

The Scalp-Taking of Gen. Flynn

The Russia-gate prosecutors have taken the scalp of ex- National Security Adviser (and retired Lt. Gen.) Flynn for lying to the FBI. But this case shows how dangerously far afield this “scandal” has gone, reports Robert Parry.

By [Robert Parry](#)

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Featured image: Retired U.S. Army Lt. Gen Michael Flynn at a campaign rally for Donald Trump at the Phoenix Convention Center in Phoenix, Arizona. Oct. 29, 2016. (Flickr Gage Skidmore)

Russia-gate enthusiasts are thrilled over the guilty plea of President Trump’s former National Security Adviser Michael Flynn for lying to the FBI about pre-inauguration conversations with the Russian ambassador, but the case should alarm true civil libertarians.

What is arguably most disturbing about this case is that then-National Security Adviser Flynn was pushed into a perjury trap by Obama administration holdovers at the Justice Department who concocted an unorthodox legal rationale for subjecting Flynn to an FBI interrogation four days after he took office, testing Flynn’s recollection of the conversations while the FBI agents had transcripts of the calls intercepted by the National Security Agency.

In other words, the Justice Department wasn’t seeking information about what Flynn said to Russian Ambassador Sergey Kislyak – the intelligence agencies already had that information. Instead, Flynn was being quizzed on his precise recollection of the conversations and nailed for lying when his recollections deviated from the transcripts.

For Americans who worry about how the pervasive surveillance powers of the U.S. government could be put to use criminalizing otherwise constitutionally protected speech and political associations, Flynn’s prosecution represents a troubling precedent.

Though Flynn clearly can be faulted for his judgment, he was, in a sense, a marked man the moment he accepted the job of national security adviser. In summer 2016, Democrats seethed over Flynn’s participation in chants at the Republican National Convention to “lock her [Hillary Clinton] up!”

Then, just four days into the Trump presidency, an Obama holdover, then-acting Attorney General Sally Yates, primed the Flynn perjury trap by coming up with a novel legal theory that Flynn – although the national security adviser-designate at the time of his late December phone calls with Kislyak – was violating the 1799 Logan Act, which prohibits private citizens from interfering with U.S. foreign policy.

But that law – passed during President John Adams’s administration in the era of the Alien and Sedition Acts – was never intended to apply to incoming officials in the transition period between elected presidential administrations and – in the past 218 years – the law has

resulted in no successful prosecution at all and thus its dubious constitutionality has never been adjudicated.

Stretching Logic

But Yates extrapolated from her unusual Logan Act theory to speculate that since Flynn's publicly known explanation of the conversation with Kislyak deviated somewhat from the transcript of the intercepts, Flynn might be vulnerable to Russian blackmail.



Russia's former Ambassador to the United States Sergey Kislyak. (Photo from Russian Embassy)

Yet, that bizarre speculation would require that the Russians first would have detected the discrepancies; secondly, they would have naively assumed that the U.S. intelligence agencies had not intercepted the conversations, which would have negated any blackmail potential; and thirdly, the Russians would have to do something so ridiculously heavy-handed – trying to blackmail Flynn – that it would poison relations with the new Trump administration.

Yates's legal theorizing was so elastic and speculative that it could be used to justify subjecting almost anyone to FBI interrogation with the knowledge that their imperfect memories would guarantee the grounds for prosecution based on NSA intercepts of their communications.

Basically, the Obama holdovers concocted a preposterous legal theory to do whatever they could to sabotage the Trump administration, which they held in fulsome disdain.

At the time of Flynn's interrogation, the Justice Department was under the control of Yates and the FBI was still under President Obama's FBI Director James Comey, another official hostile to the Trump administration who later was fired by Trump.

The Yates-FBI perjury trap also was sprung on Flynn in the first days of the Trump presidency amid reverberations of the massive anti-Trump protests that had arisen across the country in support of demands for a “#Resistance” to Trump's rule.

Flynn also had infuriated Democrats when he joined in chants at the Republican National Convention of “lock her up” over Democratic presidential nominee Hillary Clinton’s use of a private email server and other alleged offenses. So, in targeting Flynn, there was a mix of personal payback and sabotage against the Trump administration.

The Legal Construct

The two-page [complaint](#) against Flynn, made public on Friday, references false statements to the FBI regarding two conversations with Kislyak, one on Dec. 22, 2016, and the other on Dec. 29, 2016.

The first item in the complaint alleges that Flynn did not disclose that he had asked the Russian ambassador to help delay or defeat a United Nations Security Council vote censuring Israel for building settlements on Palestinian territory.

