



May 14, 2020

**BY ELECTRONIC MAIL**

Jeffrey R. Ragsdale  
Acting Director and Chief Counsel  
Office of Professional Responsibility  
Department of Justice  
950 Pennsylvania Ave. NW  
Room 3266  
Washington, DC 20530  
opr.complaints@usdoj.gov

Re: *Request for Investigation of Interim U.S. Attorney Timothy Shea*

Dear Mr. Ragsdale:

American Oversight writes to supplement our letter dated May 13, 2020, requesting that the Office of Professional Responsibility (OPR) immediately open an investigation into the unprecedented decision by Interim U.S. Attorney for the District of Columbia Timothy Shea to drop the charge of making false statements against former National Security Advisor Michael Flynn.

Our initial letter raised a number of concerns about whether, in filing the motion seeking to withdraw the charges against Mr. Flynn, Mr. Shea complied with his professional responsibilities and Department of Justice (DOJ) policies.<sup>1</sup> Shortly after American Oversight submitted that complaint yesterday, *The New York Times* published a report<sup>2</sup> that raised additional and significant questions about whether Mr. Shea met his professional responsibilities and followed DOJ policies intended to safeguard the independent and impartial administration of justice.

The report by *The New York Times* brought to light new information that suggests another potential violation of the Rules of Professional Conduct in connection with the motion filed by Mr. Shea. That motion suggestively cites to notes by a former FBI official, Bill Priestap, to raise questions about the FBI's motives for conducting the interview of Mr. Flynn, and

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<sup>1</sup> Gov't Mot. to Dismiss the Crim. Information Against Michael T. Flynn, *U.S. v. Flynn*, Crim. No. 17-232 (D.D.C. filed May 7, 2020), ECF No. 198 (*available at* <https://lawprofessors.typepad.com/files/u.s.-v.-flynn--government-motion-to-dismiss-1-1.pdf>) (hereinafter cited as the "Flynn Motion").

<sup>2</sup> A. Goldman & K. Benner, *Ex-F.B.I. Official Is Said to Undercut Justice Dept. Effort to Drop Flynn Case*, N.Y. TIMES, May 13, 2020, <https://www.nytimes.com/2020/05/13/us/politics/bill-priestap-michael-flynn.html?referringSource=articleShare>.



later describes them as “talking points” reflecting internal debate within the FBI regarding whether to disclose the transcript of the call with the Russian ambassador to Mr. Flynn during the course of his interview.<sup>3</sup> The notes reportedly state: “What’s our goal? Truth/Admission or to get him to lie, so we can prosecute him or get him fired?” and “We regularly show subjects evidence, with the goal of getting them to admit their wrongdoing. I don’t see how getting someone to admit their wrongdoing is going easy on him.”

The same notes were previously cited by commentators politically aligned with the president and Mr. Flynn’s current attorneys as support for the claim that the FBI had “entrapped” Mr. Flynn by not revealing that the FBI knew the contents of his conversation with the Russian ambassador, and Attorney General William P. Barr has said that the FBI was attempting to “lay a perjury trap” for Mr. Flynn.<sup>4</sup>

*The New York Times* report yesterday revealed that—just two days before Mr. Shea filed the motion—DOJ officials reviewing the Flynn case had interviewed the former FBI official, Mr. Priestap, who explained that the interpretation of his notes “was wrong” and that he knew of “no effort to set [Mr. Flynn] up.”<sup>5</sup> Nevertheless, Mr. Shea failed to include in the motion the context provided by Mr. Priestap, or even acknowledge the fact that the author of the notes had been interviewed by DOJ officials.

As you are no doubt aware, lawyers have an obligation of candor to a tribunal. For instance, the D.C. Rules of Professional Conduct prohibit a lawyer from knowingly making a false statement of fact or law to a tribunal.<sup>6</sup> Mr. Shea’s decision—made as an officer of the court—to rely in his motion on an interpretation of the notes that the author of the notes had disputed in a DOJ interview, all without even disclosing that recent interview, raises serious questions about whether he met this duty of candor.

The choice to use the notes to paint this picture and to omit any discussion of the author’s interpretation also is a further point of evidence regarding whether Mr. Shea approached the decision to file this motion with impartiality on behalf of the United States as required by the rules of professional conduct and the principles of the impartial administration of justice set forth in the Justice Manual. American Oversight respectfully requests that OPR include these questions in a review of the issues raised in its May 13, 2020 letter.

*The New York Times* report also indicates that the U.S. Attorney for the Eastern District of Missouri, Jeffrey Jensen, and other DOJ lawyers participated in the drafting of the motion.

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<sup>3</sup> See *Flynn Motion* at 8 n.2; *id.* at 17 & n.5.

<sup>4</sup> *Attorney General William Barr on Michael Flynn, Obamacare and coronavirus restrictions – Transcript*, CBS NEWS, May 7, 2020, <https://www.cbsnews.com/news/attorney-general-william-barr-on-michael-flynn-obamacare-and-coronavirus-restrictions-transcript/>.

<sup>5</sup> Goldman & Benner, *supra* note 2.

<sup>6</sup> Rule of Professional Conduct 3.3 – Candor to Tribunal, Am. Rules of Prof. Conduct, D.C. Bar, <https://www.dcbar.org/bar-resources/legal-ethics/amended-rules/rule3-03.cfm>.

OPR should also assess whether, in doing so, Mr. Jensen and these other officials complied with their professional responsibilities and their obligations to follow DOJ policy.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', is positioned above the typed name.

Melanie Sloan  
Senior Advisor