

THE UNADDRESSED COUNTERINTELLIGENCE THREAT OF RUDY GIULIANI

The name "Giuliani" shows up, unredacted, just five times in the SSCI Russia Report:

- A reference to a meeting that Rudy had with Paul Manafort and Trump at 5:30 PM on August 2, 2016, the last thing on Manafort's calendar before he met with Konstantin Kilimnik to discuss how to win the Midwest, share campaign polling data, and carve up Ukraine.
- A citation to a Rick Gates 302 that describes that Manafort was relying on Rudy, along with Jared Kushner, in his efforts to try to place people in the new Administration.
- A footnote citing this story describing Rudy's meetings with Andrii Telizhenko as part of his search for dirt in support of Trump's 2020 re-election. The footnote is one of the few unredacted passages in an 8-page section that is part of a larger section describing

Manafort's follow-up on that August 2, 2016 meeting on Ukraine.

- A footnote describing an email – involving Rudy, Hope Hicks, Dan Scavino, and Stephen Miller – used as an example of Trump's team incorporating stolen information released by WikiLeaks into Trump's tweets.
- A footnote sourcing a rather incredible claim from Psy Group's Joel Zamel that he first met Jared Kushner via an introduction, months after inauguration, from Rudy.

I raise this not because I think there's any direct tie between Russia and the coup this week (though I find it interesting that of those scripting WikiLeaks information into Trump tweets, all but Hicks may be seeking a pardon). This coup was an all-American affair, with roots in racist extremism that goes back before the Civil War. Someday, six months from today, we can talk about how this attack was *consistent* with events started over four years ago, with all the same players in starring roles. But these are American fascists running the show, not Russians.

I raise it, instead, to point out that the single most sustained review of the danger that some of Trump's closest advisors pose to his presidency almost entirely excluded one who played the key role in the post-election period, the purported lawyer who – at every step of the way – encouraged the President to take more and more extreme measures to hold on his power.

This coup attempt happened, in significant part, because Rudy had almost unfettered access to the President, Rudy was one of few people who never lost his trust, and Rudy always encouraged the worst decisions from Trump.

TRIAGE AND IMPEACHMENT: PRIORITIZE A LEGITIMATE CRIMINAL INVESTIGATION INTO THE WIDER PLOT OVER IMPEACHMENT

I want to talk about triage in the wake of the terrorist attack on Wednesday as it affects consideration of how to hold Trump accountable for his role in it.

First, some dates:

If Mike Pence were to invoke the 25th Amendment (with the approval of a bunch of Trump's cabinet members), it could go into effect immediately for at least four days. Trump can challenge his determination, but if the same cabinet members hold with Pence, then Trump's disqualification remains in place for 21 more days, enough to get through Joe Biden's inauguration.

Both the House and Senate are not in session, and can't deviate from the existing schedule without unanimous consent, meaning Mo Brooks in the House or Josh Hawley in the Senate could single-handedly prevent any business.

Because of that, impeachment in the House can't be started until tomorrow. Right now, Pelosi is using the threat of impeachment as leverage to

try to get Pence to act (or Trump to resign, though he won't). If that doesn't work, then the House seems prepared to move on a single article of impeachment tied to Trump's attempts to cheat and his incitement of the insurrection. Pelosi won't move forward on it until she's sure it has the votes to succeed.

Even assuming a majority of the House votes to impeach Trump, that will have no impact on his authority to pardon co-conspirators, and he'll surely attempt to pardon himself, one way or another. Because of Wednesday's events, he will be doing that without the assistance of Pat Cipollone, which means he's much more likely to make his plight worse.

Impeaching this week would, however, force Republicans to cast votes before it is clear how the post-insurrection politics will work out (indeed, while Trump still has the power of the Presidency). Significantly, a number of incoming members are angry that Kevin McCarthy advised them to support the insurrection. The vote may be as much an attempt to undo complicity with Wednesday's actions as it is anything else. Done right, impeachment may exacerbate the fractures in the GOP; done wrong, it could have the opposite effect.

If the House does impeach, then the Senate will not – barring a change of heart from Hawley and everyone else who was still willing to be part of this insurrection – take up the impeachment until January 19 (the parliamentarian has already ruled on this point). That means, the trial for impeachment either happens in Joe Biden's first week in office, or the House holds off on sending the article of impeachment over to the Senate until Chuck Schumer deems it a worthwhile time. He can also opt to have a committee consider it, calling witnesses and accruing evidence, which will provide the Senate (where there are more Republicans aiming to distance from Trump) a way to further elaborate Trump's role in the terrorism.

Meanwhile, by losing all access to social media

except Parler and with Amazon's decision yesterday to stop hosting Parler (which will mean it'll stay down at least a week, until January 17), Trump's primary mouthpieces have been shut down. There's reason to believe that the more sophisticated insurrectionists have moved onto more secure platforms like chat rooms and Signal. While that'll pose some challenges for law enforcement trying to prevent follow-on attacks on January 17, 19, or 20, being on such less accessible platforms will limit their ability to mobilize the kinds of masses that came out on Wednesday. Trump has lost one of the most important weapons he can wield without demanding clearly criminal behavior from others. That said, the urgency of preventing those sophisticated plotters – and a good chunk of these people have military training – from engaging in more targeted strikes needs to be a priority.

But Trump is still President, with his hand on the nuclear codes, and in charge of the chain of command that goes through a bunch of Devin Nunes flunkies at DOD. Nancy Pelosi called Chairman of the Joint Chiefs Mark Milley and come away with assurances that Trump won't be able to deploy nukes.

Preventing an Unhinged President From Using the Nuclear Codes: This morning, I spoke to the Chairman of the Joint Chiefs of Staff Mark Milley to discuss available precautions for preventing an unstable president from initiating military hostilities or accessing the launch codes and ordering a nuclear strike. The situation of this unhinged President could not be more dangerous, and we must do everything that we can to protect the American people from his unbalanced assault on our country and our democracy.

Nevertheless that still leaves Trump in charge of the vast federal bureaucracy, which has been emptied out and the filled back up with people

who could pass Johnny McEntee's loyalty oaths to Trump.

Because this is where we're at, I have argued that there needs to be a higher priority on getting at least Biden's operational nominees, along with Merrick Garland, confirmed over impeaching Trump – yet – in the Senate.

We have not yet heard why DOD and DHS and the FBI – on top of the Capitol Police – failed to prevent the terrorist attack on Wednesday (I'll have more to say about this later). It will take a year to sort out all the conflicting claims. But as we attempt, via reporting, via oversight in Congress (including impeachment), and via a criminal investigation to figure that out, those same people who failed to prevent the attack remain in place. Indeed, most of these entities have offered little to no explanation for why they failed, which is a bad sign.

Because of that, I think Biden needs to prioritize getting at least Garland and Lisa Monaco confirmed as Attorney General and Deputy Attorney General at DOJ, along with a new Acting US Attorney for DC, as soon as possible. I have two specific concerns. First, while FBI has generally been good at policing white supremacists in recent months, they failed miserably here, when it mattered most. One effect of retaliating against anyone who investigated Trump for his "collusion" with Russia has been to install people who were either Trump loyalists or really skilled at avoiding any slight to Trump. Indeed, one of the most charitable possible excuses for FBI's delayed response is that after years of badgering, otherwise reasonable people were loathe to get involved in something that Trump defined as an election issue.

