened in
- A description of Trump pressuring Zelenskyy
- The reference to election assistance
- The citations to the ICIG letter
- The references to Rudy and Barr
- The ICIG deemed the complaint credible but did not conduct legal analysis on whether this was solicitation of a campaign contribution
- OMB had cut off security

assistance to Ukraine*

- White House officials had moved the TELCON to the covert server*

The whistleblower treated the placement of the TELCON onto the covert server as Top Secret and the OMB detail as Secret, since neither of those appear in the TELCON marked Secret those are both properly treated by OLC as classified (though OLC bumped up the OMB detail to Top Secret).

But given that OLC took this language out of a paragraph that it marked Top Secret for its unclassified version, it must be treating this information as Top Secret.

The complainant alleged that he or she had heard reports from White House officials that in the course of a routine diplomatic communication between President Trump and Ukrainian President Volodymyr Zelenskyy, President Trump had “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.” ICIG Letter at 3 (quoting the complainant’s letter). Specifically, the complainant allegedly heard that the President had requested that the Ukrainian government investigate the activities of one of the President’s potential political rivals, former Vice President Joseph Biden, and his son, Hunter Biden. The complainant also allegedly heard that the President had requested Ukrainian assistance in investigating whether Russian interference in the 2016 U.S. presidential election originated in Ukraine, and that Ukrainian investigators meet with the President’s personal lawyer, Rudolph Giuliani, as well as Attorney General William Barr regarding these matters.

In other words, DOJ, after having reviewed a White House document that treated this information as Secret, instead bumped up the classification of it to Top Secret, including the detail that the Attorney General himself was implicated in the attempt to frame the President's opponents.

It's not just the White House that was abusing the classification system in an attempt to cover up what really happened here. It was also DOJ.