
ANALYSIS: Democrats have a Colonel Vindman problem

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House Democrats conducted their impeachment interviews in secret, but Lt. Col. Alexander Vindman still emerged as star of the show. Appearing at his Oct. 29 deposition in full dress uniform, the decorated Army officer, now a White House National Security Council Ukraine expert, was the first witness who had actually listened to the phone call between President Trump and Ukrainian President Volodymyr Zelensky that is at the heart of the Democratic impeachment campaign. Even though lawmakers were forbidden to discuss his testimony in public, Vindman's leaked opening statement that "I did not think it was proper [for Trump] to demand that a foreign government investigate a U.S. citizen" exploded on news reports.

Vindman has not yet been scheduled to appear before the Democrats' public impeachment hearings. When that happens, he will undoubtedly again play a prominent role. But there will be a difference. The public now has a transcript of Vindman's deposition. And those who have taken the trouble to read the 340-page document will have a different picture of Vindman's testimony than the one presented in early media reports.

Yes, Vindman testified repeatedly that he "thought it was wrong" for Trump, speaking with Zelensky, to bring up the 2016 election and allegations of Ukraine-related corruption on the part of former Vice President Joe Biden and his son Hunter Biden. But the Vindman transcript also showed a witness whose testimony was filled with opinion, with impressions, who had little new to offer, who withheld important information from the committee, who was steeped in a bureaucracy that has often been hostile to the president, and whose lawyer, presumably with Vindman's approval, expressed unmistakable disdain, verging on contempt, for members of Congress who asked inconvenient questions. In short, Vindman's testimony was not the slam-dunk hit Democrats portrayed it to be. And that raises questions about how it will play when Vindman goes before the world in a public impeachment hearing.

Here are four problems with the Vindman testimony:

1) *Beyond his opinions, he had few new facts to offer.* Vindman seemed to be an important fact witness, the first who had actually been on the July 25 call when Trump talked to Zelensky. But the White House weeks ago released the rough transcript of that call, which meant everyone in the secure room in which Vindman testified, and everyone on the planet, or that matter, already knew what had been said.

Indeed, Vindman attested to the overall accuracy of the rough transcript, contrary to some impeachment supporters who have suggested the White House is hiding an exact transcript that would reveal everything Trump said to the Ukrainian president. As one of a half-dozen White House note-takers listening to the call, Vindman testified that he tried unsuccessfully to make a few edits to the rough transcript as it was being prepared. In particular, Vindman believed that Zelensky specifically said the word "Burisma," the corrupt Ukrainian energy company that hired Hunter Biden, when the rough transcript referred only to "the company." But beyond that, Vindman had no problems with the transcript, and he specifically said he did not believe any changes were made with ill intent.

"You don't think there was any malicious intent to specifically not add those edits?" asked Republican counsel Steve Castor.

"I don't think so."

"So otherwise, this record is complete and I think you used the term 'very accurate'?"

"Yes," said Vindman.

Once Vindman had vouched for the rough transcript, his testimony mostly concerned his own interpretation of Trump's words. And that interpretation, as Vindman discovered during questioning, was itself open to interpretation.

Vindman said he was "concerned" about Trump's statements to Zelensky, so concerned that he reported it to top National Security Council lawyer John Eisenberg. (Vindman had also reported concerns to Eisenberg two weeks before the Trump-Zelensky call, after a Ukraine-related meeting that included Gordon Sondland, the U.S. ambassador to the European Union.) Vindman said several times that he was not a lawyer and did not know if Trump's words amounted to a crime but that he felt they were "wrong." That was when Republican Rep. John Ratcliffe, a former U.S. attorney, tried to get to the root of Vindman's concerns. What was really bothering him?

"I'm trying to find out if you were reporting it because you thought there was something wrong with respect to policy or there was something wrong with respect to the law," Ratcliffe said to Vindman. "And what I understand you to say is that you weren't certain that there was anything improper with respect to the law, but you had concerns about U.S. policy. Is that a fair characterization?"

"So I would recharacterize it as I thought it was wrong and I was sharing those views," Vindman answered. "And I was deeply concerned about the implications for bilateral relations, U.S. national security interests, in that if this was exposed, it would be seen as a partisan play by Ukraine. It loses the bipartisan support. And then for — "

"I understand that," Ratcliffe said, "but that sounds like a policy reason, not a legal reason."

