

MIDNIGHT IN WASHINGTON: TODAY'S SENATE VOTE [UPDATE-2]

[NB: Updates will appear at the bottom of this post. /~Rayne]

This post is dedicated to today's U.S. Senate's proceedings with regard to the trial of Donald J. Trump under articles of impeachment for abuse of power and obstruction of Congress.

The Senate is scheduled to convene at 4:00 p.m. ET* for the vote. Debate is underway already.

[Senate live video link](#)

[C-SPAN live video via YouTube](#)

[C-SPAN's live feed at their site](#)

Eleven Films made a video in which House Intelligence Committee chair Adam Schiff's closing arguments are the centerpiece.

There's a weak chance that GOP members of Congress could prove me wrong and do impartial justice. There might be a few who vote to convict Trump.

But I doubt it, not when they have proven time and again to be weak and craven, like Sen. Susan Collins who could be persuaded with a little cash to claim Trump has learned a lesson from impeachment.

NEW: Susan Collins told [@NorahODonnell](#) she believes the president has learned a "pretty big lesson" from impeachment and will be "much more cautious" about seeking foreign assistance in the future. <https://t.co/uvC7lzBhIq>

– Grace Segers (@Grace_Segers) [February 4, 2020](#)

What a pathetic fool. Mainers deserve so much better.

“When he was asked about Sen. Susan Collins (R-Maine) saying he had learned a lesson during impeachment, the president said he’d done nothing wrong: ‘It was a perfect call.’”

<https://t.co/hbDM22HmUx>

– Kyle Griffin (@kylegriffin1) [February 5, 2020](#)

The worst part of what’s to come? Just as Trump made his “perfect call” the day after Robert Mueller’s testimony before Congress, Trump will feel vindicated if he is not removed from office today.

His vile minions will manipulate him in his addled state into wreaking revenge.

White House liaison Eric Ueland just walked by a pen of reporters and said “I can’t wait for the revenge.”

– Daniel Flatley (@DanielPFlatley)
[January 23, 2020](#)

And every one of the GOP members of Congress who did not vote to impeach and did not vote to convict and remove Trump will own what’s to come.

You’ll note I’m not holding my breath for impartial justice.

** Note the time change from 2:00 p.m. to 4:00 p.m. Debate speeches are still underway as of 3:25 p.m.*

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UPDATE-1 – 2:15 P.M. ET –

Give it up for Mitt Romney. I’m still in doubt this will persuade any other GOP senators to do the right thing and vote to convict.

[#BREAKING](#) Republican Romney says he'll
vote to convict Trump at Senate
impeachment
trial pic.twitter.com/MsWjzpCSn5

– AFP news agency (@AFP) [February 5,](#)
[2020](#)

ADDER: Oh gads Mitt's splitting the baby. He's going with one vote to convict on abuse of power, one vote to acquit on obstruction of Congress. I don't even know how he could imagine ordering people not to comply with requests and subpoenas from the House isn't obstruction.

UPDATE-2 – 4:50 P.M. ET –

As expected, the GOP senators voted along party line to acquit Trump. Mitt Romney was the exception, voting to convict on abuse of power but acquitting on obstruction of Congress.

You own all of this, GOP. Everything up to now, everything that follows now that you've turned your back on the rule of law. You are tied with a cord of steel to this forever.

The GOP senators who are up for re-election this year are:

Capito, Shelley Moore (R-WV)
Cassidy, Bill (R-LA)
Collins, Susan M. (R-ME)
Cornyn, John (R-TX)
Cotton, Tom (R-AR)
Daines, Steve (R-MT)
Enzi, Michael B. (R-WY)
Ernst, Joni (R-IA)
Gardner, Cory (R-CO)
Graham, Lindsey (R-SC)
Hyde-Smith, Cindy (R-MS)
Inhofe, James M. (R-OK)
McConnell, Mitch (R-KY)
Perdue, David (R-GA)
Risch, James E. (R-ID)
Rounds, Mike (R-SD)
Sasse, Ben (R-NE)
Sullivan, Dan (R-AK)

Tillis, Thom (R-NC)

Alexander, Lamar (R-TN) – retiring, seat is open.

Roberts, Pat (R-KS) – retiring, seat is open.

McSally, Martha (R-AZ) – is up for election; she's an appointee who replaced a previous short-term appointee, [Jon Kyl](#).

Find their opponents and give them a hand. Vote everyone of these scofflaws out of office.

THREE THINGS: DAY AFTER NIGHT BEFORE DAY OF DISASTER [UPDATE-2]

*[NB: Updates will appear at bottom of post.
/~Rayne]*

What a flaming mess.

Bet you can't really tell which mess I'm referring to – the Iowa caucuses, the State of the Union Address, or the rolling not-trial of Donald J. Trump.

But there they are, the three things this post will address.

~ 3 ~

What can I say that you don't already know about Iowa?

You already know right-wing assholes began a negative influence operation before the caucuses began, spreading from the Epoch Times to Judicial Watch, Charlie Kirk to the Trump boys, amplified by Hannity and Twitter accounts.

New: Conservatives push false claims of voter fraud on Twitter as Iowans prepare to caucus. They've gotten a ton of traction, despite efforts by state officials to rebut them. From

[@isaacstanbecker](#) + me:
<https://t.co/vPFwsvkS8y>

– Tony Romm (@TonyRomm) [February 3, 2020](#)

A note from the Republican Iowa Secretary of State about the repeated misinformation put out by Judicial Watch, a conservative organization that routinely spreads absolute garbage about voter rolls. <pic.twitter.com/vpyChUtsAG>

– Jessica Huseman (@JessicaHuseman)
[February 3, 2020](#)

And you already know that for some stupid reason [badly-designed, poorly-tested mobile technology was pushed into production](#) after too little time in beta. Just too many variables not reduced in advance of the crunch-time roll-out.

The fallout was and is messy, made worse by a [commercial media model based on hyper-competition](#) – *who ever gets and publishes the story first wins* is completely diametric to democracy's need for accurate reporting for an informed electorate.

The caucus app developer, Shadow Inc. – yeah, you'd think this would be an over-the-top name for a software business which keeps its ownership opaque – has apologized today, explaining,

As the Iowa Democratic Party has confirmed, the underlying data and collection process via Shadow's mobile caucus app was sound and accurate, but our process to transmit that caucus results data generated via the app to the IDP was not.

– Shadow, Inc. (@ShadowInCHQ) [February 4, 2020](#)

Let's assume IDP = Iowa Democratic Party. This was not the DNC's work, which more right-wing trolls tried to claim last night along with blaming former Clinton campaign manager Robby Mook for the app failure although Mook is NOT a software developer.

A lot of character assassination by the right-wing over the last 24 hours bears a strong resemblance to the character assassination of former ambassador Marie Yovanovitch. Trump-friendly mouthpiece makes egregious false accusation, picked up by Trump-friendly media, repeated by Trump's family members, propelled even further by Trumpists and trollbots. What a coincidence.

Of course everybody has completely forgotten [it took the Republicans more than two weeks](#) – from January 3 to January 21 – to sort out who won their caucuses in 2012. How convenient the right-wing horde has something else they can bloviate about instead of their own failings. How convenient they were able to set up and complain about “rigged elections” laying the ground for their approach to November's general election.

Once again we hear complaints about how grossly unfair Iowa caucuses are – they prevent disabled and working people from participation, and the state is the first to select winning primary candidates although it's a small (31st in population) and non-diverse (90.7% white), unrepresentative of the rest of this country.

