

Chat with (b) (6)

4/26/2019 9:03:40 AM - 1/26/2021 12:36:58 PM

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**Export Details:**

Device Name Kupec PAO 1/28/21

Device ID c26bc4de4bfefc8284d9ea0b051800242c5e2cf6

Backup Date Friday, February 12, 2021 6:47 AM

Backup Directory C:\Users\pmdavis\AppData\Roaming\Apple Computer\MobileSync\Backup\c26bc4de4bfefc8284d9ea0b051800242

iOS 12.1.4

Current Time Zone (UTC-05:00) Eastern Time (US & Canada)

Created with iExplorer v4.4.2.0

**Participants:**

(b) (6)

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Not Responsive Records



Wednesday, February 12, 2020

Me

Hey so sorry to bother you. Is there any way you can send to Tim the facts that pertain to him and Metcalf so he can fact check them himself? I just want to make sure he has opportunity to dispute if he needs to

7:13 PM

(b) (6)

omg yes

7:14 PM

(b) (6)

so sorry i got pulled into a meeting

7:14 PM

(b) (6)

(not about juwanna man, sadly)

7:15 PM

(b) (6)

I downplayed the quitting

8:36 PM

(b) (6)

So will save the 'quitting is fine' stuff for a story where the quitting is a bigger deal

8:36 PM

Me

Ok

10:00 PM

Not Responsive Records

Chat with (b) (6)

5/14/2019 1:19:10 PM - 12/23/2020 1:03:58 PM

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**Participants:**

(b) (6)

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Not Responsive Records





Friday, February 14, 2020

(b) (6)

President Trump needs to stop tweeting about cases and let AG Bill Barr do his job.

1:48 AM

(b) (6)

[https://www.wsj.com/articles/trumps-worst-enemy-11581639143?emailToken=58a9de0276db4cd3ddae67f424bc1373Y/0PFf2BJTOhxhTVdWyrnXfRHMdByCPDdoU9rrlMUUOOQolQfqYBek9JnCFsjhYG&reflink=article\\_imessage\\_share](https://www.wsj.com/articles/trumps-worst-enemy-11581639143?emailToken=58a9de0276db4cd3ddae67f424bc1373Y/0PFf2BJTOhxhTVdWyrnXfRHMdByCPDdoU9rrlMUUOOQolQfqYBek9JnCFsjhYG&reflink=article_imessage_share)

1:48 AM

(b) (6)

Bureaucrats bristle as Attorney General William Barr delivers on his pledge of accountability, writes @KimStrassel

1:48 AM

(b) (6)

[https://www.wsj.com/articles/the-trials-of-bill-barr-11581637977?emailToken=f4f8b30f1e852963711a42838cd03ec4VqhsPpcSao2usNFY1VoabOV/x//Fg8hVnN0d3n7bPTGnE+xKo3QcBBWkEECB+bLazScRsduveEVsEzCVqfaegw%3D%3D&reflink=article\\_imessage\\_share](https://www.wsj.com/articles/the-trials-of-bill-barr-11581637977?emailToken=f4f8b30f1e852963711a42838cd03ec4VqhsPpcSao2usNFY1VoabOV/x//Fg8hVnN0d3n7bPTGnE+xKo3QcBBWkEECB+bLazScRsduveEVsEzCVqfaegw%3D%3D&reflink=article_imessage_share)

1:48 AM

Me

This is awesome. Thank you.

5:51 AM

(b) (6)

Can you call when you have sec?

1:04 PM

Chat with (b) (6)

4/26/2019 3:56:37 PM - 12/23/2020 12:24:04 PM

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**Participants:**

(b) (6)

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Not Responsive Records



Thursday, February 20, 2020

(b) (6)

Hi there! You around? Seems like the DOJ prosecutors are reverting back to the original sentencing recommendation — is this something the AG approved?

11:01 AM

Me

I'm not sure what you are talking about

11:09 AM

Me

I doubt that's the case. He's prob just explaining what happened

11:10 AM

(b) (6)

Yeah that seems right, sorry our reporter in the courtroom was texting me frantically about it

11:13 AM

Me

Come by

3:55 PM

Me

Come by

4:05 PM

Chat with (b) (6)

4/25/2019 12:21:31 PM - 12/23/2020 11:15:07 AM

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**Participants:**

(b) (6)

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Not Responsive Records



Thursday, February 13, 2020

(b) (6)

Hey are you in the building? We understand the IG is opening an investigation into the Stone episode

11:21 AM

(b) (6)

Re-upping this...were planning to report fairly imminently that the IG is investigating the Stone matter

12:11 PM

Me

Decline to comment

12:14 PM

(b) (6)

Ok thanks. Off the record: I'm guessing Barr asked him to? Because normally they don't investigate prosecutorial matters. But I'd love to know the context...

12:17 PM

Me

Decline

1:13 PM

(b) (6)

When's a good time to stop by? (Not directly about this — got the decline there — but a somewhat more complicated thing)

1:14 PM

Chat with (b) (6)

4/25/2019 1:54:06 PM - 12/23/2020 8:52:38 AM

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**Participants:**

(b) (6)

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Not Responsive Records



Tuesday, February 11, 2020

(b) (6)

Can you confirm on background that DoJ will reduce sentencing recommendation for Roger Stone?

11:55 AM

(b) (6)

On background was there any communication or coordination with the White House over reducing Stone's sentencing?

12:24 PM

(b) (6)

We're doing a story to run tonight or tomorrow morning that Barr and DoJ leadership is now facing one of it's biggest crisis as a result of handling the Stone case. Three prosecutors have resigned. I need to know if you want to comment or provide background guidance. My deadline is probably 8pm.

4:53 PM

(b) (6)

On background was the decision to seek less prison time for Stone made before Trump tweeted last night?

9:19 PM

Did Barr make the decision or at least sign off on it?

Me

Decision was made last night before tweet

9:25 PM

Not Responsive Records



Chat with (b) (6)

4/30/2019 7:32:19 PM - 12/22/2020 6:54:36 PM

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**Participants:**

(b) (6)

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Not Responsive Records



Tuesday, February 11, 2020

(b) (6)

Hi Kerri

Can u share anything re Stone rec? Tks Josh

12:01 PM

(b) (6)

At desk if you can try me back

12:31 PM

(b) (6)

Anything re personnel changes?

3:20 PM

(b) (6)

Still looking for latest guidance if u have a moment tks josh

4:22 PM

(b) (6)

(b) (6)

Can you call if you free up?

7:40 PM

Wednesday, February 12, 2020

(b) (6)

Sent you trump tweet for response

7:02 AM

Me

Decline to comment

8:55 AM

Not Responsive Records

Chat with (b) (6)

11/26/2019 11:06:54 AM - 12/21/2020 8:02:52 PM

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**Participants:**

(b) (6)

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Not Responsive Records



Tuesday, February 18, 2020

(b) (6)

Pls call in next 30 mins .. I want to be sure you're ok w what I say on air

5:31 PM

(b) (6)

Here's what I'm giving Mike for morning newsletter:

5:59 PM

(b) (6)



5:59 PM

Me

Good

7:37 PM

(b) (6)

I saw WaPo reported it:

9:38 PM

(b) (6)

[https://www.washingtonpost.com/politics/trump-raises-possibility-of-suing-those-involved-in-prosecuting-roger-stone/2020/02/18/238279fc-5250-11ea-9e47-59804be1dcfb\\_story.html](https://www.washingtonpost.com/politics/trump-raises-possibility-of-suing-those-involved-in-prosecuting-roger-stone/2020/02/18/238279fc-5250-11ea-9e47-59804be1dcfb_story.html)

9:38 PM

(b) (6)

Can I confirm w source close to situation?

9:39 PM

Me

Hey sorry for delay

11:17 PM

Me

Tried calling you and went right to voicemail

11:17 PM

Chat with (b)(6) - Kristina Mastropasqua Cell Phone

11/8/2019 12:41:30 PM - 12/8/2020 3:58:54 PM

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### Participants:

(b) (6)

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Not Responsive Records



(b) (6)

(b) (5)

12:01 PM

(b) (6)

(b) (5)

12:55 PM

(b) (6)

Going to the moot at 1. Should be done by 3, if we can talk then and go over all this, that'd be great. Thanks!

12:56 PM

Thursday, February 20, 2020

(b) (6)

I'm getting questions and seeing reports that crab basically argued in favor of the first memo. I'm trying to correct this. Are you getting any Qs on that?

1:48 PM

Me

Yes

1:49 PM

Me

Haven't answered any yet

1:49 PM

(b) (6)

Wtf

1:49 PM

Me  
You need to explain to people how it works 1:49 PM

(b) (6)  
It makes this entire thing look like it was total incompetence 1:50 PM

Me  
And how that would be inconsistent with his own filing 1:50 PM

Me  
And variance issue 1:50 PM

(b) (6)  
Yeah I have been. Issue is crab said "a substantial sentence" is warranted 1:50 PM

(b) (6)  
Yeah I'm pushing the variance and that the judge herself found the need to apply a downward variance 1:51 PM

Me  
I know 1:51 PM

Me  
Stupid thing to say 1:51 PM

(b) (6)  
We should talk in person. 1:51 PM

(b) (6)  
If I can get to main today I will, otherwise tomorrow 1:51 PM

Not Responsive Records



Chat with (b) (6)

5/23/2019 8:17:57 PM - 10/19/2020 7:53:34 PM

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**Participants:**

(b) (6)

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Not Responsive Records



Tuesday, February 18, 2020

(b) (6)

[https://www.washingtonpost.com/politics/trump-raises-possibility-of-suing-those-involved-in-prosecuting-roger-stone/2020/02/18/238279fc-5250-11ea-9e47-59804be1dcfb\\_story.html](https://www.washingtonpost.com/politics/trump-raises-possibility-of-suing-those-involved-in-prosecuting-roger-stone/2020/02/18/238279fc-5250-11ea-9e47-59804be1dcfb_story.html)

9:41 PM

(b) (6)

On background, are you able to confirm this?

9:41 PM

Me

Hey tried calling you

11:16 PM

Wednesday, February 19, 2020

(b) (6)

Bah sorry, I'll try to stop by today. Will you be at main justice?

7:31 AM

Sunday, March 01, 2020

Not Responsive Records

Chat with (b)(6) - Steven Engel Cell Phone

5/14/2019 7:59:47 PM - 9/21/2020 4:54:53 PM

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### Participants:

(b) (6)

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Not Responsive Records



Wednesday, February 12, 2020

(b) (6)

FWIW

(b)(5) per OLC

9:08 AM

(b) (6)

(b)(5) per OLC

9:09 AM

Me

Yep that's in discussion as we speak

9:20 AM

Me

Agree

9:20 AM

(b) (6)

Great.

10:19 AM

Not Responsive Records



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*The Honorable William P. Barr  
Attorney General of the United States*



**UNITED STATES ATTORNEY  
DISTRICT OF COLUMBIA**

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January 2020

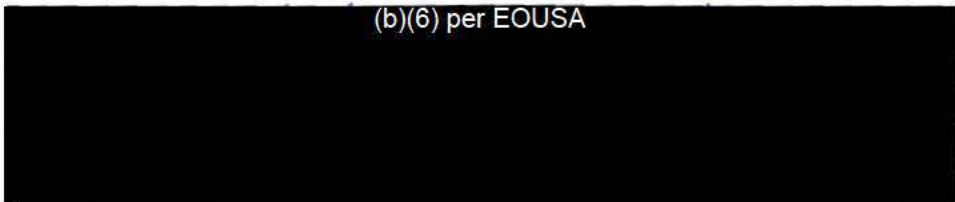
Dear Mr. Attorney General:

It was truly an honor and a privilege to serve as a United States Attorney under your leadership. I am also deeply honored by your appointment of me to serve as Chair of your Advisory Committee. Thank you, too, for having the confidence in me to recommend me to the President as



his nominee to be Associate Attorney General.

(b)(6) per EOUSA



I wish you and your team every  
success going forward. I will miss the  
Department, but will be working  
hard for you!



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>Plaintiff,</b>	:	Criminal Action
	:	No. 17-232
<b>v.</b>	:	
	:	
<b>MICHAEL FLYNN,</b>	:	December 18, 2018
	:	11:00 a.m.
	:	
<b>Defendant.</b>	:	Washington, D.C.
	:	
.....	:	

**TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE EMMET G. SULLIVAN,  
UNITED STATES DISTRICT COURT JUDGE**

**APPEARANCES:**

For the United States: **Brandon Lang Van Grack, Assistant  
U.S. Attorney**  
U.S. DEPARTMENT OF JUSTICE  
Special Counsel's Office  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 616-0800  
Email: Bvg@usdoj.gov

**Zainab Naeem Ahmad, Assistant U.S.  
Attorney**  
U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue NW  
Room B-103  
Washington, DC 20530  
(202) 616-0800  
Email: Zna@usdoj.gov

APPEARANCES: Cont.

For the Defendant:

**Robert K. Kelner, Esq.**  
COVINGTON & BURLING LLP  
850 Tenth Street, NW  
One City Center  
Washington, DC 20001  
(202) 662-5503  
Fax: (202) 778-5503  
Email: Rkelner@cov.com

**Stephen Pierce Anthony, Esq.**  
COVINGTON & BURLING LLP  
850 Tenth Street, NW  
One City Center  
Washington, DC 20001  
(202) 662-5105  
Fax: (202) 778-5105  
Email: Santhony@cov.com

For the U.S. Probation  
Department:

**Kelly Kraemer-Soares, Probation  
Officer**

**Renee Moses-Gregory, Probation  
Officer**

Court Reporter:

**Scott L. Wallace, RDR, CRR**  
Official Court Reporter  
Room 6503, U.S. Courthouse  
Washington, D.C. 20001  
202.354.3196  
scottlyn01@aol.com

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

**MORNING SESSION, DECEMBER 18, 2018**

(11:16 a.m.)

THE COURT: Good morning.

THE COURTROOM CLERK: Good morning, Your Honor.

THE COURT: Good morning.

THE COURTROOM CLERK: Your Honor, this is criminal case 17-232, *United States of America versus Michael Flynn*.

Will all parties please come forward to this lectern and identify yourselves for the record.

MR. VAN GRACK: Good morning, Your Honor. Brandon Van Grack on behalf of the United States, and with me at counsel's table is Zainab Ahmed and William McCausland from the FBI.

THE COURT: Good morning, Counsel.

MS. AHMAD: Good morning, Your Honor.

MR. KELNER: Good morning, Your Honor. Robert Kelner with Covington & Burling for the defendant, Michael Flynn, and with me at counsel table is Stephen Anthony.

THE COURT: All right. Good morning, Counsel. Mr. Flynn, good morning. How are you?

THE DEFENDANT: Good.

THE COURT: From the Probation Department?

MS. KRAEMER-SOARES: Good morning, Your Honor. Kelly Kraemer-Soares and Renee Moses-Gregory on behalf of U.S. Probation.

THE COURT: All right. Good morning to you both. The

1 case is in a very unique posture. As everyone knows, I was not  
2 the judge who took the plea of guilty from Mr. Flynn, so before I  
3 focus on sentencing issues, I need to focus on some other issues.  
4 I want to say a couple of things before I get to those issues. I  
5 read every filing very carefully in this case. There's a great  
6 deal of nonpublic information in this case, and I'll just leave  
7 it at that.

8 If any of my questions require a party to disclose  
9 nonpublic information, or if I begin to discuss something  
10 nonpublic, don't be shy in telling me. My clerks over the years  
11 have learned to do this (indicating) if I get off of script or if  
12 I get into areas where -- I won't get offended if you do it. I  
13 may not see you, so stand up and raise your hands or say  
14 something, please. I don't want to unintentionally say something  
15 that should not be revealed on the public docket.

16 There's a new document that was filed at 10:19 this  
17 morning. The government filed a sealed motion alerting the Court  
18 that it inadvertently omitted one document from the government's  
19 in-camera production.

20 The Court understands that the defendant received this  
21 document from the government on November the 8th of this year.  
22 The Court received and read the document before I came on the  
23 bench. Does the defendant have any concerns about this  
24 inadvertent omission before this hearing proceeds or otherwise  
25 any objections?

1 MR. KELNER: No, Your Honor.

2 THE COURT: All right. I want to focus on the plea first  
3 because I think I need to. And there are some questions that I'm  
4 going to ask Mr. Flynn, and because this is an extension, in my  
5 opinion, of the plea colloquy, I'm going to ask the courtroom  
6 deputy at that time to administer the oath, because normally when  
7 we have plea colloquies, we always require a defendant to be  
8 under oath, and that's what I'm going to do this morning, unless  
9 there are objections.

10 MR. KELNER: No objection, Your Honor.

11 THE COURT: All right. And in Mr. Flynn's Memorandum in  
12 Aid of Sentencing he states he, quote, does not take issue with  
13 the description of the nature and circumstances of the offense  
14 contained in the government's sentencing memorandum and the  
15 presentence investigation report, end quote. He also states that  
16 he has, quote, frankly acknowledged, end quote, that, quote, his  
17 actions were wrong and he accepted full responsibility for them,  
18 end quote.

19 At the same time, however, Mr. Flynn focuses much of his  
20 memorandum on certain, quote, additional facts, end quote,  
21 regarding the circumstances surrounding the January 24, 2017 FBI  
22 interview at which Mr. Flynn admittedly lied about several topics  
23 to the FBI agents.

24 Mr. Flynn contends that such additional facts, quote,  
25 warrant the Court's consideration as it evaluates the seriousness

1 of the offense relative to the circumstances of witness  
2 interviews and typical cases charged under 18 U.S. Code Section  
3 1001, end quote.

4 Mr. Flynn highlights the fact that former Deputy FBI  
5 Director Andrew McCabe explained that the, quote, quickest, end  
6 quote, way, to conduct the interview would be without involving  
7 the White House counsel's office.

8 Mr. Flynn then agreed to meet the agents without any  
9 additional participants.

10 Mr. Flynn also highlights that the FBI agents  
11 intentionally decided not to warn him that lying to the FBI was a  
12 crime to ensure that Mr. Flynn would be relaxed.

13 At the interview, Mr. Flynn was relaxed and unguarded. He  
14 implies that he was unguarded because he did not receive a  
15 warning and was not represented by counsel.

16 In his sentencing memorandum, Mr. Flynn cited a January  
17 24, 2017 FBI memorandum and an August commonly referred to as a  
18 302, and an August 22nd -- strike that. I misspoke. It's the  
19 memorandum -- and an August 22nd, 2017 FD-302 without providing  
20 copies to the Court.

21 Mr. Flynn did not cite or quote the FD-302 prepared  
22 immediately after his interview. These documents were not  
23 otherwise in the record. The Court then ordered the defendant to  
24 produce the cited material and ordered the government to produce  
25 any other memoranda or FD-302 relevant to Mr. Flynn's FBI

1 interview.

2 After reviewing the produced material, the Court concluded  
3 that the FD-302 prepared immediately after Mr. Flynn's interview  
4 was relevant to sentencing and thus ordered the government to  
5 file a redacted version on the public docket.

6 The Court takes its responsibility here today, as always,  
7 very seriously.

8 Mr. Flynn's briefing concerned the Court, as he raised  
9 issues that may affect or call into question his guilty plea,  
10 and, at the very least, maybe his acceptance of responsibility.

11 As such, the Court concludes that it must now first ask  
12 Mr. Flynn certain questions to ensure that he entered his guilty  
13 plea knowingly, voluntarily, intelligently, and with fulsome and  
14 satisfactory advice of counsel.

15 I cannot recall any incident in which the Court has ever  
16 accepted a plea of guilty from someone who maintained that he was  
17 not guilty, and I don't intend to start today. So I'm going to  
18 invite Mr. Flynn and his attorney or attorneys to come to the  
19 podium, and I'm going to ask the courtroom deputy to administer  
20 the oath to Mr. Flynn.

21 (MICHAEL FLYNN, DEFENDANT IN THE CASE, SWORN)

22 THE COURT: All right. And I will inform you, sir, that  
23 any false answers will get you in more trouble. Do you  
24 understand that?

25 THE DEFENDANT: Yes.



1 THE COURT: You have to keep your voice up. If you don't  
2 understand my question, please tell me and I'll rephrase it.

3 Most importantly, you may consult with your attorney  
4 privately before answering my questions or at any point in time.  
5 Should you want the opportunity to attempt to withdraw your plea,  
6 I will afford you that opportunity. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you wish to challenge the circumstances on  
9 which you were interviewed by the FBI?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you understand that by maintaining your  
12 guilty plea and continuing with sentencing, you will give up your  
13 right forever to challenge the circumstances under which you were  
14 interviewed?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you have any concerns that you entered your  
17 guilty plea before you or your attorneys were able to review  
18 information that could have been helpful to your defense?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: At the time of your January 24th, 2017  
21 interview with the FBI, were you not aware that lying to FBI  
22 investigators was a federal crime?

23 THE DEFENDANT: I was not -- I was aware.

24 THE COURT: You were aware?

25 THE DEFENDANT: Yeah.

1           THE COURT: Your sentencing memorandum also states that  
2 you pled guilty before certain, quote, revelations that certain  
3 FBI officials involved in the January the 24th interview were  
4 themselves being investigated for misconduct, end quote. Do you  
5 seek an opportunity to withdraw your plea in light of those  
6 revelations?

7           THE DEFENDANT: I do not, Your Honor.

8           THE COURT: All right. Now, again, at any time -- I  
9 should have said this before I started asking questions, but  
10 knowing what I was going to do, to have this colloquy with you,  
11 I've made arrangements for a private room for you and your  
12 attorneys to talk about any of these questions and your answers.  
13 So, even though I've taken a number of answers from you, if you  
14 want -- if you want that opportunity to speak privately with your  
15 attorneys, then I'll certainly afford you that opportunity as  
16 well. Would you like to do that?

17          THE DEFENDANT: No, Your Honor.

18          THE COURT: All right. Are you satisfied with the  
19 services provided by your attorneys?

20          THE DEFENDANT: I am.

21          THE COURT: In certain special circumstances, I have over  
22 the years appointed an independent attorney to speak with a  
23 defendant, review the defendant's file, and conduct necessary  
24 research to render a second opinion for a defendant. Do you want  
25 the Court to consider appointing an independent attorney for you

1 in this case to give you a second opinion?

2 THE DEFENDANT: I do not, Your Honor.

3 THE COURT: Do you feel that you were competent and  
4 capable of entering into a guilty plea when you pled guilty on  
5 December 1st, 2017?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: Do you understand the nature of the charges  
8 against you and the consequences of pleading guilty?

9 THE DEFENDANT: I do understand, Your Honor.

10 THE COURT: And that was covered extensively by Judge  
11 Contreras. I've read the transcript.

12 Are you continuing to accept responsibility for your false  
13 statements?

14 THE DEFENDANT: I am, Your Honor.

15 THE COURT: Do you still want to plead guilty, or do you  
16 want me to postpone this matter, give you a chance to speak with  
17 your attorneys further, either in the courtroom or privately at  
18 their office or elsewhere, and pick another day for a status  
19 conference? And I'm happy to do that.

20 THE DEFENDANT: I appreciate that, but no, Your Honor.

21 THE COURT: All right. For your attorneys: Do you have  
22 any concerns that potential *Brady* material or other relevant  
23 material was not provided to you?

24 MR. KELNER: No, Your Honor.

25 THE COURT: All right. Do you contend that Mr. Flynn is

1 entitled to any additional information that has not been provided  
2 to you?

3 MR. KELNER: No, Your Honor.

4 THE COURT: Do you wish to seek any additional information  
5 before moving forward to sentencing?

6 MR. KELNER: No, Your Honor.

7 THE COURT: Do you believe the FBI had a legal obligation  
8 to warn Mr. Flynn that lying to the FBI was a federal crime?

9 MR. KELNER: No, Your Honor.

10 THE COURT: Is it your contention that Mr. Flynn was  
11 entrapped by the FBI?

12 MR. KELNER: No, Your Honor.

13 THE COURT: Do you believe Mr. Flynn's rights were  
14 violated by the fact that he did not have a lawyer present for  
15 the interview?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Do you believe his rights were violated by the  
18 fact that he may have been dissuaded from having a lawyer present  
19 for the interview?

20 MR. KELNER: No, Your Honor.

21 THE COURT: The sentencing memorandum also states that  
22 Mr. Flynn pled guilty before certain, quote, revelations that  
23 certain FBI officials involved in the January 24th interview  
24 were, themselves, being investigated for misconduct," end quote.  
25 Is it your contention that any misconduct by a member of the FBI

1 raises any degree of doubt that Mr. Flynn intentionally lied to  
2 the FBI?

3 MR. KELNER: No, Your Honor.

4 THE COURT: The references that I've mentioned that appear  
5 in your sentencing memorandum raise some concerns on the part of  
6 the Court. And my question is, how is raising those contentions  
7 about the circumstances under which Mr. Flynn lied consistent  
8 with acceptance of responsibility?

9 MR. KELNER: Your Honor, the principle reason we raised  
10 those points in the brief was to attempt to distinguish the two  
11 cases in which the Special Counsel's investigation has resulted  
12 in incarceration, the Papadopoulos and Van der Zwaan cases in  
13 which the Special Counsel had pointed out as aggravating factors  
14 the fact that those defendants had been warned and the fact that  
15 those defendants did have counsel and lied anyway, and we felt it  
16 was important to identify for the Court that those aggravating  
17 circumstances do not exist in this case relevant to sentencing.

18 But General Flynn has been, I think, clear from the  
19 beginning and will be clear again to you today that he fully  
20 accepts responsibility, stands by his guilty plea, which was made  
21 based on knowing and willful conduct.

22 We did think there was information produced in the *Brady*  
23 process that Your Honor might want to see, and that was relevant  
24 strictly to the question of the history and circumstances of the  
25 case for sentencing purposes.

1           Those are the reasons that was included.

2           THE COURT: All right. But you can understand why the  
3 Court has some concern after --

4           MR. KELNER: -- I can --

5           THE COURT: -- reading those passages in the sentencing  
6 memo.

7           MR. KELNER: We absolutely understand your concerns, Your  
8 Honor, yes.

9           THE COURT: And you're not asking for a postponement to  
10 give more time to whether you wish to file a motion to attempt to  
11 withdraw Mr. Flynn's plea of guilty?

12           MR. KELNER: We have no intention and the defendant has no  
13 intention to withdraw the guilty plea, and we're certainly not  
14 asking Your Honor to consider that. We're ready to proceed to  
15 sentencing.

16           THE COURT: All right. And you don't need any further  
17 time to think about it?

18           MR. KELNER: We do not, Your Honor.

19           THE COURT: And nothing that's been filed within the last  
20 week on the docket raises any concerns on your part about any  
21 aspect of Mr. Flynn's guilty plea?

22           MR. KELNER: That's correct, Your Honor.

23           THE COURT: The other puzzling question I have is this:  
24 Can you explain for the record why Mr. Flynn was interviewed by  
25 the FBI on January the 24th but the 302 cited in his sentencing

1 memorandum is dated August the 22nd, 2017? There's no reference,  
2 and the January 24th is not highlighted at all.

3 MR. KELNER: Yes, Your Honor. Thank you for the  
4 opportunity to address that. I think there's been some public  
5 confusion about that. The original draft of our brief cited  
6 specifically to the FD-302 for the interview of Special Agent  
7 Strozsk and cited it specifically to the McCabe memorandum, and  
8 actually originally we intended to include those documents with  
9 the filing.

10 Prior to the filing, we shared a draft copy of our brief  
11 with the Special Counsel's Office really for two purposes: One  
12 was to make sure that we weren't including anything covered by  
13 the protective order, which they objected to our including, which  
14 would, perhaps, have to be redacted or filed under seal; and the  
15 other reason, frankly, was generally to understand what their  
16 reaction might be to particular points in the filing.

17 After that, the Special Counsel's Office discussed it with  
18 us and asked that we consider removing the Strozsk 302, and the  
19 McCabe memorandum from the brief and to simply cite to them.  
20 Given our position as cooperating in the investigation, we  
21 acceded to that.

22 We then sent them a draft of the footnotes that we would  
23 use to cite to the relevant documents, and originally those  
24 footnotes, as drafted by us, named the McCabe memorandum  
25 specifically and named the Strozsk 302 specifically so that it

1 would be clear to the reader which documents we were talking  
2 about.

3 The Special Counsel's Office requested that we change  
4 those citations to simply reference the memorandum and date and  
5 the FD-302 and date without the names. We acceded to that  
6 request, and I would add would not have acceded to it if in any  
7 way we felt it was misleading, but we respected the preferences  
8 of the Special Counsel's Office.

9 THE COURT: All right. Any objection to what counsel  
10 said? Anything that you wish to add to that?

11 MR. VAN GRACK: Judge, just one point of clarification.

12 THE COURT: Sure.

13 MR. VAN GRACK: Which is what we've represented to defense  
14 counsel in terms of what to and not to include, what we indicated  
15 was anything in the Stroz 302 and the McCabe memorandum that  
16 they thought was relevant can and should be included in their  
17 submissions. What we asked was that they not attach the  
18 documents because, as the Court is aware, there are other  
19 considerations in the material there that we wanted to be  
20 sensitive to.