The New York Times [reported](#) on Friday that Russia-gate investigators “learned through witnesses and documents that Israeli Prime Minister Benjamin Netanyahu asked the Trump transition team to lobby other countries to help Israel, according to two people briefed on the inquiry.

“Investigators have learned that Mr. Flynn and Mr. Trump’s son-in-law and senior adviser, Jared Kushner, took the lead in those efforts. Mr. Mueller’s team has emails that show Mr. Flynn saying he would work to kill the vote, the people briefed on the matter said,” according to the Times.

Breaking with past U.S. precedents, President Obama had decided not to veto the resolution criticizing Israel, choosing instead to abstain. However, the censure resolution carried with Russian support, meaning that whatever lobbying Flynn and Kushner undertook was unsuccessful.

But the inclusion of this Israeli element shows how far afield the criminal Russia-gate investigation, headed by former FBI Director Robert Mueller, has gone. Though the original point of the inquiry was whether the Trump team colluded with Russians to use “hacked” emails to defeat Hillary Clinton’s campaign, the criminal charge against Flynn has nothing to do with election “collusion” but rather President-elect Trump’s aides weighing in on foreign policy controversies during the transition. And, the first initiative was undertaken at the request of Israeli Prime Minister Netanyahu, not Russian President Vladimir Putin.

The second item, cited by Mueller’s prosecutors, referenced a Dec. 29 Flynn-Kislyak conversation, which received public attention at the time of Flynn’s Feb. 13 resignation after only 24 days on the job. That phone call touched on Russia’s response to President Obama’s decision to issue new sanctions against the Kremlin for the alleged election interference.

The complaint alleges that Flynn didn’t mention to the FBI that he had urged Kislyak “to refrain from escalating the situation” and that Kislyak had subsequently told him that “Russia had chosen to moderate its response to those sanctions as a result of his request.”

The Dec. 29 phone call occurred while Flynn [was vacationing](#) in the Dominican Republic and thus he would have been without the usual support staff for memorializing or transcribing official conversations. So, the FBI agents, with the NSA’s transcripts, would have had a clearer account of what was said than Flynn likely had from memory. The content of Flynn’s

request to Kislyak also appears rather uncontroversial, asking the Russians not to overreact to a punitive policy from the outgoing Obama administration.

In other words, both of the Flynn-Kislyak conversations appear rather unsurprising, if not inconsequential. One was taken at the behest of Israel (which proved ineffective) and the other urged the Kremlin to show restraint in its response to a last-minute slap from President Obama (which simply delayed Russian retaliation by several months).

Double Standards

While Flynn's humiliation has brought some palpable joy to the anti-Trump "Resistance" – one more Trump aide being taken down amid renewed hope that this investigation will somehow lead to Trump's resignation or impeachment – many of the same people would be howling about trampled civil liberties if a Republican bureaucracy were playing this game on a Democratic president and his staff.



Retired Lt. Gen. Michael Flynn attending a dinner marking the RT network's 10-year anniversary in Moscow, December 2015, sitting at the same table as Russian President Vladimir Putin and Green Party leader Jill Stein.

Indeed, in the turnabout-is-fair-play department, there is some equivalence in what is happening over Russia-gate to what the Republicans did in the 1990s exploiting their control of the special-prosecutor apparatus in the first years of Bill Clinton's presidency when interminable investigations into such side issues as his Whitewater real-estate deal and the firing of the White House travel office staff plagued the Clinton administration.

Similarly, Republicans seized on the deaths of four U.S. diplomatic personnel on Sept. 11, 2012, in Benghazi, Libya, to conduct a series of lengthy investigations to tarnish Secretary of State Hillary Clinton's tenure and raise questions about her judgment. Democrats understandably called these attacks partisan warfare in legal or investigative garb.

What I have heard from many Hillary Clinton supporters in recent months is that they don't care about the unfairness of the Russia-gate process or the dangerous precedents that such politicized prosecutions might set. They simply view Trump as such a danger that he must be destroyed at whatever the cost.

Yet, besides the collateral damage inflicted on mid-level government officials such as retired Lt. Gen. Flynn facing personal destruction at the hands of federal prosecutors with unlimited budgets, there is this deepening pattern of using criminal law to settle political differences, a process more common in authoritarian states.

As much as the Russia-gate enthusiasts talk about how they are upholding “the rule of law,” there is the troubling appearance that the law is simply being used to collect the scalps of political enemies.

Investigative reporter Robert Parry broke many of the Iran-Contra stories for The Associated Press and Newsweek in the 1980s. You can buy his latest book, America’s Stolen Narrative, either in [print here](#) or as an e-book (from [Amazon](#) and [barnesandnoble.com](#)).

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