

DOJ DECIDES LEAKED, INACCURATE DOJ IG MATERIALS ARE AWFUL

The NYT has a story—on which Michael Shear, who is home in quarantine with his spouse after catching COVID in the White House’s superspreader cluster, has the lead byline—on DOJ’s complicit role in separating children from their parents.

It describes how five border-state US Attorneys tried to avoid imposing the draconian policies masterminded by Stephen Miller (who, like Shear, got infected in Trump’s super-spreader event). But those US Attorneys were overruled by Jeff Sessions and Rod Rosenstein. Those findings appear in a draft DOJ IG Report, which has been sent to DOJ for comment, but not yet published.

The five U.S. attorneys along the border with Mexico, including three appointed by President Trump, recoiled in May 2018 against an order to prosecute all undocumented immigrants even if it meant separating children from their parents. They told top Justice Department officials they were “deeply concerned” about the children’s welfare.

But the attorney general at the time, Jeff Sessions, made it clear what Mr. Trump wanted on a conference call later that afternoon, according to a two-year inquiry by the Justice Department’s inspector general into Mr. Trump’s “zero tolerance” family separation policy.

“We need to take away children,” Mr. Sessions told the prosecutors, according to participants’ notes. One added in shorthand: “If care about kids, don’t bring them in. Won’t give amnesty to people with kids.”

Rod J. Rosenstein, then the deputy

attorney general, went even further in a second call about a week later, telling the five prosecutors that it did not matter how young the children were. He said that government lawyers should not have refused to prosecute two cases simply because the children were barely more than infants.

Passages of the report citing John Bash, who recently resigned his position as US Attorney for WD TX only to be replaced by a Billy Barr flunky, are quoted twice.

“Those two cases should not have been declined,” John Bash, the departing U.S. attorney in western Texas, wrote to his staff immediately after the call. Mr. Bash had declined the cases, but Mr. Rosenstein “instructed that, per the A.G.’s policy, we should NOT be categorically declining immigration prosecutions of adults in family units because of the age of a child.”

[snip]

In a briefing two days after Christmas in 2017, top Justice Department officials asked Mr. Bash for statistics from the pilot program, conducted by his predecessor, that could be used to develop “nationwide prosecution guidelines.” Mr. Bash, a former White House adviser, did not receive a follow-up request for the information. Thinking that the idea had been abandoned, he did not provide it.

And there’s at least one other prosecutor quoted – revealing that the no-tolerance policy targeting children let some far more serious criminals go free – who could be him.

Border Patrol officers missed serious felony cases because they were stretched too thin by the zero-tolerance policy

requiring them to detain and prosecute all of the misdemeanor illegal entry cases. One Texas prosecutor warned top Justice Department officials in 2018 that “sex offenders were released” as a result.

The article itself is based off a draft copy of the report and interviews with three anonymous officials.

This article is based on a review of the 86-page draft report and interviews with three government officials who read it in recent months and described its conclusions and many of the details in it.

Bash should not have had access to this entire report to review his own role in it. Past practice would have suggested he get just those passages that pertain to him directly (though this report appears to cover his time both at Main DOJ and as a US Attorney). But he would have access to the passages that quote him directly.

The article is most amusing, however, for the response from DOJ, which complains about an inaccurate DOJ IG Report and improper leaks.

Alexa Vance, a spokeswoman for the Justice Department, disputed the draft report and said the Homeland Security Department referred cases for prosecution.

“The draft report relied on for this article contains numerous factual errors and inaccuracies,” she said. “While D.O.J. is responsible for the prosecutions of defendants, it had no role in tracking or providing custodial care to the children of defendants. Finally, both the timing and misleading content of this leak raise troubling questions about the motivations of those

responsible for it.”

As I have laid out, the DOJ IG Report on Carter Page has numerous factual errors, just some of which they've corrected. The central complaint in the parallel Lisa Page and Peter Strzok Privacy Act lawsuits about the release of their texts is that those were released improperly, both as to timing and legality, and led to misleading interpretations of what the texts mean. Both of those lawsuits implicate a sworn declaration made by Rod Rosenstein (who is badly implicated by this report and who issued a statement to the NYT, suggesting he could be one of the anonymous sources as well). The Rosenstein statement in the Page and Strzok lawsuits will test how credible his claims are about his own actions in response to illegal requests from the President.

In other words, the entire article is thick with irony and revenge. And it will surely focus more scrutiny on the denials that DOJ issues once it is released after the election.

But none of that helps the infants who got separated from their parents.