21 THE COURT: All right. Thank you, Counsel. Thank you  
22 both.

23 Mr. Flynn, anything else you want to discuss with me about  
24 your plea of guilty? This is not a trick. I'm not trying to  
25 trick you. If you want some time to withdraw your plea or try to



1 withdraw your plea, I'll give you that time. If you want to  
2 proceed because you are guilty of this offense, I will finally  
3 accept your plea.

4 THE DEFENDANT: I would like to proceed, Your Honor.

5 THE COURT: All right. Because you are guilty of this  
6 offense?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. I am satisfied that Mr. Flynn  
9 entered his guilty plea while competent and capable. He  
10 understood at that time the nature of the charges against him and  
11 the consequences of pleading guilty. Having carefully read all  
12 the materials provided to the Court in this case, including those  
13 materials reviewed under seal and in-camera, I conclude that  
14 there was and remains to be a factual basis for Mr. Flynn's plea  
15 of guilty. As such, there's no reason to reject his guilty plea  
16 and I'll, therefore, move on to the sentencing phase.

17 What I would normally do at this point, Mr. Flynn, is to  
18 ask you a few questions about the pretrial -- strike that -- the  
19 presentence report. Have you had an opportunity to read the  
20 presentence report?

21 THE DEFENDANT: I have.

22 THE COURT: Did you read it?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any questions that you want to ask  
25 me about it?

1 THE DEFENDANT: I don't believe so.

2 THE COURT: All right. At some point, if you would like  
3 to say something, I'll give you an opportunity. I would not hold  
4 it against you if you decided you didn't want to say anything.

5 To your attorneys, I'm going to inquire whether or not  
6 there are any objections to the mathematical calculations. This  
7 is a total offense level of 4, criminal history category of 1.  
8 Mr. Flynn has no prior criminal history, and the advisory, and I  
9 emphasize that word, the advisory guideline range is zero months  
10 to six months. This is a five-year statutory felony. Are there  
11 any objections to the mathematical calculations, Counsel?

12 MR. KELNER: No, Your Honor.

13 THE COURT: All right. And the advisory range for  
14 supervised release is one year to three years.

15 I'm going to request that you gentlemen have a seat  
16 because I want to, for the record -- and again, because I wasn't  
17 the original judge who accepted the plea in the first instance, I  
18 want to talk about the plea agreement and the facts that are  
19 relevant for the Court's consideration, and you gentlemen don't  
20 have to stand there in front of me while I do that, all right.  
21 You can have a seat.

22 MR. KELNER: Thank you, Your Honor.

23 THE COURT: Sure. Mr. Flynn agreed to plead guilty to  
24 Count 1 of the information, making false statements, in violation  
25 of 18 U.S. Code Section 1001. He stated that he understood the

1 maximum sentence is five years imprisonment, three years  
2 supervised release, and a \$250,000 fine.

3 The parties also agreed that his Guideline calculation  
4 range was zero to six months.

5 His base offense level is 4 after a two-point reduction  
6 for acceptance of responsibility, and he's in a criminal history  
7 category of 1, and I believe he has no prior criminal history.

8 His Guideline fine range is 500 to \$9,000. Mr. Flynn also  
9 attested that he understood and agreed that the Guidelines were  
10 not binding on the Court and that the Court was not obligated to  
11 grant a downward departure, quote, even if the government files a  
12 motion pursuant to Section 5K1.1 of the Sentencing Guidelines,  
13 end quote. And even if the parties agree that there should not  
14 be -- there should be a certain sentence, the Court's not  
15 obligated to accept that recommendation.

16 Mr. Flynn also agreed to cooperate with the Special  
17 Counsel's Office and agreed that any refusal to cooperate will  
18 constitute a breach of the plea agreement. He further agreed  
19 that a breach of the plea agreement does not constitute a basis  
20 for him to withdraw his plea.

21 Special Counsel's Office agreed to file a departure motion  
22 pursuant to Section 5K1.1 of the U.S. Sentencing Guidelines if it  
23 determined that Mr. Flynn, quote, provided substantial assistance  
24 in the investigation, end quote.

25 Relevant here, Mr. Flynn also agreed that, quote,

1 sentencing in this case may be delayed until his efforts to  
2 cooperate have been completed as determined by the government so  
3 that the Court will have the benefit of all relevant information  
4 before a sentence is imposed, end quote.

5 With respect to the Statement of Facts, when he pleaded  
6 guilty Mr. Flynn agreed to the follow facts: He served as an  
7 advisor and surrogate for the Trump Campaign and the transition  
8 team. He later served as the National Security Advisor for  
9 President Trump starting on January 20th, 2017. Mr. Flynn made  
10 materially false statements and omissions during a January 24th,  
11 2017 interview with the FBI.

12 At that time, the FBI had an open investigation into  
13 Russia's efforts to interfere with the 2016 presidential  
14 election. As part of that investigation, the FBI investigated,  
15 quote, the nature of any links, end quote, between the Trump  
16 campaign and Russia, and, quote, whether there was any  
17 coordination, end quote, between the two.

18 Mr. Flynn admitted that his false statements or omissions  
19 impeded and had a material impact on the investigation, and when  
20 I ask questions of the government, I need to know answers about  
21 how he impeded the investigation and what the material impact on  
22 the investigation was.

23 The Statement of Facts further describes Mr. Flynn's false  
24 statements. One, Mr. Flynn falsely stated that he did not ask  
25 the Russian Ambassador Sergey Kislyak to refrain from, quote,

1 escalating the situation, end quote, in response to sanctions the  
2 Obama Administration had imposed upon Russia.

3 On December the 28th, 2016, then-President Obama signed  
4 Executive Order 13757 which was to take effect on December the  
5 29th, 2016. The executive order announced sanctions against  
6 Russia as a response to Russia's interference in the 2016  
7 presidential election.

8 On December the 28th, 2016, the ambassador contacted  
9 Mr. Flynn. The next day Mr. Flynn called a senior transition  
10 official who was with other senior officials at the Mar-a-Lago  
11 Resort. They discussed the sanctions and their shared desire  
12 that Russia not escalate the situation.

13 Immediately after this phone call, Mr. Flynn called the  
14 ambassador, quote, and requested that Russia not escalate the  
15 situation and only respond in a reciprocal manner, end quote.

16 Shortly after this conversation, Mr. Flynn spoke again  
17 with the senior official to report on the call.

18 Mr. Flynn also falsely stated that he did not remember a,  
19 quote, follow-up conversation, end quote, in which the ambassador  
20 stated that Russia had, quote, moderated its response to those  
21 sanctions as a result of Mr. Flynn's request, end quote.

22 On December 30th, 2016, President Putin announced that he  
23 would not take retaliatory measures in response to the sanctions  
24 imposed by then-President Obama.

25 On December 31, 2016, the ambassador called Mr. Flynn to

1 inform him that Russia had chosen not to retaliate. After this  
2 call, Mr. Flynn spoke with senior members of the transition team  
3 about the conversation and Russia's decision not to escalate the  
4 situation.

5 Three: Mr. Flynn also made statements, quote, about calls  
6 he made to Russia and several other countries regarding a  
7 resolution submitted by Egypt to the United Nations Security  
8 Council on September 21, 2016, end quote.

9 Mr. Flynn told the FBI that he had only, quote, asked the  
10 country's positions on the vote and that he did not request that  
11 any of the countries take any particular action on the  
12 resolution, end quote.

13 On December 21, 2016, Egypt submitted a resolution to the  
14 United Nations Security Council on the issue of Israeli  
15 settlements. The resolution was aimed at preventing Israeli  
16 settlements and Palestinian territories. The U.N. Security  
17 Council was scheduled to vote on the resolution the next day.

18 On December the 22nd, 2016, a, quote, very senior, end  
19 quote, member of the transition team directed Mr. Flynn to  
20 contact officials from foreign governments, including Russia to,  
21 quote, learn where each government stood on the resolution, end  
22 quote, and to, quote, influence those governments to delay the  
23 vote or defeat the resolution, end quote.

24 That same day, Mr. Flynn contacted the ambassador about  
25 the vote and informed him that the incoming administration was

1 opposed to the resolution. He requested that Russia vote against  
2 or delay the resolution.

3 On December 23rd, 2016, Mr. Flynn again spoke to the  
4 ambassador who informed him that Russia would not vote against  
5 the resolution if it came to a vote.

6 Four: Finally, Mr. Flynn made false statements or  
7 omissions regarding his contacts with foreign governments,  
8 specifically, the Republic of Turkey, when filing documents with  
9 the Department of Justice pursuant to the Foreign Agents  
10 Registration Act, commonly referred to as FARA.

11 On March 7th, 2017, Mr. Flynn filed multiple documents  
12 pursuant to the Foreign Agents Registration Act. In the filings,  
13 he made false statements or omissions by stating that his  
14 company, the Flynn Intel Group, Incorporated did not know whether  
15 or the extent to which Turkey was involved in a project he and  
16 his company performed, quote, for the principle benefit of  
17 Turkey, end quote, when, in fact, Turkish officials had  
18 supervised, approved, and directed the work his company  
19 performed.

20 Mr. Flynn also made false statements by stating that his  
21 company's Turkey project was, quote, focused on improving U.S.  
22 business organizations' confidence regarding doing business with  
23 Turkey, end quote, when that was not the primary purpose.

24 Finally, Mr. Flynn made a false statement that an op-ed he  
25 published in the Hill on November 8th, 2016 was written at his

1 own initiative, when it was actually written for Turkey's benefit  
2 at its direction and under its supervision.

3 At the time the Turkish officials were directing and  
4 supervising this work, Mr. Flynn was also serving as a senior  
5 national security official on the Trump Campaign.

6 With respect to the sentencing questions that the Court  
7 needs to focus on and resolve today, the Court, pursuant to Title  
8 18, U.S. Code section 3553(a), the Court must impose a sentence  
9 that it fines sufficient but not greater than necessary to  
10 reflect the seriousness of the crime, afford adequate deterrence,  
11 and protect the public, among other things.

12 In determining the particular sentence to be imposed, the  
13 Court must consider several factors as set forth in Title 18 U.S.  
14 Code 3553(a). Those factors include, one, the nature and  
15 circumstances of the offense and the history and characteristics  
16 of the defendant; two, the need for the sentence to reflect the  
17 seriousness of the offense, to promote respect for the law and  
18 provide just punishment; three, the need for the sentence to  
19 afford adequate deterrence; four, the need, if any, for the  
20 sentence to protect the public from further crimes of the  
21 defendant; five, the need, if any, to provide the defendant with  
22 correctional treatment; six, the sentences available, the  
23 sentencing range, and any applicable policy statements set forth  
24 in United States Sentencing Guidelines; seven, the need to avoid  
25 unwarranted sentence disparities among similarly situated



1 defendants; and eight, the need, if any, to provide restitution  
2 to victims.

3 The process is highly individualized. As such, some of  
4 these factors are not relevant in Mr. Flynn's case and some  
5 factors, including the seriousness of the crime, which the Court  
6 emphasizes, and the history and characteristics of the defendant,  
7 weigh very heavily.

8 This is a very serious offense. A high-ranking senior  
9 official of the government making false statements to the Federal  
10 Bureau of Investigation while on the physical premises of the  
11 White House.

12 The Court will also consider the defendant's acceptance of  
13 responsibility and his substantial assistance in several  
14 investigations. In Mr. Flynn's case, the government has filed a  
15 motion for a downward departure pursuant to Section 5K1.1 of the  
16 Sentencing Guidelines. The memorandum states that Mr. Flynn  
17 provided substantial assistance to certain investigations.

18 When the government files such a memorandum, the Court may  
19 depart -- the Court's not obligated to do so -- and sentence the  
20 defendant to a lower sentence than contemplated by the  
21 Guidelines. In determining whether a reduction is warranted, the  
22 Court may consider the significance and usefulness of the  
23 defendant's assistance, the truthfulness, completeness, and  
24 reliability of the defendant's assistance, the nature and extent  
25 of the defendant's assistance, any gains or injury the defendant

1 may have endured as a result of his assistance; and the  
2 timeliness of the defendant's assistance, among other  
3 considerations.

4 Mr. Flynn's total offense level is 4. And having no other  
5 criminal history, his criminal history category is 1. Therefore,  
6 the applicable Guideline range is zero to six months of  
7 incarceration with one to three years of supervised release.

8 All that being said, the Guidelines, again, are advisory,  
9 as I've said four, five, six times. The Court could sentence the  
10 defendant to a sentence above or below the Guidelines,  
11 notwithstanding any Section 5K1.1 motion.

12 Now, I'd like to hear from the government first, all  
13 right. Would you come forward, Counsel, to the microphone. And  
14 your colleagues can join you if they wish to, whatever.

15 And again, I'm not intentionally trying to intrude on  
16 matters that should not be on the public record, so I will  
17 respect your resistance to answer a question, all right.

18 Is Mr. Flynn still cooperating with and providing  
19 assistance to the government?

20 MR. VAN GRACK: Your Honor, it remains a possibility that  
21 General Flynn is continuing to cooperate with the government at  
22 this time.

23 THE COURT: All right. It's a possibility?

24 MR. VAN GRACK: Yes, Your Honor.

25 THE COURT: All right. And the reason I ask that is

1 because, as you know and most people don't know, most of these  
2 cooperation agreements are conducted in sealed courtrooms, and  
3 the public doesn't really know a lot about cooperation efforts by  
4 individuals. And it's for that reason -- not for that reason,  
5 but the courts are reluctant to proceed to sentencing unless and  
6 until cooperation has been completed, more often than not, for  
7 cogent reasons. Because the Court wants to be in a position to  
8 fully evaluate someone's efforts to assist the government.

9 Had I taken the plea, I would have had a discussion with  
10 Mr. Flynn probably along these lines: I probably would have said  
11 something like, as I say in every case in which someone is  
12 cooperating, "the more you assist the government, the more you,  
13 arguably, help yourself at the time of sentencing."

14 Now, I make no promises about that. I mean, conceivably  
15 the Court could thank someone at the end of their cooperation  
16 after months or years and say "thank you" and sentence someone to  
17 the maximum. I don't recall ever doing that, but that's a  
18 possibility, and I tell people that. But I want people to have  
19 the best opportunity to help themselves at the time of  
20 sentencing. That's why, more often than not, the Court will wait  
21 until the government says, "this person is finished; this person  
22 has testified in the Grand Jury" or "there have been pleas of  
23 guilty entered, there's nothing else he can do to help us."

24 But there's still a likelihood that he could help, though,  
25 correct?

1 MR. VAN GRACK: And, Your Honor, let me clarify that  
2 point.

3 THE COURT: Sure.

4 MR. VAN GRACK: Which is the determination on the path of  
5 the government to proceed is for a number of reasons, which is,  
6 one, based on the totality of the assistance that the defendant  
7 had provided at that point. We believe that it did merit  
8 substantial assistance in the filing of a motion for a downward  
9 departure, and we made a submission summarizing that.

10 Related to that is, based on the government's view of not  
11 only the assistance he provided, but the nature of the  
12 investigations that he provided, that the defendant had provided  
13 the vast majority of cooperation that could be considered. And  
14 so in order to fully inform the Court, the Court was in a  
15 position to consider the vast majority of not just the  
16 cooperation, but the potential benefit of that cooperation. And  
17 we'd like to bring to the Court's attention that we just had an  
18 indictment unsealed in the Eastern District of Virginia charging  
19 Bijan Rafiekian and Ekim Alptekin with various violations, and  
20 the defendant provided substantial assistance to the attorneys in  
21 the Eastern District of Virginia in obtaining that charging  
22 document.

23 THE COURT: All right. Could the defendant have been  
24 indicted in that indictment? Could he have been charged in that  
25 indictment?

1 MR. VAN GRACK: And, Your Honor, the answer is yes, and  
2 the reason for that is that in the Statement of Offense in this  
3 case, the defendant refers to false statements in that FARA  
4 filing that are part of the indictment filed in the Eastern  
5 District of Virginia.

6 THE COURT: All right. And I can assume that the person  
7 identified as "A" is the defendant, correct, or would you rather  
8 not mention that?

9 MR. VAN GRACK: Your Honor, having not conferred with  
10 attorneys from the Eastern District of Virginia -- I just want to  
11 be sensitive about --

12 THE COURT: I think that's fair. I think that's fair.  
13 Your answer is he could have been charged in that indictment.

14 MR. VAN GRACK: Yes, Your Honor.

15 THE COURT: And that would have been -- what's the  
16 exposure in that indictment if someone is found guilty?

17 MR. VAN GRACK: Your Honor, I believe, if you'll give me a  
18 moment, I believe it was a conspiracy, 18 U.S.C. 371, which I  
19 believe is a five-year offense. It was a violation of 18 U.S.C.  
20 951, which is either a five- or ten-year offense, and false  
21 statements -- under those false statements, now that I think  
22 about it, Your Honor, pertain to Ekim Alptekin, and I don't  
23 believe the defendant had exposure to the false statements of  
24 that individual.

25 THE COURT: Could the sentences have been run consecutive

1 to one another?

2 MR. VAN GRACK: I believe so.

3 THE COURT: So the exposure would have been grave, then,  
4 would have been -- it would have been -- exposure to Mr. Flynn  
5 would have been significant had he been indicted?

6 MR. VAN GRACK: Yes. And, Your Honor, if I may just  
7 clarify. That's similar to the exposure for pleading guilty to  
8 18 U.S.C. 1001.

9 THE COURT: Right. Exactly. I'm not minimizing that at  
10 all. It's a five-year felony.

11 MR. VAN GRACK: Yes, Your Honor.

12 THE COURT: Excuse me one second.

13 (Brief pause in proceedings.)

14 THE COURT: Yes, Counsel.

15 MR. VAN GRACK: Your Honor, I'd clarify that the maximum  
16 penalty for 18 U.S.C. 951 is a ten-year felony and five years --

17 THE COURT: Ten-years. All right. Thank you.

18 I want to thank you at this point. I'm going to invite  
19 Mr. Flynn back at this point and his attorneys. Thank you,  
20 Counsel.

21 So, at this point you've paid attention to what the  
22 attorney said, Mr. Flynn, correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I want to ensure that you want to move forward  
25 today with sentencing. The government's publicly filed Addendum

1 in Aid of Sentencing, quote, seeks to provide a comprehensive  
2 description of the benefit the government has thus far obtained  
3 from your substantial assistance, end quote, but cautions that  
4 some of that benefit may not be fully realized at this time, end  
5 quote, and that's not different from what counsel just said.  
6 There could be a need for further cooperation from you. Did you  
7 understand that?

8 THE DEFENDANT: I believe I understand that, yes, Your  
9 Honor.

10 THE COURT: All right. And I don't know what that could  
11 be, but I accept the government's representations, and it could  
12 involve that case in Virginia, it could involve other matters for  
13 which you've spoken with the government, because you've had 19  
14 interviews with the government, correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right.

17 You've asked to proceed to sentencing at this time and for  
18 the Court to assess your cooperation and substantial assistance  
19 and what impact that will have on the Court's sentencing, and  
20 that's your desire, to proceed with sentencing today, correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. You've heard me say that  
23 sentencing a cooperating defendant before cooperation has ended  
24 is relevant, is rare. Normally, these discussions we're having  
25 now are held in sealed courtrooms with people, and more often

1 than not, I may weigh in and say, "let's wait because more is  
2 expected of this defendant," and, arguably, "he or she should  
3 have a chance to argue for the full benefit of that assistance."

4 And it's only fair because the Court's not bound by the  
5 recommendations. The Court has to be in a position to say, "I  
6 can consider everything now, the full extent of a defendant's  
7 cooperation."

8 I can't do that in your case because, arguably, you could  
9 be required to provide more cooperation to the government. Do  
10 you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So, if you proceed to sentencing today, which  
13 is your prerogative and only yours, the Court will have to impose  
14 a sentence without fully understanding the true extent and nature  
15 of your assistance. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If you want to postpone this and come back at  
18 some later point -- and I don't know what that later point will  
19 be -- that's fine with me. Because at that time I can say the  
20 book is closed, the government is satisfied, there's nothing else  
21 that Mr. Flynn can do, and I can evaluate everything that you've  
22 done or not done.

23 I have to caution you, Mr. Flynn, that the sentence the  
24 Court imposes today, if sentencing proceeds, may not be the  
25 sentence that you would receive after your cooperation ends. I



1 don't know that to be a fact. I don't know. I mean, who knows?  
2 I don't have the proverbial crystal ball, but I always approach  
3 sentencing with an open mind, and I'm fully prepared to listen to  
4 the attorneys and the defendant and consider the full extent of  
5 someone's cooperation.

6 In other words, the Court likes to be in a position to say  
7 there's nothing else this defendant can do to help the United  
8 States of America. He's done everything that he can do. And  
9 then the Court focuses on what impact that has under the advisory  
10 Guidelines.

11 I'm going to be frank with you. This crime is very  
12 serious. As I stated, it involves false statements to the  
13 Federal Bureau of Investigation agents on the premises of the  
14 White House, in the White House in the West Wing by a high  
15 ranking security officer with, up to that point, had an  
16 unblemished career of service to his country. That's a very  
17 serious offense.

18 You know, I'm going to take into consideration the 33  
19 years of military service and sacrifice, and I'm going to take  
20 into consideration the substantial assistance of several  
21 ongoing -- several ongoing investigations, but I'm going to also  
22 take into consideration the aggravating circumstances, and the  
23 aggravating circumstances are serious. Not only did you lie to  
24 the FBI, but you lied to senior officials in the Trump Transition  
25 Team and Administration. Those lies caused the then-Vice

1 President-Elect, incoming Chief of Staff, and then-Press  
2 Secretary to lie to the American people. Moreover, you lied to  
3 the FBI about three different topics, and you made those false  
4 statements while you were serving as the National Security  
5 Advisor, the President of the United States' most senior national  
6 security aid. I can't minimize that.

7 Two months later you again made false statements in  
8 multiple documents filed pursuant to the Foreign Agents  
9 Registration Act. So, all along you were an unregistered agent  
10 of a foreign country, while serving as the National Security  
11 Advisor to the President of the United States.

12 I mean, arguably, that undermines everything this flag  
13 over here stands for (indicating). Arguably, you sold your  
14 country out. The Court's going to consider all of that. I  
15 cannot assure you that if you proceed today you will not receive  
16 a sentence of incarceration. But I have to also tell you that at  
17 some point, if and when the government says you've concluded with  
18 your cooperation, you could be incarcerated.

19 It could be that any sentence of incarceration imposed  
20 after your further cooperation is completed would be for less  
21 time than a sentence may be today. I can't make any guarantees,  
22 but I'm not hiding my disgust, my disdain for this criminal  
23 offense.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: But it's your call, Mr. Flynn. I'm just being

1 up front with you, as I would with anyone else, and everyone who  
2 knows me knows that. If you want to proceed to sentencing today,  
3 I can't promise anything other than I'll give full consideration  
4 to anything you wish to say, if you want to say anything at all.  
5 You may say, "Judge, my lawyers have said everything possible. I  
6 don't want to say anything." I would not hold that against you,  
7 sir. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: But if you want some more time and to come  
10 back later after it's clear that you've done everything you  
11 possibly can for the United States of America, I'm going to grant  
12 that request.

13 Now, if you would like to take a recess now and talk to  
14 your attorneys, I'm happy to accommodate you in that regard as  
15 well. Would you like to do that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Fair enough. Why don't you have a  
18 seat. Let me ask the government a few more questions that I want  
19 you to consider as well.

20 Counsel. And these are questions -- answers to which the  
21 Court's going to consider in attempting to determine an  
22 appropriate sentence. The conversation with the Russian  
23 ambassador in December, is that a violation of law?

24 MR. VAN GRACK: Your Honor --

25 THE COURT: I hate to be so blunt. Could he have been

1 charged with a criminal offense?

2 MR. VAN GRACK: Let me answer two ways.

3 THE COURT: Okay.

4 MR. VAN GRACK: Which is the facts could potentially,  
5 potentially support a violation of the Logan Act, which I think  
6 is, perhaps, what the Court is referring to.

7 THE COURT: Is that the Act that no one has ever been  
8 prosecuted under?

9 MR. VAN GRACK: That's right, which is why I want to be  
10 clear in terms of the government's consideration of potential  
11 charges against General Flynn. That is not one of the charges  
12 that the government was considering in its interfacing with --

13 THE COURT: Fair enough. Good. That's the answer I  
14 wanted. Were there other charges that could have been brought  
15 against Mr. Flynn, Other than FARA violations, false statements?  
16 I'm not minimizing either one of those.

17 MR. VAN GRACK: The government's Statement of Offense  
18 represents a representation of the unlawful activity that the  
19 government was -- believes that the defendant committed in terms  
20 of beyond a reasonable doubt. And in terms of other offenses,  
21 they were not sort of in consideration in our interfacing with  
22 the defendant.

23 THE COURT: All right. I really don't know the answer to  
24 this question, but given the fact that the then-President of the  
25 United States imposed sanctions against Russia for interfering

1 with federal elections in this country, is there an opinion about  
2 the conduct of the defendant the following days that rises to the  
3 level of treasonous activity on his part?

4 MR. VAN GRACK: The government did not consider -- I  
5 shouldn't say -- I shouldn't say did not consider, but in terms  
6 of the evidence that the government had at the time, that was not  
7 something that we were considering in terms of charging the  
8 defendant.

9 THE COURT: All right. Hypothetically, could he have been  
10 charged with treason?

11 MR. VAN GRACK: Your Honor, I want to be careful what I  
12 represent.

13 THE COURT: Sure.

14 MR. VAN GRACK: And not having that information in front  
15 of me and because it's such a serious question, I'm hesitant to  
16 answer it, especially because I think it's different than asking  
17 if he could be charged under FARA or if there were other 1001  
18 violations, for example.

19 THE COURT: The government filed a sentencing memorandum  
20 in which it recommended sentencing at the low end of the  
21 Guidelines, including probation. Subsequent thereto, the  
22 government filed its reply, which did not include the language  
23 "including probation." Now, I'm going to assume that was  
24 intentional.

25 MR. VAN GRACK: Your Honor, thank you for the opportunity

1 to clarify. The government's recommendation is that a sentence  
2 at the low end of the Guideline range is appropriate and  
3 warranted period. And, in fact, the conclusion of the  
4 government's sentencing memo states that very point. The  
5 clarification in that opening paragraph of "including a term of  
6 no incarceration" was to represent that when we say "low end of  
7 the Guideline range," that, in fact, could include a term of no  
8 incarceration. And in particular, it was to distinguish some  
9 other representations that the Special Counsel's Office had made  
10 in other cases in which there was a specific recommendation for a  
11 term of incarceration. So it was meant to clarify the position  
12 from the beginning, including in its reply, was intended to be  
13 consistent.

14 THE COURT: All right. So, there was an intention to be  
15 consistent, then?

16 MR. VAN GRACK: Yes, yes. The government's representation  
17 that a sentence at the low end of the Guideline range is  
18 warranted.

19 THE COURT: All right. The points raised by Mr. Flynn in  
20 his sentencing memorandum concerned the Court. Do you have an  
21 opinion as to whether he's forfeited the adjustment points for  
22 acceptance of responsibility by raising questions about the  
23 circumstances surrounding his interview with the FBI agents on  
24 January the 24th?

25 MR. VAN GRACK: Your Honor, we believe that he has

1 accepted responsibility, not just from his statements to the  
2 Court today, but throughout the proceedings, including the  
3 statements he made under oath in front of Judge Contreras that he  
4 has accepted responsibility and acknowledges that his false  
5 statements were knowing and willful.

6 THE COURT: All right. Because in your memo you say  
7 "assuming he continues to accept responsibility." So, was there  
8 some doubt in your mind that he was wavering on acceptance?

9 MR. VAN GRACK: Your Honor, though the government  
10 interpreted the defendant's submission in the way that it was  
11 presented to the Court, which is to identify distinguishing  
12 characteristics to two other matters that the Special Counsel's  
13 Office had prosecuted, it was also aware of the potential  
14 implications that the memorandum had made and wanted to clarify  
15 under no uncertain terms its position that those were not  
16 mitigating circumstances in any way, and is satisfied both in  
17 terms of the representations the defense counsel has made and his  
18 statements today that we do not doubt that he has accepted  
19 responsibility.

20 THE COURT: All right. Excuse me one second, Counsel.

21 (Brief pause in proceedings.)

22 THE COURT: Yes, Counsel.

23 MR. VAN GRACK: No, Your Honor.

24 THE COURT: Nothing further? All right. I'm going to --  
25 at Mr. Flynn's request, I'm going to give them a -- we're going

1 to take a recess. I can never see that clock because there's a  
2 glare on that clock there. It's 12:04. Until 12:30. Will that  
3 be enough time?

