

## TF 38 Get Over It! at 21 October 2019 20:22:39

**Jennie Josephson** [00:00:00] Producer Jennie here Talking Feds is now six months old. We have big plans for this show. But to make those plans possible, we need to understand what you like and what you'd like us to improve about Talking Feds. So head to our web site, Talking Feds dot com and participate in our listener survey. It only takes a few minutes and you can complete the survey anonymously. Thanks.

**Harry Litman** [00:00:33] Welcome back to Talking Feds, a prosecutors roundtable that brings together prominent former federal officials for a dynamic discussion of the most important legal topics of the day. I'm Harry Litman. I'm a former United States attorney and deputy assistant attorney general and a current Washington Post columnist. It's been a big week, a really big week.

**Harry Litman** [00:00:58] There's been intense activity in Congress, intense activity in the Southern district of New York. And even a confluence of the two areas in the person of the ever bizarre and brazen attorney to the president, Rudy Giuliani. We're going to talk about both areas and the repercussions of each for the possible impeachment and even removal, a topic that seems to have come back at least on to the far corner of the radar screen of President Trump. And we've got a cracker jack group of well-known Feds in three different cities to discuss. So let's get right to it.

**Harry Litman** [00:01:35] Welcome back to the program, Barb McQuaid, former U.S. attorney for the Eastern District of Michigan. Frank Figliuzzi, a former assistant director for counter intelligence at the FBI. And Elie Hoenig, formerly an assistant U.S. attorney and supervisor in the Southern District of New York. Which, of course, Giuliani once headed and where he now has to worry he will be indicted. OK. We've had a week with several different witnesses appearing on the hill, giving long closed door depositions. In theory, the depositions have been confidential. But to nobody's surprise, at least, the headlines have leaked out after each marathon session. Sessions by Fiona Hill, Gordon Sondland, Michael McKinley, George Kent. Let's just go right in and start who this week did the most damage to the White House and why?

**Barb McQuade** [00:02:35] You know, in terms of the specific witness, I think Gordon Scanlon said some things that were particularly damaging. But I really thought it started right in the beginning when the former ambassador to Ukraine came and testified, because she made it clear that she was going to defy orders by the State Department and she was going to tell her story. And I think that that show of courage is what empowered all the others to come after her. So I'm not sure all the others follow suit without her going for. So maybe, maybe I would pick her.

**Harry Litman** [00:03:06] You know, this is an awesome point, because this is the difference with the Mueller inquiry where they were able to circle the wagons, have all loyalists from the campaign, they've taken these crazy positions categorically. But then with individual witnesses, the ones we name, they've actually had to play ball like a normal inquiry. And that seems to me to be kind of night and day. Do you guys agree?

**Elie Honig** [00:03:29] I do. Harry, I think Bob makes a really good point here. I mean, Ambassador Jovanovic essentially called the White House's bluff. They had the White House issue this order to executive branch employees. You're not going to be complying

with these subpoenas. And she did. And she essentially said, what are you going to do about it? And the answer, it turns out, is nothing. And I think that emboldened and cleared the way for Hill, Sondland, Kent, McKinley to come forward. And I think these witnesses and the other ones who are coming up soon are going to become a key part of the impeachment case.

**Harry Litman** [00:03:58] Right. Changes the whole dynamic before the White House says it. Even if it's bogus, it freezes the linebackers, at least when they're complicit. You know, even like a guy like McGahn. And then Congress has to go to court. If instead the ambassador, Fiona Hill, come in now it's on the White House to try to go to court to stop it. And of course, they have not a leg to stand on, really. So they're stuck trying to actually be reasonable. In terms of the substance of Hill Sondland, McKinley Kent, Jovanovic who really roughed up the White House the most?

**Frank Figliuzzi** [00:04:32] Well, of course, we don't yet know all of the details of these closed door depositions. We have some opening statements. We have some leakage occurring. But I think the collective weight and the relative silence that we're getting from Republicans who were privy to the testimony is a sign that they're doing some damage. But I'm going to go a little bit outside of the question and say that the most damage to the White House this week was done by a guy by the name of Mick Mulvaney. Mulvaney has handed a critical, heavy weighted issue to the already growing article of impeachment called obstruction and to the Ukraine pile of a separate article seeking the help of a foreign power. Whether this was a strategy or not, whether this was a strategy gone horribly wrong or not, he essentially has, not essentially, he has confessed that this is exactly what the White House was doing. They indeed were holding up money until the Ukraine could launch an investigation.