I have more specific concerns about the DC US Attorney's office. Michael Sherwin, who has been less awful as Acting US Attorney than Timothy Shea, originally said on the record all options in the investigation that will be led out of his office were on the table, including incitement

by Trump. But then someone said off the record that Trump was *not* a focus of the investigation. I suspect that person is Ken Kohl, who as Acting First Assistant US Attorney is in charge of the investigation and has been cited in other announcements about the investigation.

Ken Kohl at least oversaw, if not participated in, the alteration of documents to help Trump get elected. I've been told he's got a long history of being both corrupt and less than competent. The decisions he will oversee in upcoming weeks could have the effect of giving people the opportunity to destroy evidence that lays out a much broader conspiracy, all while rolling out showy charges against people who were so stupid they took selfies of themselves committing crimes. We want this investigation to go beyond a slew of trespassing charges to incorporate the actual plotting that made this attack possible. It's not clear Kohl will do that.

Even assuming that people currently in DOJ are willing to collect evidence implicating Trump, short of having a confirmed Attorney General overseeing such decisions, we're back in the same situation Andrew McCabe was in on May 10, 2017, an Acting official trying to decide what to do in the immediate aftermath of a Trump crime. Trump's backers have exploited the fact that McCabe made the right choices albeit in urgent conditions, and they've done so with the willing participation of some of the people – notably, FBI Deputy Director David Bowdich – who are currently in charge of this investigation.

I'm happy to entertain a range of possible courses going forward, so long as all of them involve holding Trump accountable to the utmost degree possible. I assume Nancy Pelosi, whatever else she'll be doing, will also be counting the votes to understand precisely what is possible, given the schedule.

But I also know that I'd far rather have Trump and those he directly conspired with criminally charged than have an impeachment delay the

thorough fumigation of a government riddled with people who may have had a role in this plot. And that's not going to happen if the investigation is scoped in such a way in the days ahead to rule out his involvement.

Update: Here's a much-cited interview with Michael Sherwin. He adopts all the right language (pointedly disavowing labels of sedition or coup, saying he's just looking at crimes) and repeats his statement that if there's evidence Trump is involved he'll be investigated.

On Thursday you were quoted saying the conduct of "all actors" would be examined, which was interpreted to mean President Trump might face charges. Is that what you meant – the man who gave the speech at the start of the day could be looking at charges?

Look, I meant what I said before. In any criminal investigation, I don't care if it's a drug trafficking conspiracy case, a human trafficking case or the Capitol – all persons will be looked at, OK? If the evidence is there, great. If it's not, you move on. But we follow the evidence. If the evidence leads to any actor that may have had a role in this and if that evidence meets the four corners of a federal charge or a local charge, we're going to pursue it.

Update: This story describes how a senior McConnell aide called Bill Barr's Chief of Staff who called David Bowdich who then deployed three quick reaction teams in response.

The senior McConnell adviser reached a former law firm colleague who had just left the Justice Department: Will Levi, who had served as Attorney General William P. Barr's chief of staff.

They needed help – now, he told Levi.

From his home, Levi immediately called FBI Deputy Director David Bowdich, who was in the command center in the FBI's Washington Field Office.

Capitol police had lost control of the building, Levi told Bowdich.

The FBI official had been hearing radio traffic of aggressive protesters pushing through the perimeter, but Levi said it had gone even further: The mob had already crashed the gates and lives were at risk.

Capitol police had said previously they didn't need help, but Bowdich decided he couldn't wait for a formal invitation.

He dispatched the first of three tactical teams, including one from the Washington field office to secure the safety of U.S. senators and provide whatever aid they could. He instructed two more SWAT teams to follow, including one that raced from Baltimore.

These teams typically gather at a staging area off-site to coordinate and plan, and then rush together to the area where they are needed. Bowdich told their commander there was no time.

"Get their asses over there. Go now," he said to the first team's commander. "We don't have time to huddle."

Not explained: why Bowdich was watching protestors get through the perimeter without deploying teams on his own. Again, I'm not saying he was complicit. I'm saying he has spent the last four years by letting Trump's claims about politicization direct the Bureau, and can see how that habit might have led to a delayed response here.

NFL PLAYOFF FOOTBALL IS BACK, AND WE'RE GONNA GET IN TROUBLE TRASH TALK

It has been a hell of a fun first ~~few months~~ week of 2021. So, with no further adieu, lets get to the ball. A nearly unprecedented SIX games in one weekend (there was that one weird strike season, which doesn't really count). And, there really are no bad matchups on tap. Away we go!

First up is Indiana at Buffalo. The Colts seem a better team than their 11-5 record, and Phil Rivers can still chuck the ball. They have weapons on both offense and defense. But, dang, the Bills have looked like a serious Super Bowl contender all year. And, while Rodgers may be the MVP of the league, to my eye, Josh Allen was pretty close. The Bills are at home for a rabid and great fan base that has been dying for this since the mid-90's. And the Wagon Circlers have weapons too, including Stephon Diggs, arguably the leagues best receiver this year, a fair, if not great, running game and a very good defense. Expect the Colts to be good, but the Bills to win. And that would be a very good thing for the City of Buffalo and their long suffering excellent fans.

Second up for Saturday is LA Rams at Seattle Squawks. This is a harder call. Rams first string QB Jared Goff is "questionable", but expected to play (but for how long with a recently broken thumb on his throwing hand?). Jamal Adams, the Seahawks safety that is one of the best is in the same boat. It is not the same without the 12th Man fans in Seattle, but, despite a rough patch, the Squawks seem to be gelling. And then there is those Russell Wilson

and DJ Metcalfe dudes. They are pretty good.
Seattle wins.

The Saturday Night Game is Tampa at the Washington Football Team. WFT is on the clear rise under Riverboat Ron Rivera, they are better than you think, and on both sides of the ball. Young Chase Young and the superb DC D-Line are going to try to spook and hurry the old man Brady. The rest of the WFT defense is really good as well. But this is the first time Brady has been defended this way, and Tampa has a very talented defense as well. All pro receiver Mike Evans is nicked up, but will play, as will Ronald Jones. WFT is nicked up, but the most relevant one is QB Alex Smith. His entrance turned their moribund season around after Dwayne Haskins. If Smith can play, and play well, this could be an upset. Not gonna bet that, but that may be the X factor. Still will take the old man and the Bucs.

Okay, and here we go with the Sunday games.

First up Sunday is Baltimore at Tennessee. I have no real idea what to make of this one. Tennessee is good, and made it to the AFC finals last year. They have Derrick Henry, and that is one powerful weapon. But the Ravens have been rushing the heck out of the ball over the last five games. Sure, there is Lamar Jackson, but it is more than that. By a tiny margin, think the Ravens are better on D, but only a tiny amount. Am still inclined to go with the Titans at home.

Second comes Bears at Saints. This, on paper, is the least interesting game of the weekend. It is probably Drew Brees' last year. The Aints are at home in the Dome. Nawlins will, apparently have both Michael Thomas and Alvin Kamara on the field. Sorry, not sure how the Bears and Trubisky have a real shot here.