4 MR. KELNER: Yes, Your Honor.

5 THE COURT: Do you have any other questions that you want  
6 to ask me before we take a recess?

7 MR. KELNER: Not at this time, Your Honor.

8 THE COURT: All right. Any questions, Counsel?

9 MR. VAN GRACK: No, Your Honor.

10 THE COURT: All right. The Court will stand in recess  
11 until 12:30. There's no need to stand.

12 THE COURT: Marshal Ruffin. There's a room available for  
13 you to speak privately with your client, Counsel, and Marshal  
14 Ruffin will accommodate you. Thank you.

15 (Thereupon, a recess in the proceedings occurred from  
16 12:09 p.m. until 12:45 p.m.)

17 THE COURT: All right. Thank you.

18 THE COURTROOM CLERK: Your Honor, resuming Criminal Case  
19 17-232, *United States of America versus Michael Flynn*.

20 THE COURT: All right. I just want to ask a couple of  
21 questions. This is directed to either government counsel or  
22 defense counsel. I made a statement about Mr. Flynn acting as a  
23 foreign agent while serving in the White House. I may have  
24 misspoken. Does that need to be corrected?

25 MR. VAN GRACK: Yes, Your Honor, that would be correct,



1 which is that the conduct ended, I believe, in mid-November 2016.

2 THE COURT: All right. That's what I thought, and I felt  
3 terrible about that. I just want the record clear on that. You  
4 agree with that, Counsel?

5 MR. KELNER: Yes, Your Honor.

6 THE COURT: All right. I also asked about -- and this is  
7 very important -- I also asked about the Special Counsel's  
8 Office. I also asked questions about the Special Counsel and  
9 the -- and other potential offenses for the purpose of  
10 understanding the benefit, if any, that Mr. Flynn has received in  
11 the plea deal. I wasn't suggesting he's committed treason. I  
12 wasn't suggesting he committed violations. I was just curious as  
13 to whether or not he could have been charged, and I gave a few  
14 examples. And, you know, there are a lot of conspiracy theorists  
15 out there. I'm not taking the elements of any of the uncharged  
16 offenses into consideration at the time of sentencing. I was  
17 just trying to determine the benefit of and the generosity of the  
18 government in bestowing a benefit on Mr. Flynn. That was the  
19 reason why.

20 MR. VAN GRACK: Yes, Your Honor.

21 THE COURT: And I said early on, Don't read too much into  
22 the questions I ask. But I'm not suggesting he committed  
23 treason. I just asked a legitimate question.

24 MR. VAN GRACK: Yes, Your Honor. And that affords us an  
25 opportunity to clarify something on our end which is, with

1 respect to treason, I said I wanted to make sure I had the  
2 statute in front of me. The government has no reason to believe  
3 that the defendant committed treason; not just at the time, but  
4 having proffered with the defendant and spoken with him through  
5 19 interviews, no concerns with respect to the issue of treason.

6 THE COURT: Right, right, and I've never presided over a  
7 treasonous offense and couldn't tell you what the elements are  
8 anyway. I just asked the question. All right. Thank you very  
9 much. How would you like to proceed, Counsel.

10 MR. KELNER: Your Honor, with your indulgence, if I could  
11 make a few points.

12 THE COURT: Sure.

13 MR. KELNER: First of all, let me make very clear, Your  
14 Honor, that the decisions regarding how to frame General Flynn's  
15 sentencing memorandum made by counsel, made by me, made by  
16 Mr. Anthony, are entirely ours and really should not and do not  
17 diminish in any way General Flynn's acceptance of responsibility  
18 in this case. And I want to make that --

19 THE COURT: That point is well taken, but you understand  
20 why I had to make the inquiry?

21 MR. KELNER: I do.

22 THE COURT: Because I'm thinking, this sounds like a  
23 backpedaling on the acceptance of responsibility. It was a  
24 legitimate area to inquire about. And I don't want to be too  
25 harsh when I say this, but I know you'll understand. I would

1 never penalize any client for what his or her attorney has said.  
2 I'm not saying that you misspoke at all, but you understand  
3 absolutely why I had to make the inquiry.

4 MR. KELNER: I absolutely understand. We understand the  
5 Court's --

6 THE COURT: And I wouldn't take it out on him or anyone  
7 else, for that matter, what the attorneys say, no.

8 MR. KELNER: Right. We understand the Court's reason for  
9 concern. I just wanted to make very clear the very specific  
10 reasons that those sections in the brief were included, to  
11 distinguish the Papadopoulos and Van der Zwaan cases, which did  
12 result in incarceration, we think are meaningfully  
13 distinguishable in many respects.

14 THE COURT: Let me stop you on that point, because I'm  
15 glad you raised that, and I was going to raise this point at some  
16 point. We might as well raise it now since you brought up  
17 Papadopoulos and Van der Zwaan. The Court's of the opinion that  
18 those two cases aren't really analogous to this case. I mean,  
19 neither one of those individuals was a high-ranking government  
20 official who committed a crime while on the premises of and in  
21 the West Wing of the White House. And I note that there are  
22 other cases that have been cited in the memorandum with respect  
23 to other individuals sentenced in 2017, I believe, for 1001  
24 offenses, and the point being made -- and I think it's an  
25 absolutely good point -- the point being made that no one

1 received a jail sentence.

2 My guess is that not one of those defendants was a  
3 high-ranking government official who, while employed by the  
4 President of the United States, made false statements to the FBI  
5 officers while on the premises of and in the West Wing of the  
6 White House. That's my guess. Now, if I'm wrong, then you can  
7 point me to any one or more of those cases.

8 This case is in a category by itself right now, but I  
9 understand why you cited them. I appreciate that.

10 MR. KELNER: Your Honor, we don't disagree. We recognize  
11 that General Flynn served in a high-ranking position, and that is  
12 unique and relevant. But I --

13 THE COURT: Absolutely.

14 MR. KELNER: But I would submit to you a couple of points  
15 in response for the Court's consideration.

16 Number one, because of his high rank and because of his  
17 former high office, when it came time to deal with this  
18 investigation and to deal with the Special Counsel's Office,  
19 that, too, set a higher standard for him, and he did understand  
20 that as a three-star general and a former National Security  
21 Advisor, what he did was going to be very consequential for the  
22 Special Counsel's investigation, and very consequential for the  
23 nation, so he made decisions early on to remain low profile, not  
24 to make regular public statements, as some other people did.  
25 That was acknowledged by the Special Counsel's Office when we did

1 first hear from them, the value of that silence.

2 And then he made the decision publicly and clearly and  
3 completely and utterly to cooperate with this investigation,  
4 knowing that, because of his high rank, that was going to send a  
5 signal to every other potential cooperator and witness in this  
6 investigation, and that was consequential, and we appreciate the  
7 fact that the Special Counsel memorialized that in his brief.  
8 That did make a decision, and that was another kind of high  
9 standard that was set for him and that he rose to and met  
10 decisively. In addition, there have been other cases --

11 THE COURT: Can I just stop you right now? Is -- How do  
12 you wish to proceed? Do you wish to proceed with sentencing  
13 today or do you want to defer it?

14 MR. KELNER: Thank you, Your Honor.

15 THE COURT: Or are you leading up to that point?

16 MR. KELNER: I'm leading up to that.

17 THE COURT: No, that's fine.

18 MR. KELNER: Just a bit of indulgence, if I may.

19 THE COURT: No, no. Go ahead. That's fine.

20 MR. KELNER: And let me just finish that last point.

21 THE COURT: No, no, no. I'm not trying to curtail you. I  
22 just wanted to make sure I didn't miss anything.

23 MR. KELNER: I'm building up to it. I'm building up to  
24 it, Your Honor.

25 THE COURT: All right.

1 MR. KELNER: In addition, I would note there have been  
2 other high profile cases, one involving a four-star general,  
3 General Petraeus.

4 THE COURT: I don't agree with that plea agreement,  
5 but don't --

6 MR. KELNER: It's a classic --

7 THE COURT: He pled to a misdemeanor?

8 MR. KELNER: He was allowed after lying to the FBI --

9 THE COURT: -- right --

10 MR. KELNER: -- to plead to a misdemeanor and was  
11 sentenced to probation.

12 THE COURT: All right. Well, I'm not going to  
13 criticize -- I don't know any of the facts about that case, other  
14 than what I've read in -- what I've read, so....

15 MR. KELNER: I'll just briefly highlight those examples.  
16 The Sandy Berger case, also involving a former National Security  
17 Advisor, also included lies to government officials. He was also  
18 allowed to plead to a misdemeanor and also sentenced to  
19 probation. So there is precedence. But I want to be clear. We  
20 absolutely take your point. General Flynn recognizes the  
21 obligations that came with high office and that this is a serious  
22 offense. We don't in any way dispute that.

23 But at the same time, knowing that high standard, he made  
24 use of it in sending a signal as part of the larger Special  
25 Counsel's investigation.

1           Your Honor, I would like to also emphasize that our  
2 understanding, and I think it's been reiterated today, is that it  
3 remains the position of the Special Counsel's Office that a  
4 sentence at the low end of the Guidelines range, quote, including  
5 a sentence that does not impose a term of incarceration, is  
6 appropriate and warranted in the government's view, and we've  
7 just reconfirmed that with them.

8           I'd like to highlight that General Flynn has held nothing  
9 back, nothing in his extensive cooperation with the Special  
10 Counsel's Office. He's answered every question that's been  
11 asked. I believe they feel that he's answered them truthfully,  
12 and he has. He's complied with every request that's been made,  
13 as has his counsel.

14           Nothing has been held back. That said, it is true that  
15 this EDVA case that was indicted yesterday is still pending, and  
16 it's likely, I would think, that General Flynn may be asked to  
17 testify in that case. We haven't been told that, but I think  
18 it's likely, and he's prepared to testify. And while we believe  
19 that the Special Counsel's Office views his cooperation as having  
20 been very largely complete, completed at this point, it is true  
21 that there's this additional modicum of cooperation that he  
22 expects to provide in the EDVA case, and for that reason, we are  
23 prepared to take Your Honor up on the suggestion of delaying  
24 sentencing so that he can eke out the last modicum of cooperation  
25 in the EDVA case to be in the best position to argue to the

1 Court the great value of his cooperation.

2 THE COURT: Let me tell you something. It didn't occur to  
3 me to do that. I just raised the thought. I'm prepared to go  
4 forward today, but I think it's only fair to say exactly what I  
5 did say.

6 MR. KELNER: Yes.

7 THE COURT: So, you know, call it a suggestion or a  
8 thought. It was a thought. I didn't, you know, say, you know,  
9 wink-wink, nod-nod, you need to do this. So if you want to  
10 proceed today, I'm prepared to do so.

11 MR. KELNER: We do not take it as a wink-wink, nod-nod.

12 THE COURT: And I'm not promising anything either.

13 MR. KELNER: And we understand that.

14 THE COURT: All right.

15 MR. KELNER: But from the beginning of this process,  
16 literally from the beginning, General Flynn has cooperated with  
17 Director Mueller and the Special Counsel's investigation in every  
18 way imaginable, and he's prepared to continue that cooperation  
19 with respect to the EDVA case, which I think is the only area  
20 which there is anything left to give, probably just consisting of  
21 his testimony at trial in that case.

22 But we would like to request a continuance of sentencing  
23 to allow him to complete that cooperation, and I might suggest,  
24 perhaps, a status conference in 90 days, if it -- if it makes  
25 sense to the Court.



1 THE COURT: That's fine with the Court.

2 Mr. Flynn, why don't you join your attorney at the  
3 microphone. Mr. Flynn.

4 All right, sir. You've heard your attorney indicate that  
5 you would like to postpone this. Again, the Court's not making  
6 any promises. The Court was just being up front with you, like  
7 I've been up front with people for more than 30 years, and that's  
8 all I was doing. If you want to proceed today, I would proceed  
9 today, but I'm not making any promise as to what the sentence  
10 will be in the event you cooperate with that matter, about this  
11 or other matters. Do you understand that?

12 THE DEFENDANT: Yes, I understand Your Honor.

13 THE COURT: All right. Okay. Does the government have an  
14 objection to doing this?

15 MR. VAN GRACK: No, Your Honor.

16 THE COURT: All right. Let me just say this. I probably  
17 shouldn't. Having said that, I probably shouldn't. I don't  
18 agree with the Petraeus sentence. I'm sorry. I don't see how a  
19 four-star general gives classified information to someone not  
20 authorized to receive it and then is allowed to plead to a  
21 misdemeanor, but I don't know anything about it. Maybe there  
22 were extenuating circumstances. I don't know. It's none of my  
23 business, but it's just my opinion.

24 And that has no impact -- I would not take that into  
25 consideration in whatever sentence I impose here. Just based

1 upon what I know about that case, I just disagreed with it.  
2 That's all.

3 MR. KELNER: Understood.

4 THE COURT: Counsel, what day would you want? I mean, I  
5 can probably accommodate -- the 12th is not a good date. March  
6 12th is not a good date, but otherwise, if you want to suggest a  
7 date that's convenient for everyone, that's fine with me.

8 MR. ANTHONY: May I confer?

9 THE COURT: Sure.

10 (Discussion had off the record.)

11 MR. KELNER: Your Honor, after consulting with the  
12 government, we suggest a status report rather than a status  
13 conference.

14 THE COURT: Sure.

15 MR. KELNER: And for a date, I believe March 13th would  
16 work.

17 THE COURT: Any date you want now, that's fine, to file a  
18 status report. That's fine.

19 MR. KELNER: We propose March 13th for the status report.

20 THE COURT: Sure, that's fine. Let's just say by noon on  
21 the 13th of March.

22 MR. KELNER: Thank you, Your Honor.

23 THE COURT: All right. Anything further?

24 MR. KELNER: Nothing further from us.

25 THE COURT: From government counsel?

1 MR. VAN GRACK: No, Your Honor.

2 THE COURT: Mr. Flynn, do you have any questions you want  
3 to ask me or your attorneys? Do you have any questions you want  
4 to ask me?

5 THE DEFENDANT: I have none, Your Honor.

6 THE COURT: All right. Excuse me one second.

7 (Brief pause in proceedings.)

8 THE COURT: Let me just throw this out. Let me just share  
9 this with you.

10 What I could do, and maybe it's not appropriate to do it  
11 now, and maybe it's not appropriate to do it in March. At some  
12 point -- it probably won't surprise you that I had many, many,  
13 many more questions, and at some point what I may do is share  
14 those questions with counsel so you can give some thought, maybe  
15 do some additional research to be prepared for an eventual  
16 sentencing. I'm not sure if I want to do that. I was not going  
17 to spend another hour and share those questions with you in open  
18 court today, had you decided to postpone sentencing, but I may do  
19 that. I'm not sure. These are questions that you would be  
20 prepared to answer anyway, such as, you know, how the  
21 government's investigation was impeded? What was the material  
22 impact of the criminality? Things like that.

23 MR. KELNER: Your Honor, I think we would find it very  
24 helpful, actually, and would welcome the opportunity.

25 THE COURT: I thought you might say that. I'll give it

1 some thought, because my purpose is not to sandbag anyone. I  
 2 want your best thoughts, your best answers about questions that  
 3 are -- that I believe are very relevant and important, but it's  
 4 not time to do that now, and it won't be time to do it before  
 5 March 13th, but I may do that.

6 MR. KELNER: Thank you, Your Honor.

7 THE COURT: All right. Sure. Would the government find  
 8 that of any benefit? You probably know the questions I'm going  
 9 to ask anyway, impeding the investigation, materiality impact.

10 MR. VAN GRACK: We would not object to any clarification  
 11 from the Court.

12 THE COURT: Okay. All right. Thank you, all. And happy  
 13 holidays, everyone. Thank you.

14 MR. KELNER: Thank you, Your Honor.

15 (Proceedings adjourned at 1:01 p.m.)

16 **C E R T I F I C A T E**

17  
 18 I, Scott L. Wallace, RDR-CRR, certify that  
 19 the foregoing is a correct transcript from the record of  
 proceedings in the above-entitled matter.

20 /s/ Scott L. Wallace

12/18/18

21 -----  
 22 **Scott L. Wallace, RDR, CRR**  
 23 **Official Court Reporter**

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**Date**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA**

**v.**

**MICHAEL T. FLYNN,**

**Defendant**

**Crim. No. 17-232 (EGS)**

**JOINT STATUS REPORT**

The United States of America, by and through the U.S. Attorney for the District of Columbia, and Mr. Flynn through his counsel, file this joint status report to provide the Court with the current status of this matter.

On June 24, 2019, the Court ordered the parties to file another joint status report by no later than August 30, 2019. On August 21, 2019, the Court instructed that the status report address four topics: (1) the status of the defendant's cooperation; (2) whether the case is ready for sentencing; (3) suggested dates for the sentencing hearing, if appropriate; and (4) whether there are any issues that would require the Court's resolution prior to sentencing.

The parties are unable to reach a joint response on the above topics. Accordingly, our respective responses are set forth separately below. Considering these disagreements, the government respectfully requests that the Court schedule a status conference. Defense counsel suggests that a status conference before 30 days would be too soon, but leaves the scheduling of such, if any, to the discretion of the Court. The government is available on September 4th, 5th, 9th or 10<sup>th</sup> of 2019,



or thereafter as the Court may order. Defense counsel are not available on those specific dates.

**I. Counsel for the defendant advises the following:**

1. Mr. Flynn's cooperation is complete. He not only cooperated extensively with the Special Counsel's office, but also with the prosecutors in the Eastern District of Virginia in the Rafiekian case. This cost Mr. Flynn more than 100 hours of his time and hundreds of thousands of dollars in additional legal fees. He even waived the attorney-client privilege and the protection of the work-product doctrine to enhance his cooperative effort.

2. The case is not ready for sentencing. As new counsel, we have only recently received the entire file, which occupies 13 hard drives, comprised of more than 300,000 documents, and we are still working with prior counsel to tie up some loose ends. The last of those hard drives was just uploaded to our document review system within the last 30 days. Despite our best efforts, it will still take a significant amount of time to complete our review. More troubling, there is much information that we do not have—and neither did prior counsel. Thus, the defense requests an additional 90 days before the next status report.

3. For the reasons set out above, the defense does not have any dates to suggest for sentencing.

4. There are serious issues to be addressed by the Court before we can proceed further. First, the government continues to deny our request for security

clearances. Our attempts to resolve that issue with the government have come to a dead end, thus requiring the intervention of this Court.

Our client held the highest security clearance the government provides. We know—but not in any detail because of our lack of clearance—that he briefed and debriefed the DIA about his foreign contacts and travel. All that material is relevant to the charges against him, and it is most likely *Brady* material to boot. Although Mr. Flynn was a civilian at the time, that information remains classified-- or at a minimum withheld from the defense.

There is other information relevant to the defense that is either classified or being suppressed by the government, not the least of which are the transcripts and recordings of the phone calls that supposedly underpin the charges against Mr. Flynn. The government has steadfastly refused to produce those – even to this Court. The Inspector General of the Department of Justice has completed one or more relevant reports that include classified sections, and he is completing additional reports that reportedly will include a large classified section – a significant portion of which will almost certainly relate to Mr. Flynn. We must have access to that information to represent our client consistently with his constitutional rights and our ethical obligations.

Second, the government has also failed to produce, among other things, the original or first draft of the FBI 302 of the interview of Mr. Flynn on January 24, 2017, and the 1A file which we have repeatedly requested, and any records or documents that show everyone who made changes to that 302.

We expect to identify more issues for the Court promptly, and we will file the appropriate motions to address those issues as soon as possible. In the interest of efficiency, we will certainly continue to review the materials we do have simultaneously with addressing these additional issues.

**II. The government advises the following:**

1. The defendant's cooperation has ended.
2. The case is ready for sentencing, and the government proposes the following dates for a sentencing hearing: October 21-23, 2019, or November 1-15, 2019.
3. The government is not aware of any issues that require the Court's resolution prior to sentencing.
4. We take very seriously our discovery and disclosure obligations, to include those specifically imposed by the Court in this case. As we have previously communicated to defense counsel, discovery and disclosure of classified national security information, as defined under Executive Order 13526 and its predecessor Executive Orders, is governed by the procedures set forth under the Classified Information Procedures Act, 18 U.S.C. App. III. Sections 1-16 ("CIPA"), and specifically CIPA Section 4. A defendant and his/her cleared counsel in a criminal prosecution may only obtain access to classified U.S. government information when such classified material is deemed both "relevant" and "helpful to the defense." *See United States v. Yunis*, 867 F.2d 617, 623-24 (D.C. Cir. 1989).

The government has exceeded its discovery and disclosure obligations in this matter, including those imposed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and the Court's Standing Brady Order dated February 16, 2018. That includes the provision to the defendant of over 22,000 pages of documents. Among those documents are all versions in the government's possession of the FBI report of the January 24, 2017 interview of the defendant and the interviewing agents' notes. The defendant and his prior counsel were in possession of those notes and draft reports of the January 24 interview before his scheduled sentencing on December 18, 2018. The government has not provided any classified information to the defendant or his counsel, and the government is not aware of any classified information that requires disclosures to the defendant or his counsel under *Brady* or the Court's Standing *Brady* Order.

Respectfully submitted,

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JESSIE K. LIU  
U.S. Attorney for the District of Columbia

BRANDON L. VAN GRACK  
Special Assistant U.S. Attorney

DEBORAH CURTIS  
JOCELYN BALLANTINE  
Assistant United States Attorneys

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SIDNEY POWELL  
JESSE BINNALL  
Attorneys for Defendant

**DuCharme, Seth (ODAG)**

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**From:** DuCharme, Seth (ODAG)  
**Sent:** Tuesday, January 7, 2020 2:43 PM  
**To:** Liu, Jessie (USADC)  
**Cc:** Weinsheimer, Bradley (ODAG); Demers, John C. (NSD); Evangelista, Alessio (USADC)  
**Subject:** Re: Prosecutors Ask That Michael Flynn Get Prison Time - The New York Times

Thanks. This looks fairly straightforward too:

“It is within the government’s sole discretion to determine whether the defendant has ‘substantially assisted’ the government,” prosecutor Brandon Van Grack wrote in a 33-page court filing. “In light of the complete record, including actions subsequent to December 18, 2018, that negate the benefits of much of the defendant’s earlier cooperation, the government no longer deems the defendant’s assistance ‘substantial.’ ”

Sent from my iPhone

On Jan 7, 2020, at 2:37 PM, Liu, Jessie (USADC) <JLiu3@usa.doj.gov> wrote:

Yes. (b) (5)

On Jan 7, 2020, at 2:34 PM, DuCharme, Seth (ODAG) <[seducharme@jmd.usdoj.gov](mailto:seducharme@jmd.usdoj.gov)> wrote:

“Federal prosecutors recommended on Tuesday that President Trump’s former national security adviser Michael T. Flynn be sentenced to up to six months in prison”

Sounds like we actually just asked for the guidelines range of zero to six months, right?

Sent from my iPhone

On Jan 7, 2020, at 2:12 PM, Liu, Jessie (USADC)  
<[JLiu3@usa.doj.gov](mailto:JLiu3@usa.doj.gov)> wrote:

<https://www.nytimes.com/2020/01/07/us/politics/flynn-prosecutors-sentencing.html>

## **White House Press Office**

**From:** White House Press Office  
**Sent:** Tuesday, January 7, 2020 3:57 PM  
**To:** patrick.hovakimian4@usdoj.gov  
**Subject:** pool report #7b/expanded Ukraine quote re aid sent "ahead of schedule"

**From:** Gillman, Todd <tgillman@dallasnews.com>

**Sent:** Tuesday, January 7, 2020 3:48 PM

**Subject:** pool report #7b/expanded Ukraine quote re aid sent "ahead of schedule"

This is a yet more expanded version of the president's comments on Ukraine, including the part where he asserted that military aid that had been frozen was ultimately delivered "two or three weeks ahead of schedule."

Q: "Will you be OK if John Bolton testifies? He indicated yesterday that he would if he is subpoenaed."

Trump: "That's going to be up to the lawyers. It'll be up to the Senate, and we'll see how they feel. He would know nothing about what we're talking about, because as you know the Ukrainian government came out with a very strong statement no pressure no anything and this from the boss. That's from the President of Ukraine. The Foreign Minister came out with a statement that was equally as strong. And frankly, if you look at it and you look at everything, all they have to do is read the transcripts. Take a look, not just at one, you take a look at two transcripts. They were absolutely perfect. There was absolutely nothing done wrong. There was no false statement, and it's crazy that it's gotten to a point where you -- look, Ukraine, the President of Ukraine said there was no pressure whatsoever. There was no pressure on his country whatsoever. And by the way, in terms of the money, it got there two or three weeks ahead of schedule, long before it was supposed to be there. There was absolutely nothing done wrong."

Also, as pool was heading out of the Oval, Fox's John Roberts asked about the prosecution's recommendation of 6 months in prison for former National Security Advisor Michael Flynn. POTUS said he was learning about it from the question and had nothing of substance to say on it.

### **Todd J. Gillman**

Washington Bureau Chief  
*The Dallas Morning News*

M: (b) (6)

O: 202.661.8421

[tgillman@dallasnews.com](mailto:tgillman@dallasnews.com)

@ToddGillman

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DuCharme, Seth (ODAG)

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**From:** DuCharme, Seth (ODAG)  
**Sent:** Tuesday, January 7, 2020 4:05 PM  
**To:** Rosen, Jeffrey A. (ODAG)  
**Subject:** Re: pool report #7b

Thanks

I've been following the press reports -

(b) (5)

The headlines say we ask for jail time - the body of most of the articles say "up to six months"

Sent from my iPhone

On Jan 7, 2020, at 4:02 PM, Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov> wrote:

Note last paragraph.

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**From:** White House Press Office <info@mail.whitehouse.gov>  
**Sent:** Tuesday, January 7, 2020 3:57 PM  
**Subject:** pool report #7b/expanded Ukraine quote re aid sent "ahead of schedule"

**From:** Gillman, Todd <[tgillman@dallasnews.com](mailto:tgillman@dallasnews.com)>

**Sent:** Tuesday, January 7, 2020 3:48 PM

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Washington Bureau Chief

*The Dallas Morning News*

M: (b) (6)

O: 202.661.8421

[tgillman@dallasnews.com](mailto:tgillman@dallasnews.com)

@ToddGillman

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Rosen, Jeffrey A. (ODAG)

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**From:** Rosen, Jeffrey A. (ODAG)  
**Sent:** Tuesday, January 7, 2020 4:08 PM  
**To:** DuCharme, Seth (ODAG); Demers, John C. (NSD)  
**Subject:** fyi

**WaPo: "Michael Flynn deserves up to six months in prison, U.S. Justice Department says in reversal for former Trump national security adviser," Spencer S. Hsu, January 07, 2020, 12:51 PM**

Federal prosecutors on Tuesday recommended that former national security adviser Michael T. Flynn serve up to six months in prison, reversing their earlier recommendation of probation because of his drawn out attacks against the FBI and Justice Department. The dramatic revocation of the Justice Department's request for leniency came weeks after Flynn's sentencing judge on Dec. 16 categorically rejected Flynn's claims of prosecutorial misconduct and that he had been duped into pleading guilty to lying to FBI agents about his Russian contacts after the 2016 U.S. election. [\[Continue Reading\]](#) **See also:** [CNBC](#), [NYT](#), [WSJ](#)

**White House Press Office**

**From:** White House Press Office  
**Sent:** Tuesday, January 7, 2020 5:16 PM  
**To:** patrick.hovakimian4@usdoj.gov  
**Subject:** Remarks by President Trump and Prime Minister Mitsotakis of the Hellenic Republic Before Bilateral Meeting

 The White

Office of the Press Secretary

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FOR IMMEDIATE RELEASE

January 7, 2020

REMARKS BY PRESIDENT TRUMP  
AND PRIME MINISTER MITSOTAKIS OF THE HELLENIC REPUBLIC  
BEFORE BILATERAL MEETING

Oval Office

2:20 P.M. EST

PRESIDENT TRUMP: Well, thank you very much. On behalf of the First Lady and myself, it's an honor to have the Prime Minister of Greece and First Lady of Greece with us. We really appreciate it. We have many things to discuss.

The relationship is extr- -- really extraordinary, I would say. Right? It's as good as it can get. We're doing a lot of things together -- military. We're also doing big trade. A lot of trade. And Greece has made a tremendous comeback. We've worked with them very closely. And, really, the Prime Minister will have some interesting things to say. So you have to tell them one statistic, because it's a great statistic. We're very proud of Greece and the comeback that they're making. And we will continue it forward. There's no doubt about it. Thank you very much for being here.

PRIME MINISTER MITSOTAKIS: Thank you. Thank you, Mr.



President. It's a real privilege to be here at a very important time. You were right to point out that this relationship is the best it ever was. But it can become even better.

Both on the geopolitical side, we're looking for your constant support, strengthening the strategic relationship.

On the defense side, we've made lots of progress in terms of making sure that you have a reliable and predictable ally in a complicated part of the world. But I also wants to stress the economic aspect of our relationship. The Greek economy has done extremely well over the past months. We have lowered taxes. We are deregulating. We're following a recipe that has also worked here in the --

PRESIDENT TRUMP: (Laughs.) Yeah. That's right.

