

DOCKET TEA LEAVES: MANAFORT, BANNON, AND FLYNN

I'd like to point to some curious docket doings in cases pertaining to Paul Manafort, Steve Bannon, and Mike Flynn

Manafort

First, two things pertaining to Paul Manafort, who is serving his prison sentence from home. In his book, Andrew Weissmann raises the "other investigation" in which Manafort, on the day he succeeded in getting a plea deal, implicated someone – almost certainly Jared Kushner – and wondered why the material still hadn't been released.

Most notably, at one point we asked him about an email he'd received in August 2016 from Roger Stone. Manafort gave a long explanation, the gist of which was to implicate two senior Trump campaign officials; it was related to an investigation in New York. (As the precise material is still under seal I cannot discuss the details, although it is unclear to me what the continued basis is for keeping all this material under seal.) We were trying to assess his credibility, fixating on signs of dishonesty—any indication that Manafort was still angling for a pardon, or attempting to play us. Volunteering this information, which implicated senior officials, suggested he may have written that possibility off, even though we all had continuing doubts.

It's a damn good question given that Manafort's defense and prosecutors filed a sealed joint motion about what else could be unsealed from Manafort's breach determination. At the time,

the government was proposing to unseal at least some of the information – and had even given proposals to Manafort’s lawyers to unseal them.

On May 29, 2020, the government provided counsel for Mr. Manafort with the last of the government’s proposals for lesser-redacted materials. Counsel for Mr. Manafort is now considering the government’s proposals, and the parties respectfully request additional time for counsel for Mr. Manafort to do so, and for the parties to confer and prepare the joint report for the Court.

But Judge Amy Berman Jackson hasn’t ruled yet. She’s busy as hell, but some of this information would be fairly important for voters to consider before they vote.

Meanwhile, in Manafort’s case in chief, on Tuesday, one of the two DC AUSAs who were on the docket swapped out for a different one.

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, and Assistant United States Attorney Arvind Lal, hereby informs the Court that he is entering his appearance in this matter on behalf of the United States. Assistant United States Attorney Zia M. Faruqui no longer represents the United States in this matter.

Manafort’s serving his prison sentence from home. And the AUSA on the unsealing docket, Molly Gaston, remains on this one (so it shouldn’t pertain to the unsealing debate). There doesn’t seem to be a need to add new AUSAs when all he’s going to do is continue to sit in his condo until Trump pardons him.

Bannon

Meanwhile, on Wednesday, a sealed document was placed in Steve Bannon's docket.

10/14/2020	38	SEALED DOCUMENT placed in vault. (jus) (Entered: 10/14/2020)
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This could be a lot of things, and Bannon has three co-defendants, so it's not even clear that it pertains to him. But it's the first sealed document (as a simple fraud case, this shouldn't involve any classified evidence). And it was filed the same day as the Hunter Biden faux-scandal broke.

NBC reported that the FBI is investigating whether this faux-scandal has ties to foreign intelligence.

Federal investigators are examining whether emails allegedly describing activities by Joe Biden and his son Hunter and found on a laptop at a Delaware repair shop are linked to a foreign intelligence operation, two people familiar with the matter told NBC News.

The FBI seized the laptop and a hard drive through a grand jury subpoena. The subpoena was later published by the New York Post. The bureau has declined to comment.

Though there are other sketchy aspects to the story, such as the claim that the shop owner, having been subpoenaed for the laptop, also made a copy and gave it to Rudy's lawyer, Robert Costello.

"Before turning over the gear, the shop owner says, he made a copy of the hard drive and later gave it to former Mayor Rudy Giuliani's lawyer, Robert Costello," the Post said. "Steve Bannon, former adviser to President Trump, told The Post about the existence of the hard

drive in late September and Giuliani provided The Post with a copy of it on Sunday.”

Bannon’s Chinese benefactor, Guo Wengui, was hyping the dirt before it was released.

Weeks before the New York Post began publishing what it claimed were the contents of Hunter Biden’s hard drive, a Sept. 25 segment on a YouTube channel run by a Chinese dissident streamer, who is linked to billionaire and Steve Bannon-backer Guo Wengui, broadcast a bizarre conspiracy theory. According to the streamer, Chinese politburo officials had “sent three hard disks of evidence” to the Justice Department and House Speaker Nancy Pelosi containing damaging information about Joe Biden as well as the origins of the coronavirus in a bid to undermine the rule of Chinese President Xi Jinping.

Three days later, a Twitter account linked to Guo and Bannon’s Himalaya movement subsequently amplified an edited clip of the segment alongside the pledge of a “Bombshell... 3 hard disk drives of videos and dossiers of Hunter Biden’s connections with the Chinese Communist Party (CCP) have been sent to Nancy Pelosi and DOJ. Big money and sex scandal!”

And Bannon was boasting of having the laptop on September 28.

If the FBI was *already* investigating this – including why the shop owner was handing out copies of the purported laptop – then the FBI may have been aware of Bannon’s activities before Wednesday.

The point is, some of this – particularly if it delves into fraud – would be a bail violation. There’s a status conference on October 26, so

it's possible we'll get hints then.