**Harry Litman** [00:05:31] Yeah, and I mean, play this out as a prosecutor, right? So he says this. Then he comes back with the classic White House remark of blaming the press for reporting it all fake news. But you've been handed this gift bar MCQUAID you're prosecuting the case and you call Mulvaney to the stand. How do you use this admission first? Is it an admission? Is it? Can you get it in and how do you use it?

**Barb McQuade** [00:05:57] I think it's at least an admission with regard to his own culpability to the extent he's a coconspirator in all of this. It becomes a coconspirator statement. So it it's admissible as to all the others. You know, I thought a wonderful demonstration of how this can be used effectively was when Barry Burke came in and conducted the cross-examination of Corey Lewandowski. And what he did with some of those clips was to play the clip. First of all, so that everybody's on the same page about what's going on. And then the question something simple like, you know, is that accurate or something like that? You know, you don't give him a chance to wiggle out of it. Isn't it true that you said those things? Isn't it true that you said quid pro quo at that moment? Yes, I did. Done right. And then you can use it in cross-examination or you can use it in closing argument. But it's so devastating. And he tried to walk it back later. But the recording itself is such powerful evidence. There is even a reporter who tried to help him understand and make sure he wasn't misspeaking or understanding the import of what he was saying. And he said that's absolutely what we were talking about. And so I think I would play the clip. And then the question would be something very simple just to get him to own and adopted. That story hasn't changed because it's a really powerful statement.

**Harry Litman** [00:07:05] And even if it has. First of all. Yeah. Does he try? What? What does he say? Get over it. You know that that's almost the quote of the week. Yes, that's exactly what happens. Politics is in there. We abuse power daily. Get over it. But you're so right. When a Barry Burke or a good lawyer questioning has this, all the prevarications and walking back doesn't matter. You put this to him. You know, Mr. Mulvaney, you said it was a quid pro quo. Right. And then he said, well, I later tried to explain. But Mr. Mulvaney, you said this was a quid pro quo. Right. And you forced them to a yes or no and just have that laying out there and kind of, you know, no further questions.

**Elie Honig** [00:07:47] The best thing you can have as a prosecutor is a tape. I guess the only thing better than that is a videotape. And only thing even better than that is a videotape where the person who's making the damaging statements is given every opportunity to correct it. So we can't later say I misspoke and refuses to correct it. So it's devastating evidence. I think there are numerous bases you could get this kind of statement admitted if it was a criminal trial.

**Elie Honig** [00:08:10] But bigger picture. Let's all keep in mind, this is impeachment. This is not a criminal trial. So really the only rule of evidence is whatever the heck the House of Representatives cares to rely on. And so I think Adam Schiff can play this clip whenever he makes his ultimate presentation to the house or however he makes it. And sure, you can play the efforts to walk it back, but this one is not walk back a ball. I also found it really almost humorous how they tried to walk it back and they tried to say, well, what Mulvaney really meant was Trump is this sort of international corruption buster. And that's what we were holding up the money for, which is nice in theory, but fiction. I mean, you know what?

**Harry Litman** [00:08:50] It's not going to hold up against the accounts, but I think imagine what it was like for anyone who's been around the White House that day because they he had totally stepped in it. It must have been feverish. But they also must have known what he comes out with. They are going to have to live with. And here's what they're going to have to live with. This notion of exactly as you say, Ali. It was all really about corruption. But then you'll have witness after witness saying, you know, he kept mentioning the Bidens. That's that's all he ever seemed to care about. And I just don't think that'll fly.

**Barb McQuade** [00:09:25] And, you know, Harry, Elie makes a really great point there, which is this is not a criminal case. This is an impeachment proceeding. And I think we need to make sure that people understand the difference. And in fact, I worry that this mantra of quid pro quo is an awful lot like the mantra we heard before of no collusion, no obstruction, and trying to persuade the American public that if there is no evidence of quid pro quo, then Trump wins. And that should not be the case, because for an abuse of power, an impeachable offense, there's no need to show quid pro quo. That would only come into play if it were a criminal case for bribery, which may end up being the case for some of these other players if they get charged criminally. But I think it's important to remember the legal standard in an impeachment inquiry is much broader than it is in a criminal case.