PRIME MINISTER MITSOTAKIS: -- in the United States. And the economy is reacting very positively. So we'll also be looking to your support to convince American companies to invest more in Greece and help us grow the economy at a pace where people are really going to feel the difference.

So it's a privilege to be here. You can always count on -- the United States can always count on Greece as a reliable and predictable ally in our part of the world.

PRESIDENT TRUMP: Well, we appreciate it. And again, congratulations. Really, one of the -- percentage-wise, one of the biggest increases in the world. And that's a big statement. And that's a tremendous comeback. And you've done a fantastic job. You've really united the country.

So again, congratulations.

PRIME MINISTER MITSOTAKIS: Thank you. Thank you. Thank you very much, Mr. President.

Q Mr. President?

PRESIDENT TRUMP: Yeah.

Q A lot of questions are being asked in Washington and across America about what evidence you had that Qasem Soleimani was planning attacks against American targets. What can you tell us about what you knew prior to ordering the attack?

PRESIDENT TRUMP: Well, number one, I knew the past. His past was horrible. He was a terrorist. He was a -- so designated by President Obama, as you know. And he wasn't even supposed to be outside of his own country; he was. So, right there.

But that's, in a way, the least of it. We had an attack very recently that he was in charge of, where we had people horribly wounded, one dead. In fact, the number now, as of this morning, I believe is two dead. And that was his. He was traveling with the head of Hezbollah. They weren't there to discuss a vacation. They weren't there to go to a nice resort someplace in Baghdad. They were there to discuss bad business.

And we saved a lot of lives by terminating his life. A lot of lives were saved. They were planning something, and you're going to be hearing about it, or at least various people in Congress are going to be hearing about it tomorrow.

Our Secretary of State covered it very well a little while ago. I saw him. I saw his new conference -- Mike. And if you want to mention a couple of things in addition to what I've just said. But we had tremendous information. We've been following him for a long time. And we followed his path for those three days. And they were not good stops. We didn't like where he was stopping. They were not good stops. We saved a lot of lives. Mike?

SECRETARY POMPEO: Mr. President, I'd only add we had deep intelligence indicating there was active plotting to put American lives at risk. And I'm confident, and I think the President is confident too, that the actions that the President took saved American lives, saved lives of Iraqi Muslims as well. It was the right thing to do. And our Department of Defense did an excellent



job executing the mission.

Q And, Mr. President, can --

PRESIDENT TRUMP: And, as you know, he killed at least 608 Americans, but the number is much higher than that. He's also very much -- roadside bombs and all of the horrible explosives that you see, he was a big believer and sent them everywhere. He was somebody that we did ourselves and we did a lot of countries a big favor. And I've been -- I've been hearing from countries. They were extremely happy with what we did. And if you look inside Iran itself, there were plenty of those leaders that were happy because they feared him and didn't like him, in many cases.

Q Could you also clear up, Mr. President, whether Iranian cultural sites would be on any future target list?

PRESIDENT TRUMP: Well, as I said yesterday, it was very interesting, they're allowed to kill our people, they're allowed to maim our people, they're allowed to blow up everything that we have and there's nothing that stops them, and we are -- according to various laws -- supposed to be very careful with their cultural heritage. And you know what? If that's what the law is, I will -- I like to obey the law.

But think of it: They kill our people, they blow up our people, and then we have to be very gentle with their cultural institutions. But I'm okay with it. It's okay with me.

I will say this: If Iran does anything that they shouldn't be doing, they're going to be suffering the consequences, and very strongly.

All right. Steve?

Q Are there any signs of imminent retaliation from the Iranians? Any indications of imminent --

PRESIDENT TRUMP: Well, don't forget: In our case, it was retaliation because they were there first. They killed -- look, I don't have to talk about him -- May 18 to 20, 2011, he was a

don't have to talk about him. For 10 to 20 years, he was a monster. But just in the very short period of time, two people dead, people badly injured, and then, before that, there were other attacks. And look at what he was planning.

So that'll be discussed tomorrow morning. Right now, it's classified. That'll be discussed tomorrow with Mike Pompeo and the Joint Chiefs of Staff.

Q And is the U.S. prepared for an Iranian attack?

PRESIDENT TRUMP: We're prepared. We're totally prepared. And likewise, we're prepared to attack if we have to, as retribution.

Q Mr. President, Iran's leaders say that any response to the Soleimani killing would be, quote, "proportionate." What would the United States do in the event of any Iranian (inaudible)?

PRESIDENT TRUMP: So, again, John, if you look at what's going on, ours was a -- an attack based on what they did. We weren't the first one out. He killed an American. Now two people are dead from the same attack, and some people very badly wounded. And that was one of his smaller endeavors.

If you look over his past, his past -- he's been called a "monster," and he was a monster. And he's no longer a monster; he's dead. And that's a good thing for a lot of countries. And he was planning a very big attack and a very bad attack for us and other people. And we stopped him.

And I don't think anybody can complain about it. I don't hear too many people -- other than politicians who are trying to win the presidency. Those are the ones that are complaining. But I don't hear anybody else complaining.

Go ahead.

Q Mr. President, you called him a "monster," but your friend, Erdoğan, called him a "martyr." What is your reaction?



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PRESIDENT TRUMP: Well, I guess everybody -- to each his own. I mean, I disagree 100 percent, and I'm sure he does too. But he has a public to take care of, and I guess that's for his own reason. But I'm actually surprised to hear that, but that's okay.

Q Are you willing to make a deal with Greece regarding F-35s, sir?

PRESIDENT TRUMP: Say it?

Q Are you willing to make a deal with Greece regarding F-35?

PRESIDENT TRUMP: So Greece and I, and my people and -- we have a whole group of people. And as you see, they brought a lot of great representatives from Greece that we've been dealing with. We have a tremendous Greek population -- over 3 million people, as I understand it. That's fantastic. I think I know -- I really feel I know most of them. I think I know all of them, come to think of it. But it's a great population in the United States.

We're going to be meeting, we're going to be talking, we're going to be negotiating, and we're going to be making a lot of deals.

PRIME MINISTER MITSOTAKIS: Let me add something to that.

PRESIDENT TRUMP: We have a really great relationship with Greece.

PRIME MINISTER MITSOTAKIS: Let me add something to that: Greece is interested, Mr. President, in participating in the F-35 program. As you know, we are already upgrading our F-16s.

PRESIDENT TRUMP: Yeah.

PRIME MINISTER MITSOTAKIS: And that program will be



completed in 2023, 2024. So we're very much interested in participating in the F-35 program after that. And I'm sure that the U.S. will take into consideration the fact that this country is coming out of an economic crisis, in terms of structuring the program in the best possible way for my country.

PRESIDENT TRUMP: That's true. And, you know, they just signed a very big renovation of existing aircraft. They have great aircraft, but it's gotten a little bit tired. And they've done a renovation that's going to bring it up to brand new, and we look forward to doing that. A couple of our great companies are doing it. Okay?

Q Sir, in Iraq -- in Iraq, how do you feel about the idea of the supposed withdrawal from Iraq being a possibility? Isn't that something Soleimani actually wanted all these years?

PRESIDENT TRUMP: Well, it's something that I want, too. I mean, eventually, they have to be able to defend themselves and take care of themselves. And it's something, ultimately, that I want to see. We don't want to be there forever; we want to be able to get out.

I didn't want to be there in first place, to be honest, and everybody knows that. That was when I was a civilian, I said it. But we were there, and they made a decision, and I disagreed with that decision very strongly. But we're there now.

We've done a great job. We've gotten rid of the caliphate. A hundred percent of the caliphate is gone, and -- which is ISIS. We have thousands of ISIS prisoners that we're keeping, right now, under lock and key. And we want Europe to take many of these prisoners because they came from Germany, France, and other places -- probably a few from Greece, in all fairness. We'll have to talk to you about that.

PRIME MINISTER MITSOTAKIS: No, none. None -- none from Greece --

PRESIDENT TRUMP: Good.

PRIME MINISTER MITSOTAKIS: -- so far.

PRESIDENT TRUMP: You're lucky. You're lucky.

But we have a lot of -- we have a lot of people right now in prison -- ISIS fighters that are tough fighters -- and they are where they should be.

So I think we've done a fantastic job, but eventually we want to be able to let Iraq run its own affairs. And that's very important. So, at some point, we want to get out. But this isn't the right point.

The other thing is, if we do get out, you know, we've spent a tremendous amount of money on building airports and building -- it's one of the largest embassies we have in the world, Mike, and we want to be reimbursed for the various costs that we have had. And they're very significant. But we'll work something out.

And I talk sanctions, but I'm only talking sanctions if we're not treated with respect. We have to be treated with respect. We deserve -- I'll tell you what. I'll tell you, with what we did --

(Cross-talk.)

Excuse me. Wait, wait, wait. One sec. With what we did with ISIS -- and this was done during by my administration, because it was a mess before we got here -- with what we did with ISIS, we've done the Middle East and we've done a lot of other countries a tremendous favor.

Yeah, go ahead.

Q Do you agree with -- do you agree with Turkey's provocations in Libya, in eastern Mediterranean, against Greece? And are you willing to talk to your friend, Erdoğan, to stop --

PRESIDENT TRUMP: We are talking to him and we're talking to --



Q -- to stop these provocations?

PRESIDENT TRUMP: Yeah. We're talking to -- when you're talking about Libya, we're discussing with President Erdoğan, we're discussing many other countries. I just spoke with the Chancellor of Germany, with Angela, and we talked about that subject specifically -- Libya and what's going on. We'll be talking to Russia; they're involved. A lot of countries are involved with respect to Libya. And it's, right now, a mess.

But there are a lot of countries, and they all want to know where we stand, and they do know where we stand. We have a very distinctive stand. And we have meetings set up, and we're going to see if we can work out some kind of a plan for peace.

(Cross-talk.)

PRIME MINISTER MITSOTAKIS: I think it's important -- just one -- Mr. President, can I just make one point?

PRESIDENT TRUMP: Yes. Please, go ahead.

PRIME MINISTER MITSOTAKIS: One point. One second. One point on this issue. I think it is important to point out that the agreement signed between Turkey and Libya infringe upon Greece's sovereign rights and essentially cause great concern and instability in a region which is already highly problematic.

PRESIDENT TRUMP: Yeah.

PRIME MINISTER MITSOTAKIS: So we'll be very much looking to your support to make sure that these types of provocative agreements are not being put into place. And I think we should refrain, in general, in the eastern Mediterranean, for any sort of activity that inflames passions and that doesn't, you know, promote regional peace and security. So we'll be very much looking forward to your support on this issue because it is a very important issue for my country.

Q Mr. President, the Iraqi government says it expects U.S. forces to leave the country after the letter that it received, General Mark Milley said, by mistake yesterday. What do you say to the Iraqi government about the possibility of U.S. forces leaving based on that letter?

PRESIDENT TRUMP: Well, I don't know anything about that letter. That letter was sent, and I understand it was an unsigned letter. So I can maybe let Mike speak to it. I don't know if that letter was a hoax or was it unsigned, or what?

SECRETARY POMPEO: That letter itself was a mistake. I think the Department of Defense has spoken that it was a mistake; it wasn't intended.

Q But the Iraqi government is saying they're taking you at your word and expect U.S. forces to leave.

SECRETARY POMPEO: Yeah.

PRESIDENT TRUMP: Well, I think it's the worst thing that could happen to Iraq. If we leave, that would mean that Iran would have a much bigger foothold, and the people of Iraq do not want to see Iran running the country -- that, I can tell you.

So we'll see how it all works out. I know it's going to work out well for us because, at some point, we want to be able to get out. We want to bring our soldiers back home.

I will say that we have had tremendous support from the people of Iraq appreciating what we've done. And they don't want to see Iran go into Iraq. But they're neighbors, and over a period of years, something will happen; we'll see what that is.

But the -- what was said yesterday, I didn't know about. I really don't know about it. What is that, Mike? What exactly was that?

SECRETARY POMPEO: I just know that there was a draft letter that was sent out by mistake.



PRESIDENT TRUMP: A draft, unsigned.

SECRETARY POMPEO: Unsigned letter that --

PRESIDENT TRUMP: The media knew that was (inaudible), but they don't like to say that. Yeah.

SECRETARY POMPEO: They knew it. And the Iraqi people understand that we're there to help them stand up their sovereignty.

PRESIDENT TRUMP: The Iraqi people were not happy when the suggestion was made yesterday that we were thinking about leaving at some point. They were not happy. But, at some point, we will want to leave.

Q Mr. President, you didn't answer the question.

Q Mr. President --

PRESIDENT TRUMP: No -- Steve, go ahead. Steve?

Q Are you ready for the Senate impeachment trial?

PRESIDENT TRUMP: What?

Q Are you ready for the Senate trial?

PRESIDENT TRUMP: Yeah, whatever it is. It's a hoax. The impeachment is a big hoax. It's a -- it's become a laughing stock all over the world. There was nothing done wrong. The two articles that were sent are not even serious. And, by the way, they're not a crime.

The Republicans voted approximately 196 to nothing. This was not supposed to be partisan. It was never meant that way by, as they would say, the Founders. So it was -- it's turned out to be a totally partisan hoax, witch hunt. And, frankly, it's been going on from before I came down the escalator with our great First Lady. I mean, it -- this has gone on for three years. and

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probably longer than that.

And it will be very interesting when the final tabulation is set and when the facts are released, because a lot of people are working on those facts right now. It's a big deal. It's, in many ways, the greatest hoax ever perpetrated on our country. It's one of the great hoaxes ever. It started with a -- with an illegal document that turned out to be false. The fake document that you know so well, the dossier, as they call it. And it went on from there. It was set up by a bunch of dirty cops and others, working with the DNC, working with the Democrats.

And from the day I ran -- from the day I was elected, and probably before that, substantially -- not probably. If you look at the insurance policy, the insurance policy was long before that. So that means before I ever got elected, they were working on something that's so illegal. So I assume that will be announced at some point into the future and hopefully not too far into the future.

And the impeachment story is -- it's just a continuation of the same -- shame -- it really is a shame that we can't focus on all of the things. You know, we talked today about Iran. We talk about Iraq. We talk about economic development. We have the greatest stock market we've ever had in the history of our country. We have the greatest economy that we've ever had in the history of our country. We're setting records. Unemployment records. Employment records also; we're going to have almost 160 million people working.

And that we have to work on this partisan scam is really a shame. That we have to take time is a shame.

All right, that's about it, I think.

Q Mr. President, one more on a different topic?

PRESIDENT TRUMP: Yeah, go ahead.

Q Will you be okay if John Bolton testifies? He indicated



yesterday that he would if he is subpoenaed.

PRESIDENT TRUMP: Well, that's going to be up to the lawyers. It will be up to the Senate. And we'll see how they feel. He would know nothing about what we're talking about, because if you know, the Ukrainian government came out with a very strong statement -- no pressure, no anything. And that's from the boss. That's from the President of Ukraine. The Foreign Minister came out with a statement that was equally as strong.

And, frankly, if you look at it and you look at everything, all they have to do is read the transcripts. You take a look not just at one -- you take a look at two transcripts. They were absolutely perfect. There was absolutely nothing done wrong. There was no false statement. And it's crazy that it's gotten to a point where you -- look, Ukraine -- the President of Ukraine said there was no pressure whatsoever. There was no pressure on his country whatsoever.

And, by the way, in terms of the money, it got there two or three weeks ahead of schedule -- long before it was supposed to be there. There was absolutely nothing done wrong.

The one thing I look at is corruption, and the other thing I look at is, why isn't France and why isn't Germany and maybe, I could say, why isn't Greece -- but why aren't all of these countries -- why aren't they paying? Why is it always the United States that has to pay?

And I said that very strongly. In fact, it's in the transcript, but the press doesn't cover it. Why is it that the United States pays? And it affects Europe far more than it affects the United States. So why isn't it that France, Germany, and all of those countries in Europe that are so strongly affected, why aren't they paying? Why is it always us? That's one question.

And the other question is always about corruption. We're sending all of this money. Where is it going? Where is it going?

And the President, by the way, got elected on anti-corruption, and I think he's going to do a great job. But I appreciated his statement; he's made it many times: no pressure whatsoever.

Thank you all very much. Thank you. Thank you very much. Thank you very much.

PRIME MINISTER MITSOTAKIS: Greece is actually paying more than 2 percent in NATO.

PRESIDENT TRUMP: Good. That's true.

Q Do you agree with the DOJ recommending jail time for Michael Flynn?

PRESIDENT TRUMP: I don't know. I don't know. I didn't look at it. I -- you're just telling me for the first time. I don't know. I'll take a look at it.

END

2:40

P.M. EST

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**White House Press Office**

**From:** White House Press Office  
**Sent:** Tuesday, January 7, 2020 5:16 PM  
**To:** jeffrey.rosen38@usdoj.gov  
**Subject:** Remarks by President Trump and Prime Minister Mitsotakis of the Hellenic Republic Before Bilateral Meeting

 The White

Office of the Press Secretary

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FOR IMMEDIATE RELEASE

January 7, 2020

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President. It's a real privilege to be here at a very important time. You were right to point out that this relationship is the best it ever was. But it can become even better.

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On the defense side, we've made lots of progress in terms of making sure that you have a reliable and predictable ally in a complicated part of the world. But I also wants to stress the economic aspect of our relationship. The Greek economy has done extremely well over the past months. We have lowered taxes. We are deregulating. We're following a recipe that has also worked here in the --

PRESIDENT TRUMP: (Laughs.) Yeah. That's right.

PRIME MINISTER MITSOTAKIS: -- in the United States. And the economy is reacting very positively. So we'll also be looking to your support to convince American companies to invest more in Greece and help us grow the economy at a pace where people are really going to feel the difference.

So it's a privilege to be here. You can always count on -- the United States can always count on Greece as a reliable and predictable ally in our part of the world.

PRESIDENT TRUMP: Well, we appreciate it. And again, congratulations. Really, one of the -- percentage-wise, one of the biggest increases in the world. And that's a big statement. And that's a tremendous comeback. And you've done a fantastic job. You've really united the country.

So again, congratulations.

PRIME MINISTER MITSOTAKIS: Thank you. Thank you. Thank you very much, Mr. President.

Q Mr. President?



PRESIDENT TRUMP: Yeah.

Q A lot of questions are being asked in Washington and across America about what evidence you had that Qasem Soleimani was planning attacks against American targets. What can you tell us about what you knew prior to ordering the attack?

PRESIDENT TRUMP: Well, number one, I knew the past. His past was horrible. He was a terrorist. He was a -- so designated by President Obama, as you know. And he wasn't even supposed to be outside of his own country; he was. So, right there.

But that's, in a way, the least of it. We had an attack very recently that he was in charge of, where we had people horribly wounded, one dead. In fact, the number now, as of this morning, I believe is two dead. And that was his. He was traveling with the head of Hezbollah. They weren't there to discuss a vacation. They weren't there to go to a nice resort someplace in Baghdad. They were there to discuss bad business.

And we saved a lot of lives by terminating his life. A lot of lives were saved. They were planning something, and you're going to be hearing about it, or at least various people in Congress are going to be hearing about it tomorrow.

Our Secretary of State covered it very well a little while ago. I saw him. I saw his new conference -- Mike. And if you want to mention a couple of things in addition to what I've just said. But we had tremendous information. We've been following him for a long time. And we followed his path for those three days. And they were not good stops. We didn't like where he was stopping. They were not good stops. We saved a lot of lives. Mike?

SECRETARY POMPEO: Mr. President, I'd only add we had deep intelligence indicating there was active plotting to put American lives at risk. And I'm confident, and I think the President is confident too, that the actions that the President took saved American lives, saved lives of Iraqi Muslims as well. It was the right thing to do. And our Department of Defense did an excellent

job executing the mission.

Q And, Mr. President, can --

PRESIDENT TRUMP: And, as you know, he killed at least 608 Americans, but the number is much higher than that. He's also very much -- roadside bombs and all of the horrible explosives that you see, he was a big believer and sent them everywhere. He was somebody that we did ourselves and we did a lot of countries a big favor. And I've been -- I've been hearing from countries. They were extremely happy with what we did. And if you look inside Iran itself, there were plenty of those leaders that were happy because they feared him and didn't like him, in many cases.

Q Could you also clear up, Mr. President, whether Iranian cultural sites would be on any future target list?

PRESIDENT TRUMP: Well, as I said yesterday, it was very interesting, they're allowed to kill our people, they're allowed to maim our people, they're allowed to blow up everything that we have and there's nothing that stops them, and we are -- according to various laws -- supposed to be very careful with their cultural heritage. And you know what? If that's what the law is, I will -- I like to obey the law.

But think of it: They kill our people, they blow up our people, and then we have to be very gentle with their cultural institutions. But I'm okay with it. It's okay with me.

I will say this: If Iran does anything that they shouldn't be doing, they're going to be suffering the consequences, and very strongly.

All right. Steve?

Q Are there any signs of imminent retaliation from the Iranians? Any indications of imminent --

PRESIDENT TRUMP: Well, don't forget: In our case, it was retaliation because they were there first. They killed -- look, I don't have to talk about him -- May 18 to 20, 2011, he was a



don't have to talk about him. For 10 to 20 years, he was a monster. But just in the very short period of time, two people dead, people badly injured, and then, before that, there were other attacks. And look at what he was planning.

So that'll be discussed tomorrow morning. Right now, it's classified. That'll be discussed tomorrow with Mike Pompeo and the Joint Chiefs of Staff.

Q And is the U.S. prepared for an Iranian attack?

PRESIDENT TRUMP: We're prepared. We're totally prepared. And likewise, we're prepared to attack if we have to, as retribution.

Q Mr. President, Iran's leaders say that any response to the Soleimani killing would be, quote, "proportionate." What would the United States do in the event of any Iranian (inaudible)?

PRESIDENT TRUMP: So, again, John, if you look at what's going on, ours was a -- an attack based on what they did. We weren't the first one out. He killed an American. Now two people are dead from the same attack, and some people very badly wounded. And that was one of his smaller endeavors.

If you look over his past, his past -- he's been called a "monster," and he was a monster. And he's no longer a monster; he's dead. And that's a good thing for a lot of countries. And he was planning a very big attack and a very bad attack for us and other people. And we stopped him.

And I don't think anybody can complain about it. I don't hear too many people -- other than politicians who are trying to win the presidency. Those are the ones that are complaining. But I don't hear anybody else complaining.

Go ahead.

Q Mr. President, you called him a "monster," but your friend, Erdoğan, called him a "martyr." What is your reaction?

-----, -----, -----

PRESIDENT TRUMP: Well, I guess everybody -- to each his own. I mean, I disagree 100 percent, and I'm sure he does too. But he has a public to take care of, and I guess that's for his own reason. But I'm actually surprised to hear that, but that's okay.

Q Are you willing to make a deal with Greece regarding F-35s, sir?

PRESIDENT TRUMP: Say it?

Q Are you willing to make a deal with Greece regarding F-35?

PRESIDENT TRUMP: So Greece and I, and my people and -- we have a whole group of people. And as you see, they brought a lot of great representatives from Greece that we've been dealing with. We have a tremendous Greek population -- over 3 million people, as I understand it. That's fantastic. I think I know -- I really feel I know most of them. I think I know all of them, come to think of it. But it's a great population in the United States.

We're going to be meeting, we're going to be talking, we're going to be negotiating, and we're going to be making a lot of deals.

PRIME MINISTER MITSOTAKIS: Let me add something to that.

PRESIDENT TRUMP: We have a really great relationship with Greece.

PRIME MINISTER MITSOTAKIS: Let me add something to that: Greece is interested, Mr. President, in participating in the F-35 program. As you know, we are already upgrading our F-16s.

PRESIDENT TRUMP: Yeah.

PRIME MINISTER MITSOTAKIS: And that program will be



completed in 2023, 2024. So we're very much interested in participating in the F-35 program after that. And I'm sure that the U.S. will take into consideration the fact that this country is coming out of an economic crisis, in terms of structuring the program in the best possible way for my country.

PRESIDENT TRUMP: That's true. And, you know, they just signed a very big renovation of existing aircraft. They have great aircraft, but it's gotten a little bit tired. And they've done a renovation that's going to bring it up to brand new, and we look forward to doing that. A couple of our great companies are doing it. Okay?

Q Sir, in Iraq -- in Iraq, how do you feel about the idea of the supposed withdrawal from Iraq being a possibility? Isn't that something Soleimani actually wanted all these years?

PRESIDENT TRUMP: Well, it's something that I want, too. I mean, eventually, they have to be able to defend themselves and take care of themselves. And it's something, ultimately, that I want to see. We don't want to be there forever; we want to be able to get out.

I didn't want to be there in first place, to be honest, and everybody knows that. That was when I was a civilian, I said it. But we were there, and they made a decision, and I disagreed with that decision very strongly. But we're there now.

We've done a great job. We've gotten rid of the caliphate. A hundred percent of the caliphate is gone, and -- which is ISIS. We have thousands of ISIS prisoners that we're keeping, right now, under lock and key. And we want Europe to take many of these prisoners because they came from Germany, France, and other places -- probably a few from Greece, in all fairness. We'll have to talk to you about that.

PRIME MINISTER MITSOTAKIS: No, none. None -- none from Greece --

PRESIDENT TRUMP: Good.

PRIME MINISTER MITSOTAKIS: -- so far.

PRESIDENT TRUMP: You're lucky. You're lucky.

But we have a lot of -- we have a lot of people right now in prison -- ISIS fighters that are tough fighters -- and they are where they should be.

So I think we've done a fantastic job, but eventually we want to be able to let Iraq run its own affairs. And that's very important. So, at some point, we want to get out. But this isn't the right point.

The other thing is, if we do get out, you know, we've spent a tremendous amount of money on building airports and building -- it's one of the largest embassies we have in the world, Mike, and we want to be reimbursed for the various costs that we have had. And they're very significant. But we'll work something out.

And I talk sanctions, but I'm only talking sanctions if we're not treated with respect. We have to be treated with respect. We deserve -- I'll tell you what. I'll tell you, with what we did --

(Cross-talk.)

Excuse me. Wait, wait, wait. One sec. With what we did with ISIS -- and this was done during by my administration, because it was a mess before we got here -- with what we did with ISIS, we've done the Middle East and we've done a lot of other countries a tremendous favor.

Yeah, go ahead.

Q Do you agree with -- do you agree with Turkey's provocations in Libya, in eastern Mediterranean, against Greece? And are you willing to talk to your friend, Erdoğan, to stop --

PRESIDENT TRUMP: We are talking to him and we're talking to --



Q -- to stop these provocations?

PRESIDENT TRUMP: Yeah. We're talking to -- when you're talking about Libya, we're discussing with President Erdoğan, we're discussing many other countries. I just spoke with the Chancellor of Germany, with Angela, and we talked about that subject specifically -- Libya and what's going on. We'll be talking to Russia; they're involved. A lot of countries are involved with respect to Libya. And it's, right now, a mess.

But there are a lot of countries, and they all want to know where we stand, and they do know where we stand. We have a very distinctive stand. And we have meetings set up, and we're going to see if we can work out some kind of a plan for peace.

(Cross-talk.)

PRIME MINISTER MITSOTAKIS: I think it's important -- just one -- Mr. President, can I just make one point?

PRESIDENT TRUMP: Yes. Please, go ahead.

PRIME MINISTER MITSOTAKIS: One point. One second. One point on this issue. I think it is important to point out that the agreement signed between Turkey and Libya infringe upon Greece's sovereign rights and essentially cause great concern and instability in a region which is already highly problematic.

PRESIDENT TRUMP: Yeah.

PRIME MINISTER MITSOTAKIS: So we'll be very much looking to your support to make sure that these types of provocative agreements are not being put into place. And I think we should refrain, in general, in the eastern Mediterranean, for any sort of activity that inflames passions and that doesn't, you know, promote regional peace and security. So we'll be very much looking forward to your support on this issue because it is a very important issue for my country.

Q Mr. President, the Iraqi government says it expects U.S. forces to leave the country after the letter that it received, General Mark Milley said, by mistake yesterday. What do you say to the Iraqi government about the possibility of U.S. forces leaving based on that letter?

PRESIDENT TRUMP: Well, I don't know anything about that letter. That letter was sent, and I understand it was an unsigned letter. So I can maybe let Mike speak to it. I don't know if that letter was a hoax or was it unsigned, or what?

SECRETARY POMPEO: That letter itself was a mistake. I think the Department of Defense has spoken that it was a mistake; it wasn't intended.

Q But the Iraqi government is saying they're taking you at your word and expect U.S. forces to leave.

SECRETARY POMPEO: Yeah.

PRESIDENT TRUMP: Well, I think it's the worst thing that could happen to Iraq. If we leave, that would mean that Iran would have a much bigger foothold, and the people of Iraq do not want to see Iran running the country -- that, I can tell you.

So we'll see how it all works out. I know it's going to work out well for us because, at some point, we want to be able to get out. We want to bring our soldiers back home.

I will say that we have had tremendous support from the people of Iraq appreciating what we've done. And they don't want to see Iran go into Iraq. But they're neighbors, and over a period of years, something will happen; we'll see what that is.