There's also head scratching about apparent low turn-out. Can't imagine why voters (who may have accessibility issues, lack transportation, work afternoons/evenings, can't afford or find childcare) won't turn out to caucus and sort through a large field of candidates even though they may already lean toward voting Democratic

no matter which candidate wins the primary.

One piece worth reading and pondering, published in the aftermath of this year's Iowa caucus, is this three-year-old article by David Auerbach, [Confirmation Bias: Did big data sink the Clinton campaign?](#) Auerbach thinks the Ada data analysis program was screwed up and both the Clinton campaign and DNC were prone to confirmation bias, failing to suspect the app could be bad.

But what if like Iowa's IDP-organized caucuses relying on a mobile app which had not been adequately stress tested the big data program was simply too new and untried for its intended purposes?

One thing also bothered me re-reading Auerbach's piece, given that he also wrote an essay in 2012, [The Stupidity of Computers](#). Are folks designing and implementing these apps for politics failing because they're like other software-based platforms? Have they "created their own set of inferred metadata, the categories propagate, and so more of the world is shoehorned into an ontology reflecting ad hoc biases and received ideas," to the point where threats and risks outside of their imagination easily destroy their aims?

Is it at all possible that the same kind of lack of foresight and imagination that led to last night's failure cascade also underpinned a big data analysis program which couldn't see new foreign-born influences manipulating output?

Do read Auerbach, but with your eyes wide open; even Auerbach didn't anticipate his own credibility being [undermined by right-wing provocateurs](#). Yet another lesson about the impact of technology on human relations.

And yet another lesson about the difference between the chronically underfunded Democratic Party and the wealthy fascistic GOP. How much did the collapse of Obama for America after the 2008 election combined with Tim Kaine's tepid DNC leadership [contribute to the conditions which set up Iowa's application meltdown](#) – the

absence of an adequately-funded national party-wide technology platform?

~ 2 ~

House impeachment managers made closing arguments in the Senate's not-a-trial yesterday. Rep. Adam Schiff's speech will be remembered well into the future for its excellence as American oratory.

"We must look at the history of this presidency and to the character of this president, or lack of character, and ask: Can we be confident he will not continue to try to cheat in that very election?...The short, plain, sad & incontestable answer is: no you can't."

—@RepAdamSchiff

pic.twitter.com/hQokZIGHEN

— House Intelligence Committee
(@HouseIntel) [February 3, 2020](#)

The Senate debated the charges today. Michigan's Sen. Gary Peters may have redeemed himself:

As an officer in the U.S. Navy Reserve and as a U.S. Senator, I took an oath to support the U.S. Constitution. After solemn consideration of the facts, I will vote to hold the President accountable for his actions. Read my full statement:

pic.twitter.com/9CkCzxugsv

— Senator Gary Peters (@SenGaryPeters)
[February 4, 2020](#)

West Virginia's Sen. Joe Manchin was his craven self again, introducing the alternative of censure rather than conviction.

Sen. Joe Manchin calls for the Senate to "censure" President Trump: "Censure would allow this body to unite across party lines ... his behavior cannot go

unchecked by the Senate.”

<https://t.co/5SqfeT0eSY>
<pic.twitter.com/Xo6CXL2fUf>

– This Week (@ThisWeekABC) [February 3, 2020](#)

No. Hell no. Manchin [isn't up for re-election this year](#); he has no good excuse for offering the possibility Trump could crow about a bipartisan acquittal if any Democrat votes for something other than conviction and removal.

Further, Manchin's sucking up to Trump won't do a thing for his state. If he thinks this will sway the MAGA base in any way he's unmoored from data showing Trumpists will not be moved. They believe what Fox News' talking heads like Sean Hannity and Tucker Carlson tell them and that's enough.

Nor will GOP senators vote for censure. They're simply too bought, owned, corrupt, and spineless.

And of course both senators Lisa Murkowski and Susan Collins have played their roles as drama queens, vacillating on whether to vote for or against acquittal. Murkowski blamed partisanship while making the partisan decision to vote with her party for acquittal.

CBS NEWS EXCLUSIVE: Sen. Susan Collins (R-ME) tells [@NorahODonnell](#) she will vote to acquit Pres. Trump in the Senate impeachment trial, adding that she believes “the president has learned from this case.”

Watch more tonight at 6:30 p.m. ET.

<https://t.co/oxGYtYgjBw>
<pic.twitter.com/Wv4PmGINZk>

– CBS Evening News (@CBSEveningNews)
[February 4, 2020](#)

Collins was bought. For the right price –

\$150,000 laundered through a front corporation in Hawaii – she will play stupid and give women a bad name in general.

A mysterious Hawaii company may have illegally funneled a six-figure contribution to a political group boosting an embattled Republican Senator 5,000 miles away, an ethics watchdog alleged <https://t.co/ZxhFGseDoU>

– The Daily Beast (@thedailybeast)
[February 3, 2020](#)

Do get a load of the name of the front corporation. Sure. Like women suddenly forgot that Collins approved Justice Kavanaugh's nomination to the Supreme Court.

Tomorrow's vote will be unpleasant – brace yourselves.

~ 1 ~

In about an hour the tangerine hellbeast will shake off his [sundowning](#) and step up to the podium in the House to deliver what should be his last State of the Union message.

I refuse to watch that lying malignant narcissist. I'll check for observations by people watchers like [Dr. Jack Brown](#) who will monitor Trump's body language and Tom Joseph who [follows Trump's mental and physical decline](#).

I will not enjoy being reminded the dementia-addled wretch has the nuclear codes. Nor will I enjoy knowing Trump may use the podium of the people's house not to communicate the progress made in governance but to campaign for his re-election.

What are the odds he has the moxie to ask another nation-state for help in his re-election right under our noses tonight?

~ 0 ~

This is an open thread. Begin kvetching below.

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UPDATE-1 – 05-FEB-2020 12:45 P.M. –

Yeah, yeah, yeah...Jesus Christ, Jonathan Turley, let it go.

Since last night Turley's posted ten tweets and an [op-ed in The Hill](#) bitching about the Speaker of the House not behaving like a compliant little Handmaid. He makes me wonder if he doesn't have enough work and he's bucking for a new paying gig.

By all means ignore the pussygrabber-in-chief's multitude of disgusting behaviors, wretched political acts, and [his slide into dementia](#), focusing instead on an effective female leader who doesn't lick your reality TV narcissist's toes.

Pelosi demolished decades of tradition in this ill-considered, ill-tempered moment. Many will celebrate her conduct and be thrilled by the insults. However, if she cannot apologize and maintain this tradition, Pelosi should resign as Speaker. <https://t.co/JDLp096NDW>

– Jonathan Turley (@JonathanTurley)
[February 5, 2020](#)

Speaking of paying gigs, it occurred to me well after Turley appeared in December as an expert witness in front of the House Intelligence Committee that we don't know if HIC asked Turley if he was a fact witness.

In his written statement Turley never mentions he wrote an article for The Hill, [Could Robert Mueller actually be investigating Ukrainian collusion?](#)

Nor did he mention the same piece was published the very same day in [Kyivpost](#).

Also not mentioned is that this piece ran on February 21, 2019 – the date is roughly one week after Rudy Giuliani [met with then-prosecutor](#)

[general Yuriy Lutsenko](#) in Warsaw, Poland, and almost one month to the day before John Solomon [conducted a character-assassinating](#) interview with Lutsenko for Hill.TV.

Turley's piece furthers the idea that Ukraine was involved in collusion rather than Russia.

