

TRUMP REFUSES TO ANSWER WHY HE ORDERED MIKE FLYNN TO PLACATE THE RUSSIANS ON SANCTIONS

As I have repeatedly argued, a key detail of the Russian investigation that has never been adequately explained is the firing of Mike Flynn. Contrary to what Trump's propaganda in early January 2017 suggested, it was no secret within the White House that Flynn had discussed delaying any response to Obama's sanctions with Sergei Kislyak. Indeed, it is virtually certain Flynn did so on the Trump's orders, conveyed via KT McFarland, and many of the people involved in creating Trump's public explanations knew that.

Which is why it's so interesting that Trump has refused to answer questions about the transition (in addition to questions about after inauguration).

But after months of negotiations with Mueller's team, Trump's lawyers have refused to answer any questions about his time as president-elect or president, arguing that the special counsel is not legally entitled to details about executive decision-making.

If, as I've posited, sanctions relief was one of the payoffs in a quid pro quo for election assistance, then by refusing to answer questions about the transition, Trump would effectively be refusing to go on the record about why he chose to undermine Obama's policy (on this, and on assistance to Israel, probably among other things).

Now consider how this fits with regards to

timing.

The WaPo reports that Trump was going to return his open book test to Mueller last Thursday, but balked, claiming they had questions about the legitimacy of the investigation.

Trump's lawyers originally planned to submit the answers to Mueller last Thursday, but put on the brakes.

Giuliani said there were "more questions raised about the legitimacy of the investigation that we had to discuss and look into," declining to elaborate.

That makes it more likely that the 10-day delay in a status report on Paul Manafort's cooperation – from last Friday to next Monday – reflects Mueller's effort to delay releasing that report until after he had received Trump's responses (which, remember, he once said he'd return a day or so after returning from Paris).

It's also *possible* that Trump got his first report on the status of the investigation from Whitaker last Thursday, one day after OLC released its memo deeming Whitaker's appointment legal. Today, Chuck Schumer sent DOJ Inspector General Michael Horowitz a letter asking for an investigation into Whitaker's communications with the White House, but I read it to relate exclusively to activity prior to his appointment as Acting Attorney General.

Or, less controversially, he may have gotten assurances from Whitaker that he, as Acting AG slash hatchetman, would deem transition period activities as protected by Executive Privilege.

And since we're reading tea leaves, consider the additional motion Mueller submitted in the Mystery Appellant case.

10/23/2018	APPELLANT BRIEF [1756693] filed by appellant [Service Date: 10/23/2018] Length of Brief: 12904 words. [18-3071] [Entered: 10/23/2018 01:49 PM]
10/23/2018	APPENDIX [1756695] filed [Volumes: 1] [Service Date: 10/23/2018] [18-3071] [Entered: 10/23/2018 01:51 PM]
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11/07/2018	SEALED MOTION [1759196] filed by appellee (Service Date: 11/07/2018 by mail) Length Certification: 2 pages. [18-3071] [Entered: 11/08/2018 01:02 PM]
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11/07/2018	SEALED SUPPLEMENTAL APPENDIX [1759201] lodged. [Volumes: 1] [Service Date: 11/07/2018] [18-3071] [Entered: 11/08/2018 01:06 PM]
11/14/2018	SEALED APPELLANT REPLY BRIEF [1759865] filed by appellant [Service Date: 11/14/2018] Length of Brief: 6,487 words. [18-3071] [Entered: 11/14/2018 01:11 PM]
11/15/2018	SEALED NOTICE [1760116] filed by appellant [Service Date: 11/15/2018] [18-3071] [Entered: 11/15/2018 02:44 PM]
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Particularly given the motion Mueller submitted yesterday – which argued that any subpoena the Special Counsel issued before Whitaker’s appointment remains valid – I wonder whether the recent activity reflects Whitaker’s tampering as well, perhaps reflecting notice, after the OLC memo, that Whitaker does not agree with the subpoena. Today’s sealed motion is around 25% longer than yesterday’s brief, so it may be notice of that argument.

(I think the new motion raises the chances, slightly, that the Mystery Appellant is Trump, but if it were someone – like John Kelly – making an Executive Privilege claim, Whitaker’s intervention may rely on the same justification Trump might have made last week about withholding transition materials.)

In other words, not only is Trump trying to avoid providing sworn testimony about one key event in this investigation – his order to placate the Russians on sanctions – but there are other hints that Whitaker has started his work to undermine the Mueller investigation.

Still, it may be too little too late. Mike Flynn’s sentencing continues as scheduled, with his probation officer submitting his presentencing report today. The government will have to submit a report on his cooperation on December 4, in advance of his December 18 sentencing. So Mueller must feel confident he knows all the circumstances of those conversations with Kislyak regardless of Trump’s willingness to talk about it.