Lastly, Brownies at Steelers. For a short period, it really looked like Pittsburgh was in the doldrums and Cleveland would do the unthinkable and take the division championship. But the Steelers righted the ship and won out

over Cleveland for the title. Nick Chubb and Baker Mayfield (watch out for Mayfield on play action, he is really good) are maturing and growing quite nicely. And the Cleveland defense is pretty good. But this is still the Stillers, and the Browns will be without head coach and chief play caller Kevin Stefanski because of Covid. That seems rough. Have to take Big Ben and Pittsburgh at home, but this could be a great game.

A lot of people are saying they want a revolution. John, Paul, George and Ring have one for you. Rock it up.

ONCE AGAIN TRUMP'S SELF-VICTIMHOOD DISTRACTS FROM HIS NEGLIGENCE

It will be the subject of extensive discussion going forward how plans for an insurrection made in plain sight on social media went from being viewed, by the FBI and DHS, as First Amendment protected speech to so dangerous that social media shut down key influencer accounts and Apple and Google kicked entire platforms out of their stores within days. But that's what happened.

On Thursday, a various law enforcement agencies tried to explain why they had allowed the Capitol to be overrun by terrorists, they claimed not to have seen the signs many of us were seeing of plans for violence.

Federal and local officials said Thursday they did not have intelligence suggesting any violent mob was preparing to attack the Capitol, even as demonstrators were publicly saying on

social media they were not planning a typical protest.

Despite weeks of preparations, “obviously, what happened no one anticipated,” Michael Sherwin, acting US Attorney for the District of Columbia, told reporters in a telephone press conference Thursday. “Things could have been done better.”

[snip]

Police were caught flat-footed the next day. DC Police Chief Robert Contee told reporters Thursday there was no intelligence that suggested there would be a breach of the US Capitol on January 6. Three DHS sources, who usually receive such reports, were unaware of a threat assessment being shared from the DHS intelligence office ahead of Wednesday’s siege.

But just over a day later, Apple announced that it was giving Parler 24 hours to come into compliance with its moderations guidelines; Google just removed Parler from its stores entirely. Twitter first removed various QAnon supporters, including Sidney Powell and Mike Flynn. Then, finally, after allowing him to Tweet twice after a short-term ban, Twitter announced it was removing Trump permanently and those social media platforms that hadn’t already done so removed Trump as well.

Trump spent the night trying to find workarounds, using the POTUS account, attempting to have one of his sons tweet out his content, and having his social media staffer tweet on his own account. Unless the Tweet included a presidential message, the content was removed.

In response, Trump, his supporters, and the usual commentariat have decried a purportedly authoritarian “censorship” of Donald Trump. Indeed, most of the discussion since then has focused on whether Twitter and other social

media platforms acted appropriately.

That has, as has happened so many times in the last four years, distracted from Trump's own refusal to act.

Here's Twitter's description of why it found that Trump had violated Twitter's Glorification of Violence prohibition.

Overview

On January 8, 2021, President Donald J. Trump tweeted:

"The 75,000,000 great American Patriots who voted for me, AMERICA FIRST, and MAKE AMERICA GREAT AGAIN, will have a GIANT VOICE long into the future. They will not be disrespected or treated unfairly in any way, shape or form!!!"

Shortly thereafter, the President tweeted:

"To all of those who have asked, I will not be going to the Inauguration on January 20th."

Due to the ongoing tensions in the United States, and an uptick in the global conversation in regards to the people who violently stormed the Capitol on January 6, 2021, these two Tweets must be read in the context of broader events in the country and the ways in which the President's statements can be mobilized by different audiences, including to incite violence, as well as in the context of the pattern of behavior from this account in recent weeks. After assessing the language in these Tweets against our Glorification of Violence policy, we have determined that these Tweets are in violation of the **Glorification of Violence Policy** and the user @realDonaldTrump should be immediately permanently suspended from

the service.

Assessment

We assessed the two Tweets referenced above under our **Glorification of Violence** policy, which aims to prevent the glorification of violence that could inspire others to replicate violent acts and determined that they were highly likely to encourage and inspire people to replicate the criminal acts that took place at the U.S. Capitol on January 6, 2021.

This determination is based on a number of factors, including:

- *President Trump's statement that he will not be attending the Inauguration is being received by a number of his supporters as further confirmation that the election was not legitimate and is seen as him disavowing his previous claim made via two Tweets (1, 2) by his Deputy Chief of Staff, Dan Scavino, that there would be an "orderly transition" on January 20th.*
- *The second Tweet may also serve as encouragement to those potentially considering violent acts that the Inauguration would be a*

“safe” target, as he will not be attending.

- *The use of the words “American Patriots” to describe some of his supporters is also being interpreted as support for those committing violent acts at the US Capitol.*
- *The mention of his supporters having a “GIANT VOICE long into the future” and that “They will not be disrespected or treated unfairly in any way, shape or form!!!” is being interpreted as further indication that President Trump does not plan to facilitate an “orderly transition” and instead that he plans to continue to support, empower, and shield those who believe he won the election.*
- *Plans for future armed protests have already begun proliferating on and off-Twitter, including a proposed secondary attack on the US Capitol and state capitol buildings on*

January 17, 2021.

As such, our determination is that the two Tweets above are likely to inspire others to replicate the violent acts that took place on January 6, 2021, and that there are multiple indicators that they are being received and understood as encouragement to do so.

Effectively, Twitter is saying that these Tweets have been exploited by the terrorists supporting Trump as support for further violence. It specifically described plans, being made both on and off Twitter, for a follow-on attack on January 17 (apparently because Q is the 17th letter in the alphabet).

Twitter is not actually arguing that Trump *intended* to incite violence. Rather, they're saying that his Tweets are being interpreted as encouragement of more violence that is already being actively planned, regardless of what Trump actually meant by it.

Now, maybe Trump didn't intend that to be the effect, though Twitter makes a fair point that both the reference to a "GIANT VOICE" in the future – one that may depend on further terrorism – and the formal announcement that the inauguration could be targeted without endangering Trump himself might be seen as inviting more violence.

But if he didn't mean to do so, the proper response of any marginally responsible adult would be to say, "Golly, I didn't realize how my own words were being used in ways I didn't intend. Let me take the next few weeks off to cool off, or better yet, let me find other ways to correct any misinterpretation that I supported violence." The appropriate response for the Commander in Chief would be to say, "Wow, that was a totally unprecedented attack on our Capitol the other day, I'm deploying all the resources of the Federal government to ensure these planned follow-up attacks will not take

place.”

Have you noticed that Trump hasn't actually said he has ordered the government to prevent further violence?

That's all the more alarming, given that US law enforcement agencies increasingly share intelligence with the social media platforms, which suggests that Twitter's reference to “a number of factors” doesn't rule out specific intelligence about follow-on plans that aren't visible on social media.

Twitter said, tucked away there in a fifth bullet, that one of the reasons they (and presumably Facebook and Apple and Google and everyone else) acted is because there are specific plans for future terrorist attacks.

And instead of talking about the fact that the man who remains President is doing nothing to prevent those follow-on attacks, we're talking about what a victim he is.

BUNKER: TRUMP'S EXPOSURE IN THE INSURRECTION MAKES PARDONPALOOZA MORE COMPLICATED

There have been numerous accounts of Trump's desperate days since he incited a coup attempt. Most, including this CNN version, describe how – on the advice of (among others) White House Counsel Pat Cipollone – Trump recorded and released a very heavily edited video from a script written for him in an attempt to stave off removal proceedings.