... But what is remarkable is how all investigative roads seem to lead to Kiev, not Moscow, in terms of key figures. It raises the question of whether Russian hacking efforts in the American election in 2016 were little more than what they seem as a clumsy leak and trolling operation. ...

How did Turley end up fitting so neatly into the timeline?

UPDATE-2 – 05-FEB-2020 1:00 P.M. –

Though I linked to it in my previous update, I should probably share this here more overtly. This is very troubling; this man has the [nuclear football](#) within reach.

Cranked up, most likely on stimulants and Levodopa, Trump struggled all night with body jerking, teeth baring, arm trembling and a podium death grip. His dementia Tour de Force climaxed with this neurological body jerk/spasm.

pic.twitter.com/sQ0BGId3oJ

– Tom Joseph (@TomJChicago) [February 5, 2020](#)

Today GOP Senators will likely acquit this person who can barely get through a speech and certainly not without lying repeatedly.

CNN's [@ddale8](#) fact-checks President Trump's [#SOTU](#) speech on issues like health care, economy, immigration and more. <https://t.co/kgn4StA3oh>
pic.twitter.com/TSn6XaIBcP

— New Day (@NewDay) [February 5, 2020](#)

As mentioned before, this is an open thread. I'll put up another post shortly dedicated to the vote today in the Senate.

HITTING THE OSCILLATOR: TODAY'S SENATE VOTE ON WITNESSES [UPDATE-5]

[NB: Check the byline, thanks!/~Rayne]

At 1:00 p.m. the U.S. Senate convenes and resumes consideration of the articles of impeachment as a Court of Impeachment.

A vote is expected on whether to call for/subpoena witnesses to appear before the Senate as part of this trial.

Last night Sen. Susan Collins said she would vote for witnesses:

I will vote in support of the motion to allow witnesses and documents to be subpoenaed. My full statement:

<https://t.co/VuhZv6C05e>
pic.twitter.com/LhQlnvPaoc

— Sen. Susan Collins (@SenatorCollins)
[January 31, 2020](#)

But the timing of her statement was only minutes before retiring Sen. Lamar Alexander announced he wouldn't vote for witnesses.

I worked with other senators to make sure that we have the right to ask for more documents and witnesses, but there

is no need for more evidence to prove something that has already been proven and that does not meet the U.S. Constitution's high bar for an impeachable offense.1/15

– Sen. Lamar Alexander (@SenAlexander) [January 31, 2020](#)

How convenient.

We don't know yet where Sen. Murkowski (R-AK) stands on the matter of witnesses, only that as of last night she was "going to go reflect and decide whether she needs to hear more".

Mitt Romney (R-UT) says he wants to hear from John Bolton.

"Mitt Romney, R-Utah, has said he wants to hear from John Bolton, and two of his aides confirmed to NBC News he will, as expected, vote to call witnesses."

<https://t.co/v1aMTaEY5h>

– Kyle Griffin (@kylegriffin1) [January 31, 2020](#)

And now the stakes have been raised yet again with a fresh report in The New York Times that Trump "directed" John Bolton to help him with what Bolton has called a "drug deal."

DIRECTED

Friggin DIRECTED

<https://t.co/YlzwvFJdXD> (h/t [@jentaub](#))
<pic.twitter.com/0Np0QoIjv8>

– Jason Leopold (@JasonLeopold) [January 31, 2020](#)

I'm not linking to NYT. You'll have to hunt this down if you want it because I'm not driving traffic to that outlet.

More to come very soon, I'm sure.

UPDATE-1 – 1:31 P.M. ET –

Sen. Lisa Murkowski, chickenshit.

Final vote on witnesses: 51-49, with two
GOP defectors <https://t.co/8q07kXZHZX>

– Manu Raju (@mkraju) [January 31, 2020](#)

She fell back on partisanship as an excuse even though she was elected because she wasn't partisan. Alaskans, you can do better.

It's not partisanship when nearly an entire party turns its back on the rule of law.

Murkowski and her staff were too chickenshit to put this statement on her Twitter account.

Murkowski statement: "I have come to the conclusion that there will be no fair trial in the Senate. I don't believe the continuation of this process will change anything. It is sad for me to admit that, as an institution, the Congress has failed." <pic.twitter.com/jNQU3BfbzP>

– Addy Baird (@addysbaird) [January 31, 2020](#)

It wasn't going to be a fair trial – or really, a trial at all – if witnesses were never going to be called. Murkowski owns this lack of fairness.

UPDATE-2 – 1:40 P.M. ET –

Of extremely important concern is the possibility any Democrats may vote to acquit Trump.

Trump wants nothing more than a bipartisan acquittal. He might get it. Dems to watch: Jones, Sinema, Manchin, Peters. <https://t.co/TGKU5sleHF>

– Sheryl Gay Stolberg (@SherylNYT)

[January 31, 2020](#)

I am FURIOUS about Sen. Gary Peters' name coming up here. I know he's sweating his re-election race here in Michigan, but if he votes to acquit he will give Trump the ability to say this was a bipartisan acquittal.

Absolutely NO Democrat should vote to acquit. None. There's more than enough evidence on hand already to prove Trump abused his office and obstructed Congress, including Trump's own on-camera words.

Call your senators and tell them to vote NO on acquittal: (202) 224-3121 or use [Resistbot](#).

And Peters, I'm looking at you. You won't win Republican votes by voting to acquit because a Republican votes for a Republican.

UPDATE-3 – 1:52 P.M. ET –

At 12:59 p.m. Lev Parnas' attorney tweeted,

Lev Parnas directly gave POTUS quid pro quos to President Petro Poroskenko in 2/19 & President Zelensky's Chief Aide, Sergey Shefir, in 5/12/19. He was also aware of the pressure [@realDonaldTrump](#) was exerting on [@AmbJohnBolton](#).
[#CallTheWitnesses](#) [#LetLevSpeak](#)
[#LetBoltonTestify](#)
<https://t.co/GAo2kxZCCP>

– Joseph A. Bondy (@josephabondy)
[January 31, 2020](#)

in response to Trump's denial about the NYT's story today.

Sure would like to know what the story was behind the timing of NYT's publication. How snug all of this is.

UPDATE-4 – 2:05 P.M. ET –

Sen. Collins has no good reason to smile.

When Val Demings remarked, “Today we have new evidence,” I also observed Susan Collins smile.

From my vantage point in the press gallery, it is hard to see who or what exactly she was smiling at. I cannot say definitively, but nonetheless, it was a short lived smile.

– Brandi Buchman (@BBuchman_CNS) [January 31, 2020](#)

Collins would do well to consider why she is the [most unpopular senator](#) next to Chief Obstructionist Mitch McConnell. No amount of laundered Russian money pumped in her campaign through PACs and other entities can make her popular.

UPDATE-5 – 2:30 P.M. ET –

Looks like it’ll be a wrap on this abortion of governance next Wednesday.

NEW: [@SenSchumer](#) and [@senatemajldr](#) told their members at their respective closed-door lunches that the two leaders have agreed to a proposal culminating in a Wednesday vote to acquit the president, according to two Democrats in the room and two Republican aides familiar. 1/

– Leigh Ann Caldwell (@LACaldwellDC)
[January 31, 2020](#)

Read Caldwell’s [Twitter thread](#) for more on the negotiation.

Can’t even begin to imagine what kind of autocratic megalomaniacal bullshit Trump will pull as soon as the votes have been tallied.

This post will be updated periodically; new content will appear at the bottom.

THE MANAFORT LINK SETS THE FRUMAN- PARNAS TIMELINE BACK — BUT THE MANAFORT TIMELINE IS EARLIER TOO

The Daily Beast [reports](#) that Lev Parnas has linked Igor Fruman and Paul Manafort going back years.