But the -- what was said yesterday, I didn't know about. I really don't know about it. What is that, Mike? What exactly was that?

SECRETARY POMPEO: I just know that there was a draft letter that was sent out by mistake.



PRESIDENT TRUMP: A draft, unsigned.

SECRETARY POMPEO: Unsigned letter that --

PRESIDENT TRUMP: The media knew that was (inaudible), but they don't like to say that. Yeah.

SECRETARY POMPEO: They knew it. And the Iraqi people understand that we're there to help them stand up their sovereignty.

PRESIDENT TRUMP: The Iraqi people were not happy when the suggestion was made yesterday that we were thinking about leaving at some point. They were not happy. But, at some point, we will want to leave.

Q Mr. President, you didn't answer the question.

Q Mr. President --

PRESIDENT TRUMP: No -- Steve, go ahead. Steve?

Q Are you ready for the Senate impeachment trial?

PRESIDENT TRUMP: What?

Q Are you ready for the Senate trial?

PRESIDENT TRUMP: Yeah, whatever it is. It's a hoax. The impeachment is a big hoax. It's a -- it's become a laughing stock all over the world. There was nothing done wrong. The two articles that were sent are not even serious. And, by the way, they're not a crime.

The Republicans voted approximately 196 to nothing. This was not supposed to be partisan. It was never meant that way by, as they would say, the Founders. So it was -- it's turned out to be a totally partisan hoax, witch hunt. And, frankly, it's been going on from before I came down the escalator with our great First Lady. I mean, it -- this has gone on for three years. and

-----  
probably longer than that.

And it will be very interesting when the final tabulation is set and when the facts are released, because a lot of people are working on those facts right now. It's a big deal. It's, in many ways, the greatest hoax ever perpetrated on our country. It's one of the great hoaxes ever. It started with a -- with an illegal document that turned out to be false. The fake document that you know so well, the dossier, as they call it. And it went on from there. It was set up by a bunch of dirty cops and others, working with the DNC, working with the Democrats.

And from the day I ran -- from the day I was elected, and probably before that, substantially -- not probably. If you look at the insurance policy, the insurance policy was long before that. So that means before I ever got elected, they were working on something that's so illegal. So I assume that will be announced at some point into the future and hopefully not too far into the future.

And the impeachment story is -- it's just a continuation of the same -- shame -- it really is a shame that we can't focus on all of the things. You know, we talked today about Iran. We talk about Iraq. We talk about economic development. We have the greatest stock market we've ever had in the history of our country. We have the greatest economy that we've ever had in the history of our country. We're setting records. Unemployment records. Employment records also; we're going to have almost 160 million people working.

And that we have to work on this partisan scam is really a shame. That we have to take time is a shame.

All right, that's about it, I think.

Q Mr. President, one more on a different topic?

PRESIDENT TRUMP: Yeah, go ahead.

Q Will you be okay if John Bolton testifies? He indicated



yesterday that he would if he is subpoenaed.

PRESIDENT TRUMP: Well, that's going to be up to the lawyers. It will be up to the Senate. And we'll see how they feel. He would know nothing about what we're talking about, because if you know, the Ukrainian government came out with a very strong statement -- no pressure, no anything. And that's from the boss. That's from the President of Ukraine. The Foreign Minister came out with a statement that was equally as strong.

And, frankly, if you look at it and you look at everything, all they have to do is read the transcripts. You take a look not just at one -- you take a look at two transcripts. They were absolutely perfect. There was absolutely nothing done wrong. There was no false statement. And it's crazy that it's gotten to a point where you -- look, Ukraine -- the President of Ukraine said there was no pressure whatsoever. There was no pressure on his country whatsoever.

And, by the way, in terms of the money, it got there two or three weeks ahead of schedule -- long before it was supposed to be there. There was absolutely nothing done wrong.

The one thing I look at is corruption, and the other thing I look at is, why isn't France and why isn't Germany and maybe, I could say, why isn't Greece -- but why aren't all of these countries -- why aren't they paying? Why is it always the United States that has to pay?

And I said that very strongly. In fact, it's in the transcript, but the press doesn't cover it. Why is it that the United States pays? And it affects Europe far more than it affects the United States. So why isn't it that France, Germany, and all of those countries in Europe that are so strongly affected, why aren't they paying? Why is it always us? That's one question.

And the other question is always about corruption. We're sending all of this money. Where is it going? Where is it going?

And the President, by the way, got elected on anti-corruption, and I think he's going to do a great job. But I appreciated his statement; he's made it many times: no pressure whatsoever.

Thank you all very much. Thank you. Thank you very much. Thank you very much.

PRIME MINISTER MITSOTAKIS: Greece is actually paying more than 2 percent in NATO.

PRESIDENT TRUMP: Good. That's true.

Q Do you agree with the DOJ recommending jail time for Michael Flynn?

PRESIDENT TRUMP: I don't know. I don't know. I didn't look at it. I -- you're just telling me for the first time. I don't know. I'll take a look at it.

END

2:40

P.M. EST

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**To:** Ballantine, Jocelyn (USADC) (b)(6) per EOUSA didn't ge  
**Cc:** Van Grack, Brandon (NSD) (b)(6) per NSD >; 'Molly McCann'  
(b) (6) >; Jesse R. Binnall  
<[jbinnall@harveybinnall.com](mailto:jbinnall@harveybinnall.com)>; 'Lindsay McKasson'  
<[lmckasson@harveybinnall.com](mailto:lmckasson@harveybinnall.com)>; 'Abigail Frue' <[afue@harveybinnall.com](mailto:afue@harveybinnall.com)>

**Subject:** CERTIFICATE OF CONFERENCE

**Importance:** High

We request your reply ASAP for the government's position on a motion we intend to file today to request a 30-day continuance of Mr. Flynn's sentencing date to move to February 27. There are many reasons, not the least of which is a 330,000 document data base, the recent IG report of 478 pages chocked full of information we are still processing, Judge Sullivan's recent 92 page decision, your recent production of 637 pages including never-before seen 302s, your recent change in position on sentencing; our discovery of documents we had not previously seen in our collection despite our best efforts, etc. etc, etc. We would appreciate your agreement to this request.

The relief we request specifically is as follows:

**[PROPOSED] ORDER**

Having considered the Motion for Continuance of Sentencing Date and for Extension of Time to File Defendant's Sentencing Memorandum, it is hereby ORDERED that:

The Sentencing Date be moved to February 27, 2020, and the time for Defendant to file Defendant's Sentencing Memorandum be extended thirty (30) days to be filed on February 21, 2020.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sullivan

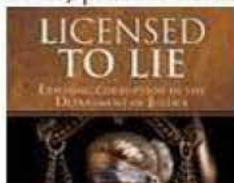
District Judge

Emmet G.

United States

Sidney Powell P.C. – Author of the #1 Best-seller LICENSED TO LIE:  
Exposing Corruption in the Department of Justice – Federal Appellate  
Attorney – Senior Fellow of the London Center for Policy Research  
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U.S. Department of Justice

Jessie K. Liu  
United States Attorney

*District of Columbia*

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*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

January 13, 2020

***Via Email & FedEx***

Sidney Powell  
3831 Turtle Creek Blvd. #5B  
Dallas, TX 75219

Jesse Binnall  
Harvey & Binnall, PLLC  
717 King Street  
Suite 300  
Alexandria, VA 22314

Re: *United States v. Michael T. Flynn*, 17-cr-00232 (EGS)

Dear Counsel:

We write to provide a response to your request for our position regarding your suggested amended sentencing dates in this case. In short, we do not oppose a continuance of the due date for your supplemental sentencing memorandum and the date of sentencing. In light of your request, we also ask that the Court schedule a due date for a government reply memorandum one week after the date upon which your supplemental sentencing memorandum is due.

In addition, in light of the fact that you cite our “recent change in position on sentencing” as one of several factors justifying a continuance, we think it would be helpful to clarify that position. As set forth in our submission, we believe that a sentence within the applicable Guidelines range – which includes a possible sentence of probation – is appropriate in this case. Although we assess that the assistance provided by your client does not rise to the level of “substantial assistance” within the meaning of Section 5K1.1 under the totality of the circumstances, as we made clear in both our original and our supplemental sentencing filings, we acknowledge that the Court should take into account your client’s timely assistance to the Special Counsel’s Office (SCO) on a range of issues through the course of 20 interviews as well as his initial cooperation in the *Rafiekian* case, which we described in detail in our December 2018 Addendum. We note that your client’s applicable Guidelines range would be 0 to 6 months of incarceration with or without credit for acceptance of responsibility, and with or without credit for

substantial assistance. Accordingly, there appears to be no dispute as to the applicable sentencing range or the fact that a non-incarceratory sentence would be a reasonable sentence within that range.

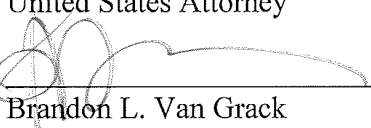
Further, as we acknowledged in our filing, your client's lengthy history of military service to the United States is an additional important mitigating factor that we have asked the Court to consider in determining where within the applicable Guidelines range to sentence your client, and we expect that you will continue to provide additional information regarding your client's personal history and characteristics that would be relevant to sentencing under Title 18, United States Code, Section 3553(a)(1). We of course will give careful consideration to that information, and any other relevant information you bring to our attention, in advance of sentencing.

Please do not hesitate to contact us if you have any additional questions.

Sincerely,

JESSIE K. LIU  
United States Attorney

By:



Brandon L. Van Grack  
*Special Assistant United States Attorney*

Jocelyn Ballantine  
*Assistant United States Attorney*

**From:** Sidney Powell <[sidney@federalappeals.com](mailto:sidney@federalappeals.com)>

**Date:** January 14, 2020 at 7:13:48 PM EST

**To:** "Ballantine, Jocelyn (USADC)" (b)(6) per EOUSA ;

(b)(6) >, "Van Grack, Brandon (NSD)"

(b)(6) per NSD

**Cc:** Jesse Binnall <[jbinnall@harveybinnall.com](mailto:jbinnall@harveybinnall.com)> ,

Molly McCann

(b) (6) >, "[lmckasson@harveybinnall.com](mailto:lmckasson@harveybinnall.com)"

<[lmckasson@harveybinnall.com](mailto:lmckasson@harveybinnall.com)>, (b)(6) - William Hodes Email Address

(b)(6) >, 'Abigail Frye'

<[afrye@harveybinnall.com](mailto:afrye@harveybinnall.com)>

**Subject: For Certificate of Conference**

Counsel, We are filing a Motion to Withdraw Mr. Flynn's Plea. Please advise of your position. Sidney Powell

Sidney Powell, Attorney and author of LICENSED TO LIE: Exposing Corruption in the Department of Justice + Senior Fellow of the [London Center](#) for Policy Research

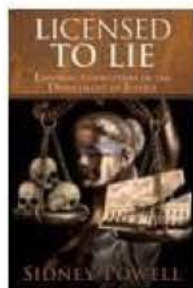
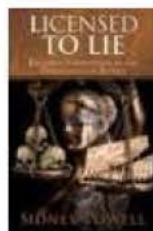
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@SidneyPowell1

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**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**v.**

**Criminal Action No. 17-232-EGS**

**MICHAEL T. FLYNN,**

**Defendant.**

**MR. FLYNN'S MOTION TO WITHDRAW PLEA OF GUILTY  
AND UNOPPOSED MOTION FOR CONTINUANCE**

Sidney Powell  
Molly McCann  
Sidney Powell, P.C.  
2911 Turtle Creek Blvd.,  
Suite 300  
Dallas, Texas 75219  
Tel: 214-707-1775  
sidney@federalappeals.com  
Admitted *Pro Hac Vice*  
molly@federalappeals.com  
Admitted *Pro Hac Vice*

Jesse R. Binnall  
Lindsay R. McKasson  
Harvey & Binnall, PLLC  
717 King Street, Suite 300  
Alexandria, VA 22314  
Tel: (703) 888-1943  
Fax: (703) 888-1930  
jbinnall@harveybinnall.com  
lmckasson@harveybinnall.com  
Admitted *Pro Hac Vice*

W. William Hodes  
The William Hodes Law Firm  
3658 Conservation Trail  
The Villages, Florida 32162  
Tel: (352) 399-0531  
Fax: (352) 240-3489  
Admitted *Pro Hac Vice*

**Attorneys for Lt. General Michael T. Flynn (USA) (Retired)**

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Michael T. Flynn (“Mr. Flynn”) hereby moves to withdraw his plea because of the government’s bad faith, vindictiveness, and breach of the plea agreement. *See* ECF No. 150. Mr. Flynn also requests a continuance of the sentencing date set for January 28, 2020, for thirty days or until February 27, 2020, or such other subsequent day that is convenient to the Court and counsel, and a corresponding extension of time to file any supplemental sentencing memorandum (from January 22, 2020, to February 21, 2020). The continuance is requested to allow time for the government to respond to the most recent aspects of this Motion and for Mr. Flynn to provide the additional briefing he needs to protect the record and his constitutional rights in light of significant developments in the last thirty days.

Mr. Flynn’s counsel conferred with the government about the continuance requested herein beginning the morning of January 10, 2020, and provided a letter yesterday to include as the Certificate of Conference. The government’s timely response is attached as the Certificate of Conference. Since that conference, Mr. Flynn has instructed counsel to request withdrawal of his plea because of the government’s breach of the plea agreement. Accordingly, pursuant to *Puckett v. United States*, 556 U.S. 129 (2009),<sup>1</sup> Mr. Flynn files this Motion now in the interest of justice.

#### **A. Background and Facts Relevant to the Issues Herein**

By way of reminder, the small team of new counsel appeared for Mr. Flynn for the first time on June 17, 2019.<sup>2</sup> ECF No. 90, 91. Mr. Flynn and his defense team (past and current) spent

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<sup>1</sup> This Motion to Withdraw addresses the issues and facts relevant to issues triggered by *Puckett* analysis. Mr. Flynn has substantial alternative reasons to move to withdraw his plea, and counsel will brief those for the court as soon as possible.

<sup>2</sup> By August 15, 2019, Mr. Flynn’s new counsel received eighteen hard drives from former counsel at Covington & Burling LLP (“Covington”), which contained more than 330,000 documents. Present counsel has been working as diligently as possible since first appearing in June 2019. Present counsel provided the Court new and extensive briefings and motions on issues important to Mr. Flynn’s defense based primarily on information the government only began

hundreds of hours trying to cooperate with the government in accordance with Mr. Flynn's plea agreement which requires him to provide truthful testimony.

Only after new counsel appeared, did the government *for the first time* demand an *admission and testimony* from Mr. Flynn that he *knew* and *intended* when he signed the FARA registration form that it contained several material false statements.<sup>3</sup> Not only was that demanded testimony a lie, but also, the prosecutors knew it was false, and would induce a breach.

That assertion/question/demand had not been raised nor made by the government in the previous year and a half during any of Mr. Flynn's sixteen or more lengthy sessions with Mr. Van Grack and the EDVA prosecutors. Prosecutors did not raise it in preparation for his grand jury testimony the previous summer, nor did they raise it before the grand jury. ECF No. 150-2. The prosecutors did not raise this issue in his countless hours spent with the Special Counsel's Office ("SCO"). And, even more stunning, the prosecutors' new assertion that Mr. Flynn knew the statements in the FARA application were "false" when he authorized Covington to file the form, is squarely refuted by the draft of the plea agreement Covington negotiated with Mr. Van Grack himself which specifically struck from the "Statement of Offense" the language "as he then and there knew" with respect to the FARA filing.<sup>4</sup>

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dribbling out over the last year or so since its first *Brady* production of March 4, 2018, and the Inspector General's Reports. We are a small team working on a shoe-string budget funded by thousands of hard-working patriots across the country who are making non-tax-deductible contributions primarily in amounts from \$1 to \$100 to [www.MikeFlynnDefenseFund.com](http://www.MikeFlynnDefenseFund.com).

<sup>3</sup> Notably, Mr. Flynn hired the nationally known FARA experts at Covington who then billed hundreds of thousands of dollars to investigate independently and prepare the FARA filing in full and extensive coordination with David Laufman, Heather Hunt, and multiple members of the DOJ.

<sup>4</sup> Ex. 1 (Red-lined Statement of Offense).



Among undersigned counsel's responses, during a heated exchange with Mr. Van Grack, defense counsel informed him he was demanding that Mr. Flynn lie. Counsel requested the government to identify any prior statement of Mr. Flynn's to that effect.<sup>5</sup> The prosecutors merely told counsel to check the hundreds of pages of Covington's notes, many of which were raw, the plea colloquy, and whatever information counsel could find regarding the plea negotiations. *Id.*

Prior to this unexpected and outrageous demand (by Mr. Van Grack and DOJ NSD Attorney Evan Turgeon ("Mr. Turgeon") in particular), the *Rafiekian* EDVA prosecutors had stated on the record in open court, and repeatedly told Mr. Flynn and new counsel, that they were not asserting in any way that Mr. Flynn was a co-conspirator in *United States v. Rafiekian*.<sup>6</sup> AUSA James Gillis advised in cooperation sessions with new counsel and Mr. Flynn that whatever the outcome of the *Rafiekian* trial, it would not adversely affect Mr. Flynn's sentencing recommendation.<sup>7</sup> Significantly, as counsel reminded the prosecutors, Mr. Flynn's plea agreement requires that he tell the truth in any testimony,<sup>8</sup> and he was fully prepared and willing to do so.

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<sup>5</sup> Ex. 2 (McKasson declaration).

<sup>6</sup> See Judge Trenga's Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-00457, ECF No. 372 at 11 ("Neither the original nor superseding indictment in this case references Flynn as a member of the alleged conspiracy or as an agent of the Turkish government; and in response to the Court's explicit questioning, the Government stated in open court that Flynn, who it planned to call as a witness, was not a member of the charged conspiracy and that it would not rely upon his testimony to establish the foundation for the admission of Alptekin's hearsay statements under Fed. R. Evid. 801(d)(2)(E))." See also, Ex. 3 excerpt from *United States v. Rafiekian*, Case No. 1:18-cr-00457, ECF No. 213, June 13, 2019 Hearing Tr. 65:9-22. ("...we do not contend that General Flynn was part of that conspiracy.").

<sup>7</sup> Memorandum Opposing Co-conspirator Designation of Non-Party Witness Michael T. Flynn. *United States v. Rafiekian*, 1:18-cr-00457, ECF 270, n.4. ("Mr. Gillis informed undersigned counsel and Mr. Flynn twice on June 6 alone that Mr. Flynn was not charged in this conspiracy, and they did not intend to charge him.").

<sup>8</sup> Ex. 4 (Flynn Plea Agreement).

He rightly refused to lie for the government, and his new counsel would not allow him to do so, nor allow the government to bully him into acquiescence.

Remarkably, on June 26, 2019, in a preparation session for Mr. Flynn's likely testimony in *Rafiekian*, Mr. Van Grack, Mr. Turgeon, and EDVA prosecutors insisted that Mr. Flynn had lied to Covington lawyers about who wrote the opinion piece that appeared in *The Hill* on election day, November 8, 2016.<sup>9</sup> That was also false, as the defense team explained to the government with documentation. In fact, new counsel spent days scouring Covington's notes and other documents that unequivocally demonstrated that Mr. Flynn told them the truth. Emails, notes, and documents in the possession of Covington from January 2, 2017, prove that it had the information to make a correct FARA filing, *and* that the filing was substantially correct in all material respects.<sup>10</sup> If there were mistakes in the filing, they were the result of Covington's interviews of multiple people including several lawyers; Covington's consultation with and demands from David Laufman, Heather Hunt, and multiple people with DOJ in and around the FARA section; and, Covington's own judgment calls and choices as it navigated this inscrutable area of the law.

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<sup>9</sup> See Judge Trenga's Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 31 ("Finally, the Government points to the op-ed published by Flynn on November 8, 2016 and Rafiekian's statement to Alptekin that 'a promise made is a promise kept' as sufficient evidence that Rafiekian was a Turkish agent. But there is no evidence that the op-ed had been requested by the Turkish government, either directly or through Alptekin; or that it was Rafiekian, as opposed to Flynn, who decided to have the op-ed published at that time.").

<sup>10</sup> Ex. 5 (Kelner Testimony and Defense Exhibits from *Rafiekian* trial). Moreover, the cover letter to the FARA filing must be read as part of the filing. Read together, it gives a reasonable and correct picture of the relationship, and it certainly identifies Turkey as a "principal beneficiary" the primary purpose of the filing the making of which was itself a judgment call. See Ex.6 (March 7, 2017 Covington Cover Letter for FARA Filing). See Ex.7 (Covington email before meeting with FARA section). Notably, the form itself contemplates amendment upon finding new information. See ECF No. 150-1. Covington never amended the filing. See Ex. 12 (Smith notes of January 2, 2017 meeting with Kelner, Kristen Verderame, and Mr. Flynn, including M. Flynn Jr.).

Mr. Flynn was honest with his attorneys and provided all his documentation. He had spent tens of thousands of dollars to hire the FARA experts at Covington and allowed (and paid) them to conduct a full investigation. The registration was completed with substantial input from DOJ including a very lengthy meeting, many phone calls, and DOJ's review and feedback on the draft filing. As Mr. Kelner admitted on the witness stand in *Rafiekian*, Covington added parts to the filing and exercised its judgment in what to include or exclude. *Id.*

Covington's "virtual transcripts" of Mr. Flynn's many interviews in his cooperation with Mr. Van Grack and the EDVA and even 302s just attached to the government's sentencing memo but never produced by the government to Mr. Flynn prove that Mr. Flynn repeatedly told Covington before the filing (from their first meeting onward), and the prosecutors knew:

- about Turkey's knowledge and "involvement in the project," providing emails and documents with Alptekin claiming to be communicating with government officials;<sup>11</sup>
- the focus of the project was to document concerns and any wrongdoing on the part of Fetullah Gulen who was believed to support radical Islam and cause problems in Turkey from his base in the United States. Everyone on the brief project knew that as did

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<sup>11</sup> Remarkably, this was *not* the assertion of the FARA filing. The actual FARA registration said that "Flynn Intel Group does not know whether or the extent to which the Republic of Turkey was involved *with its retention by INOVO* for the three-month project." ECF No. 150-1 at 44 (emphasis added). The representation in the FARA registration was true. The prosecutors manufactured the "false statement" by omitting the key words [*"with its retention by INOVO"*]. The government's omission completely changes the meaning of what was a correct statement in the FARA registration. To this day, there is no evidence of the extent of the involvement of the Republic of Turkey in *hiring INOVO*. Everyone knew they were being told about the "project." That was clear from the "green-light" email Covington had from early January. Ex. 5 (Kelner *Rafiekian* testimony).

As Judge Trenga found: "There is no evidence, not even in the hearsay statements from Alptekin to Rafiekian, that Alptekin, Inovo, or anyone associated with the Turkish government directed or controlled the work performed by FIG or Sphere personnel." *United States v. Rafiekian*, No. 1:18-cr-457, ECF No. 372 at 29.

Covington. Documents show the two issues of Gulen and confidence in the business environment in Turkey to be inextricably intertwined and virtually synonymous;<sup>12</sup>

- Mr. Rafiekian *wrote* the first draft of the opinion piece published by *The Hill* as reflected in the notes of Covington FARA expert Brian Smith from Covington's first meeting with Mr. Flynn confirmed by the recently filed (never produced) FBI 302 of Smith's interview in mid-2018;<sup>13</sup>
- Mr. Flynn could not testify that any Turkish government official gave him any instructions or had any control over the project.<sup>14</sup> Notably, neither could anyone else.

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<sup>12</sup> ECF No. 150-4 and 6; ECF No. 98-3 at Ex. 7 (Entitled Statement of the Problem: How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gulen cult in the United States"); ECF No. 98-3 at Ex. 8 and 8-A (Covington Feb. 22, 2017 Notes: Commercial Activity → Crystalized → Gulen); ECF No. 150-5 at 4; 150-6 at 2.

<sup>13</sup> ECF No. 150-5, FBI 302 of Brian Smith on June 21, 2018, never produced by the government to Mr. Flynn (yet clear *Brady* evidence long exonerating Mr. Flynn of one of the prosecution's most ridiculous allegations regarding the "initiation" of the only op-ed written and published in connection with the project). Even the recently filed, never produced FBI 302s prove that **the FBI and prosecutors knew** in mid-2018 from Covington lawyer Brian Smith that he: "was aware of the September 2016 meeting in New York City (NYC) where FLYNN and RAFIEKIAN met with Turkish government officials." ECF No. 150-5 at 5. "The meeting primarily focused on radical Islam. Briefly during the meeting, FIG described their business for ALPTEKIN/INOVO." *Id.* "The topic of GULEN was brought up by Turkish officials at the meeting." *Id.* The prosecutors' knowledge of Smith's true testimony did not stop them from trying to coerce Mr. Flynn into testifying differently a year later.

<sup>14</sup> Ex. 8 (June 25, 2018 Notes). This virtually verbatim transcript of Mr. Flynn's interview with Mr. Van Grack, Mr. Turgeon, and EDVA prosecutors in the presence of the FBI on June 25, 2018, is especially instructive. This interview was long before the government filed its motion for downward departure because of Mr. Flynn's substantial assistance and made its judicial admissions about his numerous contributions to this Court on December 18, 2017. Mr. Flynn was represented by Covington at the time; the firm did the transcription (to which the EDVA prosecutors referred new counsel for its accuracy); and, it preceded new counsel by one year.

Moreover, as Judge Trenga wrote: "On September 19, 2016, in a meeting arranged by Alptekin, Rafiekian, Flynn, and Brian McCauley met with Alptekin, MC, and then-Turkish Minister of Energy and Natural Resources Berat Albayrak ("BA"), President Erdogan's son-in-law, in New York City. *See* Trial Tr. 405:20-24, [Doc. No. 330] (McCauley). The meeting lasted about twenty-five to thirty minutes, *id.* at 409:13-14, 440:11-13, and mostly consisted of the Turkish officials expressing their negative opinions regarding Gulen, *see id.* at 440:18-441:8. During that meeting, there was no discussion concerning any work that FIG was doing or of FIG's relationship with Inovo or the Turkish government, nor was there any request from the Turkish officials or Alptekin for FIG to do anything. *Id.* at 440:14-17, 442:1-3." *United States v. Rafiekian*, No. 1:18-cr-457, ECF No. 372 at 8.

- Former FBI official Brian McCauley attended the New York meeting with the Turks. As McCauley testified in *Rafiekian*, the Turks gave no one instructions in that meeting, and Alptekin was not happy with any of FIG's work. McCauley slapped down most of his ideas. *See* Ex. 10.
- Significantly, Flynn also told Covington in their first meeting, that he briefed DIA before meeting the Turks in New York in September 2016.

In truth, it is Mr. Van Grack's "Statement of Offense" that is false or wrong as Mr. Van Grack knew no later than June 21, 2018, when the FBI interviewed Brian Smith and created a 302 that proves Mr. Smith told the FBI that Flynn told Covington Rafiekian *wrote* the opinion piece.<sup>15</sup> Yet a year later, June 2019, Mr. Van Grack exploded at defense counsel because Mr. Flynn would not testify under oath that he made a "false statement" that was not false.

The prosecutors concocted the alleged "false statements" by their own misrepresentations, deceit, and omissions.<sup>16</sup> It is beyond ironic and completely outrageous that the prosecutors have persecuted Mr. Flynn, virtually bankrupted him, and put his entire family through unimaginable stress for three years. Mr. Flynn had long told the prosecutors that he had learned much with the

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<sup>15</sup> Even the FBI 302 of Brian Smith, recently filed, never produced to Mr. Flynn by the government, shows that Mr. Smith informed the government in 2018: "The topic of GULEN was brought up by Turkish official at the meeting." ECF No. 150-5 at 5. FLYNN had informed SMITH the meetings conducted by RAFIEKIAN on behalf of FIG were considered lobbying efforts." ECF No. 150-5 at 7. "RAFIEKIAN worked with an editor, Hank COX, to write the op-ed on GULEN." *Id.* "FLYNN informed SMITH it was his idea to write an op-ed. However, RAFIEKIAN, wrote the first draft of the op-ed about GULEN." *Id.* ECF No. 150-6 at 6. Further, "when asked what facts were provided to Covington about PC [Project Confidence], which contradict FIG's FARA filing, Kelner explained according to *Rafiekian*, GULEN was the problem and was destroying the confidence in Turkey. In order to increase confidence in Turkey, GULEN had to be stopped." ECF No. 150-6 at 6-7.

