

BILL BARR DID NOT PROVIDE THE MOST IMPORTANT EXHIBIT TO HIS MIKE FLYNN DISMISSAL MOTION: THE CALL TRANSCRIPTS

There's a giant hole in Bill Barr's motion to dismiss the Mike Flynn prosecution: the call transcripts of the General's calls with Sergey Kislyak.

The Timothy Shea-signed motion claimed that the transcripts showed "arms-length communications" which provided no suggestion that Flynn might be "directed and controlled" by Russia.

Nor was anything said on the calls themselves to indicate an inappropriate relationship between Mr. Flynn and a foreign power. Indeed, Mr. Flynn's request that Russia avoid "escalating" tensions in response to U.S. sanctions in an effort to mollify geopolitical tensions was consistent with him advocating for, not against, the interests of the United States. At bottom, the arms-length communications gave no indication that Mr. Flynn was being "directed and controlled by ... the Russian federation," much less in a manner that "threat[ened] ... national security." Ex. 1 at 2, Ex. 2 at 2. They provided no factual basis for positing that Mr. Flynn had violated FARA. Nor did the calls remotely transform Mr. Flynn into a "viable candidate as part of the larger ... umbrella case" into Russian interference in the 2016 presidential election. Ex. 1 at 3.

Significantly, *Shea doesn't cite the transcripts*

here! He cites the Electronic Communication opening the investigation against Flynn and the draft EC closing the Flynn case written 20 days before the Flynn interview. Moreover, he mis-cites the opening EC so as to suggest (as he does elsewhere in the memo), falsely, that Flynn was only being investigated under FARA, which usually has a public component, and not 18 USC 951, which more often does not.

This, then, is an assertion for which Barr provides no evidentiary backup.

Barr makes the assertion in a filing that includes several pieces of evidence that directly conflict with this judgment.

As I've noted, Mary McCord thought the idea of a call between the incoming National Security Advisor and the Russian Ambassador was "logical" until she reviewed the transcripts of the calls. "After reading them, she felt they were 'worse' than she initially thought," in part because, "Flynn proactively raised the issue of sanctions."

The Sally Yates 302 *seems* to suggest that as soon as Andrew McCabe read the transcripts it was clear Flynn was lying because he didn't really engage in the conversation until sanctions came up (a view that is entirely consistent with McCord's view, though Barr did not provide McCabe's 302 for us to compare more directly).

██████████ McCabe told Yates that ██████████, he was convinced Flynn was lying. He noted that Flynn wasn't as engaged in the conversation until the part about the sanctions. NSD told Yates at some point that the interviewing agents hadn't ██████████ read the full transcripts prior to the interview.

This passage may also suggest that Peter Strzok and Joe Pientka did not read the full transcripts of the calls before the interview, which would explain why they might have relied on whether Flynn gave indications he was lying. If that's true, it would also undermine other key claims made in this motion, most notably that the agents knew everything the transcripts said.

As for Yates herself, she provided Don McGahn several reasons why she believed these transcripts were troubling. Part of that description, as well as two of the examples she provided to substantiate the description, are redacted.

know they had hard evidence. She told them that not only did Flynn discuss sanctions, [REDACTED] and provided specific examples.

[REDACTED] Yates pointed out that Flynn actually made a specific request to Kislyak that the Russians not overreact and that they minimize their response, and Kislyak affirmed he had "taken it to the highest levels" and their response was because of the request.

[REDACTED]

[REDACTED]

[REDACTED] The specific asks Flynn was making, and the back and forth between him and Kislyak, were contrary to what was being represented in the media at the time. Yates added she was not saying the Vice President was being deliberately misleading, and McGahn noted that he could guarantee anything the Vice President said he'd heard directly from Flynn.


But Yates is specific: the "back and forth" between Kislyak and Flynn was contrary to the descriptions Flynn had offered publicly about the calls. Importantly, Yates' description rebuts the Shea motion's claim that this was an "arms-length" conversation.

Which is to say, in a key passage dismissing the possibility that the call transcripts included evidence that Flynn might have a relationship with Russia that could damage national security, the motion provides no evidence and in fact mis-cites something inapt as proof. But elsewhere, the filing *does* provide evidence about the call transcripts, and that evidence directly refutes the claim. Moreover, the filing redacts a number of other passages that go directly to the claim.

Importantly, whether or not the transcripts showed some reason to think Flynn's relationship with Russia might affect national security is not an issue that Barr can invoke exclusive Executive judgment on, something on which judges generally defer to the Executive. The record shows that two Acting Attorneys General – one

(Rod Rosenstein) appointed by Trump – already deemed the transcripts to include such evidence. Here, Barr isn't even on the record making the claim. Just an Acting US Attorney who has not been Senate confirmed is.

A year ago, Judge Emmet Sullivan ordered the government to provide the transcripts of the calls between Flynn and Kislyak.

The government is hereby ORDERED to file on the public docket in this case the transcript of the "voicemail recording" referenced in the 75  Addendum to Government's Memorandum in Aid of Sentencing and the transcripts of any other audio recordings of Mr. Flynn, including, but not limited to, audio recordings of Mr. Flynn's conversations with Russian officials, by no later than May 31, 2019.

In response, the government obliquely said no, because they were not relying on those recordings for sentencing, effectively pointing out that no claims entered into evidence had relied on the transcripts (by the time Flynn pled guilty, he himself had provided evidence that he lied, and so they didn't need to rely on the transcripts).

The government further represents that it is not relying on any other recordings, of any person, for purposes of establishing the defendant's guilt or determining his sentence, nor are there any other recordings that are part of the sentencing record.

Now, however, the transcripts are utterly central to the claims the government is making. Indeed, the only evidence about the transcripts submitted with this motion rebuts the government's claim.

Emmet Sullivan would be totally within his

authority to require the government to provide the actual evidence on which they make at this point unsubstantiated claims in this filing.

Mike Flynn has been demanding these transcripts for quite some time. Given the declassification spree that Barr and Ric Grenell have been on, I would imagine they would have been made public if they helped Flynn at all. So I'm guessing Yates and McCord provided a more accurate description of these transcripts than Timothy Shea.