Rudy Giuliani ally Igor Fruman and ex-Trump campaign chief [Paul Manafort](#) have been friendly for years, two sources familiar with their relationship tell The Daily Beast.

And that relationship – stretching from New York to London to Kyiv – long predated Rudy Giuliani’s wide-ranging attempts to discredit the evidence that played a key role in kicking off Manafort’s political downfall and [eventual incarceration](#).

Joseph Bondy, the [lawyer for Fruman associate Lev Parnas](#), said Manafort and Fruman were friendly for years before their respective indictments.

A friend of Manafort’s, who spoke anonymously to discuss non-public matters, confirmed that Fruman and Manafort have known each other for years. He said Fruman invited Manafort to the opening party for Buddha-Bar in Kyiv many years ago, and that the two men have discussed business. Buddha-Bar opened in the summer of 2008. Bondy said the pair also spent time together in

London and New York.

It suggests, but does not say outright, that the Ukrainian grifters' initial work served to put together the counter-report that Rudy Giuliani planned to release to combat the Mueller Report.

In late 2018, as the Mueller investigation was drawing to a close, Giuliani and his allies worked to draft a counter-report that would rebut Mueller's work. (Manafort was one of the first targets of Mueller's probe, and was convicted of multiple charges related to work he did in Ukraine for a Russia-friendly political party.) Giuliani never released that report. But he also didn't toss it; he [told The Daily Beast](#) in October that [materials he gave](#) the State Department came from his effort to find information in Ukraine that could exonerate Trump.

[snip]

In other words, Giuliani's efforts to undermine the Mueller probe—and stand up for Manafort—led directly to his Biden dirt-digging endeavors. Parnas has said he and Fruman were right there to help.

This report explains a great deal about the story we've got. It explains why Lev Parnas was badmouthing Marie Yovanovitch long before ([he claims](#)) Trump flunkies' attacks on her led him to adopt that line. It explains [why Kevin Downing was on the Joint Defense team](#) for the Ukrainian grifters. It basically extends the narrative about the grifters back to 2018, when [SDNY started it](#).

Except the story TDB tells still starts the narrative too late in time.

It suggests that the reason Rudy started chasing propaganda in Ukraine is because Paul Manafort's life started falling apart after news of his

inclusion in the Black Ledger got published on August 14, 2016.

Relations with Ukraine have shadowed Trump and his allies even before he was elected president. On August 14, 2016, [The New York Times reported](#) that Manafort may have received millions of dollars in “illegal, off-the-books” cash from the pro-Russia political party he worked for. The story was a body blow to Manafort, who left Trump’s campaign five days after it was published. Serhiy Leshchenko, then a Ukrainian parliamentarian, played an instrumental role in the black ledger.

In the years after the publication of the story, Manafort’s life fell apart. Nine months after Trump’s inauguration, he was arrested and charged with a host of crimes. By March 2019, he had been sentenced to a seven-year prison term. He and his allies blamed the black ledger for starting the calamity. And given that Leshchenko was a government official when he shared the documents, Trump’s allies have said their release was an example of [election meddling by Kyiv](#). Parnas [told The Daily Beast](#) that Giuliani tried to push Leshchenko away from Zelensky; Giuliani himself [has called him](#) an enemy of the United States.

Giuliani has said his scrutiny of the black ledger fed directly into his focus on the Bidens.

That’s certainly the story that Manafort would like to tell – and one that likely is palatable for Parnas. In that story, his grift is exclusively about finding propaganda that is useful to the President, and he can point back to the President as the agent behind his actions.

Except Manafort's life was going to shit before that, and the grifters were active before they could have been writing a counter-report.

Manafort's life started going to shit when Viktor Yanukovych was ousted from Ukraine. He lost his main clients and had both the debt from his own lavish lifestyle but also the \$20 million that Oleg Deripaska said Manafort had bilked him out of. By January 2016, DOJ was already investigating him for money laundering. By March, according to Rick Gates, he was effectively broke.

That's when he signed up to work for Donald Trump for "free."

During the entire time he worked for Trump, Deripaska was [using Christopher Steele](#) to encourage the criminal investigation into Manafort, even while enticing Manafort with the hope of "making him whole" by performing some unspecified services – effectively making Manafort (and by association, Trump) more vulnerable for the moment he'd move in for the kill. Two months before the Black Ledger was publicly released, Manafort knew he was on it. And before the Black Ledger story broke, Manafort took a meeting with Konstantin Kilimnik, who had promised a scheme to return Yanukovych to a position where he could turn on Manafort's gravy train again. It's still unclear what happened at the meeting, but it's clear winning the Rust Belt, carving up Ukraine, and getting paid all came up. Eight days later, Manafort booked \$2.4 million – deliverable in November – suggesting he believed that that meeting did lead to him getting paid. And until the time Manafort landed in prison, he took actions in accordance with the plan to carve up Ukraine in that August 2, 2016 meeting.

That's the background to the Black Ledger release. And that's the reason Manafort needs some story, however bogus, to justify a pardon.

Moreover, the grifters' timing dates to April 2018, about the time Ukraine purchased some

Javelins and [stopped cooperating](#) with Mueller, which probably explains why [a guy working for Raytheon's lobbyist, Kurt Voker](#), was perceived to be [working on Manafort's defense](#).

Manafort doesn't (just) need a story that can justify a Trump pardon. He needs a way to prevent the rest of this story from coming out.

PAT CIPOLLONE BELIEVES THE GOLDEN RULE IS FOR CHUMPS

The question and answer phrase of the Senate trial is far more interesting than the presentation of the cases. Both parties are obviously feeding their own side questions to rebut the other, or posing questions they think will make the other stumble (Chief Justice John Roberts has reportedly censored only one kind of question: any question that probes for the whistleblower's name).

Later last night, the questioning became interesting for the whip count. There were a couple of questions posed by large numbers of Senators on record supporting Trump, including vulnerable swing state Senators like Martha McSally, Thom Tillis, and Cory Gardner, and it was interesting to see who else jumped on questions that obviously served only to suck up to Trump.

Over the course of several questions, there was a discussion on whether Roberts could rule on the appropriateness of witnesses or Executive Privilege. Pat Philbin argued that he could not, on EP (contrary to the rules), in response to which Schiff came back and said he could. Schiff argued that the Democrats would accept Roberts' views without challenge. Jay Sekulow piped in to say Republicans would not. I keep thinking about

how Roberts will be ruling on some of these issues on other appeals, and I think Schiff is playing to him on some questions as much as to the Senate.

Questions being asked by leaners (people like Lisa Murkowski and Susan Collins, who have asked a number together, though it seems like Mitt Romney went from leaning to supporting questions) are of particular interest. At one point, Collins asked why the House didn't include bribery in its articles. Hakeem Jeffries gave an answer that Collins visibly responded to by saying, "he didn't answer my question," but Schiff came in shortly after and did answer it, pointing out that all the elements of bribery are included in the abuse of power article. Collins also asked the President's lawyers what Trump had done on corruption in Ukraine prior to last year, which Philbin didn't answer and then, when the question was re-asked by Democrats, said he couldn't answer because it's not in the record (though he has relied on non-public information elsewhere).

Then there are the alarming answers. Alan Dershowitz was asked, after he argued that if the President thought something that benefitted him personally was good for the country, whether that extended to nuking democratic states because he believed his reelection was good for the country and he agreed in theory.

Pat Philbin answered a question about whether it was okay to accept dirt to win an election. He said it was.

