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PRE-SHOW

1. update on Wisconsin, Brexit, on Tuesday
2. Zarda oral arguments on 10/7: split among the circuits, we KNOW how this is going to go
3. AWW

Wordorigins.org – your source for legal terms from 13th century Saxony & also Alice Ashton, others in the intelligence community.

* Yes, we read patron comments first!
1. Javelin is an anti-tank missile
2. Codeword clearance – I was wrong, and it’s WAY worse than I thought.

There are two elements in determining whether or not someone should have access to classified information: clearance and need to know. Clearance is what most people are familiar with. That’s the three levels: confidential, secret, and top secret. To have a security clearance means that you have passed the background checks for that level and been deemed trustworthy. But that’s not enough. **You also need to have a requirement for that information**.

For the most sensitive information, access is compartmentalized and determination of need to know is centralized. You need pre-approval to access the information. Such information is labeled with a code word to designate this. For instance, access to satellite imagery was (still is?) given the code word Special Intelligence/Talent Keyhole or “SI/TK.” If you had “Top Secret SI/TK” clearance, then you could see it. If you just had a generic “Top Secret” clearance, you couldn’t.

A computer system designed to house codeword information would have a record of who is allowed to access what information and when a person logs in would only show the information they were privy to.

**So codeword information is the most sensitive information, where the government wants to maintain tight control over who has access to it**.

1. Also, I was definitely wrong when I said Gore cast the tiebreaking vote on Article 2, which was 50/50, that was just… stupid.
2. But I was NOT wrong when I said McConnell was the “appeal to the decision of the chair” – lots of people, including
3. Hearsay Explainer: “THE WHISTLEBLOWER COMPLAINT IS HEARSAY!”
4. What it is

a) definition: out-of-court statement offered for its truth value.

-DOES NOT HAVE TO BE BY SOMEONE ELSE!

-if I write an email, even if I’m on the stand, that’s hearsay!

-some statements are NOT offered for their truth value.

“Have you ever communicated with Charlize Theron?”

“No”

“Your honor, I’d like to introduce this email from Andrew Torrez to Charlize Theron”

“Oh”

And it doesn’t matter what the email says. You’re not trying to prove the truth of the matter asserted in the email, you’re just saying I did talk to you. So that *wouldn’t* be hearsay.

b) A rule of evidence

-NOT a rule for civil or criminal complaints

-You call the police and say “I just heard a gunshot next door, and then I heard a woman scream ‘HELP, I’VE BEEN SHOT!’”

-The police show up and they see a blood seeping under the front door

-Can they go in on hearsay? OF COURSE THEY CAN

And, in fact, it’s been well-settled since at least 1955 that grand juries can indict SOLELY on hearsay. SOLELY on hearsay of EXPERT WITNESSES

<https://www.jstor.org/stable/1337878?seq=1#page_scan_tab_contents>

-That’s because hearsay is not fundamentally about reliability. We’ll get to that. It’s about how you present evidence. So, in the same way that “that’s just circumstantial evidence” is something a lawyer would scoff at, “that’s just hearsay” is misleading. Maybe not quite as much, but it’s in the same ballpark.

The takeaway here: complaints CAN be based on hearsay. It makes total sense. A complaint – be it civil or criminal – is the start. We then investigate. So of course you say, “all right, that makes us suspicious” Does the investigation yield any reliable evidence?

ALREADY HAS. But let’s nail this down. Even if ALL WE HAD was the whistleblower’s testimony, we’d STILL be in good shape.

c) Hearsay admissible

-other than the rule against perpetuities, this is the bane of your Bar Prep existence

3 rules in the FRE

802: Hearsay is presumptively not admissible

801: some things that would otherwise be hearsay are defined as NOT hearsay

-witness’s prior statements

-opposing party statements

* *Possible* some of the underlying facts in the whistleblower’s complaint would fit under this. We don’t know, but if he heard some of the co-conspirators..., that’s a specific 801 excpetion.

803: some things *are* hearsay, but they’re admissible anyway

How many exceptions? 23. And some of them have multiple sub-parts. And the bar will test you as to whether it’s admissible hearsay (Rule 803) or not hearsay by definition (801). It’s brutal.

Not going through them, but

-subsection (6) – records of a regularly-conducted activity

-subsection (7) – absence of those records

-public records (8) or their absence

-“ancient” documents (before 1998, which officially makes both of us ancient)

-so, p.3, based on a “readout” of the call – that’s what we saw, the TELCON. And that ABSOLUTELY meets the definition of the hearsay exception under (6).