**Harry Litman** [00:10:09] Yeah, I think it's a great point. And I actually don't even understand what the quid pro quo mantra is supposed to mean. But obviously, they're going to try to stick to it. I mean, that was the sense from Mulvaney as cleanup. Didn't you think, Frank?

**Frank Figliuzzi** [00:10:23] Well, the attempted cleanup, indeed. And I'm not sure it makes a whole lot of sense either, except to perhaps imply that there really was no pressure. They could do whatever they want, we're just kind of holding this money back and we're pursuing corruption. There was another quote from the Mulvaney press conference that I think probably resonates with all of us on this call. Those of us who've worked public corruption and that is I heard the phrase that I always listen for when we're looking at a corrupt public official, and that is we do this all the time. When you hear we do this all the time or everyone does it from a corrupt public official, you know, it's the last desperate defense that they have. And if that's all you've got and I'm thinking in my career of one particular public official who basically said, I do it all the time and it comes out well. Okay, great. If that's all you've got, you're going to be in big trouble.

**Harry Litman** [00:11:15] Without going through each of the tests. And I just want to make one point that I thought was really damaging, as damaging as even Mulvaney in the week, which is that a couple people, including Deputy Assistant Secretary of State George Kent, made it 100 percent clear that Trump himself had ordered this whole operation be turned over to the direction and the leadership of Rudy Giuliani. And there's 18 ways in which that's a problem. But one is, you know, for a fact that Giuliani is not on some strong anti-corruption crusade. You know that Giuliani is all about serving Trump's political interests by getting dirt on the Bidens. And with that established, I thought that really puts the Republicans behind an eight ball.

**Elie Honig** [00:12:03] On the point of Rudy, the mere fact that Rudy Giuliani was centrally involved in this, I think is in itself so telling, because really, when you boil it down, there's only two things that were going on. There's only two possibilities in the way Donald Trump was interacting with Ukraine. Either, A, he was tried to advance the best national interests of the United States in terms of foreign relations and diplomacy, or B, he was trying to advance his own personal and political interests. And the fact that Rudy Giuliani, a nongovernment employee, the president's personal lawyer, was running this, I think answers the question for us.

**Harry Litman** [00:12:35] Yeah. That and just everything about him. All right. Well, we've gone through a number of ways in which the White House seems to be losing control and basically not being not in charge of things. What about Congress, as you said at the beginning? I think, Barb, this is night and day different from Mueller right there behind closed doors. They are moving quickly. They're actually having witnesses, not the biggest headline ones. They're taking what they can get. How would you judge their overall effectiveness?

**Barb McQuade** [00:13:06] To my great surprise, they've been incredibly effective. And my great surprise and I've always had a bias in favor of criminal investigators, you know, the Robert Mueller model, as opposed to a congressional model, thinking that, you know, they have subpoena power, they have the secrecy of the grand jury to give it some teeth. But it seems that this is really working effectively. Maybe it's just that we can see it. But one of the things they're doing is they are taking, I think, a play out of the prosecutor's playbook by doing the depositions in private. You know, the same way a witness comes in and testifies before the grand jury and it's done privately and you're not bogging it all down with the political morass that we sometimes see in these hearings where politicians are trying to get their five minutes of a sound bite that they can use on television later. Instead, they're doing it behind closed doors. You know, nine, 10 hours.

**Barb McQuade** [00:13:54] And maybe in the same way you would use a witness that testifies, a grand jury you use maybe, you know, one hour of testimony. You know, we talked about 10 different topics. Nine of them were not all that interesting, but one of them was very interesting. And so it's more of a you know, in the vein of discovery during those depositions and then at the trial, if there is a trial, if there's an impeachment and a trial, then you would imagine that some of but not all of those witnesses will come back and testify. But it could be done in a very focused way, wouldn't take nine or 10 hours, you know, hit the greatest hits of what they had to say during the deposition. So I think it's been incredibly effective.

**Harry Litman** [00:14:28] Yeah, I think is a great point. And I think as was it Elie, who mentioned the removal trial will be one thing. But before then, presumably Schiff or three committee members will make a presentation and they will take the best stuff from the depositions. And in addition, of course, what they avoided is the whole circus atmosphere, not just of the individual members pontificating, but the whole distraction technique of the Republicans to talk about the steel dossier and the terrible Democrats that's just off the table now. And what we get is a really great package that I think makes the facts pretty well established. And remember here, something that's unusual. We started with a charging document the same way you would a trial because we had the whistleblower complaint.

