

THE CONSPIRACY THEORIES FLYNN WANTS TO RESUSCITATE AND THE MCCABE INVESTIGATION

Lost in the frenzy regarding the conspiracy theories Rudy Giuliani is planting and the Attorney General is personally chasing is the government's response to Mike Flynn's purported "Brady" demand – which accuses Flynn lawyer Sidney Powell of planting conspiracy theories. I tweeted about the package in this thread. While there may be a dispute about a few items, I correctly predicted that the main legal question is whether Emmet Sullivan will interpret his standing Brady order – requiring that prosecutors turn over Brady information even for defendants pleading guilty – will extend to Giglio information impeaching witnesses. In response to a request for any Brady or Giglio information discovered by DOJ's Inspector General in the last two years, DOJ states flat out Giglio is not covered by Sullivan's order.

The government has already provided the defendant with all Brady material; it is not obligated to provide Giglio material pursuant to the Court's Standing Order, *United States v. Flynn*, 17-cr-232 (D.D.C. Feb. 16, 2018) (Doc. 20).

And much of the rest of what Powell is asking for, pertaining to Peter Strzok at least, would be Giglio.

That said, there is a part of the government's substantiation that Sidney Powell is sowing conspiracy theories that deserves more attention. The government lays out how Flynn lawyer Rob Kelner asked the government three times about a conspiracy theory that Andrew McCabe, before Powell asked a fourth time.

The defendant's complaints and accusations are even more incredible considering the extensive efforts the government has made to respond to numerous defense counsel requests, including to some of the very requests repeated in the defendant's motion. For instance, the defendant alleges that former FBI Deputy Director Andrew McCabe said, "'First we f**k Flynn, then we f**k Trump,' or words to that effect;" and that Deputy Director McCabe pressured the agents to change the January 24 interview report. See Mot. to Compel at 4, 6 (Request ##2, 22). Defense counsel first raised these allegations to the government on January 29, 2018, sourcing it to an email from a news reporter. Not only did the government inform defense counsel that it had no information indicating that the allegations were true, it conducted additional due diligence about this serious allegation. On February 2, 2018, the government disclosed to the defendant and his counsel that its due diligence confirmed that the allegations were false, and referenced its interview of the second interviewing agent, who completely denied the allegations. Furthermore, on March 13, 2018, the government provided the defendant with a sworn statement from DAD Strzok, who also denied the allegations.

Nevertheless, on July 17, 2018, the defense revived the same allegations. This time, the defense claimed that the source was a staff member of the House Permanent Select Committee on Intelligence ("HPSCI"). The HPSCI staff member allegedly told the defendant that the second interviewing agent had told the staff member that after a debrief from the interviewing agents, Deputy Director McCabe said, "F**k Flynn." Once again, the government reviewed

information and conducted interviews, and once again confirmed that the allegations were completely false. And after defendant and his counsel raised the accusation for a third time, on October 15, 2018, the government responded by producing interview reports that directly contradicted the false allegations. Despite possessing all of this information, defense counsel has again resurrected the false allegations, now for a fourth time. See Mot. to Compel at 4, 6 (Request ##2, 22)

The persistence of this conspiracy theory – and HPSCI’s role in perpetuating it – is significant for another reason.

The IG Report on Andrew McCabe discusses how DOJ IG came to investigate McCabe this way.

In May 2017, the FBI Inspection Division (INSD) expanded a pre-existing investigation of media leaks to include determining the source of the information in the October 30 WSJ article regarding the August 12 McCabe-PADAG call. INSD added the October 30 article to their pre-existing matter because it appeared to involve an instance of someone at the FBI leaking the Deputy Director’s private conversations to the media.

The backstory to this is that Jim Comey asked the Inspection Division to investigate leaks (remember, something Trump had demanded). But the “pre-existing” investigation referenced reportedly pertained to the same conspiracy theory: that someone had leaked to the press that McCabe had said “First we fuck Flynn, then we fuck Trump” in front of some FBI Agents. (I believe the Circa story cited here eventually came to be part of the investigation, but TruePundit claims credit for the conspiracy, pointing to a version that temporally matches

the timeline.)

Note the asymmetry to this story.

No DOJ entity, whether FBI's Inspection Division, DOJ IG, or Flynn's prosecutors have presented the public proof that this serial conspiracy theory has been debunked – much less chase down the Agents who keeps spreading it and prosecute them. But because the Inspector Division asked McCabe who might be leaking about him (which is what the initial question was), he is being pursued in an investigation that Reggie Walton denounced the other day.

This is how conspiracy theories about what DOJ and FBI did in the last three years are allowed to persist, much less get reentered into court filings that otherwise would get the lawyers doing so sanctioned.