

MICHAEL HOROWITZ'S CREDIBILITY IS AT RISK

I'm generally a fan of Michael Horowitz, DOJ's Inspector General.

For example, unlike many people, I think the Inspector General report on Andrew McCabe makes a credible case that the Deputy Director got caught being less than fully forthcoming with the IG – though I also think McCabe's lawsuit has merit and expect his claim that the report itself was not completed in proper fashion may prove key to that inquiry.

But yesterday's Comey report – and the office's continued failure to release a report on the non-Comey leaking that hurt Hillary Clinton in the 2016 election – threatens to do grave damage to his credibility.

As I laid out in this piece at The New Republic, I think the IG Report captures the way Comey didn't meet the standards he set for whistleblowers and Hillary Clinton over his career. I get the feeling IG staffers find Comey just as insufferable as I do!

But that's a problem, because the case they make that Jim Comey violated FBI rules in retaining memos documenting the highly inappropriate behavior of the President is shoddy, largely because the factual findings laid out make the claim he mishandled classified information dubious and the assessment of whether he released non-public investigative material and whether his memos recorded official acts in no way supports the claims made. The IG probably could have made a solid case on the latter issue; they just didn't.

For example, there's the conclusion that Comey improperly disclosed Trump's request that he drop the investigation into Michael Flynn (i.e. "I hope you can let this go") to his friend Daniel Richman, who then told the *New York*

Times. For the first time, the report in the second section cites Comey's colleagues' response to his action. "Members of Comey's senior leadership team used the adjectives 'surprised,' 'stunned,' 'shocked,' and 'disappointment' to describe their reactions to learning that Comey acted on his own to provide the contents of Memo 4, through Richman, to a reporter."

The report later also claims there is "no doubt" that his colleagues used those words because he violated the FBI duty to safeguard investigative matters. But if there were truly no doubt, then the report could have shown that by citing those witnesses stating that themselves. Since the report relies on this language in its analysis of two different findings, those reactions should be included, with full context, in the factual findings section.

Then there's the report's claim that, in releasing that same memo, Comey had revealed non-public investigative information. To back this up, the report includes two lengthy footnotes on former Deputy Attorney General Sally Yates's extensive testimony to Congress about her discussion with White House Counsel Don McGahn about Flynn—testimony that revealed a great deal about the status of the FBI's Flynn investigation as it existed on the day she got fired. These footnotes attempt to argue that Yates's disclosures were less substantive than Comey's repeated references to Trump describing the calls Flynn had made to Russia's ambassador (calls that were publicly disclosed) and insisting that Flynn had done nothing wrong. The second footnote describes that information by asserting, "Comey's disclosure of Memo 4 provided the public with details relevant to the Flynn investigation."

But what Yates's testimony **demonstrates** is that Yates had, without objection from the Justice Department, introduced a great deal of information about the investigation into Flynn into the public record before Comey's disclosure. Furthermore, the report cannot claim that he revealed details *about the investigation itself*. The actual new information that the memo disclosed was a description of how the president had, in highly unusual fashion, tried to end the investigation into Michael Flynn. The memo could only have disclosed investigative information if the president himself was being investigated—and he wasn't yet.

The inspector general might have argued that fielding a request from the president to end an ongoing investigation is part of that investigation itself. But it tellingly does not lay out that case, instead merely claiming that such a request is "relevant" to the investigation.

Perhaps most problematically, the report provides abundant evidence of how unusual were Trump's efforts to intervene in ongoing investigations, how his efforts broke all sorts of DOJ rules designed to protect investigative independence.

More generally, the report does not discuss whether presidential efforts to intervene in investigations, in violation of department rules about proper communication channels and chain of command, constitute the official business of the FBI director. The report does, however, lay out abundant evidence that such efforts are not normal. It quotes former FBI General Counsel Jim Baker stating that any one-on-one meetings are "quite outside the norm of interactions between the FBI Director

and a President of the United States.” It describes Baker and Comey’s repeated efforts to address Trump’s direct communications: After Trump asked Comey to let the Flynn investigation go, the report quotes Comey as saying he “took the opportunity to implore the Attorney General to prevent any future direct communication between the President and me. I told the AG that what had just happened—him being asked to leave while the FBI Director, who reports to the AG, remained behind—was inappropriate and should never happen.”

After Trump called Comey directly about an intelligence investigation on March 9, 2017, Comey called then-Attorney General Jeff Sessions immediately, “to keep the Attorney General in the chain of command between [Comey] and the President.” The last memo records Comey reviewing again the proper channels for the president to intervene in investigations; the report’s discussion of it notes that Comey’s chief of staff shared the details in real time with the proper chain of command.

Is this what constitutes official business? This is what the inspect general’s report would have you believe: that the president asking Comey to do things that break the FBI’s rules is part of the FBI director’s job—and hence, Comey is at fault for airing that official business to his associates and ultimately the press. The report treats a memo recording the president demanding that he “‘lift the cloud’ created by the investigation into Russian interference in the 2016 presidential election” as official business, implying that Comey should have done what the president asked of him.

As the report reveals, a whistleblower provided

a full copy of Comey's memos to the IG Department. At that point, then, the IG had solid documentation of all the ways Jeff Sessions and others had failed to protect the independence of the Department.

There's no sign the IG investigated that problem, which remains ongoing.

Instead, after months of pressure from Trump, it instead made a weak case that Comey broke the rules, without assessing all the other urgent problems revealed by the memos.

I actually don't think the IG produced this report in response to pressure from Trump. The facts they do lay out – to the extent they lay out the facts – aren't that supportive of Trump.

But I do think the IG presents abundant evidence of other problems at DOJ that remain pressing. And instead of focusing on those, they instead made a weak case against Jim Comey.

I don't like Jim Comey's sanctimony either. But given the way the IG focuses on Comey to the detriment of the other violations of DOJ process, it suggests this investigation was affected by more personal animus than anything Peter Strzok did.