<sup>16</sup> Ex. 9 (Charts of Government's alleged "false statements" juxtaposed with actual FARA filing and evidence). Prosecutors created the "false statements" by omissions and distortions which changed the meaning of the actual filing or depended on judgment calls made by Covington.

benefit of hindsight,<sup>17</sup> and that any problems with the FARA filing were not known to him at the time. On *June 25, 2018*, while represented by Covington months before the government filed its sentencing motion and bragged about Mr. Flynn’s full cooperation and special assistance at his scheduled sentencing in December 2018 Mr. Flynn specifically told them:

I told this to you the other day, I don’t go over the FARA filing with Bijan [Rafiekian] at all. I don’t know if that makes any different to you all. But it wasn’t . . . learn a lot of things in hindsight. Would it have adjusted what I, how I stated, how I filled out, can’t say that it may have adjusted what I filled out; can’t say it would or would not have.<sup>18</sup>

In short, the government has long known from its “star cooperating witness” in the *Rafiekian* case:

- there was no conspiracy with Rafiekian;<sup>19</sup>
- there was no evidence that Turkish officials directed, controlled, or gave “instructions” to anyone at FIG for the project;<sup>20</sup>

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<sup>17</sup> Ex. 8 (June 25, 2018 Notes, page 10: “learn a lot of things in hindsight.”).

<sup>18</sup> Ex. 8 (June 25, 2018 Notes, page 10).

<sup>19</sup> See Judge Trenga’s Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 34-35 (“the Government claims “the three co-conspirators [Rafiekian, Flynn, and Alptekin] again gave substantially identical explanations [in the FARA filings] that the jury plainly deemed false and used as further evidence of a concerted agreement to lie. [Doc. No. 365 at 20]. But that contention ignores the lack of evidence to establish the presumed conspiracy, or any agreement, among these three individuals concerning the FARA filing, as discussed above. In fact, until the eve of trial, the Government contended that Flynn was not part of the alleged conspiracy.” [Footnotes omitted].

Trenga also noted, “The Government’s position with respect to Flynn is particularly telling... with full knowledge of Flynn’s involvement, the Government told the Court as recently as June 13, 2019, that Flynn was not a member of the alleged conspiracy, *see* June 13, 2019 hearing TR 65:9-22, [Doc. No. 213], only to notify the Court of its change in position on July 3, 2019, *see* [Doc. No. 261], not because of Flynn’s known involvement as outlined above, or any other involvement, but because it no longer planned to call Flynn as a witness pursuant to his cooperation agreement with the Government, even though Flynn was prepared to testify.”). *Id.* at n.44.

<sup>20</sup> Judge Trenga heard the government’s best evidence. *See* Judge Trenga’s Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 8. That evidence

- Mr. Flynn was speaking in many cases with the benefit of hindsight; and
- Mr. Flynn could not even say that he would have answered questions any differently now than he did when Covington filed the FARA registration.<sup>21</sup>

Still the government was satisfied with Mr. Flynn's cooperation as of December 2018 so satisfied that it filed its motion recommending probation because of his substantial assistance, and Mr. Van Grack was profuse in praising Mr. Flynn in open court. ECF No. 46, 47, and December 18, 2018 Hearing Tr. at 25:20- 27:22.

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included testimony from *government* witnesses: Alptekin was not pleased with the scope or substance of what was presented to him, which included a presentation by McCauley summarizing the findings of the investigation into Gulen and a mockup of the Gulenopoly board game conceived by Sphere. *See* Trial Tr. 720:2-8, 720:19-721:4, [ECF No. 333] (Courtovich); 526:25-527:8, [ECF No. 331] (Boston).

<sup>21</sup> Ex. 8 (June 25, 2018 Notes). Further, government witness former FBI Deputy Assistant Director Brian McCauley also proved there was no "direction or control" even by Alptekin the Turkish businessman in *Rafiekian*. He testified: "Alptekin was angry and dissatisfied with everything FIG had done, including the report FIG gave him. FIG had not even done what Alptekin wanted or expected at any juncture. There was no evidence of any particular act being requested by any of the Turkish ministers at the only brief "meet and greet" they had in NY late one night. (This is consistent with Flynn's grand jury testimony). McCauley further debunked the government's fictitious conspiracy when he testified that Flynn told Rafiekian to file with "DOJ.". Ex. 10 (McCauley *Rafiekian* testimony).

It is undisputed that Rafiekian sought legal advice for that very purpose even from Covington. When Flynn received the FARA letter from DOJ, he was stunned. Mr. Flynn told the prosecutors in one of his many cooperation sessions: "I assumed Bob Kelley was briefed by Bijan on what was going on. Fast forward, I learned that Bijan had called here [Covington] to ask about FARA filing. I didn't know about that. He asked a couple of stupid questions that had nothing to do with FARA, but just political nonsense. I didn't find out about that until later on. Number one, that irritated me because he thought about that. He knew what FARA was. I've never talked to him about this. Other [than] sticking the document I got from DOJ in his chest was one of the last times I spoke to him. I was irritated that he had called up about FARA. For the cost of 10K to file FARA [to begin with] we're now sitting here," and "I'm not sure if we talked about that. You're scraping at cobwebs. I told Bijan that I had this conversation going on. I don't know what depth I discussed with him..." Again, this conversation was June 15, 2018, --long before new counsel appeared and before SCO expressed its delight with his substantial assistance. Ex. 11 (June 14, 2018 Covington Interview Notes).

The only thing that changed in Mr. Flynn's case was the appearance of new, unconflicted counsel on Mr. Flynn's behalf, and Mr. Flynn's refusal to lie for the prosecution of Rafiekian with the representation, protection, and advocacy of his new defense team.

Defense counsel recently again advised the government that redlined edits to the "statement of offense," negotiated with Mr. Van Grack on November 30, 2017, specifically removed the language "as he then and there knew" regarding the allegedly "false" FARA statements.<sup>22</sup> Not only did Mr. Van Grack demand false testimony from Mr. Flynn about the alleged "false statements" in the FARA filing, but Mr. Van Grack also knew it was false because Mr. Flynn had explained it to him on June 25, 2018,<sup>23</sup> in preparation for his testimony to the grand jury for the *Rafiekian* indictment for which Mr. Van Grack touted Mr. Flynn's "substantial assistance."<sup>24</sup>

Undersigned counsel walked the prosecutors through notes and documents that proved the truth of the defense's statements on June 27, 2019. Instead of reevaluating the situation, Mr. Van Grack flew into a rage.<sup>25</sup> As the defense explained in *United States v. Rafiekian*, the prosecutors responded to this information from counsel for Mr. Flynn by doubling-down.<sup>26</sup> They scheduled an interview by the FBI with Mr. Kelner at Covington & Burling, which they later moved to the U.S.

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<sup>22</sup> Ex. 1 (Redlined Statement of Offense at page 6, yellow-highlighted language).

<sup>23</sup> Ex. 8 (June 25, 2018 Notes).

<sup>24</sup> A clear "shot across the bow" to Flynn and Covington, the government obtained the Rafiekian indictment only days before the scheduled sentencing before this Court. It worked just in time to leverage it to confirm his plea of guilty in front of Judge Sullivan. Mr. Van Grack used the possibility of indicting Flynn in the *Rafiekian* case at the sentencing hearing to raise the specter of all the threats he had made to secure the plea a year earlier including the indictment of Mr. Flynn's son.

<sup>25</sup> Ex. 2 (McKasson Declaration).

<sup>26</sup> See, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.



Attorney's office in Alexandria on July 3, 2019. Also, on July 3, 2019, an FBI Agent called the younger Michael Flynn directly to question him despite knowing that he was represented by counsel. The Agent persisted in speaking with him even after he said to call his attorney. *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

The prosecutors told the new defense lawyers that they would question Mr. Kelner in his July 3, 2019, interview about the Covington notes new counsel had just provided to the government showing that Mr. Flynn had been fulsome with his counsel but Mr. Turgeon did not do so. Instead, Mr. Turgeon carefully worded his questions to elicit responses from former counsel that were misleading at best, if not directly contradicted by the notes by Covington's notetaker and partner Brian Smith. *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

Within minutes of concluding the interview of Mr. Kelner, AUSA James Gillis called defense counsel only to notify us that he would not be calling Mr. Flynn as a witness, and that counsel would be receiving a gag order that prohibited counsel from disclosing that fact. He did not even mention that the government had made the remarkable decision to re-cast Mr. Flynn as a co-conspirator contrary to many prior representations and that they would seek a ruling from this Court finding him to be a co-conspirator by a preponderance of the evidence in the high-profile *Rafiekian* proceeding in which he could not defend himself.<sup>27</sup> *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270.

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<sup>27</sup> *See, United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 270 for the full discussion of this information. As Judge Trenga wrote: "Then on July 3, 2019, the Government filed a Notice of Correction to the Record in which it advised the Court that it no longer planned to call Flynn as a witness in its case in chief. The Government also took the position for the first time, contrary to its earlier in-court statements, that Flynn was regarded as a co-conspirator and that it would seek to have his out-of-court statements introduced pursuant to Fed. R. Evid. 801(d)(2)(E)." (Citations Omitted) *See* Judge Trenga's Memorandum Opinion, *United States v. Rafiekian*, Case No. 1:18-cr-457, ECF No. 372 at 11.

The prosecution has shown abject bad faith in pure retaliation against Mr. Flynn since he retained new counsel. This can only be because with new, unconflicted counsel, Mr. Flynn refused to lie for the prosecution. In pure spite, the government retaliated and sought to rescind its judicial admissions that Mr. Flynn was not a co-conspirator, obtained an *ex parte* emergency order from Judge Trenga, including a gag order, and moved up the date of a hearing on the issues without notice to counsel for Mr. Flynn.<sup>28</sup> An agent improperly contacted Michael Flynn Jr., see *supra*. The prosecutors placed him on the witness list solely to harass him and to raise the threat and anxiety of the family at this crucial time. The prosecutors completed the trial without calling him as a witness.

Justice is not a game, and there should be no room for such gamesmanship in the Department of Justice.

**B. The Government's December 15, 2019 Extraordinary Production, the December Report of the Inspector General, this Court's Opinion Denying All *Brady* Requests, and the Government's New Sentencing Position and Memo Warrant This Continuance.**

There have been extraordinary developments in this case in the last thirty days. In addition, in the process of preparing for sentencing, we found information we have not seen previously despite our team's most diligent efforts. Due to the multiple issues, filings, productions, and developments outlined herein, however, the defense must have additional time to zealously provide their client the quality of representation to which he is entitled.

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<sup>28</sup> Only then did Mr. Flynn's unconflicted new defense counsel file a motion to oppose his designation as a co-conspirator. *United States v. Rafiekian*, 1:18-cr-00457, ECF No. 270.

**1. The 478 Page IG Report Disclosed Stunning New Information About the Second Agent Who Interviewed Mr. Flynn.**

On December 9, 2019, the Inspector General (“IG”) for the Department of Justice issued the 478-page Report on FISA abuses. At the government’s request on November 26, 2019, the parties agreed, and this Court issued an order, approving a delay for this Court’s decision on Mr. Flynn’s Motion to Compel because that Report was expected to “examine topics related to several matters raised by the defendant.”<sup>29</sup> It certainly does.

**2. On December 15, 2019, the Government Finally Produced 637 Pages of Long-Promised 302s and Handwritten Notes of Agents.**

The government produced an additional 637 pages of discovery to Mr. Flynn only three weeks ago. Mr. Flynn’s counsel has notified the government of problems with that production.<sup>30</sup> The production, consisting of 302s and notes requested multiple times since Oct. 11, 2019, includes crucial documents such as sixteen 302s consisting of 113 pages, as well as 206 pages of handwritten FBI notes. Mr. Flynn’s counsel is still reviewing and digesting these documents as the handwritten notes are particularly difficult to read.

**3. This Court’s Ninety-Two Page Decision**

The next day, on December 16, 2019, this Court issued a 92-page decision in which it rejected every request in Mr. Flynn’s motion for exculpatory evidence, including requesting the required production of the inexplicably “missing” original 302 by the fired and infamous former

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<sup>29</sup> ECF No. 140 at 2.

<sup>30</sup> In the government’s cover letter with its most recent production, it claims that it is producing documents with the Bates range of 700022699-23460; however, the production was missing the following Bates ranges: 700022699-22756, 23173-23213, 23247-23258, and 23267-23282. The production was also not produced in Bates order, making it very confusing to review. For example, Bates stamp 22953 appears before Bates stamp 22890. Ms. Ballantine promptly responded over the weekend with an effort to correct this, and the parties expect to resolve any issues.

FBI Agent Peter Strzok. ECF No. 144. Despite the Court's grant of the parties' request for delay of that Order until the Report issued, the 92-page decision did not address the IG Report, and the Court did not afford the parties any time to brief the remarkable new information revealed in the IG Report and the effect of that information on Mr. Flynn's case. Mr. Flynn needs additional time to review and present information from that Report that does indeed bear on his case and to protect his constitutional rights.

**4. The Government Obtained Two Extensions Before Filing Its Sentencing Memoranda Seeking to Revise History and Imprison Mr. Flynn.**

Per the Court's Order, the government was to provide its supplemental sentencing memorandum on December 30, 2019. Unexpectedly, on December 20, 2019, the government requested from Mr. Flynn a letter outlining "the facts and circumstances that the defendant believes should be taken into consideration by the Departure Committee when determining whether the defendant merits a downward departure motion pursuant to USSG Section 5K1.1, 18 U.S.C. § 3553(e), and/or Fed. R. Crim. P. 35(b)." The government gave a deadline of noon, December 24, 2019 (Christmas Eve). Mr. Flynn replied and requested an extension to December 27, 2019. The government denied the request to the 27th, but it granted the defense an extension to 5 p.m. on December 26, 2019. This required the defense team to work through Christmas Eve and Christmas Day, only to receive "out-of-office for the week" replies from government lawyers to whom we sent the letter.

Mr. Flynn provided his letter to the government by its requested deadline of 5 p.m. on December 26, 2019. The government notified Mr. Flynn that it was likely unable to meet its deadline to this Court of December 30, 2019, due to "the holidays" and requested an extension to January 7, 2020. Mr. Flynn agreed with government's request despite having just been forced by the prosecutors to work through Christmas and Hanukkah themselves. Thus, the government

sought and obtained an extension from this Court for its “supplemental” sentencing memorandum. On January 4, 2020, the government moved again to continue the sentencing deadline by 24 hours again because of holiday schedules. ECF No. 149. The defense also agreed to this extension. Despite its multiple extension requests, the government still filed past this Court’s noon deadline. ECF No. 150.

**C. The Government’s Sentencing Memo Dramatically Changed Its Position, Seeks to Withdraw Its Prior Motion and Recommendation, and Triggers the Necessity to File this Motion Now to Withdraw the Plea.<sup>31</sup>**

In its “supplemental” sentencing memorandum, the government reverses its position on Mr. Flynn’s sentencing.<sup>32</sup> It seeks to “withdraw” its motion filed a year ago pursuant to U.S.S.G. § 5K1.1 and to withdraw its recommendation that he receive probation. The prosecution seeks to rewrite history and send Mr. Flynn to prison. This about-face places the government in breach of the plea agreement and triggers application of the ramifications of the Supreme Court’s decision in *Puckett*, 556 U.S. 129. *Puckett* requires any competent defense counsel in these circumstances to move to withdraw Mr. Flynn’s guilty plea for this reason alone. *Id.* It would constitute ineffective assistance of counsel to fail to move to withdraw his plea now in light of the government’s breach and change in sentencing recommendation.

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<sup>31</sup> The government’s letter just received yesterday by way of “Certificate of Conference” which agrees to the Continuance requested, tries “to have its cake and eat it too.” The government breached the plea agreement when it filed the new sentencing memo. Mr. Flynn now also needs time to brief many alternate reasons for the withdrawal of his plea.

<sup>32</sup> The government’s “supplemental” memorandum is thirty-two pages in length (its original memorandum was merely six). ECF No. 150 and 46, respectively. It also contains 136 pages of exhibits, including 302s of Mr. Flynn’s interview of June 25, 2018 as well as Mr. Flynn’s previous counsel, Robert Kelner’s (on June 21, 2018 and July 3, 2019) and Brian Smith’s (June 21, 2018) interviews. Counsel was provided Mr. Flynn’s interviews in the production on December 15, 2019. Counsel had not previously seen the attorney 302s or the more than 200 pages of handwritten notes of the agents that must be deciphered. ECF No. 150-1 – 150-6.

Mr. Flynn has instructed counsel to file *this* Motion to withdraw his plea now. The defense must file a Supplemental Motion to Withdraw for alternative additional reasons as soon as possible. Mr. Flynn will not plead guilty. Furthermore, he will not accede to the government's demand that he "disavow" any statements made in his filings since he obtained new, unconflicted counsel. Michael T. Flynn is innocent. Mr. Flynn has cooperated with the government in good faith for two years. He gave the prosecution his full cooperation. "He held nothing back." He endured massive, unnecessary, and frankly counterproductive demands on his time, his family, his scarce resources, and his life. The same cannot be said for the prosecution which has operated in bad faith from the inception of the "investigation" and continues relentlessly through this specious prosecution.<sup>33</sup>

Because of the government's special role in the justice system and its extraordinary bargaining power, a plea agreement is strictly construed against the government. Unless the plea agreement reserves the government's right to withdraw a filed Section 5K1.1 motion and specifies the conduct that would trigger the government's right to withdraw, the government may not request withdrawal of the motion. *United States v. Padilla*, 183 F.3d 136, 141 (2nd Cir. 1999). The Flynn plea agreement contains no such reservation or specification, and the government is in breach.

The Department of Justice, specifically the Office of United States Attorney for the District of Columbia, reversed its sentencing position despite the many judicial admissions of the

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<sup>33</sup> Notably, the first interview of Mr. Flynn was conducted surreptitiously by the FBI by the unprecedented and never-to-be repeated maneuver of slipping an agent into a sample presidential daily briefing to nominee Trump, Mr. Flynn, and a third person on August 17, 2016—two days after Strzok and Page texted about "the insurance policy discussed in McCabe's office and one day after they supposedly "opened" and investigation of Mr. Flynn. Office of the Inspector General, U.S. Dept. of Justice, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, 340-41, 426 (December 2019, revised).

prosecutors from DOJ and EDVA, and despite the fact that virtually every premise undergirding the prosecutors' original memorandum still holds true. Compare ECF No. 150 to ECF No. 46-47.

Mr. Flynn has spent approximately one hundred hours cooperating with the government and has provided it thousands of documents, incurring millions of dollars in legal fees and expenses requiring him to sell his home in Alexandria all to cooperate with the government. As the government noted in its original memorandum, Mr. Flynn's "early cooperation was particularly valuable because he was one of the few people with long-term and firsthand insight regarding events at issue under investigation by the SCO...[which] likely affected the decisions of related firsthand witness to be forthcoming with the SCO and cooperate." ECF No. 46-1 at 5. Nothing reasonable or rational explains the government's breach.

Furthermore, as the government admitted, Mr. Flynn's "military and public service are exemplary. He served in the military for over 33 years, including five years in combat duty, led the Defense Intelligence Agency, and retired as a 3-star general. The Defendant's record of military and public service distinguish him from every other person who has been charged as part [of] the SCO's investigation." ECF No. 46 at 5. This all remains true today.

***D. Puckett Requires Mr. Flynn Move to Withdraw His Plea.***

The government's new Supplemental Memorandum in Aid of Sentencing recommends that this Court impose on Mr. Flynn a period of incarceration, and it specifically seeks to withdraw its previous motion. ECF No. 150. The government's position not only breaches the plea agreement, but it also violates Mr. Flynn's Due Process rights. It magnifies and further proves the government's abject bad faith and vindictiveness.

The terms of that agreement clearly state:

If the government determines that your client has provided such substantial assistance, this Office *shall* file a departure motion pursuant to Section 5K1.1 of

the Sentencing Guidelines, which would afford your client an opportunity to persuade the Court that your client should be sentenced to a lesser period of incarceration and/or fine than indicated by the Sentencing Guidelines.<sup>34</sup>

Consistent therewith, on December 4, 2018, the government submitted its recommendation to this Court which concluded that “[g]iven the defendant’s substantial assistance and other considerations . . . a sentence at the low end of the guideline range including a sentence that does not impose a term of incarceration is appropriate and warranted.” ECF No. 46 at 1. In the December 18, 2018, sentencing hearing, the government represented to this Court that Mr. Flynn should receive probation and confirmed his “substantial assistance.” The government based its decision on Mr. Flynn’s cooperation both with the SCO, which was, according to the government, “very largely complete, completed at this point,” and the extensive cooperation Mr. Flynn provided to the EDVA. Mr. Van Grack thoroughly praised Mr. Flynn, telling the Court: “I’d like to highlight that General Flynn has held nothing back, nothing in his extensive cooperation with the Special Counsel’s Office. He’s answered every question that’s been asked. I believe they feel that he’s answered them truthfully, and he has. He’s complied with every request that’s been made, as has his counsel. Nothing has been held back.”<sup>35</sup> The government told the Court that Mr. Flynn “provided substantial assistance to the attorneys in the Eastern District of Virginia in obtaining th[e] charging document”<sup>36</sup> for its prosecution of Bijan Rafiekian and Ekim Alptekin.

Mr. Flynn was ready, willing, and able to testify consistently with his grand jury testimony. As late as June 2019, government prosecutors were still assuring current counsel that Mr. Flynn’s

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<sup>34</sup> See Exhibit 4 (Plea Agreement) (emphasis added).

<sup>35</sup> Hr’g Tr. 46:8-14, Dec. 18, 2018.

<sup>36</sup> Hr’g Tr. 27:20-22, Dec. 18, 2018.



cooperation would not be affected by the outcome of the *Rafiekian* case. The government's stunning and vindictive reversal of its earlier representations to this Court are incredible, vindictive, in bad faith, and breach the plea agreement.

Mr. Van Grack's obsession with attempting (and failing) to bully Mr. Flynn into testifying consistently with the government's fictional theory of the case in the *Rafiekian* matter and admit guilt to "false statements" the government knows he did not make is repugnant to the search for justice which cannot be found without first finding truth. His attempt to punish Mr. Flynn for standing firm for the truth is unlawful. *See Wade v. United States*, 504 U.S. 181 (1992) (review for an "unconstitutional motive"). The government's tactics in retaliation for Mr. Flynn's refusal to "compose" for the prosecution is also a due process violation that can and should be stopped dead in its tracks by this Court. *See United States v. Paramo*, 998 F.2d 1212, 1218-20 (3d Cir. 1993) (reversing a district court that refused to consider a prosecutorial vindictiveness claim when the prosecution withheld a 5K1.1 because the defendant decided to plead not guilty and proceed to trial). By attempting to punish Mr. Flynn for pushing back at Mr. Van Grack's attempts to coerce him into giving false testimony in the *Rafiekian* case, the prosecutor's retaliatory motive shows "actual vindictiveness." *Id.* at 1220.

"Long ago, the Supreme Court instructed that '(t)he right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted solely to the interests of his client,' an admonition which we ourselves have had occasion to observe. 'Undivided allegiance and faithful, devoted service to a client,' the Court declared, 'are prized traditions of the American lawyer. It is this kind of service for which the Sixth Amendment makes provision.'" *United States v. Hurt*, 543 F.2d 162 (D.C. Cir. 1976) (citing *Von Moltke v. Gillies*, 332 U.S. 708, 725 (1948)). Effective assistance of counsel requires counsel for Mr. Flynn to move to withdraw his

plea, and Mr. Flynn has instructed counsel to do so now for the reasons stated herein and for many alternate reasons we will present in a supplemental filing. *Puckett v. United States*, 556 U.S. 129 (2009).<sup>37</sup> In *Puckett*, the majority wrote: “such a breach is *undoubtedly* a violation of the defendant’s rights”<sup>38</sup> and that if the government’s “obligations are not met” under the plea agreement, “the defendant is entitled to seek a remedy” which includes “allowing him to withdraw his plea.”<sup>39</sup> The government is “obligated to uphold its side of the bargain”<sup>40</sup> in a plea agreement, and its failure to do so is grounds for withdrawal of the defendant’s guilty plea. *Id.* Here the government breached the contract with its request to withdraw its motion and for incarceration of Mr. Flynn.

#### **E. Conclusion**

Accordingly, Mr. Flynn moves to withdraw his plea of guilty. The government breached the plea agreement, and future briefing will establish additional reasons. The government has agreed to a thirty-day continuance. He requests the continuance be granted in the interest of justice and to allow Mr. Flynn and his counsel to process, respond, and reply to the many ramifications from the significant developments and new information that has been disclosed in the last thirty days.

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<sup>37</sup> In *Puckett*, the Supreme Court applied the “plain error” standard and ruled against Puckett because defense counsel did not move to withdraw his plea in the district court when the Government defaulted on its plea-agreement obligations and sought additional incarceration even though Mr. Puckett had committed an additional crime in the three years between his guilty plea and his sentencing. *Puckett*, 556 U.S. at 133.

<sup>38</sup> *Id.* at 136 (emphasis added).

<sup>39</sup> *Id.* at 137.

<sup>40</sup> *Id.* at 138.

Dated: January 14, 2020

Reviewed, understood, and agreed,

/s/ Michael T. Flynn

\_\_\_\_\_  
Lt. General Michael T. Flynn (Ret.)

W. William Hodes  
The William Hodes Law Firm  
3658 Conservation Trail  
The Villages, Florida 32162  
Tel: (352) 399-0531  
Fax: (352) 240-3489  
Admitted *Pro Hac Vice*

Respectfully submitted,

/s/ Sidney Powell

\_\_\_\_\_  
Sidney Powell  
Molly McCann  
Sidney Powell, P.C.  
2911 Turtle Creek Blvd.,  
Suite 300  
Dallas, Texas 75219  
Tel: 214-707-1775  
sidney@federalappeals.com  
Admitted *Pro Hac Vice*  
molly@federalappeals.com  
Admitted *Pro Hac Vice*

/s/ Jesse R. Binnall

\_\_\_\_\_  
Jesse R. Binnall  
Lindsay R. McKasson  
Harvey & Binnall, PLLC  
717 King Street, Suite 300  
Alexandria, VA 22314  
Tel: (703) 888-1943  
Fax: (703) 888-1930  
jbinnall@harveybinnall.com  
lmckasson@harveybinnall.com  
Admitted *Pro Hac Vice*

### **CERTIFICATE OF CONFERENCE**

The government's response to the Motion for Continuance is attached in the form of the letter Ms. Ballantine requested attached. Defense counsel contacted the government shortly before filing this Motion to Withdraw the Plea. The government had not replied at the time of filing.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2020, a true and genuine copy of Mr. Flynn's Motion for Leave for Continuance of Sentencing was served via electronic mail by the Court's CM/ECF system to all counsel of record, including:

Jessie K. Liu, U.S. Attorney for the District of Columbia  
Brandon L. Van Grack, Special Assistant U.S. Attorney  
Jocelyn Ballantine, Assistant U.S. Attorney  
555 4<sup>th</sup> Street, NW  
Washington, D.C. 20530

Respectfully submitted,

/s/ Jesse R. Binnall  
Jesse R. Binnall, VSB# 79272  
HARVEY & BINNALL, PLLC  
717 King Street, Suite 300  
Alexandria, VA 22314  
Tel: (703) 888-1943  
Fax: (703) 888-1930  
jbinnall@harveybinnall.com

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Criminal No.:

Violation: 18 U.S.C. § 1001 (False  
Statements)

**STATEMENT OF THE OFFENSE**

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America and the defendant, MICHAEL T. FLYNN, stipulate and agree that the following facts are true and accurate. These facts do not constitute all of the facts known to the parties concerning the charged offense; they are being submitted to demonstrate that sufficient facts exist that the defendant committed the offense to which he is pleading guilty.

1. The defendant, MICHAEL T. FLYNN, who served as a surrogate and national security advisor for the presidential campaign of Donald J. Trump ("Campaign"), as a senior member of President Elect Trump's Transition Team ("Presidential Transition Team"), and as the National Security Advisor ("~~NSA~~") to President Trump, made material~~ly~~ false statements and omissions during an interview with the Federal Bureau of Investigation ("FBI") ~~that took place on January 24, 2017, in Washington, D.C., which is located in the District of Columbia, on January 24, 2017.~~ At the time of the interview, the FBI had an open investigation into the Government of Russia's ("~~Russia~~") efforts to interfere in the 2016 presidential election, including the nature of any links between individuals associated with the Campaign and Russia, and whether there was any coordination between the Campaign and Russia's efforts. ~~The FBI opened and coordinated the investigation in Washington, D.C.~~

2. FLYNN's false statements and omissions impeded and otherwise had a material impact on the FBI's ongoing investigation into the existence of any links or coordination between individuals associated with the Campaign and Russia's efforts to interfere with the 2016 presidential election.

