

A One-sided PolitiFact Explainer, With Error

PolitiFact [published an explainer article on May 8, 2020](#) about the Department of Justice reversing course on the prosecution of Gen. Michael Flynn. That article was both inappropriately one-sided and internally inconsistent.

One-sided

PolitiFact's explainer article did not link to the Department of Justice filing and quoted from it minimally ("a legitimate investigative basis" and "material even if untrue"). It's worth noting that my outreach to PolitiFact said it had not quoted from the DOJ filing. Perhaps such short & selective quotations are worse than not quoting it at all.

The article fails to include the gist of the DOJ filing, which notes that the FBI had prepared to close the Flynn investigation for lack of evidence and that the prosecution failed to notify Flynn's defense (and the Court) regarding this exculpatory information. PolitiFact's version of events its readers need to know carried no hint of the prosecutorial misconduct in the Flynn case. Nor did it touch on the legal importance of materiality to a false statements charge.

PolitiFact cited four experts in its explainer, two of whom have records of substantial political donations to Democrats (OpenSecrets.org). None of the four had anything positive to say about the DOJ filing, at least by PolitiFact's telling. Yet well-qualified experts had expressed positive views publicly, including [Andrew McCarthy](#) and [Jonathan Turley](#). PolitiFact's explainer article offered no hint that experts could hold positive views of the DOJ's decision, instead promoting the narrative that "Legal experts ... said it seems politically motivated."

Internally Inconsistent

PolitiFact used a quotation from expert Barbara McQuade that conflicted with the DOJ filing in the Flynn case as well as PolitiFact's own reporting (bold emphasis added):

The Justice Department "completely undermines its own mission when it says the investigation was not properly predicated, contrary to the finding of its own inspector general," said Barbara McQuade, former U.S. Attorney for the Eastern District of Michigan. Flynn's alleged dealings with Russia and his lack of candor with Vice President Mike Pence, which reportedly led to his firing by Trump, "created a national security threat of blackmail against someone in a sensitive national security position. The FBI had not just a right but a duty to investigate."

But the IG Report on “Crossfire Hurricane” did not make any comment on the FBI’s decision to question Flynn after deciding to close its investigation. It dealt with the justification for kicking off the investigation in the first place. The DOJ filing in the Flynn case, in fact, accords with that finding where it says (bold emphasis added) “the Government has concluded that the interview of Mr. Flynn was untethered to, and unjustified by, the FBI’s counterintelligence investigation into Mr. Flynn—a **no longer justifiably predicated investigation** that the FBI had, in the Bureau’s own words, prepared to close.” The part in bold directly implies the DOJ filing agreed with the IG Report instead of contradicting it.

I contacted McQuade in an attempt to resolve the apparent contradiction in PolitiFact’s reporting. McQuade wrote:

Maybe it requires more explanation:

Once predicated, an investigation does not need to be re-predicated. This investigation was never closed. FBI did not need fresh predication for the interview.

(And even if FBI had needed fresh predication, the calls and lies to Pence would have been sufficient.)

McQuade argued that the existing justification did not need re-predication because the existing investigation was never closed. Of course PolitiFact readers, along with the judge and defense in the case would have no idea that the FBI had decided to close the Flynn investigation. But more to the point, McQuade’s argument does not resolve the contradiction in the reporting. The IG Report never made the argument McQuade used to justify her statement. PolitiFact, through its expert source, published an untrue allegation of a contradiction and contradicted its own reporting in the process. PolitiFact, from the same Flynn explainer (bold emphasis added):

The filing said that **a key interview of Flynn did not have "a legitimate investigative basis"** and therefore the department does not consider Flynn’s statements from the interview to be "material even if untrue."

If PolitiFact had reported “The filing said the investigation of Flynn did not have ‘a legitimate investigative basis’” then its reporting would comport with the quotation of McQuade. It counts as an important fact that the DOJ’s argument on materiality hinged on the (il)legitimacy of the particular Flynn interview, not the early justification for investigating Flynn.

PolitiFact has yet to act to resolve the contradiction in its reporting, which contributes to the set of evidence showing PolitiFact’s failure to consistently adhere to an open and honest corrections policy.

Beyond that, it’s hard to imagine how PolitiFact could have offered a more one-sided account of the DOJ’s reversal on the Flynn prosecution. It doesn’t bother to offer any detail about the legal

arguments involved, instead condensing those to the point that they can get passed off on readers as politically motivated. It fails to mention the legal importance of materiality, prosecutorial misconduct via withholding exculpatory evidence or even the flimsy factual foundation of the false statements charge ([read about the 302s](#)).

PolitiFact's explainer about the Flynn case makes it look like the author has absolutely no idea there is a way of viewing the case other than from the political left. The story so lacks balance that all by itself it could make the case PolitiFact is politically biased. It's like a "Crossfire" segment minus the view from the right.

Let the IFCN consider this case as PolitiFact failing to ensure political neutrality and failing to adhere to an open and honest corrections policy.

Thanks for your attention to this matter.

Sincerely,
Bryan W. White
Editor, Zebra Fact Check
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