1. Did the IC IG change the rules?

This is a goddamn nonsense conspiracy theory being advanced by Mollie Z. Hemingway and *The Federalist* magazine, which officially drops below the *Weekly World News*.

Total nonsense

<https://thefederalist.com/2019/09/27/intel-community-secretly-gutted-requirement-of-first-hand-whistleblower-knowledge/>

According to the GOP and an army of conservative commentators, the old version of the form prohibited workers from submitting urgent complaints based on secondhand information; only misconduct witnessed personally could be reported. That changed in early August, the false claim goes, when ICIG Michael Atkinson snuck through a hasty revision to the complaint form that reversed longstanding policy.

**So that’s fucking stupid**

50 U.S.C. § 3033

<https://www.law.cornell.edu/uscode/text/50/3033>

The Inspector General Act of 1978 created Inspectors General for federal agencies and provides broad authorities for overseeing programs, promoting efficiencies, and detecting fraud, waste, and mismanagement throughout the federal government. The 2010 Intelligence Authorization Act formally established the Office of the Inspector General of the Intelligence Community within the Office of the Director of National Intelligence.

In accordance with Title 50 U.S.C.A. § 3033, the Inspector General of the Intelligence Community (ICIG) conducts independent and objective audits, investigations, inspections, and reviews to promote economy, efficiency, effectiveness, and integration across the Intelligence Community.

Michael K. Atkinson (May 16, 1964) is the second United States Inspector General of the Intelligence Community. **He assumed office on May 17, 2018**.

<https://www.dni.gov/index.php/who-we-are/organizations/icig/icig-about-us/icig-leadership/icig-ig-bio>

Atkinson was born in Oswego, New York[1]. He earned his Juris Doctorate from Cornell University in 1991 and his Bachelor of Arts from Syracuse University in 1986.[1][2] Atkinson was admitted to the District of Columbia Bar in November 1991.[3] Atkinson then served as a partner at Winston & Strawn, where he focused his practice on white collar defense, internal investigations, and complex civil litigation. Incontravertable

Atkinson worked for the U.S. Department of Justice for over fifteen years. He was a trial attorney in the Department of Justice Criminal Division, Fraud Section, from 2002 through 2006. He served as an Assistant United States Attorney for the District of Columbia from 2006 through 2016, where he was the Acting Chief and Deputy Chief of the Fraud and Public Corruption Section. In 2012, he was awarded the Attorney General’s Award for Distinguished Service for his work on a significant public corruption case. Thereafter, he served in Department of Justice National Security Division as the Acting Deputy Assistant Attorney General for National Asset Protection and as Senior Counsel to the Assistant Attorney General.

Atkinson's was awarded the Executive Office for United States Attorneys’ Director’s Award for Superior Performance by an Assistant United States Attorney, and the Council of the Inspectors General on Integrity and Efficiency Gaston L. Gianni Jr. Better Government Award for his work prosecuting the largest domestic bribery and bid steering scheme in the history of federal contracting.

**This is 100% a lie**. The ICWSP May 2018 is 100% the same as the ICWSP today.

<https://www.scribd.com/document/427771856/Icwpa-Form-401-24may18>

Accompanying SHEET to (“Form 401”)

Old copy:

<https://www.scribd.com/document/427767481/Icwpa-Form-401-24may18?campaign=VigLink&ad_group=xxc1xx&source=hp_affiliate&medium=affiliate>

Here’s what it said:

**FIRST-HAND INFORMATION REQUIRED**

In order to find an urgent concern “credible, the IC IG must be in possession of reliable, first-hand information. The IC IG cannot transmit information via the ICWPA based on an employee’s second

-hand knowledge of wrongdoing. This includes information received from another person, such as when a fellow employee informs you that he/she witnessed some type of wrongdoing. (Anyone with first-hand knowledge of the allegations may file a disclosure inwriting directly with IC IG.) Similarly, speculation about the existence of wrongdoing does not provide sufficient legal basis to meet the statutory requirements of the ICWPA. If you think that wrongdoing took place, but can provide nothing more than second-hand or unsubstantiated assertions, IC IG will not be able to process the complaint or information for submission as an ICWPA.

**ANONYMOUS SOURCES**

While IC IG will protect the identity of persons who make disclosures, it cannot consider anonymous disclosures for ICWPA processing. If a disclosure is filed by an anonymous source, the disclosure will be referred to the Office of Inspector General in the appropriate agency and the IC IG will take no further action.

