

# DOJ SUDDENLY DECIDES IT CAN SHARE THE MCCABE, COMEY 302S WITH CONGRESS

After DOJ asserted to DC Chief Judge Beryl Howell that *US v. Nixon* would be decided differently today, the judge instructed the parties fighting over whether DOJ will share the grand jury materials from the Mueller investigation with Congress to get busy. She set of bunch of short deadlines to determine the validity of DOJ's claims to secrecy. As part of that, she had DOJ explain which FBI 302s (interview reports) it had shared of those the House Judiciary Committee requested, then had HJC fact check that list.

According to HJC, DOJ's declaration alerted them, for the first time, that some of the redactions in 302s were made to protect "Executive Branch confidentiality," a claim they'll move to challenge.

Although DOJ discussed the bases for redaction in its Supplemental Submission and at the October 8, 2019 hearing, see DOJ Supp. Sub. ¶ 4; Hr'g Tr. 48-49 (Oct. 8, 2019), none of the bases for redactions are listed or otherwise indicated on the FBI-302 reports reviewed by the Committee. Instead, portions of the FBI-302 reports are simply blacked out without any explanation. During the Committee's on-site reviews of the FBI-302 reports and in calls between Committee and DOJ officials, the Committee has repeatedly requested that DOJ specifically identify the complete set of bases for its redactions. The Committee still has not received this information as to any of the FBI-302 reports it has reviewed. While the Committee is generally aware

that there were redactions for personally identifiable information, until the discussion during yesterday's hearing and in DOJ's Supplemental Submission, the Committee was unaware, for example, that the bases for redactions included either "Executive Branch confidentiality interests," DOJ Supp. Sub. ¶ 4, or "presidential communications," Hr'g Tr. 48:19- 20 (Oct. 8, 2019).

The more interesting revelation from the exchange, however, pertains to whether or not DOJ was going to supply all 302s, and which ones they might suppress. As DOJ explains, it has given HJC 302s for 17 of the 33 people they asked for (though the Rob Porter and Uttam Dhillon 302s were mostly redacted):

The Committee requested FBI-302s for 33 individuals. To date the Department has provided access to the FBI-302s of 17 of those individuals, several of whom had multiple interviews. Those individuals are (in alphabetical order): (1) Chris Christie, (2) Michael Cohen (six separate FBI-302s); (3) Rick Dearborn; (4) Uttam Dhillon; (5) John Kelly; (6) Jared Kushner; (7) Cory Lewandowski; (8) Paul Manafort (seven separate FBI-302s); (9) Mary McCord; (10) K.T. McFarland (five separate FBI-302s); (11) Stephen Miller; (12) Rob Porter (two separate FBI-302s); (13) Rod Rosenstein; (14) Christopher Ruddy; (15) Sarah Sanders; (16) Sean Spicer; (17) Sally Yates.

But it has thus far withheld 302s from a group of others.

The Department currently anticipates making the remaining FBI-302's available under the agreed upon terms as processing is completed, so long as they do not adversely impact ongoing

investigations and cases and subject to redaction and potential withholding in order to protect Executive Branch confidentiality interests. These include, in alphabetical order (1) Stephen Bannon; (2) Dana Boente; (3) James Burnham; (4) James Comey; (5) Annie Donaldson; (6) John Eisenberg; (7) Michael Flynn; (8) Rick Gates; (9) Hope Hicks; (10) Jody Hunt; (11) Andrew McCabe; (12) Don McGahn; (13) Reince Priebus; (14) James Rybicki; (15) Jeff Sessions. In addition, the Committee requested the FBI-302 for the counsel to Michael Flynn, which also has not yet been processed.

It's an interesting list to withhold.

Hicks, of course, was privy to a great deal (including Trump's effort to lie about the June 9 meeting), and her testimony about certain communications during the campaign was actually fairly revealing.

At least two of these may be withheld for the pendency of the Roger Stone trial; both Steve Bannon and Rick Gates will be witnesses, and Mike Flynn's discussions of WikiLeaks may come up as well.

These 302s (and Dhillon's heavily redacted one) cover virtually all of the White House's side of discussions not to fire Mike Flynn right away after discovering he lied about his call with Sergey Kislyak: James Burnham, John Eisenberg, Don McGahn, and Reince Priebus, and of course Flynn himself, were all key players in that. Of course, Eisenberg (who's the lawyer who decided to hide the records on Trump's call to Volodymyr Zelensky) was involved in other acts that might indicate obstruction, including advising KT MCFarland *not* to create a false record about what Flynn said. And McGahn was involved in much else (and might even have been asked about Stone's campaign finance issues, which McGahn represented him on, and the awareness of the

Trump campaign about will be an issue at Stone's trial). But I find it acutely interesting that DOJ is withholding a bunch of records that will make it clear how damning Trump's reluctance to fire Flynn was, even as Flynn attempts a propaganda driven effort to give Trump an excuse to pardon him.

Then there are the 302s pertaining to the recusal of Jeff Sessions and firing of Jim Comey (and immediate pressure on Andrew McCabe). Those include Comey himself, McCabe, Rybicki, Hunt, Sessions, and Dana Boente. The fact that DOJ has been withholding these (and it's suggestion that there are ongoing investigations) is really sketchy: it suggests that DOJ may have been withholding really damning 302s from Congress so it can decide whether to indict McCabe and – presumably – wait for DOJ IG to finish its investigation of the FISA orders some of these men approved. In other words, DOJ has been releasing one after another damning claim against Comey and McCabe, but withholding evidence about why they might be targeted.

It's also noteworthy that Boente and McGahn's memory regarding an effort McGahn made to shut down the Russian investigation is one of the greatest conflicts of testimony in the entire Mueller Report.

The 302s DOJ has been withholding also happens to include 302s of current DOJ officials. Boente is the FBI General Counsel. More alarmingly, Jody Hunt runs the Civil Division and Burnham is his Deputy. These are the men directing the DOJ effort to make breathtaking claims about impeachment, and they're hiding their own actions in the investigation about which Congress is considering impeachment.

But, having been asked by Howell what the state of affairs is, DOJ has now decided that they're going to turn over 302s they previously had suggested they might withhold. HJC expressed some surprise about the sudden change of plans.

■ With respect to the outstanding FBI-302

reports, the Committee was surprised but encouraged by DOJ's statement in its supplemental filing that it "currently anticipates making the remaining FBI-302s available." DOJ Supp. Sub. ¶ 5. The Committee had previously understood from its recent communications with DOJ that DOJ's production was nearing completion and that there were only a limited number of remaining documents that DOJ would disclose.

It will be interesting if and when HJC obtains these records to see how DOJ tried to protect itself.

Update: I'm reminded of two things. First, as I copied out this URL, I recalled that Turkey, along with Russia, would have known that he lied about his calls with Sergey Kislyak.

Also, in the government's most recently filing in the Mike Flynn case, they revealed that he had not been in possession of the interview reports from between the time he was initially interviewed and the time he pled guilty.

Based on filings and assertions made by the defendant's new counsel, the government anticipates that the defendant's cooperation and candor with the government will be contested issues for the Court to consider at sentencing. Accordingly, the government will provide the defendant with the reports of his post-January 24, 2017 interviews. The government notes that the defendant had counsel present at all such interviews.

This suggests that the government was withholding reports that would make it clear that Flynn continued to lie, even after he lawyered up.