**Harry Litman** [00:15:22] So what each of these things are doing is kind of laying down pieces of that puzzle and substantiating them. And it seems to me that the facts are going to be quite clear. In particular, the point that Trump personally was pushing so hard for Biden.

**Harry Litman** [00:15:38] Any thoughts about where the Republicans go with it? Do they try to say the Dems have the facts wrong or do they try to sort of pooh pooh the whole thing along the lines that Frank just mentioned with Mick Mulvaney saying it happens all the time, just government, your government dollars at work.

**Elie Honig** [00:15:57] If I'm advising the Republicans, I think I would lean more towards the latter. I mean, I'm looking at this case coming together, and it really feels to me like the process of building a prosecution memo, which I know Barb and Frank are familiar with, too. And by the way, I don't think it's coincidental that the guy really leading this charge down in DC for Adam Schiff is Dan Goldman, who is a former colleague of mine from Southern District. And I know everyone here knows him. But I mean, I did trials with him. I supervised him, and he knows how to build a complex case. We used to do racketeering cases, mob cases together. But if I'm looking at this case, if I'm assessing this, the call is still the bedrock of the case that July 25th. Call the transcript, summary transcript.

**Elie Honig** [00:16:34] On top of that, you have the texts between the State Department officials, which I think are really damaging. And then you have this testimony from what we'll call the pros, the career public official. So if I'm sizing this up as a Republican, I'm thinking they've got a strong case. It's understandable it's going to resonate. And so I think the best approach to get through this, remember, you're not trying to win a not guilty verdict from a criminal jury. You're just trying to get the president through this still in office. And so I think I would take a page out of the Bill Clinton playbook from the late 90s and basically say the president's going to govern and the impeachment team is going to handle impeachment and just try to hold before on the Senate Republicans and say we're not really even taking much issue with the facts here. Maybe it was bad, but it's not

impeachable. And just try to keep those fifty three or at least enough of those fifty three Republican senators in the fold that you get through this impact.

**Frank Figliuzzi** [00:17:25] I agree. And Harry, I think we're also going to see kind of a real effort to paint these career professionals as part of that deep state. And I think I think to appeal to Trump's base, you're going to hear things like, look, we voted for a president that would break the mold, drain the swamp, get rid of these career bureaucrats and bean counters, and now you've got one and he can do whatever he wants. We believe in a strong unitary executive president and he's acting like that. You can pick and choose where he wants to execute his policies. And these other people are just part of the deep state. We're likely to hear that.

**Barb McQuade** [00:18:01] I think so. And I think the Mick Mulvaney press conference is a sort of foreshadowing of that. Right. I think he was running out the trial balloon. Yeah, sure. It was a quid pro quo. So what happens all the time? Get over it. It's politics. And I think you might be able to snow some people. You know, I think people understand the terms, political hardball. And we even saw that Joe Biden was using financial aid as leverage to get what the administration wanted from Ukraine. But of course, the huge difference there is the thing that you want to get an exchange is for someone's personal interests as opposed to the national interest. And it may be that that is a nuance that they can fool the public into ignoring.

**Harry Litman** [00:18:42] I mean, maybe. But that seems like, you know, quite a huge point to me. And it's not just I think I think Rudy Giuliani is going to be the star witness, whether or not he shows up or not. Let me just ask this to close out this topic. That's where I assume from the start that this is kind of a quixotic effort by the Dems. And, you know, you just have to do it because the constitutional stakes are so high.

**Harry Litman** [00:19:08] Is that right? You've had some people talking this week actually suggesting that they think removal is maybe on the table and that there's some longshot prospect as opposed to zero. Do we think we potentially move to the Senate with the outcome in doubt or do you see this as playing out all the way through?

**Barb McQuade** [00:19:28] I don't know. And I would like to think that that trial actually matters, that the way the evidence plays out matters to some senators, that it's not just a rubber stamp. We will or will not vote in the best interest of the president based on our party affiliation. But they actually look at the evidence because I think public sentiment will sway them to some extent if it comes out and seems so bad that I think there are some senators who will see their constituents turn. I'd like to think that the trial actually has some influence on the way they vote.

**Elie Honig** [00:19:59] I think the chances of the president being impeached are very high. I think the chances of removal are low, but not zero and not 5 percent. I think it's something above that. And the candidate never.