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These instructions were was changed, but it doesn’t remotely matter, because it’s about what the ICIG has to do – not what the whistleblower has to do. The IG isn’t going to forward it to the DNI if it can’t corroborate secondhand or indirect information. The whistleblower’s job is not to investigate. That is the job of the IG.

**And that’s exactly what the ICIG did!**

DECLASSIFIED Atkinson letter:

<https://www.documentcloud.org/documents/6430363-Icig-Letter-to-Acting-Dni-Unclassified>

Why was it changed? Probably because the old guidance did NOT match up to the statute. Nothing in the relevant statute (ICWPA) or directives (PPD-19, ICD-120) has ever required that protected whistleblower disclosures contain “firsthand” information.

PPD-19

<https://fas.org/irp/offdocs/ppd/ppd-19.pdf>

ICD-120

<https://www.dni.gov/files/documents/ICD/ICD%20120.pdf>

current form:

[https://www.dni.gov/files/ICIG/Documents/Hotline/Urgent%20Concern%20Disclosure%20Form.pdf](https://www.dni.gov/files/ICIG/Documents/Hotline/Urgent%20Concern%20Disclosure%20Form.pdff)

1. Yodel Mountain
2. politics

LADIES AND GENTLEMEN, THE STATE OF OUR YODEL IS STRONG

-polling

-strategy re: Congress going on recess turns out to be correct

-press conference – what Pelosi is going to do is try and emphasize Dem policy agenda (prescription drugs, H.R. 3, USMCA)

-has already blocked out the argument: how can you work with this President?

Republican talking points. We’ll debunk. But remember that fundamentally, how fucking stupid they are: Rudolph W. Giuliani in recent months has consulted several times with Manafort through the federal prisoner’s lawyer in pursuit of information about a disputed ledger that would bolster his theory **that the real story of 2016 is not Russian interference to elect Trump, but Ukrainian efforts to support Hillary Clinton**.

That’s CrowdStrike. Do we need to talk about how dumb that is?

-bipartisan reports that the Russians have spent billions to interfere in our elections

-Hillary lost

Also, Hunter Biden. He was being paid by a Ukranian company $50,000 per month to serve on their board. It’s totally corrupt. But… the prosecutor Biden got dismissed was \*protecting\* Hunter. So.. that didn’t work, either.

And that’s it.

1. Friday: Subpoena to state Dept re: Pompeo “interfering with witnesses” Any effort to interfere

Pompeo letter

<https://foreignaffairs.house.gov/_cache/files/4/6/4683bc86-be2a-49fc-9e76-7cdbf669592f/98BEBD8006DE62BA36BEBD175775F744.2019-10-1-ele-abs-eec-to-depsec-sullivan.pdf>

Who the hell is Mike Pompeo?? Oh man…

1. Subpeona Schiff to Giuliani

Transmittal letter:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/20190930%20-%20Giuliani%20HPSCI%20Subpoena%20Letter.pdf>

Subpoena:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/20190930%20-%20Giuliani%20HPSCI%20Subpoena%20Schedule%20Only.pdf>

THERE’S A LOT OF STUFF IN THERE

-by October 15

**So again, remember: Trump isn’t going to be impeached tomorrow.**

Two improper Ukranian things: (i) Hunter Biden stuff, (ii) prosecution of Ukranians who provided evidence against Paulie Manafort.

More stuff coming up next week

1. Subpoena from Cummings to White House
2. Thursday, Volker testimony
3. Friday, Atkinson testimony
4. Next week: depo/interview with Marie Yovanovitch, former ambassador to Ukraine

Remember: p.4 of the TELCON

<http://openargs.com/wp-content/uploads/Unclassified09.2019.pdf>

“The former ambassador… the woman, was bad news and the people she was dealing with in the Ukraine [sp] were bad news so I just want to let you know that.”

This is Trump. Yovanovitch is a career diplomat. Joined the foreign service in 1986 at age 28. That’s Reagan. Elevated under Clinton. Elevated to ambassador to Kyrgyz Republic by George W. Bush. Assigned to Ukraine in 2016. Recalled in May of 2019, right after Zelinskyy won. Draw whatever inferences you want from that. But NOT in 2017.

1. Impeachment - disqualify

-Impeachment – disqualify – Erwin question

Art. 1, Sec. 3, Cl. 6-7: The Senate shall have the sole Power to try all [Impeachments](https://www.usconstitution.net/glossary.html#IMPEACH). When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the [Concurrence](https://www.usconstitution.net/glossary.html#CONCUR) of two thirds of the Members present.

