

A MIKE PENCE PARDON OF TRUMP FOR FLYNN'S PARDON WOULD OBSTRUCT THE MUELLER INVESTIGATION

Because of the way the Mike Flynn pardon is written (who wrote it, given that Bill Barr has said this kind of pardon would be a crime, remains a very interesting question), it makes it clear its goal is to make all consequences for Flynn associated with the Mueller investigation to just go away. Poof! It purports to pardon Flynn for any fact known to Mueller's investigation and anything associated with Judge Emmet Sullivan's docket.

Not only does the pardon raise vagueness problems (and attempts to pardon future crimes), but it makes it crystal clear that it is an attempt to invalidate the entire Mueller investigation.

That makes it all the more clear it is an attempt to obstruct that investigation and all subsidiary investigations that arose from it. It is an attempt to use Presidential power to ensure that no special counsel can investigate the President and have criminal charges associated with it stick. Joe Biden's DOJ could easily incorporate this pardon into the obstruction charge that Mueller prepared, with the benefit of yet another new act that Barr did not consider in his (legally suspect) declination for Trump.

That means that if Mike Pence were to pardon Trump for actions that included this pardon, *he* would then be obstructing the Mueller and associated investigation. Trump's legal jeopardy would become Pence's. Mike Pence, who got through the entire Mueller investigation without

any personal exposure, would finally be left holding the bag for at least a subset of the crimes identified by it and committed to cover it up.

Which is why I'm interested in the focus of this Carol Lee piece on Flynn. While it relies on interviews with 20 people involved, it doesn't even cover the full scope of the public documents relating to Flynn's actions, and in substantial part simply narrativizes what's in the Mueller Report. Of particular note, it doesn't mention the evidence that certain members of the Transition were fully briefed on Flynn's actions, while others (like Pence, but also Tom Bossert) were not. It doesn't mention how the White House scripted Steve Bannon to claim sanctions weren't discussed at Mar-a-Lago. It doesn't mention that Flynn told Russia Trump knew of his calls and that Flynn made the first one while with Trump.

Where it breaks new ground is its focus on Pence. Pence is mentioned 47 times, including a quote from someone describing his reaction to discovering he had been lied to. The most important new ground pertains to how Trump tried to make Pence responsible for firing Flynn, and how Pence deferred the decision to Trump.

One of the president's top aides thought Trump was trying to shift the burden of deciding whether to fire Flynn onto Pence when he said: "Mike, he disappointed you. He let you down." Flynn had apologized privately to Pence who wasn't happy with him. Still, Pence told Trump he'd support whatever decision he made.

The purported reason for firing Flynn was that he lied to Pence (the real reason is that Trump was hoping to stave off any investigation into himself).

And yet, even in a story that focuses closely on Pence (and describes him smoldering while

reading the Flynn transcripts), it claims that Pence played no part in this story (while stopping short of stating that he or his Chief of Staff Nick Ayers and his aide Marc Lotter, the latter two of whom are named, had no part in it).

Vice President Mike Pence has so far been silent about the pardon.

[snip]

The White House and Pence's office had no comment.

[snip]

Trump never said publicly or privately that Flynn had lied to him. Just to Pence, and, in a tweet in December 2017, the FBI.

Here's the thing. Not only would pardoning Trump for this pardon *for the first time* give Pence criminal exposure in the Mueller and subsequent investigations. But because Pence was left out of the loop of what was really going on with Russia during the Transition and afterwards – the back channels, the efforts to undermine sanctions, yet more back channels – he would have no idea what he was serving to cover up by pardoning Trump.

I find Pence's silence in this very noisy NBC piece to be quite intriguing.