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Constitutional Scholars Downplay Impeachability of Trump Phone Call

“All this discussion of quid pro quo is really a smokescreen,” Robert Natelson, a constitutional scholar with the libertarian think tank Independence Institute, said this week. “Even if it were a quid pro quo, I think it is clearly neither a felony nor a misdemeanor.”

Natelson, with the Denver-based think tank, was responding to questions about whether the phone conversation between U.S. President Donald Trump and Ukrainian President Volodymyr Zelensky involved some impeachable action by Trump, when he asked Zelensky to look into whether Joe Biden, while he was vice president, had intimidated the government of Ukraine to fire a prosecutor who was looking into the possibility that Biden’s son, Hunter, was involved in corrupt activities in Ukraine. At the time, Biden was vice-president of the United States, and gave the Ukrainians an ultimatum: either fire that prosecutor or they would not get a billion dollars in U.S. aid.



Democrats and their willing accomplices in the mainstream media have characterized the Trump conversation as demanding the Ukrainians “dig up dirt” on Biden — one of several Democrats who are seeking that party’s 2020 presidential nomination. According to the thesis pushed by Trump’s enemies, this constitutes bribery, an impeachable offense under the Constitution.

Natelson disagrees. “It is not a breach of fiduciary duty for a president to make aid to another country conditional, and it is certainly not a breach of fiduciary duty for the president to ask the other country to investigate possible involvement in an American election,” he explained. Many investigators now believe that much of the now-discredited “Russia collusion” story originated in Ukraine at the behest of Trump’s Democratic opposition in 2016.

The national media has either ignored or downplayed any actions taken by then-Vice President Joe Biden in 2016 that would cause Trump to ask questions. Hunter Biden was being paid hundreds of thousands of dollars per year by a Ukrainian natural gas company, Burisma Holdings, at the same time that President Barack Obama had delegated to Joe Biden U.S. policy implementation there.

Biden is on tape bragging that he was able to get the Ukrainian government to fire Ukrainian Prosecutor General Viktor Shokin — the prosecutor who was investigating Burisma and Hunter Biden —



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by threatening to withhold a \$1 billion loan guarantee if they did not fire Shokin within six hours. Biden argues that his desire had nothing to do with the investigation into his son by Shokin, but rather his concern that Shokin was a corrupt prosecutor.

Federal documents, however, demonstrate that Burisma lobbyists used the name of Hunter Biden when seeking a meeting with the U.S. State Department, in an effort to get U.S. assistance to intimidate the Ukrainians to terminate the corruption investigation by Shokin.

Natelson said it would be “absolutely appropriate” for Trump to ask for an investigation of Biden, if there were legitimate concerns that the family was involved in the corruption that Shokin was investigating. “The president always has the authority to make aid conditional as part of American foreign policy. He certainly has authority to make aid conditional on an anti-corruption investigation.”

While the Democrats and their media allies attempt to make Trump’s request about “digging up dirt” on a potential election opponent (Joe Biden), Natelson argued that Trump had the right to ask for an investigation into the Bidens, “even if a potential political opponent or potential political opponent’ son happens to be a suspect.”

In fact, the United States and Ukraine have a treaty to cooperate in criminal investigations. When asking the Senate to ratify the treaty in 1999, then-President Bill Clinton said the treaty would provide “for a broad range of cooperation in criminal matters.” He also told the Senate, “The Treaty covers mutual legal assistance in criminal matters.” Clinton added that the treaty “includes not only criminal offenses, but also proceedings related to criminal matters.”

A review of the transcript of the phone call of July 25, 2019 between Trump and Zelensky appears to confirm the constitutional analysis of the scholar at the Independence Institute. Early in the conversation, Zelensky tells Trump, “[We] are trying to work hard because we wanted to drain the swamp here in our country.” In other words, Zelensky was quite open to ferreting out corruption in Ukraine.

There was no expression of concern on the part of Zelensky about any aid being threatened. In fact, he thanked Trump for the “great support in the area of defense” Ukraine had already received.

Trump asked for Zelensky to “do us a favor” in helping to find out “what happened with this whole situation with Ukraine, they say Crowdstrike,” a reference to the Russia collusion investigation. In other words, Trump’s words “do us a favor” had nothing to do with the Biden affair. Zelensky promised Trump that he would meet with Rudy Giuliani when the former New York City mayor traveled to Ukraine to investigate Crowdstrike.

After devoting almost all of the phone call to either congratulating Zelensky on his recent victory in his election as president of Ukraine, or asking for his help in investigating the Ukrainian role in the trumped-up Russia collusion story, Trump says, “The other thing, there’s a lot of talk about Biden’s son, that Biden stopped prosecution and a lot of people want to find out about that so whatever you can do with the attorney general would be great. Biden went around bragging that he stopped the prosecution so if you can look into it — it sounds horrible to me.”

Trump later added, “I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything.”

That was pretty much it, and it is quite clear that Trump was asking the president of Ukraine to look into whether a former vice president of the United States — Joe Biden — had intimidated Ukraine into



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dropping a corruption investigation because Biden's son was employed by the company (Burisma) under investigation. How could this possibly be an impeachable offense?

Article II, Section 3 of the U.S. Constitution requires the president of the United States to "take care that the laws be faithfully executed." If Joe Biden forced Ukraine to drop an investigation into corruption by threatening to withhold U.S. aid, all to help his son who was employed by the company under investigation, it would seem that Trump would be derelict in his duty if he did not ask for an investigation into Biden's possible abuse of power.

In stark contrast, from a reading of the phone conversation transcript, it is demonstrable that Trump made no threats to withhold aid, and the president of Ukraine said nothing to indicate that he was being pressured to conduct such an investigation.

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