**Judgment in Cases of**[**Impeachment**](https://www.usconstitution.net/glossary.html#IMPEACH)**shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law**.

Art. 2, Section 4: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors

-historically, only Art. III judges have been impeached and convicted; Presidents haven’t. In all of those cases, there have been two votes.

1. Mitch said he had to held hearings

<https://www.vox.com/2019/9/30/20891463/senate-rules-mitch-mcconnell-impeachment-donald-trump>

1. Trump threatens “CIVIL WAR”

-strategy to

-Trump unhinged – repeating Kremlin talking points about civil war

<https://assets.documentcloud.org/documents/5009827/Khusyaynova-Complaint.pdf>

Complaint against Elena Alekseevna Khusyaynova

Concord Management/Internet Research Agency

“Project Lakhta”

-effort, beginning in 2014, by Russia to disrupt American and other elections

Para. 8: “…to spread distrust toward political candidates and the political system in general.”

-she was the financier

Chilling stuff. Start at page 15, which is discussions on how to discredit McCain, Paul Ryan, Blue State Elections, Marco Rubio, Mitch McConnell (!) …

Sidebar: man, I think I get why they got in line. The entire resources of a hostile foreign power are either behind replacing you, or they’ll back the fuck off. Not saying I agree with it, but I get it.

Look, there’s this on Paul Ryan (p.15)

“Brand Paul Ryan as a complete and absolute nobody incapable of any decisiveness. Emphasize that while serving as speaker, this two-faced loudmouth has not accomplished anything good for America or for American citizens. State that the only way to get rid of Ryan from Congress, provided he wins in the 2018 primaries, is to vote in favor of Randy Brice, an American veteran and an iron worker and a Democrat.”

and then, on page 16, we get this:

Support Michael Savage, a useful idiot.

“Any attempt to remove Trump is a direct path to a civil war in the United States. … Anti-Trump Republicans … will not stop acting as traitors.”

1. Barr’s involvement

<https://www.washingtonpost.com/national-security/attorney-general-barr-personally-asked-foreign-officials-to-aid-inquiry-into-cia-fbi-activities-in-2016/2019/09/30/d50cd5c4-e3a5-11e9-b403-f738899982d2_story.html>

Jesus Christ

Barr and Durham met with Mifsud

<https://www.washingtonexaminer.com/news/amid-impeachment-furor-barr-and-durham-flew-to-rome-to-hear-a-secret-tape-of-joseph-mifsud-mysterious-professor-at-center-of-mueller-probe>

total contradiction

on 7/25, Jim Jordan railed against Mueller for not indicting Mifsud.

Mueller report mentions him 88 times

He’s the “professor” who told Papadopoulos about Russian dirt on Hillary Clinton “in the form of thousands of emails” (p. 81-93)

Lied to Mueller about it, that’s WHY HE PLED.

Mr. Trump, his personal lawyer Rudy Giuliani, many Fox News commentators and House Republicans have spread the theory that Mr. Mifsud is not a professor with links to Russia, as reported in the Mueller inquiry, but that he is an asset of Western intelligence, and possibly the C.I.A., planted by the Obama administration to trap the Trump campaign adviser, George Papadopoulos.

“Mifsud was an Italian operative handled by the C.I.A.,” Mr. Papadopoulos wrote on Twitter on Sept. 27, the day Mr. Barr was in Italy. “Italy holds the keys to the kingdom. Right government, right time.”

<https://www.nytimes.com/2019/10/02/world/europe/mike-pompeo-italy-joseph-mifsud.html>

Guess where Barr and Durham went this week? Yup. Italy and Austalia.

To get to the bottom of this, I WILL GO TO ITALY

1. Pence??!?

<https://www.washingtonpost.com/world/national-security/trump-involved-pence-in-efforts-to-pressure-ukraines-leader-though-aides-say-vice-president-was-unaware-of-pursuit-of-dirt-on-bidens/2019/10/02/263aa9e2-e4a7-11e9-b403-f738899982d2_story.html>

**key takeaway: when Rs say “fight corruption” they mean “investigate Biden”**

President Trump repeatedly involved Vice President Pence in efforts to exert pressure on the leader of Ukraine at a time when the president was using other channels to solicit information that he hoped would be damaging to a Democratic rival, current and former U.S. officials said.

Trump instructed Pence not to attend the inauguration of Ukrainian President Volodymyr Zelensky in May — an event White House officials had pushed to put on the vice president’s calendar — when Ukraine’s new leader was seeking recognition and support from Washington, the officials said.