I was most interested, however, in a response Sekulow gave to a question offered by Marco Rubio and others, people who presumably were just feeding softballs to strengthen the President's argument. They referenced a claimed principle espoused by Dersh and Sekulow, wherein you should always imagine how it would feel if the other party were impeaching a president of your party on the same fact set, which was originally a way to excuse Dersh's flip-flop on abuse of power and impeachment. Rubio and others

asked where the limiting factors on this would be – basically an invitation to repeat what Trump’s lawyers have said in the past, that you shouldn’t impeach within a year of an election or some such thing. Except Sekulow would *not* offer general principles. Instead of referencing the election – the right answer to the softball question – he focused on the claimed uniqueness of this impeachment (which is bullshit in any case). In other words, given an opportunity to answer a question about principles that would adhere beyond this impeachment, Sekulow answered that his Golden Rule only applies to this impeachment.

SDNY PROSECUTORS PROTECT TRUMP’S PRIVACY TO ENTER INTO A JOINT DEFENSE AGREEMENT WITH THE RUSSIAN MOB

Whooboy is there an interesting flurry of motions over in the Ukrainian grifter prosecution. Effectively, SDNY prosecutors and (two of) Lev Parnas’ co-defendants want to slow him from sharing information with HPSCI. The letters include:

- January 17: Parnas [asks](#) to modify the protective order a third time
- January 22: Igor Fruman lawyer Todd Blanche [says](#) he has an attorney-client interest in some of what

Parnas wants to and has already shared

- January 22: Andrey Kukushkin lawyer Gerald Lefcourt [says](#) he just wants a privilege review
- January 23: SDNY [says](#) Parnas should not be able to share iCloud information he obtained via discovery without review
- January 24: Parnas lawyer Joseph Bondy [makes a quick argument](#) asserting they should be able to share the information
- January 24: Bondy [responds](#) to Fruman letter at more length
- January 27: Blanche [responds](#) again, invoking Dmitry Firtash to speak on behalf of unnamed others

The dispute started when Parnas asked to share content that the FBI seized from Parnas' iCloud account and then provided to him in discovery. He listed just 11 Bates stamp numbers in the [initial request](#), but it's unclear what kind of files these are. In response, the lawyer that Fruman shares with Paul Manafort, Todd Blanche, objected to that request, and also asked to "claw back" any privileged materials that Parnas already produced to HPSCI (remember that Victoria Toensing has already complained that Parnas has violated privilege). Blanche makes a dig at Parnas' media tour:

My obvious concern is that Mr. Bondy's hasty efforts to find a forum (beyond MSNBC and CNN) for someone – anyone –

to listen to his client's version of events caused him to irresponsibly produce privileged materials to the HPSCI.

One of the two other co-defendants, Andrey Kukushkin, weighed in – having been alerted by SDNY that, “its filter team identified materials in Mr. Parnas’ iCloud account that may fall within a common-interest attorney-client privilege held jointly by Messrs. Kukushkin, Parnas, and others” – and stated that he did not object to Parnas sharing information “if all privileged materials can be removed from Mr. Parnas’ iCloud account prior to production to HPSCI.”

Having thus cued Parnas’ co-defendants to submit complaints, SDNY then weighed in, objecting to Parnas’ request. They invoke two reasons for their objection. The first poses interesting Fourth Amendment considerations; effectively SDNY [argues](#) that Parnas’ warrant return from Apple includes material that Parnas never possessed (and some material he deleted that only still exists because prosecutors obtained a preservation request).

The materials at issue include records that, as far as the Government knows, were never in Parnas’s possession. For instance, the data produced by Apple includes deleted records (which may only exist because of the Government’s preservation requests), account usage records, and other information to which a subscriber would not necessarily have access. The form of the report, which was created by the FBI, was also never in Parnas’s possession.

[snip]

Additionally, to the extent Parnas seeks to produce his own texts, emails, photographs or other materials, he should have access to the content stored

on his iCloud account through other means: he can simply download his own iCloud account and produce it to HPSCI (and in fact, it appears he has already done so).

[snip]

To the extent that Parnas has deleted materials from his iCloud account, the Government is willing to work with counsel to ensure that Parnas can produce his own materials that are responsive to the Congressional request to HPSCI. To that end, the Government respectfully submits that Parnas's counsel should identify for the Government any specific chats, emails, photographs, or other content Parnas is unable to access from his iCloud currently, but which exist within the discovery that has been produced to him and in his view are responsive to the Congressional subpoena.

I find that stance interesting enough – basically a reverse Third Party doctrine, saying that subscribers aren't the owners of the information Apple has collected on them, at least not in the former that FBI reports it out.

It's the other objection I find most interesting. SDNY prosecutors – including one of the ones who argued against broad claims of privilege in the Michael Cohen – objects because the data from Parnas' iCloud,

[I]t public disclosure still has the potential to implicate the privacy and privilege interests of third parties and co-defendants.

It then argues that requiring Parnas to specifically request content that he already deleted,

would also permit his co-defendants to

raise any concerns with respect to their privilege or privacy interest prior to the materials' release.

SDNY's prosecutors are arguing that Parnas can't release his own iCloud material because of other people's privacy interests!! As if it is the place for SDNY's prosecutors to decide what HPSCI considers proper levels of disclosure!!

I've been giving SDNY the benefit of the doubt on this prosecution, assuming that as prosecutors they would push back against any Bill Barr attempt to protect Rudy (though not the President). But this alarms me. It seems like SDNY is using Fruman – who is in a Joint Defense Agreement with Rudy – to speak for Rudy's interests.

After [making](#) a cursory response to SDNY, Bondy [responded](#) in more detail to Fruman. In it, Bondy makes the kind of argument about the limits of privilege you'll almost never see a lawyer make.

[T]he burden is on the party asserting the attorney-client privilege to first establish that there was: 1) a communication; 2) made in confidence; 3) to an attorney; 4) by a client; 5) for the purpose of seeking or obtaining legal advice. The party asserting attorney-client privilege has the burden of conclusively proving each element, and courts strongly disfavor blanket assertions of the privilege as "unacceptable." In addition, the mere fact that an individual communicates with an attorney does not make the communication privileged.

There are also instances in which the attorney-client privilege is waived, including when the substance of otherwise privileged communications are shared with third parties, when the communications reflect a criminal or fraudulent intent between the parties,

when the communications are part of a joint—yet conflicted—representation, and in cases where the parties to a joint defense have become adverse in their interests.

Bondy then goes on to add that HPSCI “does not recognize attorney-client privilege,” which may be why, at about the time these letters were breaking, Jay Sekulow was on the floor of the Senate haranguing Democrats for not respecting that privilege (which Sekulow suggested was in the Bill of Rights). He uses that stance to suggest SDNY is making a claim that violates separation of powers.

From there, Parnas goes on to disavow any privilege shared in his brief [Joint Defense Agreement with the Russian mob](#), in part based on discussions about his initial response to the HPSCI subpoena having been shared more widely.

Mr. Parnas waives all privilege with respect to the communications he had with Mssrs. Dowd and Downing. Furthermore, the substance of his and Mr. Fruman’s legal representation appears to have been shared with third parties, including Jay Sekulow, Rudolf Giuliani, John Sale, Jane Raskin, and others. ... As the Court may know, Mssrs. Sekulow, Raskin, and Giuliani are also attorney for President Trump. Mr. Giuliani and the President have interests divergent from Mr. Parnas’s wish to cooperate with Congress and the Government. Mr. Parnas believes that his and Mr. Fruman’s ostensibly joint representation by Attorneys Dowd and Downing was conflicted and intended from its inception to obstruct the production of documents and testimony responsive to lawful congressional subpoena.