*False Statements Regarding FLYNN's Request to the Russian Ambassador that Russia Not Escalate the Situation in Response to U.S. Sanctions against Russia*

3. On or about January 24, 2017, FLYNN agreed to be interviewed by agents from the FBI ("January 24 voluntary interview"). During the ~~course of the~~ interview, FLYNN falsely stated that he did not ask Russia's Ambassador to the United States ("Russian Ambassador") to ~~refrain from~~ escalating the situation ~~with the United States~~ in response to sanctions that the United States had imposed against Russia. FLYNN also falsely stated that he did not remember a ~~follow up~~ conversation ~~with the Russian Ambassador wherein in which~~ the Russian Ambassador stated that Russia had chosen to moderate its response to those sanctions as a result of FLYNN's request. In truth and in fact, however, FLYNN then and there knew that the following had occurred:

- a. On or about December 28, 2016, then President Barack Obama signed Executive Order 13757, which was to take effect the following day. The executive order announced sanctions against Russia in response to that government's actions intended to interfere with the 2016 presidential election ("U.S. Sanctions").
- b. On or about December 28, 2016, the Russian Ambassador contacted FLYNN.
- c. On or about December 29, 2016, FLYNN called a senior official of the ~~incoming National Security Council~~ Presidential Transition Team

(“~~incoming NSCPTT~~ official”), who was with other senior members of the Presidential Transition Team at the Mar a Lago resort in West Palm Beach, Florida, to ~~seek guidance on~~ discuss what, if anything, to communicate to the Russian Ambassador about the U.S. Sanctions. On that call, FLYNN and the ~~incoming NSCPTT~~ official discussed the U.S. Sanctions, including the potential impact of those sanctions on the incoming administration’s foreign policy goals. The ~~incoming NSCPTT~~ official and FLYNN also discussed that the members of the Presidential Transition Team at Mar a Lago did not want Russia to escalate the situation.

- d. Immediately after his phone call with the ~~incoming NSCPTT~~ official, FLYNN called the Russian Ambassador and requested that Russia not escalate the situation and only respond to the U.S. Sanctions in a reciprocal manner.
- e. ~~On or about December 29, 2016,~~ Shortly after his phone call with the Russian Ambassador, FLYNN spoke with the ~~incoming NSCPTT~~ official to report on the substance of his call with the Russian Ambassador, including their discussion of the U.S. Sanctions.
- f. On or about December 30, 2016, Russian President Vladimir Putin released a statement indicating that Russia would not take retaliatory measures in response to the U.S. Sanctions at that time.

- g. On or about December 31, 2016, the Russian Ambassador called FLYNN ~~and to inform~~ed him that Russia had chosen not to ~~escalate the situation~~retaliate in response to FLYNN's request.
- h. After his phone call with the Russian Ambassador, FLYNN spoke with senior members of the Presidential Transition Team about Russia's decision not to escalate the situation in response to FLYNN's request.

*False Statements Regarding FLYNN's Request that Foreign Officials Vote Against or Delay a United Nations Security Council Resolution*

4. During the January 24 voluntary interview, FLYNN ~~falsely stated that he called~~made additional false statements about calls he made to Russia and several other countries ~~in order to get a sense of where they stood with respect to a vote on~~regarding a resolution submitted ~~by Egypt~~to the United Nations Security Council on December 21, 2016, ~~by Egypt~~. Specifically FLYNN ~~also~~ falsely stated ~~that~~ he only asked ~~what~~ the countries' positions ~~were~~ with respect to the vote, and that he did not request that any of the countries take any particular action ~~with regard to~~on the resolution. FLYNN also falsely stated that the Russian Ambassador never described to him Russia's response to ~~the request~~ FLYNN's request made regarding the resolution. In truth and in fact, however, FLYNN then and there knew that the following had occurred:

- a. On or about December 21, 2016, Egypt submitted a resolution to the United Nations Security Council on the issue of Israeli settlements ("resolution"). The United Nations Security Council was scheduled to vote on the resolution the following day.
- b. On or about December 22, 2016, a very senior ~~official~~member from the Presidential Transition Team directed FLYNN to contact officials from



foreign governments, including Russia, to learn where each government stood on the resolution and to influence those governments' ~~positions in the hopes of~~ delaying the vote or defeating the resolution.

- c. On or about December 22, 2016, FLYNN contacted the Russian Ambassador about the pending vote. FLYNN informed the Russian Ambassador about the incoming administration's opposition to the resolution, and requested that Russia vote against or delay the resolution.
- d. On or about December 23, 2016, FLYNN again spoke with the Russian Ambassador, who informed FLYNN that if it came to a vote Russia would not ~~prevent the vote from occurring~~ vote against the resolution.

*Other False Statements Regarding FLYNN's Contacts with Foreign Governments*

5. — On March 7, 2017, FLYNN filed multiple documents with the Department of Justice pursuant to the Foreign Agents Registration Act ("FARA") pertaining to a project performed by him and his company, the Flynn Intel Group, Inc. ("FIG"), for the principal benefit of the Republic of Turkey ("Turkey project"). ~~The project was initiated by a Turkish national who owned a Dutch company ("Company A").~~ In the FARA filings, FLYNN made materially the following false statements and omissions, including by: (i) falsely stating that (a) FLYNN FIG did not know whether or the extent to which the Republic of Turkey was involved ~~with FIG's retention in~~ the Turkey project; (b) (ii) ~~for the purposes of the Turkey project,~~ Company A was not supervised or directed by a foreign government; (iii) ~~Company A engaged FIG on the Turkey project in support of Company A's consulting work for a company in Israel;~~ (iv) ~~the Turkey project was focused on improving U.S. business organizations' confidence regarding doing business in Turkey;~~ and (c) (v) on his own initiative, FLYNN published an op

~~ed by FLYNNpertaining to Turkeypublished in The Hill on November 8, 2016, was written at his own initiative; and by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project. ; and (vi) FIG paid Company A \$80,000 as "Consultancy" fees. In truth and in fact, however, FLYNN then and there knew the following:~~

- ~~a. — The Government of Turkey was directly involved in FIG's retention on the Turkey project;~~
- ~~b. — The Government of Turkey supervised and directed the Turkey project;~~
- ~~c. — The Turkey project was not in support of Company A's consulting work for an Israeli company;~~
- ~~d. — The Turkey project was not focused on improving U.S. business organizations' confidence regarding doing business in Turkey;~~
- ~~e. — FLYNN published the November 8, 2016 op ed in support of the project; and~~
- ~~f.5. The \$80,000 FIG paid to Company A was not for consulting fees.~~

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ROBERT S. MUELLER, III  
Special Counsel

By:

Brandon L. Van Grack  
Zainab N. Ahmad  
Senior Assistant Special Counsels  
The Special Counsel's Office

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding this offense. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crime charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

I have read every word of this Statement of the Offense, or have had it read to me. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorneys, I agree and stipulate to this Statement of the Offense, and declare under penalty of perjury that it is true and correct.

Date:

Michael T. Flynn  
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read this Statement of the Offense, and have reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Statement of the Offense as true and accurate.

Date: \_\_\_\_\_

Robert K. Kelner  
Attorney for Defendant

Stephen P. Anthony  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

MICHAEL T. FLYNN,  
  
Defendant.

Criminal Action No. 1:17-cr-00232  
(EGS)

DECLARATION OF LINDSAY R. MCKASSON

I, Lindsay R. McKasson declare:

1. I am an attorney at Harvey & Binnall, PLLC.
2. On June 27, 2019, I participated in a trial preparation session at the United States Attorney's Office for the Eastern District of Virginia in which General Flynn was being prepared for his testimony by the United States Attorneys.
3. On that day, I wrote contemporaneous notes during the meeting. A true and correct copy of those notes are attached hereto as Exhibit 1.
4. Later that afternoon, I transcribed my handwritten notes into typed notes. A true and correct copy of those typed notes are attached hereto as Exhibit 2.

I swear that the foregoing is true and correct under the laws of the District of Columbia on this 13th day of January, 2020.

  
Lindsay R. McKasson

# EXHIBIT 1

EDVA

10/27/19

AUSA mtg

- Jim Gillis
- Neil Hammersdorf
- Evan Turgeon - Nat'l Sec. Division
- John \_\_\_\_\_

- Testimony → consistent
- cooperate
- Grave production
- Walk-through → reviewing production

Neil: • Were the attys who prepared PMRA filing the one who were in the mtgs

Evan: what's the point you are trying to make [re: grain packet]

• Evan:

• [Brandon joined]

- Confidence / Truth piece → always about truth
  - focus never changed
  - AS (b)
  - Bijan / Ekim came up w/ →
  - whence U.S. got back to Turkey
  - change in name only
  - stmt is false



Jesse - Gov. had accurate info pre-filing

Sidney - FARA = where the hell is your case?  
- look at the whole filing  
- send prisoner for

Bill: some ambiguous → false/misleading  
• did not intentionally make false stmts  
• knowingly that he knew was wrong  
• figured lawyers would get it right

John: Stmt: Turkey was focused on bus. relations  
- that's the story to portray  
- I knew highest levels of govt  
- telling FARA unit → bus. relations  
- this is a false stmt

Neil: → why not raise it in colloquy

Brandon: This agreement → extensive  
- part of discussions  
- this is language you didn't agree  
- stmt of offense  
- false stmt was aware  
- pushed back in same language  
- did not willfully  
- reminding jurors that already occurred  
- ~~pushed back~~ is front of judge

Sidney • Nothing in statute → willfully/knowingly  
— re FARA

Brandon • Doesn't make this an offense → 1

- First time client or counsel has made stat like that
- no representation — would have been faultier in ~~that~~ mitigation
- Omissions → facts about officials in Turkey
- looks like you ~~to~~ have reviewed notes
- things he told us before
- one thing: well one thing <sup>not</sup> to go through Forest; another thing that he did not know
- he provided them misleading false information
- want to be clear: no false/misleading stmts

Sidney: You're asking client to lie

Brandon: No one is asking your client to lie  
→ be careful about what you say  
• Don't ppl. listening to this call →  
on the line

Jim: Factual discussion



Jim: What he believes to be true →  
difficult for us to believe that

- drill down
- story may evolve
- not in any way to say anything but the truth
- not changing or L.T
- absorb what you have given us
- Go back to Courington lawyers
- What Brandon → saying: Your position is that her never gave false info to any lawyers at co. or to Kricker either orally or documents

→ We have seen nothing to indicate that

- Have you asked them for typed up versions
- These specific interviews
- No typed up
- Interviews in mem
- Direct yes or no from them
- Haven't confronted them in this
- Typed up notes from that time period
- Typed up notes would be contemporaneous notes
- Our experience → had assoc. knowingly typing away

- Specially typed up notes → email them to us
  - contemporaneous, typed up notes from discussion w/ Ben Fagan
  - yes?
  - email them to us

Sidney - I don't think there are any

- Alex & make associate

Sidney - We are going to need some time

Brandon - We can talk after

# EXHIBIT 2

AUSA EDVA Notes

6/27/19, 9:30 a.m. [notes were hand-written at time of interview and typed on the same day]

Attendance:

- Jim Gillis
- Neil Hammerstorm
- Evan Turgeon – Nat. Sec.
- John (AUSA)
- Sidney
- Jesse
- Lindsay
- Bill

Sidney: testimony is consistent, he will cooperate...[gave production]

- Walk through production

Evan: what's the point you are trying to make [re Gulen report/packet]

Neil: Were the atty's who prepare the FARA filing the ones who were in the meetings [that are reflected in the notes]?

Sidney: Yes

[Brandon joined the call]

John: confidence/truth project – always about Gulen

- We know that the focus never changed
- Paragraph 5(b) must be what you're talking about [Stmnt of Offense]
- Bijan/Ekim came up these lies, but in reality they were trying to get Gulen back to Turkey
- Project name change, was a change in name only
- The statement is false

Jesse: Covington had accurate information pre-filing

Sidney: review the FARA in totality, from appellate perspective = where the hell is your case?

- look at the whole filing
- send prison for 15 years for writing op-ed?

Bill: some ambiguous or false/misleading information

- Did not intentionally make false statements

- He did not knowingly make the statements that he knew were wrong
- Gave the information to his lawyers and figured they would get it right

John: Statement given was that the Turkey project was on business relations

- That's the story they portrayed
- When in reality, during the General's telling, he admits that the highest levels of GoT (Govt of Turkey) were involved
- Telling FARA unit that this about business relations – that is a false statement

Neil: why not raise it in colloquy?

Brandon: This agreement was extensive

- He was part of the discussions
- This is the language your client agreed to
- Statement of Offense
- He was aware false statement
- General pushed back on some language, but not this language
- Did not willfully – why not say something?
- You are reviving conversations that already occurred
- He did not say anything in front of judge

Sidney: nothing in statement says willfully/knowingly re FARA

Brandon: [very heated]

- Without willfully/knowingly it doesn't make this an offense
- First time your client or counsel has made any statement like what you are saying
- No representation that this [what you're saying is the case] – would have been factor in mitigation
- Omissions – the facts about officials in Turkey
- Looks like you have reviewed the notes
- Things he told us before
- It's one thing to say that he did not go line by line through the FARA, it's another thing to say he didn't know
  - He provided them misleading/false information
- Want to be clear – you are saying that he did not provide any false/misleading statements to Covington?

Sidney: You are asking my client to lie

- Everything I have seen is consistent – if you have seen something, show us

Brandon: No one is asking your client to lie

- Be careful about what you say

- Other people are listening on this call [on the line]<sup>1</sup>

Jim: Let's go back to having a factual discussion

- What he believes to be true – it is difficult for us to believe that [what you're saying]
- I know sometimes when drilling down on facts that stories may evolve a bit
- I don't want him [General] to say anything but the truth
- And I am not changing that one bit
- We need to absorb what you have given us
- I think I know what Brandon was saying – clarify that your position is that he [General] never gave false information to any lawyers at Covington or to [Kristen?] whether orally or through documents?

Sidney: we have seen nothing to indicate that

Jim: You should go back to Covington lawyers

- Have you asked them for typed up versions?
- These specific interviews [before FARA filing]
- Are there no typed up interviews with them? [Sidney: I don't believe so]
- Ask them direct yes or no from them re their notes
- Have you confronted them with this? No
- Ask them for their typed up notes from that time period
- Their typed up notes would be contemporaneous notes
- Our experience → they [Covington] had associate furiously typing away
- You should ask them specifically re the typed up notes and ask them to email the notes to you
- Contemporaneous, typed up notes from discussions between Covington and Gen. Flynn

Sidney: I don't think there are any

Jim: two associates taking notes, Alex and a male

Sidney: we are going to need some time

Brandon: we can talk after [to the AUSA team]

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<sup>1</sup> I also remember Sidney saying in response to this: Put the world on – just put the world on!

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	Case 1:18-cr-00457
	)	
Plaintiff,	)	
	)	
v.	)	Alexandria, Virginia
	)	June 13, 2019
BIJAN RAFIEKIAN,	)	10:03 a.m.
and	)	
KAMIL EKIM ALPTEKIN,	)	
	)	
Defendant.	)	
	)	Pages 1 - 80

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE ANTHONY J. TRENGA  
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 JAMES P. GILLIS, ESQUIRE  
4 EVAN N. TURGEON, ESQUIRE  
5 OFFICE OF THE UNITED STATES ATTORNEY  
6 2100 Jamieson Avenue  
7 Alexandria, Virginia 22314  
8 (703) 299-3700

9 FOR DEFENDANT BIJAN RAFIEKIAN:

10 ROBERT P. TROUT, ESQUIRE  
11 TROUT, CACHERIS & SOLOMON, PLLC  
12 1627 I Street, N.W., Suite 1130  
13 Washington, D.C. 20006  
14 (202) 464-3300

15 MARK J. MACDOUGALL, ESQUIRE, *PRO HAC VICE*  
16 STACEY H. MITCHELL, ESQUIRE, *PRO HAC VICE*  
17 JOHN C. MURPHY, ESQUIRE, *PRO HAC VICE*  
18 SAMANTHA BLOCK, ESQUIRE, *PRO HAC VICE*  
19 ADAM A. BERESTON, ESQUIRE, *PRO HAC VICE*  
20 AKIN, GUMP, STRAUSS, HAUER & FELD, LLP  
21 Robert S. Strauss Building  
22 1333 New Hampshire Avenue, N.W.  
23 Washington, D.C. 20036-1564  
24 (202) 887-4000

25 FOR DEFENDANT KAMIL EKIM ALPTEKIN:

RODNEY F. PAGE, ESQUIRE  
JENNIFER KIES MAMMEN, ESQUIRE  
BRYAN CAVE LEIGHTON PAISNER LLP  
1155 F Street, N.W.  
Washington, D.C. 20004-1357  
(202) 508-6000



1 presented; is that right?

2 MR. GILLIS: That's correct.

3 THE COURT: We have it in the briefing and in  
4 the indictment.

5 MR. GILLIS: Yes, and in the exhibits that we  
6 submitted, Your Honor.

7 THE COURT: Right.

8 MR. GILLIS: That --

9 THE COURT: Let me ask you this. It's not in  
10 the indictment. Is the government alleging that  
11 Mr. Flynn was part of this conspiracy?

12 MR. GILLIS: We are not, Your Honor.

13 THE COURT: Right. So you're not presenting  
14 any statements by him, any testimony -- there would be  
15 no evidence from him as to the existence of the  
16 conspiracy?

17 MR. GILLIS: Well, Your Honor -- no, Your  
18 Honor, as to that. There will certainly be testimony  
19 from General Flynn. And from that testimony, the jury  
20 could draw a reasonable inference that there was a  
21 conspiracy, but we are not -- we do not contend that  
22 General Flynn was a part of that conspiracy.

23 THE COURT: All right.

24 MR. GILLIS: With respect to the Kelley  
25 declaration, Your Honor, as far as what Ms. Mitchell

1 be arguing in a vacuum if --

2 THE COURT: Well, I think it's clear that  
3 their position is that it was the inquiry from the DOJ  
4 that was a sufficient context for the assertion of the  
5 work product privilege. Again, if you would like to  
6 file anything supplemental on that other than what  
7 you've argued here, you have leave to do that.

8 MR. GILLIS: Yes, Your Honor.

9 THE COURT: All right.

10 MR. GILLIS: Thank you.

11 THE COURT: Anything else?

12 (No response.)

13 THE COURT: All right. Thank you.

14 The Court will stand in recess.

15 -----  
16 Time: 11:48 a.m.

17

18

19

20

21

22 I certify that the foregoing is a true and  
23 accurate transcription of my stenographic notes.

24

25

/s/  
Rhonda F. Montgomery, CCR, RPR



**U.S. Department of Justice**  
*The Special Counsel's Office*

Washington, D.C. 20530

November 30, 2017

Robert K. Kelner  
Stephen P. Anthony  
Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956

Re: United States v. Michael T. Flynn

Dear Counsel:

This letter sets forth the full and complete plea offer to your client, Lieutenant General Michael T. Flynn (Ret.) (hereinafter referred to as "your client" or "defendant"), from the Special Counsel's Office (hereinafter also referred to as "the Government" or "this Office"). If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

**1. Charges and Statutory Penalties**

Your client agrees to plead guilty to the Criminal Information, a copy of which is attached, charging your client with making false statements to the Federal Bureau of Investigation in violation of 18 U.S.C. § 1001.

Your client understands that a violation of 18 U.S.C. § 1001 carries a maximum sentence of 5 years' imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Guidelines, *Guidelines Manual* (2016) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

**2. Factual Stipulations**

Your client agrees that the attached "Statement of the Offense" fairly and accurately describes your client's actions and involvement in the offense to which your client is pleading

guilty. Please have your client sign and return the Statement of the Offense as a written proffer of evidence, along with this Agreement.

**3. Additional Charges**

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense.

**4. Sentencing Guidelines Analysis**

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the applicable guidelines and policies set forth in the Sentencing Guidelines. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

**A. Estimated Offense Level Under the Guidelines**

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. §2B1.1(a)(2)	Base Offense Level:	6
	Total:	6

**B. Acceptance of Responsibility**

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, or (b) engaged in additional criminal conduct after signing this Agreement.

In accordance with the above, the applicable Guidelines Offense Level will be at least 4.



**C. Estimated Criminal History Category**

Based upon the information now available to this Office, your client has no criminal convictions.

Accordingly, your client is estimated to have zero criminal history points and your client's Criminal History Category is estimated to be I. Your client acknowledges that if additional convictions are discovered during the pre-sentence investigation by the United States Probation Office, your client's criminal history points may increase.

**D. Estimated Applicable Guidelines Range**

Based upon the agreed total offense level and the estimated criminal history category set forth above, your client's estimated Sentencing Guidelines range is zero months to six months' imprisonment (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 4, the estimated applicable fine range is \$500 to \$9,500. Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, neither a downward nor upward departure from the Estimated Guidelines Range set forth above is warranted, subject to the paragraphs regarding cooperation below. Accordingly, neither party will seek any departure or adjustment to the Estimated Guidelines Range, nor will either party suggest that the Court consider such a departure or adjustment, except as provided in the preceding sentence. Moreover, your client understands and acknowledges that the Estimated Guidelines Range agreed to by the parties is not binding on the Probation Office or the Court. Should the Court determine that a different guidelines range is applicable, your client will not be permitted to withdraw his guilty plea on that basis, and the Government and your client will still be bound by this Agreement.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement. Should your client commit any conduct after the execution of this Agreement that would form the basis for an increase in your client's base offense level or justify an upward departure (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the base offense level based on that post-agreement conduct.

**5. Agreement as to Sentencing Allocation**

Based upon the information known to the Government at the time of the signing of this Agreement, the parties further agree that a sentence within the Estimated Guidelines Range

would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below.

**6. Reservation of Allocution**

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty.

The parties also reserve the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. In the event that the Court considers any Sentencing Guidelines adjustments, departures, or calculations different from any agreements contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court. In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocution in any post-sentence litigation. The parties retain the full right of allocution in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and currently does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

**7. Court Not Bound by this Agreement or the Sentencing Guidelines**

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing or to grant a downward departure based on your client's substantial assistance to the Government, even if the Government files a motion pursuant to Section 5K1.1 of the Sentencing Guidelines. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offense authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.



**8. Cooperation**

Your client agrees to cooperate with this Office on the following terms and conditions:

(a) Your client shall cooperate fully, truthfully, completely, and forthrightly with this Office and other Federal, state, and local law enforcement authorities identified by this Office in any and all matters as to which this Office deems the cooperation relevant. Your client acknowledges that your client's cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government-administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by your client to cooperate fully, truthfully, completely, and forthrightly as directed by this Office and other Federal, state, and local law enforcement authorities identified by this Office in any and all matters in which this Office deems your client's assistance relevant will constitute a breach of this Agreement by your client, and will relieve this Office of its obligations under this Agreement, including, but not limited to, its obligation to inform this Court of any assistance your client has provided. Your client agrees, however, that such breach by your client will not constitute a basis for withdrawal of your client's plea of guilty or otherwise relieve your client of your client's obligations under this Agreement.

(b) Your client shall promptly turn over to this Office, or other law enforcement authorities, or direct such law enforcement authorities to, any and all evidence of crimes about which your client is aware; all contraband and proceeds of such crimes; and all assets traceable to the proceeds of such crimes. Your client agrees to the forfeiture of all assets which are proceeds of crimes or traceable to such proceeds of crimes.

(c) Your client shall submit a full and complete accounting of all your client's financial assets, whether such assets are in your client's name or in the name of a third party.

(d) Your client acknowledges and understands that, during the course of the cooperation outlined in this Agreement, your client will be interviewed by law enforcement agents and/or Government attorneys. Your client waives any right to have counsel present during these interviews and agrees to meet with law enforcement agents and Government attorneys outside of the presence of counsel. If, at some future point, you or your client desire to have counsel present during interviews by law enforcement agents and/or Government attorneys, and you communicate this decision in writing to this Office, this Office will honor this request, and this change will have no effect on any other terms and conditions of this Agreement.

(e) Your client shall testify fully, completely and truthfully before any and all Grand Juries in the District of Columbia and elsewhere, and at any and all trials of cases or other court proceedings in the District of Columbia and elsewhere, at which your client's testimony may be deemed relevant by the Government.

(f) Your client understands and acknowledges that nothing in this Agreement allows your client to commit any criminal violation of local, state or federal law during the period of your client's cooperation with law enforcement authorities or at any time prior to the sentencing

in this case. The commission of a criminal offense during the period of your client's cooperation or at any time prior to sentencing will constitute a breach of this Agreement and will relieve the Government of all of its obligations under this Agreement, including, but not limited to, its obligation to inform this Court of any assistance your client has provided. However, your client acknowledges and agrees that such a breach of this Agreement will not entitle your client to withdraw your client's plea of guilty or relieve your client of the obligations under this Agreement.

(g) Your client agrees that the sentencing in this case may be delayed until your client's efforts to cooperate have been completed, as determined by the Government, so that the Court will have the benefit of all relevant information before a sentence is imposed.

## **9. Waivers**

### **A. Venue**

Your client waives any challenge to venue in the District of Columbia.

### **B. Statute of Limitations**

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of the Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of the Offense that is not time-barred on the date that this Agreement is signed.

### **C. Trial Rights**

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forgo the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be



on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of compelled self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against compelled self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

#### **D. Appeal Rights**

Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or guidelines range determined by the Court or your client claims that your client received ineffective assistance of counsel, in which case your client would have the right to appeal the illegal sentence or above-guidelines sentence or raise on appeal a claim of ineffective assistance of counsel, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

#### **E. Collateral Attack**

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2), but agrees to waive the right to appeal the denial of such a motion.

## **F. Privacy Act and FOIA Rights**

Your client also agrees to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including and without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, for the duration of the Special Counsel's investigation.

### **10. Restitution**

Your client understands that the Court has an obligation to determine whether, and in what amount, mandatory restitution applies in this case under 18 U.S.C. § 3663A. The Government and your client agree that mandatory restitution does not apply in this case.

### **11. Breach of Agreement**

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information, and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.



**12. Government's Obligations**

The Government will bring to the Court's attention at the time of sentencing the nature and extent of your client's cooperation or lack of cooperation. The Government will evaluate the full nature and extent of your client's cooperation to determine whether your client has provided substantial assistance in the investigation or prosecution of another person who has committed an offense. If the Government determines that your client has provided such substantial assistance, this Office shall file a departure motion pursuant to Section 5K1.1 of the Sentencing Guidelines, which would afford your client an opportunity to persuade the Court that your client should be sentenced to a lesser period of incarceration and/or fine than indicated by the Sentencing Guidelines. The determination of whether your client has provided substantial assistance warranting the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines is within the sole discretion of the Government and is not reviewable by the Court. In the event your client should fail to perform specifically and fulfill completely each and every one of your client's obligations under this Agreement, the Government will be free from its obligations under this Agreement, and will have no obligation to present your client's case to the Departure Guideline Committee or file a departure motion pursuant to Section 5K1.1 of the Sentencing Guidelines.

**13. Complete Agreement**

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and the Special Counsel's Office.

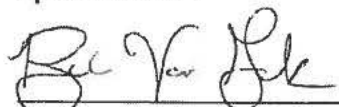
Your client further understands that this Agreement is binding only upon the Special Counsel's Office. This Agreement does not bind any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of the Offense, and returning both to me no later than November 30, 2017.

Sincerely yours,

ROBERT S. MUELLER, III  
Special Counsel

By:



Brandon L. Van Grack  
Zainab N. Ahmad  
Senior Assistant Special Counsels  
The Special Counsel's Office

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, Robert K. Kelner and Stephen P. Anthony. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorneys in connection with this Agreement and matters related to it.


Date: 11/30/17

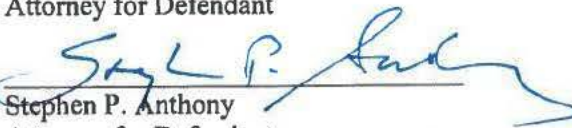
  
Lieutenant General Michael T. Flynn (Ret.)  
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Lieutenant General Michael T. Flynn (Ret.), and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 11/30/17

  
Robert K. Kelner  
Attorney for Defendant

  
Stephen P. Anthony  
Attorney for Defendant

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:18-cr-00457  
4 Plaintiff, )  
5 v. ) Alexandria, Virginia  
6 BIJAN RAFIEKIAN, ) July 16, 2019  
7 Defendant. ) 9:09 a.m.  
8 ) Day 2  
9 ) Pages 78 - 206

9 TRANSCRIPT OF TRIAL  
10 BEFORE THE HONORABLE ANTHONY J. TRENGA  
11 UNITED STATES DISTRICT COURT JUDGE  
12 AND A JURY  
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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

United States v. Rafiekian

R. Kelner - Direct

259

1 A. I don't recall that he did.

2 Q. Please take a look at Government Exhibit 61, which is  
3 another document that was part of FIG's FARA filing.

4 A. Okay.

5 Q. On page 4 and entry No. 13, can you please read out loud  
6 what's written in the beginning with "On his own initiative"?

7 A. Okay.

8 Q. Could you read that out loud, sir.

9 A. I'm sorry.

10 "On his own initiative Michael T. Flynn published an  
11 op-ed in *The Hill* on November 8, 2016 that related to the same  
12 subject matters as the Flynn Intel Group work for Inovo BV.  
13 Neither Inovo BV nor any other person requested or directed  
14 publication of the op-ed."

15 Q. Does that reflect what the defendant told you?

16 A. I'm sorry. Could you put that back up on the screen?

17 Q. Sure.

18 A. The whole quote.

19 Partly it reflects what he told us, in that it  
20 reflects that General Flynn published the op-ed on his own  
21 initiative and that they were not requested to do so by any  
22 other person.