Ultimately, I think Bannon is virtually guaranteed to be pardoned, because he still hasn't told the full truth about 2016. So even if he were jailed, it'd likely be for a matter of days until Trump got him out again.

Flynn

Finally, there's Flynn's case. The one unopposed amicus – filed by the NACDL – got docketed today. It's a strong case – far stronger than a similar argument that Sidney Powell tried to make – that Flynn should not be held in contempt for the lies he has told in Judge Emmet Sullivan's case. It's an argument that Sullivan would, I imagine, normally find persuasive, and the fact that he has docketed it today makes me wonder if he's relying on it in his order on Flynn's case.

The only problem with the brief is it misunderstands the full scope of Flynn's lies to the court. The brief assumes all his lies pertain to his guilty pleas, and argue that defendants can't be held accountable for perjury on coerced guilty pleas.

But – as I've noted repeatedly – the sworn declaration Flynn submitted as part of his attempt to withdraw his guilty plea, which DOJ's recent excuses for blowing up his prosecution increasingly rely on, also conflicts with what Flynn said to the grand jury as well as evidence submitted in this docket, which shows notes from Covington recording Flynn telling lies about his engagement with Turkey (see the bold for a conflicting statement).

- *June 26, 2018: Mike Flynn testified to an EDVA grand jury, among other things, that:*
 - *“From the*

beginning,” his 2016 consulting project “was always on behalf of elements within the Turkish government,”

- *He and Bijan Kian would “always talk about Gulen as sort of a sharp point” in relations between Turkey and the US as part of the project (though there was some discussion about business climate)*
- *“For the most part” “all of that work product [was] about Gulen”*
- *When asked if he knew of any work product that didn’t relate to Gulen, Flynn answered, “I don’t think there was anything that we had done that had anything to do with, you know, anything*

else like
business climates
or stuff like
that”

- He was not aware of “any work done on researching the state of the business climate in Turkey”
- He was not aware of “any meetings held with U.S. businesses or business associations”
- He was not aware of “any work done regarding business opportunities and investment in Turkey”
- He and his partner “didn’t have any conversations about” a November 8, 2016 op-ed published under his name until “Bijan [] sent me a draft of it a couple of days prior, maybe about a week prior”

▪ *January 29, 2020: Mike Flynn submitted a sworn declaration. Among the assertions he made were:*

▪ *“On December 1, 2017 (reiterated on December 18, 2018), I pled guilty to lying to agents of the FBI. I am innocent of this crime.”*

▪ *“I gave [Covington] the information they requested and answered their questions truthfully.”*

▪ *“I still don’t remember if I discussed sanctions on a phone call with Ambassador Kislyak nor do I remember if we discussed the details of a UN vote on Israel.”*

▪ *“My relationship with Covington disintegrated soon thereafter.”
[After second*

proffer session.]

- *“I did not believe I had lied in my White House interview with the FBI agents.”*
- *“In the preceding months leading up to this moment [when he agreed to the plea deal], I had read articles and heard rumors that the agents did not believe that I had lied.”*
- *“It was well after I pled guilty on December 1, 2017, that I heard or read that the agents had stated that they did not believe that I had lied during the January 24, 2017, White House interview.”*
- *“I agreed to plead guilty that next day, December 1, 2017, because of the intense pressure*

from the Special Counsel's Office, which included a threat to indict my son, Michael, and the lack of crucial information from my counsel."

- *"My former lawyers from Covington also assured me on November 30, 2017, that if I accepted the plea, my son Michael would be left in peace."*
- *"Regretfully I followed my lawyers' strong advice to confirm my plea even though it was all I could do to not cry out 'no' when this Court asked me if I was guilty."*
- *"In truth, I never lied."*

Not to mention, Flynn's sworn declaration is internally inconsistent. [Update: a few more of the amicus briefs have been approved, including one from former prosecutors.]

It's also worth noting that the Bill Barnett 302, which included about a page worth of paragraphs that were "pending unsealing by the court" that have yet to be unsealed. Some of those must pertain to things Flynn claimed in his declaration. (Flynn's defense, but not Judge Sullivan, has an unredacted copy.)

Finally, yesterday, DOJ either posted or updated a job description that could be Brandon Van Grack's job leading DOJ's more focused FARA practice, which Van Grack got moved to after the Mueller investigation (though it could also be a more junior position reporting to Van Grack).

The attorney for this position will focus on administering and enforcing FARA, with at least 50% of the attorney's time devoted to FARA matters. The attorney's FARA responsibilities will include preparing for and leading civil litigation, managing criminal investigations, conducting inspections, and drafting advisory opinions.

When DOJ tried to blow up Flynn's prosecution, Van Grack withdrew from the case but did not quit, though the frothy right claimed he had been ousted. Just in the last while, Bruce Ohr was finally ousted from the office for a trumped up complaint that he shared intelligence on Russian threats, as he had done for years. Van Grack hasn't filed anything in PACER since DOJ moved to withdraw the prosecution. That said, DOJ has repeatedly said DOJ did not violate Brady.

I don't really know what to make of all this. But I thought I'd note what I'm seeing in the bottom of my tea cup.