**Harry Litman** [00:20:10] And you'd've never said that four weeks ago. Right.

**Elie Honig** [00:20:12] Right. I mean, the chance of removal has vastly increased over the last four weeks. And look at the poll. The public opinion polls. I think we all saw the opinion poll that came out last week that showed 51 percent of the public is in favor of impeachment and removal. And if, though, if you see those numbers start to creep up into

the 60s and the numbers of Republican voters creep into the 30s, then I think you're going to start to see Republicans flip. And of course, that's going to be the make or break question. We've seen some cracks from Romney and Susan Collins and some others, but things have a way of snowballing. So I think the chances remain low of removal, but but well above zero.

**Frank Figliuzzi** [00:20:50] I've got to echo what's been said so far, but even add some signs that the Republicans are deeply concerned and things could change and things. You know, news breaks seemingly every hour. So we don't know where public opinion is going to be, but that's going to make all the difference to some of these senators as well. Is it too painful for me to continue to align myself with Trump and let's man.

**Harry Litman** [00:21:13] Not yet. So I totally agree. But not just Trump, but with this kind of say anything, you know, erratic, vastly unlikable. Rudy Giuliani, America's mayor, no more. I mean, you know, there's two Trump has some personal quality that lets him push this through. But I think if it's a Rudy and Don operation, it just makes it a lot more unsavory and unpleasant to try to defend.

**Frank Figliuzzi** [00:21:39] One sign that this effectiveness, as Barbara said, the degree to which this closed door deposition process is being effective was what Matt Gaetz did this week. He tried to crash Fiona Hill's closed door testimony and demanded entry. And that's a sign that he doesn't like this strategy. It's too effective. And he needed to kind of disrupt it and distract us from it. And then let's not forget, you can't really separate the Senate's sentiment toward Trump from the Syria debacle with Turkey and the fact that the many of them spoke out strongly that this president is shooting from the hip and making decisions that are literally killing allied forces in the form of the Kurds. So I think they grow weary of this president. And it's possible that things could get to the point where enough of them and their constituents are saying, well, we can't take it anymore.

**Harry Litman** [00:22:33] Yeah. Now, I mean, we saw them come out very strongly against. Mitch McConnell leading the charge on the whole Syria Turkey debacle. All right. More actually about Mr. Giuliani in a bit. But now it's time to take a moment to explain some of the terms and relationships that you hear about in this podcast and a segment that our listeners know well.

**Harry Litman** [00:22:55] As sidebar today, Rabbi Sharon Brouse will tell us about how federal prison assignments are set. Rabbi Rouse serves as the senior rabbi at IKAR, a unusual and prominent congregation in Los Angeles. She has been cited as the most influential rabbi in all of America. In 2013, she bless President Obama and Vice President Biden at the inaugural National Prayer Service. You may have seen her on the cover of Time or her TED talk in which she describes how to reintegrate religion for modern life. Here's Rabbi Brouse.

**Rabbi Sharon Brouse** [00:23:46] How are federal prison assignments determined? The Federal Bureau of Prisons, or the BNP, is in charge of the federal prison system and assigns inmates to prisons. It considers security, medical needs and logistical considerations like proximity to an inmate's home. And issues of overcrowding. The BNP is part of the Department of Justice and under the control of the attorney general when making prison assignments, the BNP uses information contained in a defendant's pre sentence investigative report prepared by a parole officer. The report looks at a defendant's conduct, criminal history, personal circumstances and other issues. The BNP

looks at the defenders conduct and history of violence or escape to determine the appropriate security level. Minimum security prisons, also known as federal prison camps, have dormitory housing and very few fences. Low security prisons have fences and more staff. Medium security prisons usually have double fences and cells. High security prisons have walls or reinforced fences, even more staff and close control of inmate movement. The highest level of security is the administrative maximum security penitentiary called the ADX or supermax. There is only one federal supermax prison. It's located in Florence, Colorado, and it houses the most dangerous or escape prone prisoners. The Bureau of Prisons also attempts to match inmates with prisons that can assist with their medical or other needs. The bureau also attempts to follow judicial recommendations when possible, but is not required to follow a judge's request and regularly does not.

**Rabbi Sharon Brouse** [00:25:29] For Talking Feds, I'm Rabbi Sharon Brouse.

**Harry Litman** [00:25:35] Thanks very much to Rabbi Sharon Brouse of IKAR Congregation. You can follow Rabbi Brouse on Twitter at sharonbrouse. Back to it.

