

# THE CIA AFFILIATION OF THE WHISTLEBLOWER ISN'T THE KEY, IT'S CIA GENERAL COUNSEL'S ROLE IN A COVER-UP

The second paragraph of the NYT story that identified that the Ukraine whistleblower as a CIA employee describes the CIA's General Counsel, Courtney Simmons Elwood, telling first the White House and then DOJ about the complaint.

The officer first shared information about potential abuse of power and a White House cover-up with the C.I.A.'s top lawyer through an anonymous process, some of the people said. The lawyer shared the officer's concerns with White House and Justice Department officials, following policy.

Starting on paragraph 15, the NYT provides more details about how and why Elwood responded to a whistleblower complaint by running to the people who were implicated by it (and note, it says this was proper, as it may well have been – I'm not saying Elwood has legal exposure here).

The week after the call, the officer delivered a somewhat broad accusation anonymously to the C.I.A.'s general counsel, Courtney Simmons Elwood, according to multiple people familiar with the events. The initial allegations reported only that serious questions existed about a phone call between Mr. Trump and a foreign leader.

As required by government policy, Ms. Elwood had to assess whether a "reasonable basis" for the accusation existed. During the preliminary inquiry,

Ms. Elwood and a career C.I.A. lawyer learned that multiple people had raised concerns about Mr. Trump's call.

Ms. Elwood also called John A. Eisenberg, a deputy White House counsel and her counterpart at the National Security Council, according to three people familiar with the matter. He was already aware of vague concerns about the call.

Ms. Elwood, Mr. Eisenberg and their deputies spoke multiple times the following week. They decided that the accusations had a reasonable basis.

Mr. Eisenberg and Ms. Elwood both spoke on Aug. 14 to John Demers, the head of the Justice Department's national security division, according to three people familiar with the discussion. Ms. Elwood did not pass on the name of the C.I.A. officer, which she did not know because his concerns were submitted anonymously.

The next day, Mr. Demers went to the White House to read the transcript of the call and assess whether to alert other senior law enforcement officials. The deputy attorney general, Jeffrey A. Rosen, and Brian A. Benczkowski, the head of the department's criminal division, were soon looped in, according to two administration officials.

Department officials began to discuss the accusations and whether and how to follow up, and Attorney General William P. Barr learned of the allegations around that time, according to a person familiar with the matter.

A CNN story provided the detail that NYT (and AP) missed: when and how Barr learned he was implicated personally.

Demers went to the White House to review the transcript of the call on August 15. His office then alerted other senior Justice officials that Barr was mentioned on the call.

Since the NYT story came out, a lot of people have attacked it for revealing where the whistleblower worked. Dean Baquet claimed they did so to lend credibility to the story, a thoroughly ridiculous explanation (especially in the wake of the transcript release, which made it clear the complaint was corroborated by the White House's own record of the call).

What is, instead, the important detail is that everything Elwood did in the wake of receiving the report, whether intentionally or not, not only served a cover-up, but also put the whistleblower at heightened risk. We may not know the ID of the whistleblower, but the White House, which now includes all the former Devin Nunes aides who were so critical to blowing up the Russian investigation in 2017, would have been able to identify who was seconded to the White House as soon as Elwood brought the complaint to the White House. And Elwood is, in significant part, responsible for that. So it's not the whistleblower's affiliation, but Elwood's, that's important, and Elwood's alone identifies where the whistleblower works (and did, for the White House, over a month ago).

The really important part of this story – which is clarified when adding the CNN detail that Demers and Brian Benczkowski and Jeffrey Rosen knew their boss was directly implicated when they decided to scope the prosecutorial analysis very narrowly, completely ignoring the kind of quid pro quo that the Constitution explicitly names as a reason to impeach the President – is that those implicated had the opportunity to cover-up the investigation even before the whistleblower filed his formal complaint. And once he did that, DOJ did things (may have felt forced to) that tried to further suppress their earlier decisions, most notably by getting an

OLC opinion that ruled the proper resolution of the complaint – which OLC deemed not to be urgent because it ignored that Bill Barr, the State Department, and those who hid the communications on the covert server were also implicated, and by association Barr's efforts to feed intelligence into John Durham's investigation – was to have people at FBI reporting to Bill Barr investigate. Whether the implication of those others makes this an IC complaint (the most obvious way it does is in the abuse of classification authority to hide the transcript) is a matter requiring analysis, analysis that Bill Barr's direct report, Steven Engel, did not do.

And that's the point (or should have been): The NYT named a number the people who *may be* involved in this cover-up: John Eisenberg, John Demers, Brian Benczkowski, Jeffrey Rosen, and CIA General Counsel Courtney Simmons Elwood. Elwood is the one who first approached the problem in such a way that a cover-up would be possible.

Yes, by relaying that detail, the NYT told all of us that the whistleblower is a CIA employee. But the people involved in the cover-up, and the firebreathers at NSC, already knew that.