

EMPTYWHEEL FACT CHECK SERVICE — DOJ, 1-1 // SIDNEY POWELL, 0-29

The other day, I noted an error in the government surreply to Sidney Powell. The government said Peter Strzok raised a question left in a draft 302. But it appeared – comparing the question with the notes in question – that the question had to come from Joe Pientka, based on DOJ's representation of whose notes were whose.

Update: I think I found another error. The government says that the only thing interesting in the February 10 redline of the 302 is *Strzok* indicating he didn't remember two details – that Flynn said he had no particular affinity for Russia, and that he didn't remember that Flynn said his government Blackberry wasn't working in the Dominican Republic.

Contrary to the defendant's assertion, there were no material changes made after February 10, 2017, to the draft of the January 24 interview report. See Reply at 26. On February 10, 2017, DAD Strzok highlighted two—and only two—sentences where he did not recall a statement that the other interviewing agent included in the draft of the report.

But this must actually be Pientka not remembering these things, because both details show up in Flynn's notes.

The government just informed Sidney Powell and Emmet Sullivan of the error, which was actually the reverse of what I surmised, that they had the ID on the notes backwards.

Last evening, we received word that our Surreply may have misidentified the authorship of the handwritten notes from the January 24, 2017 interview of your client. Specifically, we were informed that the notes we had identified as Peter Strzok's, were actually the other agent's notes (see Surreply, Exhibit 1), and what we had identified as the other agent's notes were in fact Strzok's notes (see Surreply, Exhibit 2).

This morning, we asked the FBI to re-examine the electronic records from the January 24 interview, and they confirmed that the government mistakenly identified these notes in its March 13, 2018 discovery letter. Strzok's notes are those numbered DOJSC0-700021192–DOJSC0700021195; and the other agent's notes are those numbered DOJSC0-700021196–DOJSC0700021198. We understand that this has caused some confusion, and we regret our error. The government has no other corrections to make about the notes.

I don't know that I'm the one who gets credit for spotting the error, though I know lawyers in every case I've covered closely have followed my own coverage closely (DOJ's press people have been really uninterested in speaking to me of late, for possibly justifiable reasons, so I didn't call and ask). But I certainly IDed this as an error, and it got fixed, the second day after the weekend.

So I'm running 1-1 correction rate on the substantive errors I've found in the government's briefs.

Compare that with the errors and misrepresentations I've found in Sidney Powell's briefs in just five months. Among the errors or lies I've IDed are:

1. Falsely claims things don't show up in the Strzok and Pientka notes that she hides with a sketchy cut and paste job (here, here)
2. Whether DOJ provided everything considered Brady before Flynn pled guilty a second time (here, here)
3. How long it took to move Peter Strzok off of Mueller's team (here)
4. Why Lisa Page left FBI (here)
5. Whether Flynn had the Strzok-Page texts before pleading guilty (here)
6. Claims Strzok texts saying he was concerned about leaks about Trump associates is proof of bias against Trump (here)
7. Whether Strzok treated Flynn fairly given the record (here)
8. Egregiously misquotes a Strzok 302 (here)
9. Ignores that a Lisa Page 302 proves her misquote is wrong (here)
10. Presents proof that everyone recognized Flynn lied then claims it proves the

opposite (here, here

11. Claims DOJ didn't notice Flynn about something Comey said that Emmet Sullivan was in the loop on (here)
12. Misstates the seniority of Bruce Ohr (here)
13. Whether Bruce Ohr continued to serve as a back channel for Steele intelligence when in fact he was providing evidence to Bill Priestap about its shortcomings (whom the filing also impugns) (here)
14. Whether the Ohr memos pertain to Flynn; none of the ones released so far have the slightest bit to do with Flynn (here)
15. Misstates the timing of (and therefore who paid for) Nellie Ohr's research into Flynn (here)
16. Whether Andrew Weissmann was in charge of the Flynn prosecution (here)
17. How many meetings Weissman and Zainab Ahmad had with Ohr – the only known meeting with him took place in fall 2016 – before Flynn committed the crimes he pled guilty to; the meeting likely pertained to Paul Manafort, not Flynn (here)
18. Includes a complaint from a

Flynn associate that pertains to alleged DOD misconduct (under Trump) to suggest DOJ prosecutors are corrupt (here)

19. Whether a polygraph Flynn passed in 2016 has any import to crimes he committed in 2017 (here)
20. When Flynn joined the Trump campaign, which if true, means she's accusing Flynn of lying to the FBI (here)
21. The import of key details in a timeline (here)
22. Treats the standard for charging counterintelligence crimes as the standard for opening an investigation into them (here)
23. Complains that a redaction hiding that there was no FISA order targeting Flynn hides FISA abuse on him (here)
24. Claims that an order showing problems with FISA 702 – some committed while Flynn was NSA and none used before June 2017 against Trump's people, after which those abuses were fixed – proved Flynn had been a victim of FISA abuse (here)
25. Completely misunderstands the FISA 702 memo (here)
26. Claims the use of E0 12333

collected information – something her client did for 30 years – was against the law (here)

27. Claims phones that have nothing to do with her client prove her client is innocent (here)

28. Claims Flynn's meetings with her on how to blow up his plea deal were actually meetings during which he was cooperating with EDVA's prosecutors (here)

29. Claims a letter in which Chuck Grassley demands that Flynn be given exculpatory information is instead a Grassley assertion that DIA material Flynn already received that the govt says is inculpatory is exculpatory (here)

Again, these are not even all the errors I've found in Powell's briefs.

Yet, as far as I know, she has never corrected a single one of these for Emmet Sullivan – she hasn't even stopped making some of these key false claims.

I'll grant you that the government's error is embarrassing. I shouldn't need to fact check the FBI 18 months after the fact!

But it also happens to undermine several of Powell's claims. It means Strzok, who was the main interviewer, really did take sketchier notes, as Powell says he would have. It means that Pientka, not Strzok, is the one who took notes so OCD that Powell says he shouldn't

investigate her client – but also means that the Agent she has no gripe with took the more substantive notes. It means that the redline shows Strzok challenging Pientka about material he included that Strzok didn't remember.

In other words, it undermines yet more of Powell's conspiracy theories.

And it doesn't change that both sets of notes and all three 302s back the charges of false statements that Flynn pled guilty to.

Updated to include a 29th false claim of Powell's because it's a particularly galling one.