His daughter Ivanka Trump, White House counsel Pat Cipollone, chief of staff Mark Meadows and others told Trump there was a real chance he would be removed from office – whether by his own Cabinet or lawmakers – if he did not more forcefully denounce the actions of his supporters who attacked the US Capitol the day before.

Trump did not initially want to issue a video decrying the loyalists whose actions he largely supported – and whom he said he “loved” a day earlier – but he told aides to prepare a speech and then he would decide.

Once he read over the brief script they had prepared, Trump agreed to record it Thursday evening – a relief to the senior staff, though concerns lingered he could backtrack during his final days in office given his actual position has remained unchanged: that he lost the election unfairly.

This WaPo version describes him holing up with really unsavory characters, including white supremacist Stephen Miller and John McEntee, who previously had been forcibly removed from his position at the White House because of gambling problems.

Trump spent Wednesday afternoon and evening cocooned at the White House and listening only to a small coterie of loyal aides – including Meadows, Deputy Chief of Staff Dan Scavino, personnel director Johnny McEntee and policy adviser Stephen Miller. McEnany also spent time with the president. Jared Kushner, the president’s son-in-law and senior adviser, was described as disengaged.

CNN also reports that’s he’s still planning on

pardonpalooza covering at least his kids

And a raft of pardons, including potentially for himself and his family, are expected in the coming days.

According to this Bloomberg piece, he's considering pardoning his bunker mates, Meadows, Miller, and McEntee, along with Kimberly Guilfoyle, none of whom had any obvious legal exposure before the last several weeks.

The biggest question facing his legal team may be whether the president has the authority to pardon himself, as he has discussed in recent weeks with top aides, according to the people familiar with his conversations. Trump has previously claimed the power, though it's a matter of legal dispute and has never before been attempted by a president.

A self-pardon could also prove a major political liability and hamstring another presidential bid, with opponents sure to suggest the self-pardon amounted to an admission that he thought he might be prosecuted for breaking the law.

Preemptive pardons are under discussion for top White House officials who have not been charged with crimes, including Chief of Staff Mark Meadows, senior adviser Stephen Miller, personnel chief John McEntee, and social media director Dan Scavino.

The president's eldest daughter, Ivanka Trump, her husband, Jared Kushner, who both hold White House positions, are also under consideration, the people said. Trump's personal lawyer Rudy Giuliani has also discussed the issue of a pardon with the president.

Preemptive pardons are also under consideration for other members of the

president's family, as well as friends and allies. For instance, Trump has floated a preemptive pardon for Kimberly Guilfoyle, the former Fox News host who is dating his eldest son, Donald Trump Jr.

The president wants the preemptive pardons to shield recipients from prosecutions for any federal crimes committed before the pardons were issued.

It notes that White House Counsel Pat Cipollone is "vetting" the pardons, with some concern that they create more exposure for obstruction of justice.

Trump's list is currently being vetted by lawyers who are concerned that pardons could create new allegations of obstruction of justice for members of the administration. The process is being managed in part by White House Counsel Pat Cipollone.

Except, CNN also reports that Pat Cipollone is considering resigning.

Trump's role in (at a minimum) inciting an insurrection the other day may make his effort to pardon himself and his associates out of legal trouble more difficult.

Start with a self-pardon. Before the insurrection, Cipollone might have advised Trump he might as well try it. He literally has nothing to lose, since he's unlikely to trust Pence with a pardon at this point, so even if the self-pardon doesn't work, he would be no worse off. Except, as a number of people have suggested, a self-pardon makes it far more likely DOJ will test the concept and prosecute him (though I think he's done enough to be charged anyway). And because Trump's exposure now includes insurrection, the conservative majority on SCOTUS might find the self-pardon

particularly offensive. In addition, because Clarence Thomas' wife Ginni was cheering on the terrorists, DOJ might – fairly – ask Thomas to recuse.

Then there's Rudy. He was always going to be pardoned, because he knows where the bodies are buried and Trump believes (mistakenly) that Rudy has served his interests loyally. Except, to a far greater extent than before November, a Rudy pardon frees him to testify about crimes that Trump committed for which Rudy does not have attorney-client privilege, such as coordinating with coup plotters. This is exacerbated by the byzantine legal structure behind the fraudulent Trump lawsuits, where there was never any clarity about who was representing Trump and who was not. Once upon a time, Trump might have been able to pardon Rudy without increasing his own legal exposure. That's probably not true anymore.

Then there's Cipollone himself, a formidable lawyer who wants to get the fuck out of dodge. Cipollone, briefly, got Trump to see reason in making that video. Then as soon as Trump got his Twitter account he sent more messages riling up his terrorists. That suggests Cipollone recognized that Trump had real exposure in the insurgency, and took measures to limit them. Then Trump ignored his advice. All while asking Cipollone to help him pardon his co-conspirators.

While Cipollone has limited Executive Privilege with Trump (one breached in case of crime), under Clinton precedent he doesn't have attorney-client privilege with Trump. That makes it likely that no matter what happens, he'll be sitting for lengthy sessions with prosecutors in months ahead, just as Don McGahn also did.

When this whole Transition process started, Trump had Cipollone and Bill Barr – the latter the best cover-up artist in recent US history – around to help him out of his legal troubles. Now, his post-election antics have drove both of them away.

Once upon a time, Trump might well have been able to pardon himself out of a good deal of the criminal exposure he already faced. That's far less likely now.

Update: Just in the last hour, Ginni Thomas made her Facebook account unavailable.

TIMING MATTERS: IMPEACH, CONVICT, REMOVE NOW [UPDATE-1]

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

Photos taken during the insurrectionist Capitol Building breach on Wednesday showed a lot of riot tourism – “Look at me, Mom!” kind of behavior which causes reparable damage while irritating observers. The jerk sitting in House Speaker Nancy Pelosi's chair with his feet on her desk is a perfect example.

But some photos showed participants who weren't flashy, who weren't taking selfies. They appeared intent on some objective and they were well equipped, wholly unlike the bare-chested, tattooed Qultist clown Jake Angeli.

Angeli was attention whoring.

This guy was not:

WOW: Was there a plan to take hostages?
This man is carrying police-style zip-tie handcuffs. And mace(?)
pic.twitter.com/np3ilpUc6n

– John Scott-Railton (@jsrailton)
January 7, 2021

(Believe this is a cropped photo from Getty Images, shared here under Fair Use.)

Malcolm Nance noted this same person was carrying an “olive colored Blackhawk Sherpa pistol holster with a Glock 26 or 43 subcompact pistol w/hogue rubber grips, mace & Flex-cuffs” which is far from the average riot tourist’s gear. There has been speculation it’s not a Glock but a holstered taser, though the consensus appears to be that it’s a weapon.

The photo shows someone intent on doing more than a little light vandalism. They are equipped to kidnap, detain, and possibly hurt or kill someone.

They need to be identified, their situation fully investigated, and prosecuted to the fullest extent of the law.

This isn’t something which should be blown off lightly; this person was in the Senate chamber where two of the next three in line of presidential succession – VP Mike Pence and Sen. Chuck Grassley – had been only moments before, in the same building with third-in-line, House Speaker Nancy Pelosi.