[snip]

Here, Attorney Dowd undertaking a joint

representation of Mr. Parnas and Mr. Fruman – with the President’s explicit permission – constituted an actual conflict of interest at the time and appears designed to have obstructed Mr. Parnas’s compliance with HPSCI’s subpoenas and any ensuring efforts to cooperate with congressional investigators or federal prosecutors.

Bondy ends by saying it’s up to those claiming a conflict to invoke it.

Bondy makes it fairly clear: he believes the privilege SDNY has set Fruman up to object to involves Rudy and Trump, neither of whom are in a position to object, particularly given that if they do, Bondy will argue that Parnas believes their gift might be criminal and therefore the privilege doesn’t apply.

So instead of the President and his lawyer claiming that Parnas’ release of this material will violate privilege, Fruman [does](#).

Mr. Fruman has reason to believe that the Production Material contains privileged information belonging to Mr. Fruman and others.

He invokes only the consultation of their shell company, Global Energy Producers, with [Rudy’s former firm] Greenberg Traurig in conjunction to substantiate a common attorney-client interest, then nods to more:

This is but one example, and there are many more, but certainly the privilege issues implicated by the repeated amendments to the Protective Order are far more expansive than the attorney-client relationships identified in Mr. Bondy’s letter.

Fruman then complains that he cannot – as Parnas has said he must do – invoke privilege because

he's not in possession of the materials (just the taint team and Parnas have them).

The best part is where, still faced with the problem that the people whose privilege is at issue (Rudy and Trump) cannot politically invoke it, Fruman finds someone else whose privilege, he says, has been violated: Dmitry Firtash.

Mr. Fruman is not the only person whose privilege information is at risk. For example, Mr. Parnas has represented that he was employed as a translator for Victoria Toensing and Joseph DiGenova in connection with their representation of Dymitry Firtash. Clearly, any materials Mr. Parnas received as a translator assisting attorneys in the representation of Mr. Firtash would be protected by attorney-client privilege. And that privilege would be held by Mr. Firtash, the client, not Mr. Parnas.

It's increasingly clear what Parnas and Bondy are up to: They're trying to make it politically (and given the OLC memo prohibiting the indictment of the President) bureaucratically impossible to pursue further charges. If everything recent Parnas did was done for the President, he shouldn't be the only one facing prosecution for it.

Fruman, meanwhile, seems to be the sole member of the Joint Defense Agreement with the Russian Mob who is a party here, trying to prevent his position from deteriorating by speaking for all the affected parties, only without naming Rudy or Trump (presumably backed by the same old pardon promises Trump always uses to get witnesses against him to take the fall).

What's not clear is what SDNY is up to. Because it sure seems like they've used Fruman to protect Trump's and even Rudy's interests.

Judge Oetken scheduled a hearing for Thursday to resolve all this. Which may be too late for Parnas' play.

THREE THINGS: ODD, ODDER, ODDITIES

[NB: Check the byline, thanks! / ~Rayne]

Just a few oddities as the White House presents its counter arguments to impeachment. This is an open thread.

Ken Starr asking how our nation entered an “age of impeachment” is just bizarre – as if some pod had taken over his brain and wiped out his role in Clinton’s impeachment for lying about a blowjob. Makes me want to yell, *We’re here in no small part of you, you moron!*

But this is just another entry in a string of oddities future Americans will look back upon, scratching their heads as they try to make sense of the stupidity.

~ 3 ~

Doesn’t it strike you as odd that the man who became a household name over 13 seasons on NBC’s The Apprentice by saying, “You’re fired!” couldn’t manage to say that to public servant Marie Yovanovitch who served at his pleasure?

Doesn’t it seem odd that the candidate who used the same phrase about then-President Obama and then-candidate Hillary Clinton on the campaign trail wouldn’t use that phrase about a public employee with whom he wasn’t happy?

Doesn’t it strike you as odd that this same man said instead, “Take her out!” to [people who weren’t employed by the government](#), for whom that public servant didn’t work?

Doesn’t it strike you as odd that this same man

used the phrase, "Take her out!" about removing a public servant, but [paraphrased his remarks](#) about the assassination of Iran's General Qassem Soleimani that he'd ordered? "I will say this, we caught a total monster. We took him out. That should have happened a long time ago," Trump said.

Doesn't it strike you as odd GOP senators are [more upset about Schiff's repeating a threat](#) ostensibly made by the White House to them, rather than Trump's repeated use of mobster language?

~ 2 ~

Doesn't it strike you as odd that least 20 GOP senators left the chamber for protracted periods of time during the House's opening arguments last week, in defiance of the Senate's own rules?

Doesn't it strike you as odd that the press took note that 40% of the GOP wasn't present, but never made a point to document and report the names of all the GOP senators who left the chamber?

There clearly was a bias at work because outlets like [POLITICO made sure to name the Democrats](#) who weren't in their seats for the duration, but failed to name the GOP senators who left the chamber:

Even before that scheduled recess break, a half dozen Republicans had decided to stand in the back – like Sens. Tim Scott of South Carolina and Ben Sasse of Nebraska – rather than remain in their seats.

A half-dozen Democrats, too, were in and out of the chamber. That includes Sen. Bernie Sanders (I-Vt.), who left the room three times – including once for more than 10 minutes. But nearly all Democrats remained in the chamber to listen to Schiff, even as some, like Sens. Chris Murphy (D-Conn.), Cory Booker (D-N.J.), and Joe Manchin (D-

W.V.), stood near the back of the room to lean against a railing or wall. The longer Schiff spoke, the more flagrant the rule violations on the floor. There were several whispered conversations, with several senators going in and out of the chamber every minute or so. The Senate eventually recessed around 3:30 p.m. – Sarah Ferris

Also wonder why journalists have never asked GOP members of Congress if they were ever asked to sign a [Nondisclosure Agreement with the Trump White House](#) or with Trump organization, or with the Republican Party. We know NDAs signed by public employees aren't enforceable, but were there any other NDAs controlling the speech and other actions of the GOP caucus? Did any NDAs dictate their leaving during impeachment hearings to prevent their hearing anything against Trump?

~ 1 ~

Doesn't it strike you as odd that the Class II GOP senators who are up for re-election this coming November don't seem to be concerned at all about their vote for/against witnesses for the impeachment trial?

These are the GOP senators up for re-election:

Capito, Shelley Moore (R-WV)
Cassidy, Bill (R-LA)
Collins, Susan M. (R-ME)
Cornyn, John (R-TX)
Cotton, Tom (R-AR)
Daines, Steve (R-MT)
Enzi, Michael B. (R-WY)
Ernst, Joni (R-IA)
Gardner, Cory (R-CO)
Graham, Lindsey (R-SC)
Hyde-Smith, Cindy (R-MS)
Inhofe, James M. (R-OK)
McConnell, Mitch (R-KY)
Perdue, David (R-GA)
Risch, James E. (R-ID)

Rounds, Mike (R-SD)
Sasse, Ben (R-NE)
Sullivan, Dan (R-AK)
Tillis, Thom (R-NC)

Alexander, Lamar (R-TN) – retiring, seat is open.

Roberts, Pat (R-KS) – retiring, seat is open.

Doesn't it seem odd that the last two, Alexander and Roberts, haven't come out for witnesses since they are not beholden to the GOP or the White House having announced their retirement?