Indeed it did. Elsewhere in Vindman's testimony, he repeated that his greatest worry was that if the Trump-Zelensky conversation were made public, then Ukraine might lose the bipartisan support it currently has in Congress. That, to Ratcliffe and other Republicans, did not seem a sufficient reason to report the call to the NSC's top lawyer, nor did it seem the basis to begin a process leading to impeachment and a charge of presidential high crimes or misdemeanors.

At another point, Castor asked Vindman whether he was interpreting Trump's words in an overly alarmist way, especially when Vindman contended that Trump issued a "demand" to Zelensky.

"The president in the transcript uses some, you know, words of hedging from time to time," Castor said. "You know, on page 3, he says 'whatever you can do.' He ends the first paragraph on page 3, 'if that's possible.' At the top of page 4, 'if you could speak to him, that would be great.' 'So whatever you can do.' Again, at the top of page 4, 'if you can look into it.' Is it reasonable to conclude that those words hedging for some might, you know, lead people to conclude that the president wasn't trying to be demanding here?"

"I think people want to hear, you know, what they have as already preconceived notions," Vindman answered, in what may have been one of the more revealing moments of the deposition. "I'd also point your attention to 'whatever you can do, it's very important to do it if that's possible.'"

"If that's possible," Castor stressed.

"Yeah," said Vindman. "So I guess you can interpret it in different ways."

2) Vindman withheld important information from investigators. Vindman ended his opening statement in the standard way, by saying, "Now, I would be happy to answer your questions." As it turned out, that cooperation did not extend to both parties.

The only news in Vindman's testimony was the fact that he had twice taken his concerns to Eisenberg. He also told his twin brother, Yevgeny Vindman, who is also an Army lieutenant colonel and serves as a National Security Council lawyer. He also told another NSC official, John Erath, and he gave what he characterized as a partial readout of the call to George Kent, a career State Department official who dealt with Ukraine. That led to an obvious question: Did Vindman take his concerns to anyone else? Did he discuss the Trump-Zelensky call with anyone else? It was a reasonable question and an important one. Republicans asked it time and time again. Vindman refused to answer, with his lawyer, Michael Volkov, sometimes belligerently joining in. Through it all, House Intelligence Committee Chairman Adam Schiff stood firm in favor of keeping his committee in the dark.

Vindman openly conceded that he told other people about the call. The obvious suspicion from Republicans was that Vindman told the person who became the whistleblower, who reported the call to the Intelligence Community inspector general, and who, in a carefully

crafted legal document, framed the issue in a way that Democrats have adopted in their drive to remove the president from office.

Vindman addressed the suspicion before anyone raised it. In his opening statement, he said, "I am not the whistleblower ... I do not know who the whistleblower is and I would not feel comfortable to speculate as to the identity of the whistleblower."

Fine, said Republicans. We won't ask you who the whistleblower is. But if your story is that you were so concerned by the Trump-Zelensky issue that you reported it to Eisenberg, and also to others, well, who all did you tell? That is when the GOP hit a brick wall from Vindman, his lawyer Volkov, and, most importantly, Schiff. As chairman of the Intelligence Committee, charged with overseeing the intelligence community, Schiff might normally want to know about any intelligence community involvement in the matter under investigation. But in the Vindman deposition, Schiff strictly forbade any questions about it. "Can I just caution again," he said at one point, "not to go into names of people affiliated with the IC in any way." The purpose of it all was to protect the identity of the whistleblower, who Schiff incorrectly claimed has "a statutory right to anonymity."

That left Republicans struggling to figure out what happened. "I'm just trying to better understand who the universe of people the concerns were expressed to," said Castor.

"Look, the reason we're objecting is not — we don't want — my client does not want to be in the position of being used to identifying the whistleblower, okay?" said Volkov. "And based on the chair's ruling, as I understand it, [Vindman] is not required to answer any question that would tend to identify an intelligence officer."

"Okay," Castor said to Vindman. "Did you express concerns to anybody, you know, that doesn't fall under this category of someone who might be the whistleblower, or is Eisenberg the only —"

"No," said Vindman. "In my coordination role, as I actually said in the statement, in my opening ... in performing my coordination role as director on the National Security Council, I provide readouts of relevant meetings and communications to [redacted] properly cleared counterparts with a relevant need to know."

What did that mean, exactly? Vindman didn't tell anybody else, he just provided readouts? On a need-to-know basis? Republicans tried on several occasions to figure it out. "Some of the other people that you raised concerns to, did you ask any of those folks to do anything with the concerns?" asked Castor.