There were others as well who may not have been quite as well equipped but carrying some gear like plastic zip restraints, suggesting they, too, were intent on seizing members of Congress and staff.

Until an investigation is completed, we don’t know if we haven’t just looked upon an aborted kidnapping and/or assassination attempt.

We don’t know yet how the “mobile bomb factory” found by law enforcement figured into this picture:

... The chief also confirmed that police recovered two pipe bombs at the Democratic National Committee and Republican National Committee offices. A cooler that contained molotov cocktails also was found on U.S. Capitol grounds,

the chief said. Bowser said officials will review video and issue lookout alerts for people who breached the U.S. Capitol, adding that they “need to be held accountable for the carnage.”

...

Federal agents also are investigating a pickup truck found outside the RNC, according to two people familiar with the investigation.

The truck, parked across the street from the party offices and near the entrance to a Metro station, contained rifles and shotguns, a great deal of ammunition, and other unspecified material, these people said. Federal agents are still trying to determine if that vehicle and its contents are connected to the suspected pipe bombs found earlier, the people said. ...

This could have been extremely ugly had riot members been able to occupy and control the Capitol Building through the night.

Trump should not be allowed to pardon these people if he and his associates and family had anything to do with this – like Rudy Giuliani’s incitement calling for “trial by combat” on stage before Trump supporters that day.

The only way to ensure there is no pardon granted by Trump before an investigation is complete is to remove Trump from office.

Immediately.

GOP members of Congress: You need to take this seriously and consider where you and members of your cohort stand. There may be those among them who are complicit, who may have no problem with eliminating their fellow members who aren’t as Trumpist as they are. Until a full investigation is completed there’s no way to know, and no way to protect themselves from a possible second attack-masked-by-riot.

And there's a second event in the offing. It's right there in all the chatter online about the January 6 mob.

Impeach, convict, remove Trump NOW, because it's critical to protecting the continuity of our government under the Constitution about which you swore an oath to defend.

It's also your skin in the game.

Consider how this scenario looks to others and whether the damage would have been limited to Democratic members of Congress alone.

It seems more and more likely that this was an actually serious attempt to kill off or shatter congress, with plans for murder on the part of the fash and conscious stonewalling by Trump's defense appointees.

But the rank-and-file chuds just kinda flubbed it. <https://t.co/8dtRCjcVCl>

– William Gillis □ (@rechelon) January 8, 2021

One of the things we've noted again and again looking through streams the day of and saved video after is the chuds are just befuddled tourist fratboys, while the fash embedded among them are hyper-aware of the gravity and kinda freaked out trying to parse what's possible.

– William Gillis □ (@rechelon) January 8, 2021

So many photos have like the chuds going "wooo! check me out!" while the one or two actual serious nazis next to them are just tense as fuck and weirded out, trying to assess the situation. 1) Surprised to get in, 2) perplexed the extermination hasn't started.

— William Gillis (@rechelon) January 8, 2021

Next time Congress and the VP might not be so lucky. Remove luck from the equation by removing the source of incitement NOW.

~ ~ ~

UPDATE-1 – 5:10 PM ET –

The Washington Post released video showing the lead up to and the shooting of rioter Ashli Babbitt. At least one member of Congress, Rep. Sean Maloney (D-NY-18), is visible at the beginning of the video before they are removed to a secure location and the rioters breach the door.

I was in the group seen on the other side of this door. For those pretending it's something less than a violent insurrection, please watch and wake up. This is what @realDonaldTrump and his enablers incited. He must be removed and held accountable.

<https://t.co/vJxQdz4ZQY>

— Sean Patrick Maloney (@RepSeanMaloney) January 8, 2021

Impeachment still has traction if slow. Another set of articles of impeachment have been released, this time charging Incitement to Insurrection instead of Abuse of Power. Sorry, I don't have time right now to type out a transcript, sharing a tweet with screen shots for now.

JUST IN: 4-page draft article of impeachment against President Trump that Reps. Raskin, Lieu, Cicilline are planning to introduce Monday: "Incitement of insurrection"
<pic.twitter.com/KdQrzQy6pf>

— NBC News (@NBCNews) January 8, 2021

Pence entered the White House but apparently didn't speak to Trump, and Sen. Lisa Murkowski is the first GOP senator to demand Trump resign, questioning her own future with the GOP.

One can only hope the news dump zone is kind to us.

INVESTIGATE TOMMY TUBERVILLE'S PRE-SPEECH AND DEBATE ACTIONS

There has been a lot of press focus in the last two days on the role that Josh Hawley and Ted Cruz played in Wednesday's insurgency. Hawley even lost his book deal for playing a part in inciting the mob.

There should be more focus, in my opinion, on Tommy Tuberville.

I say that for two reasons.

First, by all appearances, Hawley and Cruz were just being disgusting opportunists. They saw the populist mantle, which until Wednesday was assumed to be critical to winning a 2024 presidential primary, and ran to claim it. It's unknown how closely they coordinated with Trump in their cynical attempts to exploit the moment.

Tuberville, however, appears to have been actively coordinating with Trump during the uprising.

And his involvement in this conspiracy dates to mid-December, weeks before he was sworn in, and so a time when his activities would have somewhat less investigative protection under the speech and debate clause. After he first floated serving as the then sole Senator who would

challenge the certification of the vote, Trump reached out to Tuberville directly.

On Sunday, Trump said in a radio interview that he had spoken with Sen.-elect Tommy Tuberville (R-Ala.) about challenging the electoral vote count when the House and Senate convene on Jan. 6 to formally affirm President-elect Joe Biden's victory.

"He's so excited," Trump said of Tuberville. "He said, 'You made me the most popular politician in the United States.' He said, 'I can't believe it.' He's great. Great senator."

Tuberville's campaign did not respond to a request for comment on Trump's statement, which the president made in an interview with Rudolph W. Giuliani, his personal lawyer, on New York's WABC radio station.

Trump's conversation with Tuberville is part of a much broader effort by the defeated president to invalidate the election. He is increasingly reaching out to allies like Giuliani and White House trade adviser Peter Navarro for ideas and searching his Twitter feed for information to promote, according to Trump advisers, who spoke on the condition of anonymity to discuss private conversations.

And we know that Tuberville remained in direct contact with the conspirators because on Wednesday, the geniuses trying to pull off this coup tried to call him twice. First, literally at the moment Senators were being evacuated because rioters had breached the building, Trump attempted to call Tuberville directly but instead dialed Mike Lee's cell phone.

With a mob of election protesters laying siege to the U.S. Capitol, Sen. Mike Lee had just ended a prayer with some of his

colleagues in the Senate chamber when his cellphone rang.

Caller ID showed the call originated from the White House. Lee thought it might be national security adviser Robert O'Brien, with whom he'd been playing phone tag on an unrelated issue. It wasn't O'Brien. It was President Donald Trump.

"How's it going, Tommy?" the president asked.

Taken a little aback, Lee said this isn't Tommy.

"Well, who is this? Trump asked. "It's Mike Lee," the senator replied. "Oh, hi Mike. I called Tommy."

Lee told the Deseret News he realized Trump was trying to call Sen. Tommy Tuberville, the newly elected Republican from Alabama and former Auburn University football coach. Lee walked his phone over to Tuberville who was talking to some colleagues.