McSally, Martha (R-AZ) – is up for election; she's an appointee who replaced a previous short-term appointee, [Jon Kyl](#). Arizona is and has been rated a toss-up; you'd think she'd vote for witnesses since [public support is running 72%](#) to have witnesses called to testify.

~ 0 ~

This is an open thread. Bring all your oddities here for discussion.

THE WHACK-A-MOLE COVER STORY: BILL BARR'S KNOWING COMPLICITY MOVED A MONTH EARLIER

Attentive readers of yesterday's NYT Bolton story have noted that Bolton says that by August, Trump's demand in the quid pro quo was not just the announcement of an investigation, but "all materials they had about the Russia Investigation that related to Mr. Biden and supporters of Mrs. Clinton in Ukraine."

In his August 2019 discussion with Mr. Bolton, the president appeared focused on the theories Mr. Giuliani had shared with him, replying to Mr. Bolton's question that he preferred sending no assistance to Ukraine until officials had turned over all materials they had about the Russia investigation that related to Mr. Biden and supporters of Mrs. Clinton in Ukraine.

That is, in August of last year, Trump was extorting Ukraine to obtain *materials* about 2016.

Some have suggested this is new news. But it's not. It came up at [Mick Mulvaney's October 17, 2019 press conference](#). As he told it, the hold was primarily because of corruption and to press the rest of Europe to provide their fair share of funding for Ukraine. Mulvaney made a statement that – given that we now know DOD reviewed how much Europe provided and concluded they were providing more than the US – is fairly breathtaking in retrospect. Mulvaney gets away with this by claiming it's just about lethal aid.

So we actually looked at that, during that time, before – when we cut the money off, before the money actually flowed, because the money flowed by the end of the fiscal year – we actually did an analysis of what other countries were doing in terms of supporting Ukraine. And what we found out was that – and I can't remember if it's zero or near zero dollars from any European countries for lethal aid. And you've heard the President say this: that we give them tanks and other countries give them pillows. That's absolutely right, that the – as vocal as the Europeans are about supporting Ukraine, they are really, really stingy when it comes to lethal aid. And they weren't helping Ukraine, and then still to this day are

not.

From those two excuses – corruption and European support – Mulvaney then adds, as what he probably intends to be a throwaway comment, that part of this was investigating the DNC server, all the while trying to pretend that an investigation into the DNC server (he can never seem to label this the CrowdStrike conspiracy theory) pertains to corruption.

Did he also mention to me in pass the corruption related to the DNC server? Absolutely. No question about that. But that's it. And that's why we held up the money.

Now, there was a report –

Q So the demand for an investigation into the Democrats was part of the reason that he ordered to withhold funding to Ukraine?

MR. MULVANEY: The look back to what happened in 2016 –

Q The investigation into Democrats.

MR. MULVANEY: – certainly was part of the thing that he was worried about in corruption with that nation. And that is absolutely appropriate.

[snip]

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Someone latches on to Mulvaney’s admission that Trump was demanding an investigation into his opponents, and raises “the Bidens.” Someone else notes that even if you’re just talking about the DNC, it still means Trump engaged in a quid pro quo to investigate his prospective opponents, since the DNC is also involved in 2020.

Q Mr. Mulvaney, what about the Bidens, though, Mr. Mulvaney? Did that come into consideration when that money was held up?

MR. MULVANEY: I’m sorry, I don’t know your name, but he’s being very rude. So go ahead and ask your question.

Q Just to clarify, and just to follow up on that question: So, when you’re saying that politics is going to be involved –

MR. MULVANEY: Yeah.

Q – the question here is not just about political decisions about how you want to run the government. This is about investigating political opponents. Are you saying that –

MR. MULVANEY: No. The DNC – the DNC server –

[snip]

Q Are you saying that it’s okay for the U.S. government to hold up aid and require a foreign government to investigate political opponents of the President?

MR. MULVANEY: Now, you're talking about looking forward to the next election. We're talking –

Q Even the DNC. The DNC is still involved in this next election. Is that not correct?

Mulvaney starts to panic, and to get out of that panic, invokes the Durham investigation. To defer from 2020, Mulvaney says Trump was just obtaining information for an ongoing investigation.

MR. MULVANEY: So, wait a second. So there's –

Q So are you saying –

MR. MULVANEY: Hold on a second. No, let me ask you –

Q But you're asking to investigate the DNC, right?

MR. MULVANEY: So, let's look at this –

Q Is the DNC political opponents of the President?

MR. MULVANEY: There's an ongoing – there's an ongoing investigation by our Department of Justice into the 2016 election. I can't remember that person's name.

Q Durham.

MR. MULVANEY: Durham. Durham, okay? That's an ongoing investigation, right? So you're saying the President of the United States, the chief law enforcement person, cannot ask somebody to cooperate with an ongoing public investigation into wrongdoing? That's just bizarre to me that you would think that you can't do that.

In other words, in Mulvaney's presser, he

excused the political aspect of Trump's quid pro quo by claiming the President was pressing Ukraine to cooperate in the Durham investigation. He claimed that this wasn't about Biden but instead about 2016.

Of course, that had to have caused all sorts of heartache over at DOJ, because they had been saying for almost a month that Bill Barr had no clue about any of this and here Mulvaney was saying that the quid pro quo was about the investigation Barr set up and was micromanaging.

After DOJ pushed back, the White House adopted the line that this was about Burisma's corruption.

To be sure, the impeachment witnesses didn't always support that. Kurt Volker, for example, [invented a story](#) that when he pushed Ukraine to investigate Burisma, he meant they should investigate the corrupt company, not Biden and that the request to investigate 2016. He discounted the request for an investigation into 2016 by suggesting Ukrainians might be trying to buy influence.

SCHIFF: Ambassador, let me also ask you about the allegations against Joe Biden, because that has been a continuing refrain from some of my colleagues, as well. Why was it you found the allegations against Joe Biden, related to his son or Burisma, not to be believed?

VOLKER: Simply because I've known Vice President – former Vice President Biden for a long time, I know how he respects his duties of higher office and it's just not credible to me that a Vice President of the United States is going to do anything other than act as how he sees best for the national interest.

[snip]

SCHIFF: I take it since you say that – you acknowledge that asking for an

investigation of the Bidens would have been unacceptable and objectionable, that had the President asked you to get Ukraine to investigate the Bidens, you would have told him so?

VOLKER: I would have objected to that. Yes, sir.

SCHIFF: Mr. Goldman?

GOLDMAN: Thank you, Mr. Chairman. Just one follow up on that, Ambassador Volker. When – when you say thread the needle, you’re – you mean that you understood the relationship between Vice President Biden’s son on – and Burisma but you were trying to separate the two of them in your mind? Is that right?

VOLKER: Well I believe that they were separate, that – and I – this references the conversation I had with Mr. Giuliani as well, where I think the allegations against Vice President Biden are self-serving and not credible.

A separate question is whether it is appropriate for Ukraine to investigate possible corruption of Ukrainians that may have tried to corrupt things or buy influence. To me, they are very different things. As I said, I think the former is unacceptable, I think the latter in this case is ...

[snip]

GOLDMAN: Now he was insisting from a public commitment from President Zelensky to do these investigations, correct?

VOLKER: Now, what do we mean by these investigations?

GOLDMAN: Burisma and the 2016 election.

VOLKER: Burisma and 2016, yes.

GOLDMAN: And, at the time that you were engaged in coordinating for this statement, did you find it unusual that there was such an emphasis on a public statement from President Zelensky to carry out the investigations that the president was seeking?