**Harry Litman** [00:25:47] We have Rudy Giuliani busy and in some peril, not simply in the impeachment inquiry, but actually a renewed investigation that's obviously heated up very much in the southern district of New York. Ali, former supervisor there, how serious is the situation for him in his former office? We're just seeing some things from the outside. Some people he knows who have been indicted kind of size it up for him from your vantage point, having been inside there for a long time. What's going on?

**Elie Honig** [00:26:24] I'd definitely be worried if I was in Rudy Giuliani's shoes, certainly more worried than he's at least acting publicly. I think he said the other day, I don't need a lawyer. I think he does. Look, we don't know what the evidence is at this point, but I sort of see three or four possible buckets of conduct where Rudy could be in trouble. First of all, just Ukraine, just the stuff that he's doing out there in the public, openly soliciting what I consider to be foreign election aid under the law from Ukraine. Now, Bill Barr has sort of clean that up and said, well, it's not a thing of value. I think that's totally wrong. How could devastating oppo research not be a thing of value? That's number one.

**Harry Litman** [00:26:58] And by the way, I guess that's part of the indictment against these four, right, as campaign finance problems. That indictment involved actual cash, campaign finance. I don't think anyone could really argue against that. But that's bucket number two. This indictment of Parnas and Fruman. And these guys who are funneling hundreds of thousands of dollars of foreign money under false auspices into, guess what, pro Trump advocacy groups. And to this Representative Pete Sessions, whose agenda happened to align perfectly with Rudy is and getting rid of this Ambassador Ivanovich, who is in Rudy's way, if he had any hand in that, advising them to do it that way, helping them do it that way, he's gonna be liable to.

**Harry Litman** [00:27:36] For what? OK. Play that. Play that out. Stop. There is thick as can be. He's in the middle of it. What is his specific exposure?

**Elie Honig** [00:27:44] His exposure would be for campaign finance violations. So if he's helping these guys structure transactions so that they can take foreign money and get it into the American political system, then he's liable either. Either way,.



**Harry Litman** [00:27:55] By the way, more than helping. He may be under the sentencing guidelines as a leader and a manager. Right. He could. Which which would bump up his sentence.

**Elie Honig** [00:28:03] Now, I mean, it depends what his role was. It could have been big. It could have been small. But if he's involved in any way, he's going to be a conspirator, an aider and a better maybe a leader depending on the fact. So, yeah, I mean, look, I don't know, maybe it's a coincidence that these guys who were Rudy's connections happened to be committing this criminal conduct in a way that just Rudy knew nothing about and was not involved in. But I guess that's what where the investigation is looking. And then you are--

**Harry Litman** [00:28:27] Barb, what is your spider sense tell you, first of all, these guys got a strikingly soft pretrial detention package. Did that suggest anything to you? And what's your thought about whether Rudy is actually in the crosshairs here?

**Barb McQuade** [00:28:45] Harry, my spidey senses say that this bond situation in the southern district of New York tells me that there is a very strong likelihood that the Southern District of New York is beginning conversations with Parnas and Fruman to cooperate. Never got a million dollar bond. These guys are very significant risk of flight. As we all know, the basis for detention is either risk of flight or danger to the community. No sense that these guys are dangerous. But to me, a very serious flight risk. They've got all kinds of money and connections overseas. They were flying to Vienna on the night they were arrested. I would absolutely be seeking their detention pending trial. But instead, the southern district of New York stipulated to a bond for a million dollars that says to me, we want to play ball. And typically what you do is work your way up the chain of criminal liability. And so you start with these guys in hopes that they might flip on Giuliani. And then after that, there's only one more level to go to, which would be President Trump.

**Harry Litman** [00:29:42] And so now what? That would be Rudy flipping, which we'll get to in a minute. Any other indication that it's actually Giuliani who they're looking to these guys to deliver?

**Frank Figliuzzi** [00:29:53] We've heard that through people who've been questioned by the FBI that they're asking very specific questions about Rudy and his role. You know, we've even heard from Rudy himself on this after The New York Times came out with a piece saying that they're looking at him for counter-intelligence. They're looking for foreign agents, registration act potential violation. This is a sensitive topic for him because he came out and said, no, no, known the foreign agents registration problem. I wasn't working for the Ukrainians. I was working for Trump, which is kind of a no win statement from him. But I do think they're targeting him. And I think he's got issues. As you hear, they they're following the money trail. And there's this show where the money is. Coming from to pay Rudy and they show foreign control of that. I think he's he's really exposed.