"Hey, Tommy, I hate to interrupt but the president wants to speak with you," Lee said.

Tuberville and Trump talked for about five to 10 minutes, Lee said, adding that he stood nearby because he didn't want to lose his cellphone in the commotion. The two were still talking when panicked police ordered the Capitol to be evacuated because people had breached security.

As police were getting anxious for senators to leave, Lee walked over to retrieve his phone.

"I don't want to interrupt your call with the president, but we're being evacuated and I need my phone," he said.

Tuberville said, "OK, Mr. President. I gotta go."

Then, hours after Rudy Giuliani called for "trial by combat," after the mob had already breached the building, after one of the insurgents had been killed, hours after Trump had released a video pretending to oppose the violence, possibly even after Capitol Police officer Brian Sicknick suffered injuries that would ultimately kill him, Rudy attempted to call Tuberville. He *also* dialed the number of a different [unidentified] Senator. Rudy left a message suggesting that he expected Tuberville would heed his requests, a message that seemed to suggest the entire process was an attempt to buy President Trump's disinformation teams a day to put together new false allegations.

Senator Tuberville? Or I should say Coach Tuberville. This is Rudy Giuliani, the president's lawyer. I'm calling you because I want to discuss with you how they're trying to rush this hearing and how we need you, our Republican friends, to try to just slow it down so we can get these legislatures to get more information to you. And I know they're reconvening at 8 tonight, but it ... the only strategy we can follow is to object to numerous states and raise issues so that we get ourselves into tomorrow—ideally until the end of tomorrow.

I know McConnell is doing everything he can to rush it, which is kind of a kick in the head because it's one thing to oppose us, it's another thing not to give us a fair opportunity to contest it. And he wants to try to get it down to only three states that we contest. But there are 10 states that we contest, not three. So if you could object to every state and, along with a congressman, get a hearing for every state, I know we would delay you a lot,

but it would give us the opportunity to get the legislators who are very, very close to pulling their vote, particularly after what McConnell did today. It angered them, because they have written letters asking that you guys adjourn and send them back the questionable ones and they'll fix them up.

So, this phone number, I'm available on all night, and it would be an honor to talk to you. Thank you.

This message is the most direct piece of evidence, thus far, that Trump and his co-conspirators *planned* to use the insurgency as a delay tactic to buy time to try to concoct new claims about the results. It shows that Rudy remained engaged with the attempt to obstruct the lawful counting of the vote after the violence that had delayed it.

Admittedly, both of these calls, like all communications involving either Hawley or Cruz, would be otherwise (if Trump and Rudy hadn't fucked up) difficult to access given Tuberville's speech and debate protections. But his communications with the President prior to being sworn in just days earlier would not have the same presumptive protections. And since Rudy was calling him directly, that wouldn't be privileged either.

The place to start the investigation into Trump's role in the coup attempt is not with Hawley and Cruz. It's with Tuberville.

SECOND IMPEACHMENT

AHEAD: ARTICLES HAVE BEEN DRAFTED [UPDATE-3]

[NB: Update(s) at the bottom of this post.
/~Rayne]

Representatives David Cicilline, Ted Lieu, and Jamie Raskin have drafted articles of impeachment against Trump which are now circulating among House members.

Here's a transcript:

Resolved, That Donald John Trump, President of the United States, is impeached for high crimes and misdemeanors and that the following articles of impeachment be exhibited to the United States Senate.

Article of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against Donald John Trump, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I: ABUSE OF POWER

The Constitution provides that the House of Representatives "shall have the sole Power of Impeachment" and that the President "shall be removed from Office on Impeachment for, and Conviction of,

Treason, Bribery, or other high Crimes and Misdemeanors". In his conduct of the office of President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald J. Trump engaged in high Crimes and Misdemeanors by willfully inciting violence against the Government of the United States, in that:

On January 6, 2021, pursuant to the Twelfth Amendment of the United States Constitution, the Vice President of the United States, the House of Representatives, and the Senate met at the United States Capitol for a Joint Session of Congress to count the votes of the Electoral College. Shortly before the Joint Session commenced, President Trump addressed a crowd of his political supporters nearby. There, he reiterated false claims that "we won this election, and we won it by a landslide". He also willfully made statements that encouraged—and foreseeably resulted in—imminent lawless action at the Capitol. Incited by President Trump, a mob unlawfully breached the Capitol, injured law enforcement personnel,

menaced Members of Congress and the Vice President, interfered with the Joint Session's solemn constitutional duty to certify the election results, and engaged in violent, deadly, destructive, and seditious acts.

President Trump's conduct on January 6m 2021 was consistent with his prior efforts to subvert and obstruct the certification of the results of the 2020 presidential election. Those prior efforts include, but are not limited to, a phone call on January 2, 2021, in which President Trump urged Georgia Secretary of State Brad Raffensperger to "find" enough votes to overturn the Georgia presidential election results and threatened Mr. Raffensperger if he failed to do so.

In all of this, President Trump gravely endangered the security of the United States and its institutions of government. He threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coordinate branch of government. He thereby betrayed his trust as President, to the manifest injury of the people of the United States.

Wherefore President Trump, by such conduct, has demonstrated that he will remain a threat to national security, democracy, and the Constitution if allowed to re-

main in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

It's narrow in scope, doesn't require investigation and subsequent hearings, because the act of incitement occurred in public and was recorded on video, distributed over broadcast and cable television as well as the internet.

The inclusion of the phone call to Georgia's Secretary of State illustrates in most minimal fashion a pattern of behavior and intent.

These articles aren't the only approach being taken to remove Trump. Earlier today both Sen. Chuck Schumer and Rep. Nancy Pelosi called VP Mike Pence to ask for the invocation of the 25th Amendment:

SCHUMER on invoking the 25th amendment: "Speaker Pelosi & I tried to call the VP this morning to tell him to do this, they kept us on hold for 25 mins and then said the VP wouldn't come on the phone. So we are making this call public because he should do it and do it right away."

– Frank Thorp V (@frankthorp) January 7, 2021

They've since made public statements reiterating their demand for the 25th Amendment, and for impeachment leading to removal if the 25th isn't invoked.

NBC reported earlier that Trump is fragile and feeling betrayed:

"The president is in a very fragile mental state right now and he's not taking well to what's happening," Philip Rucker says. "He feels betrayed by his VP ... and a lot of admin. officials are very uncertain about what he might do tomorrow." <https://t.co/lmd9BRWdyc>

– MSNBC (@MSNBC) January 7, 2021

Fuck that. Trump is not the United States; Congress is not elected to fluff one delicate snowflake's dementia-addled ego.

The United States, however, is now fragile, made so by the gross failings of a malignant narcissist in decline, who has spawned an attack on his own country with seditious incitement.

It's time for Mike Pence to honor his oath to defend the Constitution by invoking the 25th Amendment.

If Pence should fail the republic yet again, it's time for Congress to impeach, convict, and remove Trump before he does any further damage to this fragile democracy.

~ ~ ~

UPDATE-1 – 8:20 PM ET –

This is not good. It's been wholly predictable to those who've assumed Trump suffers from a progressive neurological disorder like frontotemporal dementia on top of his malignant narcissism – but still not good.

It's also increasingly urgent.