That only prompted more bureaucratism from the witness. "I don't think that's an accurate characterization, counsel," Vindman said. "I think what I did was I fulfilled my coordination role and spoke to other national security professionals about relevant substance in the call so that

they could take appropriate action. And frankly, it's hard to — you know, without getting into, you know, sources and methods, it's hard to kind of talk about some of these things."

So, Vindman's basic answer was: I won't tell you because that's a secret. After several such exchanges, Volkov got tough with lawmakers, suggesting further inquiries might hurt Vindman's feelings.

"Look, he came here," Volkov said. "He came here. He tells you he's not the whistleblower, okay? He says he feels uncomfortable about it. Try to respect his feelings at this point."

An unidentified voice spoke up. "We're uncomfortable impeaching the president," it said.

"Excuse me. Excuse me," Volkov responded. "If you want to debate it, we can debate it, but what I'm telling you right now is you have to protect the identity of the whistleblower. I get that there may be political overtones. You guys go do what you got to do, but do not put this man in the middle of it."

Castor spoke up. "So how does it out anyone by saying that he had one other conversation other than the one he had with George Kent?"

"Okay," said Volkov. "What I'm telling you right now is we're not going to answer that question. If the chair wants to hold him in contempt for protecting the whistleblower, God be with you. .. You don't need this. You don't need to go down this. And look, you guys can — if you want to ask, you can ask — you can ask questions about his conversation with Mr. Kent. That's it. We're not answering any others."

"The only conversation that we can speak to Col. Vindman about is his conversation with Ambassador Kent?" asked Republican Rep. Lee Zeldin.

"Correct," said Volkov, "and you've already asked him questions about it."

"And any other conversation that he had with absolutely anyone else is off limits?"

"No," said Volkov. "He's told you about his conversations with people in the National Security Council. What you're asking him to do is talk about conversations outside the National Security Council. And he's not going to do that. I know where you're going."

"No, actually, you don't," said Zeldin.

"Oh, yes, sir," said Volkov.

"No, you really don't," said Zeldin.

"You know what?" said Volkov. "I know what you're going to say. I already know what you're going to do, okay? And I don't want to hear the FOX News questions, okay?"

Zeldin, perhaps seeking to cool Volkov down, said, "Listen, this transcript is going to be out at some point, okay?"

"I hope so," said Volkov.

Finally, Schiff stepped in to stop things. "The gentleman will suspend," he said. "Let's suspend. Counsel has made his position clear. I think his client has made his position clear. Let's move on."

It should be noted that Volkov was a lawyer, and members of Congress were members of Congress. The lawyer should not be treating the lawmakers as Volkov did. Volkov was able to tell Republicans to buzz off only because he had Schiff's full support. And Republicans never found out who else Vindman discussed the Trump-Zelensky call with.

3) There were notable gaps in Vindman's knowledge. Vindman portrayed himself as the man to see on the National Security Council when it came to issues involving Ukraine. "I'm the director for Ukraine," he testified. "I'm responsible for Ukraine. I'm the most knowledgeable. I'm the authority for Ukraine for the National Security Council and the White House." Yet at times there were striking gaps in Vindman's knowledge of the subject matter. He seemed, for instance, distinctly incurious about the corruption issues in Ukraine that touched on Joe and Hunter Biden.

Vindman agreed with everyone that Ukraine has a serious corruption problem. But he knew little specifically about Burisma, the nation's second-largest privately owned energy company, and even less about Mykola Zlochevsky, the oligarch who runs the firm.

"What do you know about Zlochevsky, the oligarch that controls Burisma?" asked Castor.

"I frankly don't know a huge amount," Vindman said.

"Are you aware that he's a former Minister of Ecology"? Castor asked, referring to a position Zlochevsky allegedly used to steer valuable government licenses to Burisma.

"I'm not," said Vindman.

"Are you aware of any of the investigations the company has been involved with over the last several years?"

"I am aware that Burisma does have questionable business dealings," Vindman said. "That's part of the track record, yes."

"Okay. And what questionable business dealings are you aware of?" asked Castor. Vindman said he did not know beyond generalities. "The general answer is I think they have had questionable business dealings," Vindman said.

Castor then noted that in 2014 Burisma "undertook an initiative to bring in some additional folks for their board, are you aware of some of the folks they added to their board in 2014?"

The only individual I'm aware of, again, after, you know, as it's been reported in the press is Mr. Hunter Biden," Vindman said.

"Okay," said Castor. "And did you check with any of your authoritative sources in government to learn a little bit more about these issues?"

