

DID MIKE FLYNN GAMBLE AND LOSE ON BILL BARR AND MICHAEL HOROWITZ?

Since the beginning of Mike Flynn's attempt to blow up his plea deal, he has been investing his hopes on two things: first, that Bill Barr's efforts to discredit the investigation into Flynn and other Trump flunkies will find something of merit, and that Michael Horowitz's Inspector General Report into the origins of the Russian investigation will likewise substantiate Flynn's claims the investigation into him was a witch hunt.

Even before Covington & Burling had withdrawn from representing Flynn, Sidney Powell wrote Barr and Jeffrey Rosen making wild claims that Flynn had been illegally targeted. Both that letter and Flynn's motion for what he purported was Brady material asked for FISA materials that actually related to FISA orders on Carter Page, as well as any Brady or Giglio material found in Barr and Horowitz's investigations.

His reply tied the FISA Report directly to its claim that the government can't be trusted to comply with Brady.

The Mueller Report established that there was no conspiracy between anyone in the Trump campaign and Russia. It is also apparent now, or will be upon the release of the FISA report of the Inspector General, that the FBI and DOJ had no legal basis to obtain a FISA warrant against Carter Page or to investigate Mr. Flynn. 13 Yet, the government wants us to accept its word that the defense has everything to which it is entitled. Fortunately Brady exists to protect the accused "from the prosecutor's private deliberations, as

the chosen forum for ascertaining the truth about criminal accusations.”

The entire effort to blow up his plea deal was a risky bet that either Barr and/or Horowitz would deliver some basis for Emmet Sullivan to throw out his prosecution.

Thus far, the only thing Barr’s worldwide wild goose chase has turned up are two phones once owned by Joseph Mifsud that the government quickly pointed out are totally unrelated to Flynn.

Yesterday, the government and Flynn asked Judge Sullivan to delay the briefing schedule that would have led up to a December 18 sentencing, a request Sullivan granted today. The request noted that *both sides* expect the IG Report to relate to Flynn’s case, even while DOJ pretends not to have inside information about when the report will be released.

Additionally, the parties note that the Department of Justice’s Office of the Inspector General (OIG) is conducting an Examination of the Department’s and the FBI’s Compliance with Legal Requirements and Policies in Applications Filed with the US. Foreign Intelligence Surveillance Court Relating to a certain US. Person. The parties expect that the report of this investigation will examine topics related to several matters raised by the defendant. As widely reported by the media, that report is expected to issue in the next several weeks.

Thus far, however, the public reporting on the IG Report suggests the report will not only not corroborate the claims Flynn wants it to, but affirmatively undermine some of his claims. For example, the NYT describes that the report attributes blame to low-level employees but not the senior figures – Jim Comey, Andrew McCabe,

and Peter Strzok – that Flynn’s entire challenge focuses on.

A highly anticipated report by the Justice Department’s inspector general is expected to sharply criticize lower-level F.B.I. officials as well as bureau leaders involved in the early stages of the Trump-Russia investigation, but to absolve the top ranks of abusing their powers out of bias against President Trump, according to people briefed on a draft.

[snip]

In particular, while Mr. Horowitz criticizes F.B.I. leadership for its handling of the highly fraught Russia investigation in some ways, he made no finding of politically biased actions by top officials Mr. Trump has vilified like the former F.B.I. director James B. Comey; Andrew G. McCabe, the former deputy who temporarily ran the bureau after the president fired Mr. Comey in 2017; and Peter Strzok, a former top counterintelligence agent.

And Horowitz’s reported finding that DOJ and FBI did not coordinate very well (something backed by materials Flynn already has in his possession) undermines Flynn’s allegations that everyone who works at both FBI and DOJ was in cahoots against Trump and therefore Flynn.

[T]he bureau and the Justice Department displayed poor coordination during the investigation, they said.

Finally, the adverse findings Horowitz will lay out largely relate to the Carter Page FISA, which had very little bearing on Flynn.

Investigators for the inspector general, Michael E. Horowitz, uncovered errors and omissions in documents related to

the wiretapping of a former Trump campaign adviser, Carter Page – including that a low-level lawyer, Kevin Clinesmith, altered an email that officials used to prepare to seek court approval to renew the wiretap, the people said.

[snip]

Mr. Horowitz’s investigators have suggested that he is likely to conclude that the filings exaggerated Mr. Steele’s track record in terms of the amount of value that the F.B.I. derived from information he supplied in previous investigations. The court filings in the Page wiretap application said his material was “used in criminal proceedings,” but it was never part of an affidavit, search warrant or courtroom evidence.

(Note, I believe the IG is wrong to base the value of Steele’s information on what shows up in affidavits, because this is precisely the kind of thing that would be parallel constructed *out* of affidavits, by design.)

And the report will specifically deny a key claim Flynn has made, that the investigation into him derives from Steele or the CIA.

None of the evidence used to open the investigation came from the C.I.A. or from a notorious dossier of claims about Trump-Russia ties compiled by Christopher Steele, a former British intelligence agent whose research was funded by Democrats, the report concludes, according to the people briefed on it.

In short, the report will be damning on some fronts. But not damning in a way that will be very useful for Flynn.

Which leaves him well over his skis at a time when Sullivan may be conducting a close review of how flimsy Powell's claims really are.

Update: And even as I was posting this, the NYT reported that the report will also confirm that the FBI was not spying on Trump's campaign.