BREAKING NEWS: @cnn @Acosta reports GOP sources close to White House say Trump "unstable, ranting and raving" and "bent on destruction in his final days." We cannot take the nuclear codes away from him. We must take him away from the nuclear codes – before it is too late.
pic.twitter.com/u2Czj7bUyA

— Joe Cirincione (@Cirincione) January
7, 2021

We need to hold Trump's cabinet members accountable – including the “principal officers” of departments like the Acting Director in cases where the Director has left the government – for not demanding the invocation of the 25th Amendment. Pence may be resisting invocation but he's not the only person responsible for its application and execution.

And if Pence and the cabinet aren't going to address this, then it's up to Congress to remove Trump from the ability to hurt this country.

All of them – Pence, the cabinet members and principal officers, members of Congress – have sworn an oath to the Constitution. It's time to protect and defend it by removing Trump from office immediately.

Call your representative and ask them to support articles of impeachment because Trump has incited seditious behavior against the U.S. and he is acting increasingly unstable.

Call your senators and ask them to convict and remove Trump from office upon the presentation of the articles of impeachment from the House because Trump has incited seditious behavior against the U.S. and he is acting increasingly unstable.

Congressional switchboard: (202) 224-3121 – or use Resist.bot.

Time's of the essence. Go. Leave word in comments if you'd care to share your experience.

~ ~ ~

UPDATE-2 – 10:42 PM ET –

Update on status of impeachment:

House Judiciary Committee Chair Jerry Nadler supports impeachment and wants it to go directly to the House floor:

I am once again urging that President Trump be impeached and removed from office. We have a limited period of time in which to act. The nation cannot afford a drawn out process and I support bringing articles of impeachment directly to the House floor.<https://t.co/xpuFwaLTC0>

– Rep. Nadler (@RepJerryNadler) January 7, 2021

Head count is mounting.

Now over 200+ House and Senate members calling for Trump's removal via 25A or impeachment per our ongoing tally by @bkamisar @Ed_Demaria @mel_holzberg.

– Benjy Sarlin (@BenjySarlin) January 8, 2021

The number 200 without context means doodley squat. We need two very specific numbers.

We need 218 House votes, or one more than half of 435. (This may be lower because there are two seats still open IIRC.)

We need 67 Senate votes, or two-thirds of the total 100 seats.

If you manage to reach your representative or senators, ask where they stand on impeaching Trump. Then ask them to support it if they don't, or thank them if they do.

I hope we have the numbers by morning. What could go wrong the longer Congress drags its feet is incalculable.

~ ~ ~

UPDATE-3 – 12:52 AM ET 08-JAN-2021 –

Two cabinet members, Transportation Secretary Elaine Chao and Education Secretary Betsy DeVos, have tendered their resignations. Chao's exit is

effective January 11; I haven't checked DeVos's exit date. Her resignation could have been effective immediately. Former White House Chief of Staff Mick Mulvaney resigned from his role as Special Envoy for Northern Ireland. Four national security aides quit.

A police officer has died of injuries sustained during the Capitol Building riot. That's more dead police than the entirety of George Floyd/BLM protests during the summer of 2020.

A family member acknowledged the death of a 34-year-old woman who participated in the Capitol Building riot but was crushed to death. She was likely one of the three accidental deaths tallied so far.

Displeased cabinet and staff members, dead police and mob member...not good, but there was something worse afoot.

Read this entire Twitter thread. And then recall the conspiracy against Michigan's Gov. Whitmer.

WOW: Was there a plan to take hostages?
This man is carrying police-style zip-tie handcuffs. And mace(?)
pic.twitter.com/np3ilpUc6n
— John Scott-Railton (@jsrailton)
January 7, 2021

Several accounts on Twitter have noted the rioters could be sorted into two groups: the tourist mob who did sightseeing and some vandalism, and some crypto-paramilitary persons who were prepared to do more than simply take selfies and smash furniture. They came armed with knives and zip ties and may have had more weapons on their persons. They were better masked than most of the tourist rioters.

There have been videos shared which appear to show Capitol Police actively encouraging the mob. Off-duty officers may not only have participated in the rioting but aided the paramilitary participants.

And there have been repeated remarks about coming back on the 19th – “I’d do it again, and I’d have a gas mask next time.”

We should not forget there were two IEDs found, one at each of the RNC and DNC offices, as well as a suspicious vehicle which has been characterized as mobile bomb factory.

There were elements inside the rioters who wanted to do more damage and possibly seize and hurt members of Congress along with VP Pence.

We don’t know if they left any preparatory materials behind or whether law enforcement did an adequate sweep considering how poorly prepared they were for the breach of the Capitol Building by rioters.

Trump must be impeached before he can encourage worse. His statement this evening suggests he is willing to encourage more seditious acts, like those at statehouses across the country yesterday while a mob rioted inside the Capitol Building.

BILL BARR KEEPS PRETENDING (FALSELY) THAT HE DIDN’T ENCOURAGE YESTERDAY’S INSURRECTION

Disgraced former Attorney General Billy Barr has released two statements condemning yesterday’s terrorist attack on the Capitol. First, a comment released via his spox,



Kerri Kupec @Kerri_Kupec

19h

From former Attorney General Bill Barr: "The violence at the Capitol Building is outrageous and despicable. Federal agencies should move immediately to disperse it."

Then he released a statement to the AP's Barr-chummy DOJ reporter:

Former Attorney General William Barr says President Donald Trump's conduct as a violent mob of his supporters stormed the U.S. Capitol was a "betrayal of his office and supporters."

In a statement to The Associated Press, Barr said Thursday that "orchestrating a mob to pressure Congress is inexcusable."

Barr was one of Trump's most loyal and ardent defenders in the Cabinet.

His comments come a day after angry and armed protesters broke into the U.S. Capitol, forcing Congress members to halt the ongoing vote to certify President-elect Joe Biden's election and then flee from the House and Senate chambers.

Barr resigned last month amid lingering tension over the president's baseless claims of election fraud and the investigation into Biden's son.

Of course, Barr himself encouraged the violence yesterday.

That's because, less than a year ago, he treated a threat against a sitting judge issued by some of the men who organized yesterday's actions as a "technicality" not worthy of a sentencing enhancement for Roger Stone.

Two years ago, after Roger Stone posted a picture of Amy Berman Jackson with crosshairs on it, Jonathan Kravis asked Stone who came up with

the picture. The President's rat-fucker named two of his buddies who are key leaders of the Proud Boys, Jacob Engles and Enrique Tarrío.

Amy Berman Jackson. How was the image conveyed to you by the person who selected it?

Stone. It was emailed to me or text-messaged to me. I'm not certain.

Q. Who sent the email?

A. I would have to go back and look. I don't recognize. I don't know. Somebody else uses my –

THE COURT: How big is your staff, Mr. Stone?

THE DEFENDANT: I don't have a staff, Your Honor. I have a few volunteers. I also – others use my phone, so I'm not the only one texting, because it is my account and, therefore, it's registered to me. So I'm uncertain how I got the image. I think it is conceivable that it was selected on my phone. I believe that is the case, but I'm uncertain.

THE COURT: So individuals, whom you cannot identify, provide you with material to be posted on your personal Instagram account and you post it, even if you don't know who it came from?

THE DEFENDANT: Everybody who works for me is a volunteer. My phone is used by numerous people because it can only be posted to the person to whom it is registered.