VOLKER: I didn't find it that unusual. I think when you're dealing with a situation where, I believe the president was highly skeptical about President Zelensky being committed to really changing Ukraine after this entirely negative view of the country, that he would want to hear something more from President Zelensky to be convinced that – OK, I'll give this guy a chance.

GOLDMAN: And he – perhaps he also wanted a public statement because it would lock President Zelensky in to do these investigations that he thought might benefit him?

VOLKER: Well again, we're – when we say these investigations what I understood us to be talking about was Ukrainian corruption.

GOLDMAN: Well, what we're talking about is Burisma and the 2016 election, let's just –

VOLKER: Correct, correct – yes, right.

[snip]

VOLKER: I do remember having seen some of the testimony of Mr. Kent, a conversation in which he had asked me about the conspiracy theories that were out there in Ukraine. I don't remember what the date of this conversation was.

And my view was, well, if there are things like that, then why not investigate them? I don't believe that there's anything to them. If there is –

2016 election interference is what I was thinking of – we would want to know about that. But I didn't really there was – believe there was anything there to begin with.

It was a thin story, but necessary to explain why Volker did something he knew to be utterly corrupt, and then got caught doing it. While not explicitly, he was endorsing the possibility that Ukraine might have had a corrupt role in 2016.

All that said, Bolton's certainty that Trump was also asking for Ukraine to provide the US with information on 2016 raises the import of this detail: Bolton claims (and DOJ has been releasing conflicting comments since yesterday) that he warned Bill Barr about this shadow Ukraine policy in July.

Mr. Bolton also said that after the president's July phone call with the president of Ukraine, he raised with Attorney General William P. Barr his concerns about Mr. Giuliani, who was pursuing a shadow Ukraine policy encouraged by the president, and told Mr. Barr that the president had mentioned him on the call. A spokeswoman for Mr. Barr denied that he learned of the call from Mr. Bolton; the Justice Department has said he learned about it only in mid-August.

After releasing an initial denial yesterday, today DOJ has [issued](#) a non-denial confirmation.

A Justice Department official familiar with the matter said Mr. Bolton did call Mr. Barr to express concerns about Mr. Giuliani and his shadow foreign policy in Ukraine. It wasn't clear what, if anything, the attorney general did with that information.

Department spokeswoman Kerri Kupec

denied that Mr. Barr learned of the Ukraine call from Mr. Bolton. The department has repeatedly said he learned about it in mid-August.

We don't know for sure, but the difference in timeline may be utterly critical to Barr's implication in this conspiracy. For starters, Bolton's warning to Barr undoubtedly came before Barr stopped into a meeting in September with Rudy Giuliani about the Venezuelan who happened to be funding some of the Ukrainian grift. Bolton's warning may make DOJ's efforts to bracket off the Parnas and Fruman investigation, which Barr undoubtedly knew about, from the whistleblower complaint far more suspect.

Most importantly, we don't know when multiple Ukrainians offered John Durham dirt (much less who they are). But if happened between Bolton's warning in July and when Barr has previously claimed to have learned that Trump told Zelensky that he, Bill Barr, would happily receive the dirt he was extorting, it would make Durham's acceptance of that dirt part of the conspiracy itself. That is, it would make Barr's efforts to use DOJ to investigate Trump's opponents a key part of both a conspiracy being investigated in SDNY, from which Barr has irresponsibly not recused, as well as an impeachment investigation, from which Barr has also not recused.

Bolton's certainty that Trump wanted Ukraine to provide materials for a US investigation into Trump's foes is not at all new. But the fact that Barr should have known he was part of this conspiracy a month earlier than he had previously admitted is.

CHARLES COOPER'S LETTER ABOUT PRE- PUBLICATION REVIEW DISCOUNTS ANY EXECUTIVE PRIVILEGE CLAIMS

In the wake of [yesterday's NYT story](#) revealing damning details about John Bolton's book manuscript, his lawyer, Charles Cooper, released the [letter sent on December 30](#) laying out what they expected from the pre-publication review.

In it, Cooper (who while he was at the Office of Legal Counsel wrote at least one opinion laying the foundation for the unitary executive, [one that helped cover up Iran-Contra](#)) suggests there is only one basis on which the White House can object to the content of his client's manuscript: classification.

I appreciate your assurance that the sole purpose of prepublication security review is to ensure that SCI or other classified information is not publicly disclosed. In keeping with that purpose, it is our understanding that the process of reviewing submitted materials is restricted to those career government officials and employees regularly charged with responsibility for such reviews.

Cooper leaves unstated his assertion that the White House cannot object to material in the book on Executive Privilege grounds, or any Absolute Immunity grounds that Pat Cipollone might dream up.

Such an assertion is wholly inconsistent with Cooper's previous assertion (made for his other client, Charles Kupperman but which Bolton

adopted by association) that the White House has any say over whether Bolton must respond to a dually authorized Congressional subpoena. Normally, a subpoena can overcome Executive Branch demands that the subpoenaed person not testify, if they want to testify. Here, Cooper is suggesting that the only restriction that the White House can impose on Bolton's non-subpoenaed speech is classification review.

I get why he said it. He was trying to lay the groundwork for the statement he released last night, in which he suggested the White House had circulated Bolton's manuscript outside those career civil servants who are entitled to review it.

But it will make it far harder to ignore future subpoenas, whether from the Senate, the House, or SDNY (in a Rudy Giuliani investigation).

DICK CHENEY'S APPRENTICE STRIKES

John Bolton may lack the courage of Marie Yovanovitch, Jennifer Williams, Fiona Hill, or Alex Vindman. But he learned the art of bureaucratic murder from the master, Dick Cheney. And so it is that after the President's lawyers have already laid out their defense, it magically happened that [NYT learned](#) the damning details about Ukraine in the draft of Bolton's book that would make his testimony in the impeachment trial monumental.

Apparently, the book describes:

- In an August meeting about releasing the aid, Trump said he didn't want to release it until Ukraine

sent all documents pertaining to Biden and Hillary

- Mike Pompeo knew Rudy's allegations about Marie Yovanovitch were false and believed Rudy may have been working for other clients when he floated them
- Bolton told Bill Barr that he was mentioned in the call in July; Barr has claimed he only learned that in August
- Contrary to Mick Mulvaney's claims, the Chief of Staff was present on at least one call with Rudy
- Bolton, Pompeo, and Secretary of Defense Mark Esper counseled Trump to release the aid almost a dozen times

The details I most relish – not least because Dick Cheney hurt the country using his bureaucratic skills but included none of them in his autobiographical novel – are there bureaucratic details.

Mr. Bolton's explosive account of the matter at the center of [Mr. Trump's impeachment trial](#), the third in American history, was included in drafts of a manuscript he has circulated in recent weeks to close associates.

[snip]

White House officials ... said he took notes that he should have left behind when he departed the administration.

Bolton has notes. And “close associates” of his have drafts of the manuscript.

Bill Barr may be sending FBI agents out to pick up Bolton’s notes as they went to pick up Jim Comey’s memos detailing Trump’s damning behavior, but at this point, I *think* Bolton could instead send them to NARA to comply with the Presidential Records Act. And if Barr goes after Bolton, I assume his friends will release the drafts.

Plus, there are several other ways this can get out. Bolton has just won himself an invitation to testify to SDNY about Rudy (and Pompeo may have as well). The House could go after Bolton for investigations of everyone else he implicated – Pompeo, Barr, Mulvaney – all of whom deserve to be impeached themselves.

Already, a significant majority of voters want the Senate to call witnesses like Bolton. Now, if they don’t so they can acquit, it will make this a bigger story going forward.