Months later, the president used Pence to tell Zelensky that U.S. aid was still being withheld while demanding more aggressive action on corruption, officials said. At that time — following Trump’s July 25 phone call with Zelenksy — the Ukrainians probably understood action on corruption to include the investigation of former vice president Joe Biden and his son Hunter Biden.

‘A presidency of one’: Key federal agencies increasingly compelled to benefit Trump

Officials close to Pence insist that he was unaware of Trump’s efforts to press Zelensky for damaging information about Biden and his son, who had served on the board of an obscure Ukrainian gas company, when his father was overseeing U.S. policy on Ukraine.

Pence’s activities occurred amid several indications of the president’s hidden agenda. Among them were the abrupt removal of the U.S. ambassador to Kiev; the visible efforts by the president’s lawyer, Rudolph W. Giuliani, to insert himself in the U.S.-Ukraine relationship; as well as alarms being raised inside the White House even before the emergence of an extraordinary whistleblower complaint about Trump’s conduct.

Perhaps most significantly, one of Pence’s top advisers was on the July 25 call and the vice president should have had access to the transcript within hours, officials said.

Trump’s deployment of Pence is part of a broader pattern of using both executive authority and high-ranking officials in his administration to advance his personal or political interests — even in cases when those subordinates appear not to know that another agenda is in play.

Officials close to Pence contend that he traveled to Warsaw for a meeting with Zelensky on Sept. 1 probably without having read — or at least fully registered — the transcript of Trump’s July 25 call with the leader of Ukraine.

White House officials said that Pence probably would have received the detailed notes of the president’s call in his briefing book on July 26. The five-page document also should have been part of the briefing materials he took with him to Warsaw to prepare for the meeting, according to the officials, who, like others interviewed, spoke on the condition of anonymity to discuss internal matters.

But officials said Pence and his staff weren’t aware that the call had provoked alarm inside the White House — even though his national security adviser, retired Lt. Gen. Keith Kellogg, had been monitoring it. It’s also not clear whether Pence failed to read the White House account of the call in his briefing book or read it and found it unremarkable.

A Pence aide disputed the notion that the vice president was poorly prepared for his meeting with Zelensky, and pointed to the eventual outcome — that the Trump administration ultimately released the aid — as a sign of a productive meeting. The White House Counsel’s Office did not alert the vice president’s office to the existence of the whistleblower complaint until the day before it became public, the aide added.

Impeachment inquiry puts new focus on Giuliani’s work for prominent figures in Ukraine

In his meeting with Zelensky, Pence conveyed the news that hundreds of millions of dollars in U.S. aid to Ukraine was not going to be released amid concerns about the country’s lagging efforts to combat corruption. He also emphasized Trump’s frustration that he thought the European Union was not doing a sufficient job in helping to provide aid. A participant in the meeting said Zelensky was “crestfallen” by the news, though a second participant described the meeting as “cordial” and Zelensky as understanding of U.S. concerns.

At that point, Ukraine’s president had already spoken to Trump and was familiar with the president’s demands. Pence did not mention Biden or the dormant probe of Burisma, the company for which his son had served as a board member. But former officials said that Pence’s emphasis on corruption probably would have been interpreted by Zelensky as “code” for that issue, whether the vice president intended it or not.

A top Pence staffer rejected the charge that the vice president was conveying an inappropriate — or coded — message from the president.

“The president consistently raised concerns about corruption and the lack of burden-sharing by European partners, so having run on an anti-corruption campaign, Zelensky was receptive to those messages,” said Marc Short, Pence’s chief of staff. “The vice president, as your reporting says, reported back to the president after the meeting and the aid was released.”

Pence often seems to be the last to be aware of major problems or scandals — a phenomenon that depicts the vice president as out of the loop at times. But it also helps insulate him from controversy within the White House.

Pence’s staff was weighing whether the vice president should lead a delegation to attend Zelensky’s inauguration in May, an important vote of confidence for the new Ukrainian president whose nation has come to view the United States as a bulwark against Russian aggression. Russia has annexed Crimea, a part of Ukraine, and continues to foment a separatist conflict in eastern Ukraine.

The date of the inauguration had been in flux, the White House still had not dispatched advance staff and Secret Service to Ukraine, and no visit had been officially confirmed when the president instructed Pence not to attend, according to officials. A current and former official confirmed Trump’s instructions, which were also mentioned in the whistleblower report.

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1. ?
2. BREXIT

Interview

1. Update on Wisconsin

UPLOAD Fed Dist Ct decision