[snip]

Jonathan Kravis. What are the names of the five or six volunteers that you're referring to?

Stone. I would – Jacob Engles, Enrique Tarrío. I would have to go back and look.

Not only did Stone appear at the rally before yesterday's insurrection, but Tarrío was arrested on his way to the riot for crimes he committed during the last demonstration in support of Trump, an attack on a historic Black church in DC and possession of weapons.

Prosecutors asked Judge Jackson to add a two-level sentencing enhancement for this action, in which Stone's Proud Boys associates crafted a threat against her.

Finally, pursuant to U.S.S.G. § 3C1.1, two levels are added because the defendant "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the prosecution of the instant offense of conviction." Shortly after the case was indicted, Stone posted an image of the presiding judge with a crosshair next to her head. In a hearing to address, among other things, Stone's ongoing pretrial release, Stone gave sworn testimony about this matter that was not credible. Stone then repeatedly violated a more specific court order by posting messages on social media about matters related to the case.

This enhancement is warranted based on that conduct. See U.S.S.G. § 3C1.C Cmt. 4(F) ("providing materially false information to a magistrate or judge"); see, e.g., *United States v. Lassequ*, 806 F.3d 618, 625 (1st Cir. 2015) ("Providing false information to a judge in the course of a bail hearing can serve as a basis for the obstruction of justice enhancement."); *United States v. Jones*, 911 F. Supp. 54 (S.D.N.Y. 1996) (applying §3C1.1 enhancement to a defendant who submitted false information at hearing on modifying defendant's conditions of release).

The sentencing memo that Bill Barr had drawn up to justify a more lenient sentence dismissed this enhancement which it admitted “technically” applied.

Notably, however, the Sentencing Guidelines enhancements in this case—while perhaps technically applicable—more than double the defendant’s total offense level and, as a result, disproportionately escalate the defendant’s sentencing exposure to an offense level of 29, which typically applies in cases involving violent offenses, such as armed robbery, not obstruction cases. Cf. U.S.S.G. § 2B3.1(a)-(b).

[snip]

Second, the two-level enhancement for obstruction of justice (§ 3C1.1) overlaps to a degree with the offense conduct in this case. Moreover, it is unclear to what extent the [defendant’s obstructive conduct actually prejudiced the government at trial.]

When ABJ gagged Stone in response to him posting the picture, she talked about the possibility that Stone’s post might incite his extremist followers to take action.

What concerns me is the fact that he chose to use his public platform, and chose to express himself in a manner that can incite others who may feel less constrained. The approach he chose posed a very real risk that others with extreme views and violent inclinations would be inflamed.

[snip]

The defendant himself told me he had more than one to choose from. And so what he chose, particularly when paired with the sorts of incendiary comments

included in the text, the comments that not only can lead to disrespect for the judiciary, but threats on the judiciary, the post had a more sinister message. As a man who, according to his own account, has made communication his forté, his raison d'être, his life's work, Roger Stone fully understands the power of words and the power of symbols. And there's nothing ambiguous about crosshairs.

She repeated that sentiment when she overruled the Barr-authorized memo, judging the enhancement was appropriate.

Here, the defendant willfully engaged in behavior that a rational person would find to be inherently obstructive. It's important to note that he didn't just fire off a few intemperate emails. He used the tools of social media to achieve the broadest dissemination possible. It wasn't accidental. He had a staff that helped him do it.

As the defendant emphasized in emails introduced into evidence in this case, using the new social media is his "sweet spot." It's his area of expertise. And even the letters submitted on his behalf by his friends emphasized that incendiary activity is precisely what he is specifically known for. He knew exactly what he was doing. And by choosing Instagram and Twitter as his platforms, he understood that he was multiplying the number of people who would hear his message.

By deliberately stoking public opinion against prosecution and the Court in this matter, he willfully increased the risk that someone else, with even poorer judgment than he has, would act on his behalf. This is intolerable to the administration of justice, and the Court

cannot sit idly by, shrug its shoulder and say: Oh, that's just Roger being Roger, or it wouldn't have grounds to act the next time someone tries it.

Effectively, ABJ was warning against precisely what happened yesterday: that Stone (and Trump) would rile up extremists and those extremists would, predictably, take violent actions. ABJ judged that you can't let the incitement go unpunished.

Barr, on the other hand, suggested that unless there was proof the incitement had an effect, it was just a technicality.

Bill Barr had a chance to stand against the incitement-driven terrorism led by the Proud Boys last year. And he chose to use his authority, instead, to protect Trump.

THE TRUMP EFFECT: ATTEMPTED COUP EDITION

I have long talked about "The Trump Effect," by which Trump, in pushing existing policies an order of magnitude further, makes those toxic policies visible to people who otherwise have not seen them.

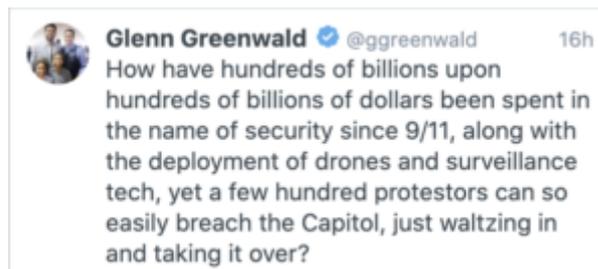
Yesterday's coup attempt was not the implementation of any existing policy. What happened yesterday was unprecedented in the history of this nation.

That said, it did make certain things visible.

The DOD refusal to honor a request from Mayor Muriel Bowser, made before the coup attempt started, to deploy the National Guard to DC to help makes it clear (as did Trump and Bill

Barr's deployment of DOD troops over the summer) that DC cannot be left anymore without its own defense. As many people have noted, this provides a clear reason, independent of the number of Senators or the existence of a largely-Black city without full franchise, that DC should become a state.

Similarly, the refusal of DC cops, including Capitol Police, to treat these terrorists as terrorists demonstrates why people have called to "defund" the police. It's not denial that we need police. It's a recognition that, right now, police forces are often filled with extremists who sympathize with people like the terrorists who stormed the Capitol. There needs to be a priority on cleansing police forces of such extremists, or they will become an armed force working against democracy again.



Finally (in what appears to be a surprise to a guy who wrote a book on the topic and who has been dismissing the threat of a coup for months), what we saw yesterday was what happens when a man who puts self-interest over the good of the country happens to wield the power of the unitary executive. While some people appointed by Donald Trump took the appropriate approach in responding to the coup attempt – citing their oath to the Constitution – others dawdled until Mike Pence took action. It will take some time until we understand their excuse for protecting a man rather than the Constitution. But decades of claims that all authority emanates from the President certainly made it more likely. Last night made it clear that such unchecked authority is incompatible with the Constitution.

We are not yet out of the woods. Trump, even while stating he will leave office, nevertheless

has promised to sustain his insurgency. On top of everything else President-Elect Biden has to deal with, he now has to think of ways to coup-proof the US government.

Update: Mayor Bowser has called for Congress to push statehood through in the first 100 days of the Biden Administration.



Sahil Kapur  @sahilkapur 29m

DC [@MayorBowser](#)'s request to Congress after the siege of the U.S. Capitol by violent pro-Trump mobs:

"We must get DC statehood on the President's desk within the first 100 days of the 117th Congress."