"I did not," said Vindman. "I didn't think it was appropriate. He was a U.S. citizen, and I wasn't going to ask questions."

A short time later, Castor asked, "And do you have any knowledge as to why Hunter Biden was asked to join the board?"

"I do not."

"Did you check with any of your authoritative sources whether he was a corporate governance expert or —"

"Like I said, I didn't," Vindman answered. "He's an American citizen. Certainly there are domestic political overtones. I did not think that was appropriate for me to start looking into this particular ... I drew my conclusions on Burisma and I moved on."

Vindman had other blind spots, as well. One important example concerned U.S. provision of so-called lethal aid to Ukraine, specifically anti-tank missiles known as Javelins. The Obama administration famously refused to provide Javelins or other lethal aid to Ukraine, while the Trump administration reversed that policy, sending a shipment of missiles in 2018. On the Trump-Zelensky call, the two leaders discussed another shipment in the future.

"Both those parts of the call, the request for investigation of Crowd Strike and those issues, and the request for investigation of the Bidens, both of those discussions followed the Ukraine president saying they were ready to buy more Javelins. Is that right?" asked Schiff.

"Yes," said Vindman.

"There was a prior shipment of Javelins to Ukraine, wasn't there?" said Schiff.

"So that was, I believe — I apologize if the timing is incorrect — under the previous administration, there was a — I'm aware of the transfer of a fairly significant number of Javelins, yes," Vindman said.

Vindman's timing was incorrect. Part of the entire Trump-Ukraine story is the fact that Trump sent the missiles while Obama did not. The top Ukraine expert on the National Security Council did not seem to know that.

4) Vindman was a creature of a bureaucracy that has often opposed Trump. In his testimony, Vindman's perspective could be mind-numbingly bureaucratic. One of his favorite words is "interagency," by which he means the National Security Council's role in coordinating policy among the State Department, Defense Department, the Intelligence Community, the Treasury Department, and the White House. His bible is something known as NSPM-4, or National Security Presidential Memorandum 4. He says things such as, "So I hold at my level sub-PCCs, Deputy Assistant Secretary level. PCCs are my boss, senior director with Assistant Secretaries. DCs are with the deputy of the National Security Council with his deputy counterparts within the interagency." He believes the interagency has set a clear U.S. policy toward Ukraine.

"You said in your opening statement, or you indicated at least, that there's a fairly consensus policy within the interagency towards Ukraine," Democratic counsel Daniel Goldman said to Vindman. "Could you just explain what that consensus policy is, in your own words?"

"What I can tell you is, over the course of certainly my tenure there, since July 2018, the interagency, as per normal procedures, assembles under the NSPM-4, the National Security Policy [sic] Memorandum 4, process to coordinate U.S. government policy," Vindman said. "We, over the course of this past year, probably assembled easily a dozen times, certainly at my level, which is called a subpolicy coordinating committee — and that's myself and my counterparts at the Deputy Assistant Secretary level — to discuss our views on Ukraine."

That is a classic bureaucrat's view of government and the world. Needless to say, Trump does not do that sort of thing. The president is remarkably freewheeling, unbureaucratic, and certainly not always consistent when it comes to making policy. But he generally has a big goal in mind, and in any event, he is the president of the United States. He, not the interagency, sets U.S. foreign policy.

Still, Vindman was deeply upset when Trump, relying on Rudy Giuliani and others, turned his attention to Ukraine. "In the spring of 2019, I became aware of outside influencers promoting a false narrative of Ukraine inconsistent with the consensus views of the interagency," Vindman said in his opening statement. The outside influencers, he suggested, were undermining the work of his "interagency colleagues." In the words of the *Washington Post*, Vindman was "deeply troubled by what he interpreted as an attempt by the president to subvert U.S. foreign policy."

Vindman's discussion of the interagency, while dry as dust, might contain the key to his role in the Trump-Ukraine affair. In the last few years, the bureaucracy with which he so clearly identified has often been at odds, sometimes privately and sometimes publicly, with the president. Former U.N. Ambassador Nikki Haley, writing in a new book, said two top officials, Secretary of State Rex Tillerson and White House chief of staff John Kelly, sought to undermine Trump to "save the country."

"It was *their* decisions, not the president's, that were in the best interest of America, they said," Haley wrote. "The president didn't know what he was doing."

That view extended deep into some areas of the government. Now, parts of the foreign policy bureaucracy are in open war with the president, channeling their grievances through the House Democrats' drive toward impeachment. When he testifies in public, Vindman will be the living embodiment of that bureaucratic war.