**Harry Litman** [00:30:42] Yeah, I agree. And one little additional clue. He hasn't been called in yet. So, you know, he's the guy out there. And, you know, at this point, if they're not talking to him, that's another indication that he really is on the hot seat.

**Harry Litman** [00:30:58] Are we looking then let's say it moves to fruition. Let's say he's indicted. Are we looking at the next Manafort here? Obviously, he has the keys to the kingdom, as part says, in terms of everything he knows with the president. There will be

privilege issues, but I don't think so many. Let's leave those to the side. But is this a guy who will spend his life in prison or play for pardon and never turn against the president? That would be the ultimate spectacle if he did. But how remote do you consider it?

**Elie Honig** [00:31:33] I think it's very unlikely Rudy Giuliani cooperates. I also think just seeing.

[00:31:38] so if they throw the book at him, he'll just take it and go to jail.

**Elie Honig** [00:31:41] Well, he'll fight it. Yeah, no question about that. I also don't know if I would want to cooperate him. I think everyone on this show right now is cooperate. It's a really bad people who've done really bad things. I mean, for me now, multiple murderers. But this is different because it's all about credibility. And if I'm flipping a mob hit man, then he'll open up and he'll tell the jury, yeah, I did this, there's this. I kill these people and they don't like him, but they believe it. But Rudy, my goodness, how could you ever establish a reasonable level of credibility just given his.

**Elie Honig** [00:32:12] That would be quite a cross examination, his his public contradictory statements. And the other thing is, I don't know that you even need Rudy to tell you anything about Donald Trump, because both Rudy and Donald Trump have been so out there on what they've done and why they've done it. I don't know how much Rudy can really add to what's in the call and what's already part of the public record.

**Harry Litman** [00:32:32] All right. Well, that goes to the question that I wanted to ask everybody and maybe we close with here, which is, you know, how big a development is it from a little storm to a tsunami? If Giuliani is indicted and by that I mean tying it back up to the president and the overall impeachment inquiry, if the Southern District comes out with solid charges. How big an impact is that back in the Trump Congress field of operation?

**Barb McQuade** [00:33:04] I think it's a tsunami. I mean, it says a couple of things. One is, you know, probable cause to believe that crimes have been committed, although impeachable offenses don't have to be crimes. The fact that they're charged as crimes with his involvement, I think would weigh heavily upon a decision in Congress whether it's also impeachable. I also think it means that William Barr allowed it to happen. So people are, you know, as the attorney general, the southern district of York, of course, is independent, but he's still the boss. And for something of this significance, they would have to run it by and he would have the ability to stop it if he wanted to. So if Rudy Giuliani gets charged, it means it was done with William Barr's blessing and he's not going to stand in the way.

**Elie Honig** [00:33:43] I'd be looking at what specifically Rudy Giuliani is charged with, because if he's charged with stuff relating to partisan Frumin, that's a big deal. Look, it's a big deal for any former U.S. attorney to get charged. I'm not sure that's ever happened before. But if it's partisan, Frumin Trump can plausibly say, OK, I beat these wackos or are pumping money and I got nothing to do with that. I didn't know about that. But if they charge Rudy for criminality relating to Ukraine. If they charge him with bribery or extortion or foreign election aid, then it automatically logically follows that Trump committed those same crimes. Because I don't see any daylight between Rudy's conduct with respect to Ukraine and Trump's conduct with respect to Ukraine. And to me, that gives House Democrats and maybe even the Senate a clear shot at impeachment. And then also, of

course, there's always the possibility, I don't think ultimately will happen, but the possibility of charges after the president leaves office.

**Harry Litman** [00:34:36] I mean, it's a great point. We've seen Trump again and again distanced himself from people that he was previously extremely close with. Cohen, Manafort, they get indicted and it's somebody, you know, that, oh, they they just happen to, you know, or see once or twice. But I don't think that dog can hunt where where Giuliani is concerned. They are really, I think, you know, joined at the hip.

**Harry Litman** [00:34:59] Frank, how big a deal is it if the United States versus Giuliani is brought in the Southern District of New York?

