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The terminally flawed story on the DOJ reversal on Michael Flynn

1 message

Bryan White <zebrafactcheck@gmail.com>
To: truthometer@politifact.com

Mon, May 11, 2020 at 11:50 AM

Dear Truth-O-Meter,

Your [May 8, 2020 explainer](#) about the Department of Justice reversal on the Michael Flynn comes across as incredibly lopsided (some details will follow the main complaint) and **makes use of a demonstrably false claim from cited expert and Democrat donor Barbara McQuade.**

The story quotes McQuade (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 filing from the DOJ](#) does not take issue with the decision to investigate Flynn. Rather, it implicitly grants the initial investigation was justifiable but takes issue with keeping the investigation open. Read (bold emphasis added):

After a considered review of all the facts and circumstances of this case, including newly discovered and disclosed information appended to the defendant's supplemental pleadings, ECF Nos. 181, 188-190, 1 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 because it had yielded an "absence of any derogatory information." Ex. 1 at 4, FBI FD-1057 "Closing Communication" Jan. 4, 2017 (emphases added). The Government is not persuaded that the January 24, 2017 interview was conducted with a legitimate investigative basis and therefore does not believe Mr. Flynn's statements were material even if untrue. Moreover, we not believe that the Government can prove either the relevant false statements or their materiality beyond a reasonable doubt.

Curiously, the PolitiFact article neither links to nor quotes from the DOJ filing.

The phrase "no longer justifiably predicated investigation" implies recognition that the investigation was a one time justifiably predicated. [The IG report](#) addressed the opening of the investigation, not the decision to keep it open for purposes of interviewing Flynn about the Kislyak conversation:

Our review included examining :

- The decision to open Crossfire Hurricane and four individual cases on current and former members of the Trump campaign, George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn; the early investigative steps taken; and whether the openings and early steps complied with Department and FBI policies;

McQuade was arguing a straw man.

An explanatory article that confuses opening the investigation with continuing the investigation misinforms readers.

Various other problems

PolitiFact's explainer is incredibly one-sided. Legal expert Jonathan Turley published on May 7, 2020 [finding the DOJ's decision well justified](#). Yet PolitiFact, publishing May 8, could only find experts with bad things to say about the DOJ's action? With two out of four having healthy records of political giving to Democrats?

As noted above, the explainer fails to link to or quote from the DOJ filing. At best, that's falling short of best practices, isn't it?

The summary of the DOJ's position, which makes the government's new case via selective quotations of AG Barr, skips

5/19/2020

Gmail - The terminally flawed story on the DOJ reversal on Michael Flynn

any substantive discussion of the issue of legal materiality, along with the failure of the prosecution to share exculpatory evidence with the defense attorneys. The result is a wildly unbalanced account of the DOJ's decision to drop its prosecution of Flynn.

At minimum, PolitiFact should correct the misinformation it quoted from McQuade.

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Sincerely,

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