**Frank Figliuzzi** [00:35:06] Well, if we thought the case against Michael Cohen and his indictment was a circus, just stand by. If this happens with Giuliani, the ego is huge. And to the extent that that he was a hero during 9/11 and the aftermath heroes, many of them have tragic flaws. And his his flaw is indeed his ego. He needs to be in the center of everything. And that's also that's his downfall. He has to rant and rave. And the defense of himself will be. Loud and obnoxious.

**Frank Figliuzzi** [00:35:35] But I'm thinking tactically, if you're the FBI, if you're the Southern District prosecutors, you've got this the privilege issues, you've got the president's counsel. Remember with Cohen, we had a search warrant executed in the office. So if Trump's going to try and distance himself, this is really fascinating. Trump going to say, look, Rudy went rogue on me. You know, I didn't direct all this stuff. I don't know what the heck he was doing. Well, do you execute a search warrant to get the phone calls? Because there are many between Rudy and the e mails or. Well, Trump doesn't use e-mails. But do you get the phone calls and the visits and all of those discussions? What do you capture? What, if anything, has Rudy documented? I don't know. But the tactical issues and strategy issues as a prosecutor are going to be fascinating.

**Harry Litman** [00:36:22] Stay tuned. All right. It is time for our final segment, Five Words or Fewer, where we take a question from a listener and each of the fantastic answer in five words or fewer. Our question today comes from Michelle on Twitter. She wonders why the GOP doesn't come out as one Republican Party and decide to impeach. Wouldn't that save them from being singled out for criticism? Feds, five words or fewer.

**Elie Honig** [00:36:57] All right, let me give it a shot. I'm gonna go. Fear of going first. I think there are probably a lot of Republicans who in their heart of hearts would like to do that and think it's the right thing to do and maybe even the politically expedient thing to do. But I also think there is a real fear of the power of Donald Trump that if one of them steps forward, he or she might be worried. I'm the only one standing here. And now Trump's going to turn his fire on me and I'm going to get primaried and I'm going to get tweeted at and I will lose my seat. So I think there's a little bit of dynamic of the group going on here. And that's why I think the momentum is going to be so important. If one person or a handful of people who are influential enough step forward, then that can make a big difference.

**Harry Litman** [00:37:34] Frank?

**Frank Figliuzzi** [00:37:35] My five word response to that is it's all about getting reelected. So it is the fear that if you're on the wrong side of this thing, you're just not going to get

reelected. And then there's this whole issue of who's getting money from where is their Russian funding of certain Republican candidates and officials. Where does the NRA money pull you into this? It's they are. They've got their finger in the wind. They're trying to figure out which way the wind is blowing. And we're certainly not there yet.

**Harry Litman** [00:38:03] Barb,.

**Barb McQuade** [00:38:04] I'd say because of party over country, it's kind of the same thoughts that Elie and Frank have had. You know, what would happen in the Nixon case was that we had public servants who put country over party and we haven't seen that yet. I don't know what it will take to get there, but I'm hopeful that we get there at some point.

**Harry Litman** [00:38:21] Yeah. Now, that's a great point. I mean, who who would be the Goldwater here? Who would you know, Mitt Romney might come out, but that doesn't make a cascade. Lindsey Graham would. But he'll never come out. Who's the sort of middle ground senior statesman whose defection would actually mean something? Yeah, I think the points are fine. So how will I repackage in five words?

**Harry Litman** [00:38:45] How about, politics makes cowards of all.

**Harry Litman** [00:38:51] Thank you very much to Barb, Frank and Elie. And thank you very much, listeners, for tuning in to Talking Feds feel like what you've heard. Please tell a friend to subscribe to us on Apple podcast or wherever they get their podcasts. And please take a moment to rate and review this podcast. You can follow us on Twitter at Talking Feds Pod to find out about future episodes and other Fed related content. And you can also check us out on the web at Talking Feds dot com where we have full episode transcripts. Submit your questions to questions at Talking Feds. Dot com. Whether it's for five words or fewer are general questions about the inner workings of the legal system for our sidebar segment.

**Harry Litman** [00:39:40] Thanks for tuning in. And don't worry, as long as you need answers, the feds will keep talking.

[00:39:51] Talking Feds is produced by Jennie Josephson, Dave Moldovan, Anthony Lemos and Rebecca Lopatin. David Lieberman is our contributing writer. Production Assistance by Sarah Philipoom. Special thanks to Rabbi Sharon Brouse and thanks as always to the incredible Philip Glass who graciously lets us use his music. Talking Feds is a production of Dalito, LLC. I'm Harry Litman. See you next time.