23 I would say that the clause that says that the op-ed  
24 related to the same subject matter as the Flynn Intel Group  
25 worked for Inovo BV was something that -- that we added.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0420

United States v. Rafiekian

R. Kelner - Cross

310

1 BY MR. MACDOUGALL:

2 Q. Do you recall in January -- in January of 2017 receiving  
3 a package of e-mails from General Flynn, Kristen Verderame,  
4 and Michael that were ten particularly important e-mails?

5 A. I don't recall whether I received e-mails. I do recall  
6 that our team at Covington and Kristen Verderame received a  
7 set of e-mails from Mr. Rafiekian's custodial file and from  
8 others.

9 Q. Would a -- would a piece of correspondence from your firm  
10 refresh your recollection as to what you received?

11 A. It might.

12 MR. MACDOUGALL: Okay. Your Honor, with permission,  
13 I would like the witness to have a look at Exhibit 102 --  
14 Defense Exhibit 102 for identification.

15 THE COURT: Show that to him. I have a copy.

16 (A pause in the proceedings.)

17 BY MR. MACDOUGALL:

18 Q. Does that refresh your recollection, Mr. Kelner?

19 A. Just give me a second to read it, please. Thank you.

20 Q. Sure.

21 (A pause in the proceedings.)

22 THE WITNESS: It doesn't really change my  
23 recollection, which is that our team at Covington, and Kristen  
24 Verderame, received certain e-mails early on from  
25 Mr. Rafiekian's custodial files, and probably others as well.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0421



United States v. Rafiekian

R. Kelner - Cross

311

1 I don't know that those went directly to me, which is why my  
2 recollection is a little bit fuzzy on the details.

3 MR. MACDOUGALL: Your Honor, the attachments, I  
4 believe, are loaded in the system and the Court has copies of  
5 them, as well as the government. If I could ask -- and I'll  
6 do this quickly -- Mr. Kelner to just have a look at each of  
7 those e-mails and confirm them?

8 THE COURT: All right. Do we have those? You want  
9 to identify them?

10 BY MR. MACDOUGALL:

11 Q. They'll be on your screen, Mr. Kelner.

12 So I would like you to look quickly at Defense  
13 Exhibit 102A, which I'll represent to you was attached to the  
14 e-mail from Ms. Langdon. Did you have that e-mail?

15 A. Sorry.

16 THE COURT: It should be taken down. It's not in  
17 evidence.

18 MR. MACDOUGALL: Yes, it should be taken down, yes,  
19 sir. It should be on the witness' --

20 THE CSO: Counselor, it only comes up with  
21 everything at one time.

22 MR. MACDOUGALL: Oh.

23 THE COURT: Can you provide hard copies to him?

24 MR. MACDOUGALL: I can. Yes, Your Honor.

25 THE COURT: All right.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0422

United States v. Rafiekian  
R. Kelner - Cross

312

1 THE WITNESS: Thank you.

2 BY MR. MACDOUGALL:

3 Q. So, Mr. Kelner, I'm just going to go through these very  
4 quickly. There's 13 of them. Defense Exhibit 102A, do you  
5 recognize that as something you had?

6 A. Uhm, I don't question that we had it, but I'm not sure I  
7 remember having it.

8 Q. Okay. You don't specifically remember?

9 A. No.

10 Q. Let's go to 102B. E-mail dated July 30, 2016.

11 A. Okay.

12 Q. Do you remember having that?

13 A. I have seen this before. I don't recall when we obtained  
14 it.

15 Q. Okay. 102C, please.

16 A. I would say the same thing. I have seen this before; I  
17 don't recall when we obtained it.

18 Q. Okay. 102D.

19 A. I have seen this before, and I do recall this is one of  
20 the ones that we obtained, I believe, in that initial set of  
21 e-mails.

22 Q. 102E.

23 A. I don't remember this one as clearly.

24 Q. Do you question that it was included?

25 A. I don't question it, but I don't actually remember.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0423

United States v. Rafiekian

R. Kelner - Cross

313

1 Q. 102F.

2 There are multiple copies in each folder, so.

3 A. I see. Okay.

4 I've seen this before, but I don't recall exactly  
5 when.

6 Q. 102G.

7 A. I've seen this and this is one of the ones that we  
8 obtained very early on.

9 Q. And I take it the prior one you don't dispute you  
10 obtained them early on, you just don't recall as you're  
11 sitting here today?

12 A. That's correct.

13 Q. 102H, please.

14 A. I recall this one.

15 Q. 102I. A couple more.

16 A. It's vaguely familiar, but I'm not sure.

17 Q. Defense Exhibit 102J.

18 A. I do recall seeing this before.

19 Q. 102K. Two more.

20 A. I'm not certain.

21 Q. You don't dispute it, though?

22 A. I don't dispute it, but I don't particularly remember  
23 this one.

24 Q. 102L.

25 A. I recall this one.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0424

United States v. Rafiekian  
R. Kelner - Cross

314

1 Q. You do. And 102M.

2 A. Uhm, I don't clearly recall this one.

3 Q. So reaching the least common denominator, subject the  
4 limitations you place on each of these, you don't dispute, as  
5 reflected in the length of this e-mail, that you had all of  
6 these in January?

7 A. I don't dispute, but I'm not -- I don't have a certain  
8 recollection of it.

9 Q. I would like you to turn, please, to Defense Exhibit 91,  
10 and which I believe is in evidence. We looked at that  
11 earlier.

12 A. Okay.

13 Q. You are a licensed to practice law in the District of  
14 Columbia?

15 A. District of Columbia and Maryland.

16 Q. And your office is in the District of Columbia that's  
17 your principal place of practice, is that right?

18 A. Yes.

19 Q. Just like me?

20 A. Yes.

21 Q. And as such you are subject to the D.C. Code of  
22 Professional Responsibility?

23 A. Yes.

24 Q. And that's really important because that's the law that  
25 governs all of us lawyers?

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

0425

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury trial in the case of the **UNITED STATES OF AMERICA versus BIJAN RAFIEKIAN**, Criminal Action No. 1:18-CR-457, in said court on the 16th day of July, 2019.

I further certify that the foregoing 157 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this July 17, 2019.



Tonia M. Harris, RPR  
Official Court Reporter

## Request

---

**From:** "Langton, Alexandra" <alangton@cov.com>  
**To:** zulutym@mailsol.net, Michael Flynn <mgflynn83@gmail.com>, "Kristen Neller Verderame (kverderame@ponderainternational.com)" <kverderame@ponderainternational.com>  
**Cc:** "Kelner, Robert" <rkelner@cov.com>, "Anthony, Stephen" <santhony@cov.com>, "Smith, Brian" <bdsmith@cov.com>, flynnlmmm@mailsol.net  
**Date:** Wed, 26 Apr 2017 16:33:22 -0400  
**Attachments:** Key Docs.zip (640.84 kB); 2017-01-02 Packet of E-mails.pdf (9.27 MB)

---

*Privileged and Confidential  
Attorney Work Product  
Attorney-Client Communication*

General Flynn, Kristen, and Michael,

We have a time-sensitive request that we hope you can help us with.

In January, you gave us a.pdf packet of e-mails (attached for your reference). I have separately included 10 of these e-mails in the zipped folder attached. We need to get .msg versions of these 10 e-mails that are not encrypted (basically an original copy from Gen. Flynn's mailbox). Could you please assist us in getting these .msg copies as soon as possible (and hopefully not later than tomorrow afternoon)?

We're happy to discuss in more detail or answer any questions.

Best,

**Alexandra Langton\***

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5915 | [alangton@cov.com](mailto:alangton@cov.com)  
[www.cov.com](http://www.cov.com)

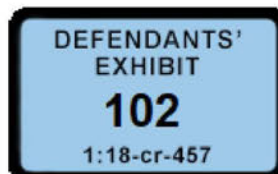
**COVINGTON**

---

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

\*Member of the Maryland Bar. District of Columbia bar application is pending; supervised by principals of the Firm.

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Rafiekian\_EDVA\_00009434

DX0102-00010427

SECURE READER

Subject: **Re: Truth**  
From: **kian@flynnintelgroup.com**  
To: **ekimalptekin@gmail.com & flynn@flynnintelgroup.com**  
Date: **Thursday, Aug 4, 2016 - 11:22am**

Virtru Encrypted Message

Thank you Ekim.

I echo General Flynn's sentiment on the significance of unlocking the facts. It is sometimes natural for complex situations to turn into a Rorschach test of a giant ink blot. Precision investigative work takes off the masks layer by layer until the real picture can emerge from the masked ink blot. Time plays a key factor in such precision work. The longer the time distance between an event and active start of a Special Investigation, the lesser the effect of revealing the "truth". The main event becomes "old news" and the findings less relevant.

Let me give you a real life experience: 1978: A soft spoken cleric sitting under an apple tree in Neauphle-le-Chateau in France looked so harmless. Spoke of equality and spirituality, declared that if he were to gain power, he will go to a religious shrine and will not get into politics and governance.

Sounds familiar?

Well, the world neglected to take the layers off the ink blot in 1978. One year later, from the place under the apple tree, The soft spoken spiritual man led the Islamic Revolution in Iran and turned the clock back 1400 years. An ancient country and culture was turned into a Pariah State that Iran is today.

37 years later, "truth" is being revealed page by page, story by story of "what" and "who" helped out the monster dressed as the soft spoken spiritual man. No matter how piercing the facts, too much time has passed. The world has changed. In this information age, we don't need to wait 37 years. 37 minutes can change the world.

The world needs a strong leader with credibility in the Islamic faith to shape a new understanding of the religion and its place in the hearts of the Muslims. The weapon of choice in the Age of Information is the "word" and not the "sword".

General Flynn and I will return with more thoughts shortly. Looking forward to working together on this important engagement. We are arranging key pieces needed for operationalizing our plan.

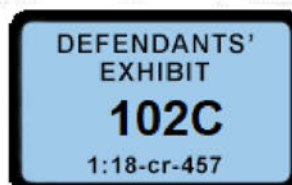
All the best,

Bijan

**Hon. Bijan R. Kian**  
*Vice Chairman of the Board of Directors*  
*Flynn Intel Group, Inc.* Reply

Reply All

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Rafiekian\_EDVA\_00009448

DX0102C-0001

0428



SECURE READER

Subject: **Re: Truth**  
From: **ekimalptekin@gmail.com**  
To: **flynn@flynnintelgroup.com & kian@flynnintelgroup.com**  
Date: **Monday, Aug 8, 2016 - 12:36pm**

Virtru Encrypted Message

Dear Bijan, General Flynn,

I had a long meeting with the Minister of Economy upon the referral of MFA Cavusoglu. I explained what we can offer. He agreed to discuss in general lines at the council of ministers today and subsequently with PM Yildirim in more detail.

I will get back to you shortly.

Best regards,

Ekim

Sent from Virtru (<http://www.virtu.com>) for iPhone

On 4 Ağu 2016 18:22, Bijan Kian <[kian@flynnintelgroup.com](mailto:kian@flynnintelgroup.com) (mailto:<[kian@flynnintelgroup.com](mailto:kian@flynnintelgroup.com)>)> wrote:

This is a secure email

*Enter your reply here.*

Reply

Reply All

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DEFENDANTS'  
EXHIBIT  
**102D**  
1:18-cr-457

Rafiekian\_EDVA\_00009449

DX0102D-0001

0429

SECURE READER

Subject: **Re: Truth**  
From: **ekimalptekin@gmail.com**  
To: **flynn@flynnintelgroup.com & kian@flynnintelgroup.com**  
Date: **Thursday, Aug 4, 2016 - 5:11am**

Virtru Encrypted Message

Dear Bijan, General Flynn,

First off, I look forward to meeting in person and thrilled at the prospect of working together.

Thank you for the eloquent outline. I met with the MFA and explained our proposed approach. He is receptive and indicated he would like to meet with us during his upcoming visit to DC.

As soon as the visit dates are scheduled and confirmed, I will inform you and we can strategize how best to approach the meeting.

PS1: Sec. Kerry appears to be visiting TR on August 21. Do we know anyone in his team?

PS2: This article shows the depth of the crisis we are facing: <http://nyti.ms/2avkkES>  
(<http://nyti.ms/2avkkES>)

Warm regards,

Ekim Alptekin

Sent from Virtru (<http://www.virtru.com>) for iPhone

On 30 Tem 2016 20:32, Bijan Kian <[kian@flynnintelgroup.com](mailto:kian@flynnintelgroup.com)> (mailto:<[kian@flynnintelgroup.com](mailto:kian@flynnintelgroup.com)>)> wrote:

This is a secure email

Reply

Enter your reply here

Reply All

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DEFENDANTS'  
EXHIBIT

**102F**

1:18-cr-457

Rafiekian\_EDVA\_00009447

DX0102F-000030

SECURE READER

Subject: **Re: Truth**  
From: **ekimalptekin@gmail.com**  
To: **flynn@flynnintelgroup.com & kian@flynnintelgroup.com**  
Date: **Wednesday, Aug 10, 2016 - 2:55pm**

Virtru Encrypted Message

Gentlemen - I just finished in Ankara after several meetings today with Min of Economy Zeybekci and MFA Cavusoglu.

I have a green light to discuss confidentiality, budget and the scope of the contract.

I am flying to LA tomorrow at the request of MFA with ETA 13:35. Can we talk some time early evening EDT tomorrow?

Best regards,

Ekim Alptekin

Sent from Virtru (<http://www.virtu.com>) for iPhone

On 8 Ağu 2016 21:44, Bijan Kian <kian@flynnintelgroup.com (mailto:<kian@flynnintelgroup.com)> wrote:

This is a secure email

Enter your reply here.

Reply

Reply All

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DEFENDANTS'  
EXHIBIT  
**102G**  
1:18-cr-457

Rafiekian\_EDVA\_00009451

**DX0102G-0001**

0491

SECURE READER

Subject: **Action update**  
From: **bijankian@gmail.com**  
To: **ekimalptekin@gmail.com & flynn@flynnintelgroup.com**  
Date: **Thursday, Aug 25, 2016 - 1:15pm**

Virtru Encrypted Message

Ekim:

Thank you for informing us of your decision to engage Flynn Intel Group on Operation "CONFIDENCE".

We appreciate the opportunity to work with you on this important engagement.

General Flynn and I have activated our "FIG LAB", placed our principal team members in formation and engaged the film crew in preparation for launching this engagement.

General Flynn has decided to lead this engagement personally.

We are targeting the following schedule of actions:

Send draft engagement letter between your company in the Netherlands and Flynn Intel Group (Please send us the full legal name of your Dutch entity and address). We will send you our draft engagement letter by no later than Sunday August 28, 2016. The brief engagement agreement will not entail operational details for obvious reasons.

Finalize the allocation of cost for Sphere (\$50K or \$30K per month for 3 months) and let us know at your earliest convenience so that we can prepare the engagement letter accordingly.

Along with the draft engagement agreement, we will issue an invoice for the first month in the amount of \$180K or \$200K (depending on the allocation for Sphere) payable at the execution of the engagement letter (target execution/launch date of September 1, 2016).

General Flynn and I welcome and appreciate your active participation and counsel on this engagement and have allocated 20% of \$150K per month as the advisory support cost provided by your firm. As we agreed, if you decide to allocate \$50K for

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DEFENDANTS'  
EXHIBIT

**102H**

1:18-cr-457

Rafiekian\_EDVA\_00009452

**DX0102H-0001**

0492





LTG R Mike Flynn <flynn@flynnintelgroup.com>

## Advisory Agreement (General Scope) for Ekim Alptekin

3 messages

Bijan Kian <kian@flynnintelgroup.com>  
To: Michael Flynn <flynn@flynnintelgroup.com>  
Cc: Michael Flynn <mgf@flynnintelgroup.com>

Mon, Sep 12, 2016 at 4:32 PM

Mike:

Attached to this email, please find a general scope advisory agreement for Ekim Alptekin. The agreement is composed in a way that is not specific so that it can be operationalized with task orders. We need this to create an audit trail on properly documenting the relationship.

Please review, make any changes you see necessary, sign and return to me and Michael.

All the best

Bijan

Hon. Bijan R. Kian  
Vice Chairman of the Board of Directors  
Flynn Intel Group, Inc.

703-313-7040 (office)  
858-449-8997 (mobile)  
kian@flynnintelgroup.com



FLYNN INTEL GROUP INC.

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Ekim Advisory Agreement BK 9122016.docx  
132K

→ Available  
upon  
request

LTG R Mike Flynn <flynn@flynnintelgroup.com>  
To: Bijan Kian <kian@flynnintelgroup.com>  
Cc: Michael Flynn <mgf@flynnintelgroup.com>  
Bcc: flynn@flynnintelgroup.com

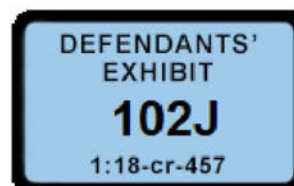
Mon, Sep 12, 2016 at 4:53 PM

I'll have it back this evening. Thanks.

Mike

**NEW YORK TIMES BESTSELLER**

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Rafiekian\_EDVA\_00009462

**DX0102J-0001**

0493

SECURE READER

Subject: **Wire Transfer to INOVO BV**  
From: **bijankian@gmail.com**  
To: **mgf@flynnintelgroup.com (+3)**  
Date: **Tuesday, Oct 11, 2016 - 7:37pm**

Ekim

Flynn

Virtru Encrypted Message

Michael:

Please initiate and execute a wire transfer in the amount of \$40,000 (Forty Thousand dollars) From Flynn Intel Group, Inc. account to the order of INOVO as soon as Mr. Alptekin sends us an invoice for consulting services that he is providing to FIG on the Confidence project.

I am copying Mr. Alptekin on this email with a request for his kind action on sending us the invoice.

Thank you,

BK

**Hon. Bijan R. Kian**  
*Vice Chairman of the Board of Directors*  
*Flynn Intel Group, Inc.*

703-313-7040 (office)  
858-449-8997 (mobile)  
kian@flynnintelgroup.com (mailto:kian@flynnintelgroup.com)



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DEFENDANTS'  
EXHIBIT

**102L**

1:18-cr-457

Rafiekian\_EDVA\_00009472

**DX0102L-0001**

0494

SECURE READER

Subject: **Fwd: Inivo**  
From: **bijankian@gmail.com**  
To: **mgf@flynnintelgroup.com (+2)** → **flynn**  
Date: **Friday, Oct 14, 2016 - 9:50am** ← **ekin**

Virtru Encrypted Message

Michael:

The attached forwarded invoice is approved as presented. Please initiate and execute a wire transfer today.

Thank you,

BK

**Hon. Bijan R. Kian**  
*Vice Chairman of the Board of Directors*  
*Flynn Intel Group, Inc.*

703-313-7040 (office)  
858-449-8997 (mobile)  
kian@flynnintelgroup.com (mailto:kian@flynnintelgroup.com)



FLYNN INTEL GROUP INC.

★ Attachment  
available  
upon request ★

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----- Forwarded message -----

From: **Bijan Kian** <bijankian@gmail.com (mailto:<bijankian@gmail.com)>  
Date: Fri, Oct 14, 2016 at 8:02 AM  
Subject: Inivo  
To: Bijan Kian <bijankian@gmail.com (mailto:<bijankian@gmail.com)>

Reply

Reply All

Confidential -- Subject to Protective Order



Rafiekian\_EDVA\_00009479

DX0102M-0001

0495



## COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES  
NEW YORK SAN FRANCISCO SEOUL  
SHANGHAI SILICON VALLEY WASHINGTON

**Robert K. Kelner**

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5503  
rkelner@cov.com

**VIA E-MAIL**

**March 7, 2017**

Ms. Heather Hunt  
FARA Registration Unit  
U.S. Department of Justice  
600 E Street, N.W.  
Washington, D.C. 20004

Re: Flynn Intel Group Registration

Dear Ms. Hunt:

We write on behalf of our clients Flynn Intel Group and its Chairman and CEO, General Michael T. Flynn, to submit a Foreign Agents Registration Act ("FARA") registration and supplemental disclosure statement, in connection with Flynn Intel Group's previously disclosed representation of Inovo BV, a corporation organized in the Netherlands.

In September 2016, Flynn Intel Group publicly disclosed its representation of Inovo BV in a federal Lobbying Disclosure Act ("LDA") registration that was filed with the Secretary of the Senate and Clerk of the House. After General Flynn was named in mid-November 2016 to serve as National Security Advisor in the new administration, Flynn Intel Group shut down its operations, did not renew its contract with Inovo BV, and filed, on December 1, 2016, a final public disclosure report terminating its lobbyist registration for Inovo BV.

As you know, under FARA, a U.S. firm that represents a foreign corporate client, which is not a foreign government or political party, may register under the LDA rather than FARA, so long as the firm engages in lobbying activities for its client. Flynn Intel Group concluded that because its client was a foreign corporation and the services provided included lobbying activities, it could file under the LDA.

The Department's regulations provide that filing under the LDA is not an option, however, if a foreign government, even though not the client, nonetheless is the "principal beneficiary" of the work performed. This is an uncertain standard, not based on the statutory language, and not defined in the Department's regulations. Nevertheless, because of the subject matter of Flynn Intel Group's work for Inovo BV, which focused on Mr. Fethullah Gulen, whose extradition is sought by the Government of Turkey, the engagement could be construed to have principally benefitted the Republic of Turkey. To eliminate any potential doubt, the Flynn Intel Group therefore is electing to file a registration under FARA, in lieu of its prior LDA registration.

Because this is a retroactive registration, compiled after the Flynn Intel Group shut down its operations in November 2016, the enclosed supplemental disclosure statement is based on information that is currently available to Flynn Intel Group, to the best of its knowledge, after

Ms. Heather Hunt  
March 7, 2017  
Page 2

undertaking reasonable due diligence with the assistance of counsel. If additional material information relevant to the supplemental statement is identified, Flynn Intel Group will amend the statement.

Please note that insofar as Flynn Intel Group's contract with Inovo BV ended by its terms on November 15, 2016, the filing of the supplemental statement today also terminates the FARA registration, effective as of that date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Kelner', with a long horizontal flourish extending to the right.

Robert K. Kelner

Enclosure

## Outline for DOJ Meeting

---

**From:** "Kelner, Robert" <rkelner@cov.com>  
**To:** K Verderame <kverderame@ponderainternational.com>  
**Cc:** "Smith, Brian" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpow02.smithbd">, "Langton, Alexandra" <"/o=covington & burling/ou=exchange administrative group (fydibohf23spdl)/cn=recipients/cn=54610707d47f404ba9511efe701f1f09-lang">, "Anthony, Stephen" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpow01.anthonysp">  
**Date:** Mon, 20 Feb 2017 23:11:33 -0500

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PRIVILEGED & CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION  
ATTORNEY WORK PRODUCT

Here is an outline for what I propose to cover tomorrow at the meeting, though obviously they may lead us in other directions:

We wanted to come in, as we have done before potential retroactive filings for other clients, to walk through the draft filing and solicit any input, so that we could address any issues with the draft. But in this case, as we discussed with Heather, we also wanted to talk through the arguments for and against filing a FARA registration, in the circumstances presented here, to get the Unit's input.

We've addressed in the draft we brought with us the answers to the various questions you had in your letter. And I can walk you through those answers today. Let me do that briefly now.

[Walk through each question and our response]

The client that engaged FIG, Inovo BV, is a Netherlands based corporation. A business consulting firm. Its CEO, Ekim Alptekin, a US-Dutch citizen, indicated that he was interested in restoring confidence in the Turkish economy, and he viewed Mr. Gulen and his followers as an obstacle to that. Although FIG did know that initially Mr. Alptekin was in touch with the Turkish government about the possibility of engaging FIG, Alptekin ultimately engaged FIG directly through Inovo and indicated that the Turkish government would not be involved in directing or funding FIG's engagement.

FIG agreed to conduct research from public sources on Gulen and to develop a video based on the research, which could be disseminated through a PR firm that FIG would retain.

After a contract was executed in August 2016, FIG engaged various independent contractors who conducted the open source research and began preliminary work on the video. FIG later retained a PR firm, Sphere. Sphere engaged in some federal and state level outreach to public officials, engagement with the media, and preparation of a monopoly themed graphic about the Gulen organization, called Gulenopoly. FIG also engaged in some outreach on the Hill regarding Gulen, including a meeting with Chairman McCall's staff.

Originally, the expectation was that the initial 3-month contract would be extended so that the research and video could be disseminated. But the contract was allowed to lapse on Nov. 15 without being extended, in light of the expectation that Gen. Flynn would join the administration. FIG suspended operations in mid-November 2016 and began to shut down. To the best of FIG's knowledge, FIG's research and the early work on the video was not disseminated by FIG. We do not know what Inovo may have elected to do with work product that was in its possession. We have seen, for example, Gulenopoly popping up on social media and in publications such as The Hill. FIG is not involved in circulating Gulenopoly to the best of our knowledge.

As noted, toward the end of the initial contract period, General Flynn himself wrote an op-ed about Gulen. He was not asked to do this. He viewed this as something he was doing on his own. But the subject matter overlapped with the work for Inovo, he did seek input from Alptekin, and FIG did ask Sphere to place the article.

*Based on this fact pattern, a credible argument could be made that registering under LDA, as FIG did, was sufficient, under the terms of the LDA exemption to FARA registration.*

At the same time, we recognize that Gulen is a major focus for the Turkish government, and extradition of Gulen was probably the primary focus of the Turkish government in its dealings with the United States during the period in which FIG was performing work for Inovo. This raises the question of whether the Turkish government is the principal beneficiary of the work for Inovo, within the meaning of the Department's regulation applying the LDA exemption. Arguably the work could be viewed as principally benefiting the Turkish government.

During the course of performing work for Inovo, Aptekin arranged for General Flynn to meet two Turkish ministers while they were visiting New York. But we don't view this meeting by itself as resulting in agency on behalf of the government, and there is no indication that the meeting or any other contacts involved the Turkish government directing FIG's activities.

After the post-election publicity about FIG's work for Inovo, and after we received your letter, FIG also received a letter from Mr. Alptekin's counsel at Arent Fox. Arent Fox asserted that Inovo had retained FIG in connection with Mr. Alptekin's business dealings with an Israeli company that was involved with the Leviathan oil field.

So FIG had a commercial client with commercial objectives, and no known foreign government client. This left us somewhat straining to determine whether registration could be required solely on the basis that the work performed could be construed as principally benefiting the Turkish government rather than Inovo or business interests generally. *We welcome your input on that judgment call.*

[Then, depending on their response, distribute draft filing for discussion]

If they ask about the reported payments to Inovo, I expect to respond as follows:

We did see two payments of 40k each to Inovo. We've included them in the filing as they appear in accounting records. Early on, there was a proposed consulting agreement for Aptekin. These payments, based on available records, appear to tie to that contract. But we have also been told that while Aptekin did not end up playing a role as a consultant on the project, he did nonetheless want part of Inovo's funding of the project to be refunded. The details of the arrangement are not particularly clear, amid the shut down of operations. [Beyond that, I will punt for now, if they press.]

**Robert Kelner**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5503 | rkelnr@cov.com  
www.cov.com

**COVINGTON**

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June 25, 2018

ET  
BVG  
G  
A

DOCID: FIG EDVA 00005134

Subj: All good to go

Date: July 27

G: One of first documents where project is mentioned.

"I had a detailed discussion with my MF last night." This email in itself doesn't say a lot to you?

MF; is that how you're usually referred to? No idal.

DOCID0000472: July 29: Met with MC? Did you have an understanding of who the MC is?

MF: Yes, eventually. G: Do you recall who? M: Yes, I believe it was the foreign minister.

G: in addition that to how mentioned here, is that how he became to be referred to?

From the beginning were the Turkish officials involved in this way?

M: There was a time early on, that there was some discussion with Bijan about who would pay for it. Bijan had relayed that wheter GOT or Ekim; and I was like whatever.

G: Apart from who was going to pay for it; some pretty highlevel officials within Turkey were involved?

M: Yes.

And that was tru from the beginning of your involvement?

M: Yes, he talked about Ekim in a way that he was well connected; I understood from Bijan that there were discussions at the highest level of the government.

G: in context of this project.

M: Yes

G: So not just Ekim's connections generally, but the project.

M: More or less

G: Why the qualifier

M: I didn't talk directly with Ekim so.. .

G: We're just interested in what you were told by Bijan in this context.

M: That Ekim had connections to senior members of the government, all the way up to Erdogan.

G: And that those connections were involved in this project?

M: Yes, I believed that.

G: Based on what.

M: In the conversations I had with Bijan, I understood it to be initially, as he was describing Ekim.. know him from Narwuz, Turkish-American biz counsel. This has real potential to be a longer term project, and the visibiltiy of this project is at the highest levels of Turkish government. And Ekim had this project. At least initially.

G: Would it be fair to say that from your understanding of conversations with Bijan, did it appear or was it your understanding that Ekim was acting as the go between from those top-level foreign officials and this project that you'll be undertaking.

M: Yes.

G: Is this an example of Ekim acting as a go between between your project and the Turkish government?

M: Yes.

G: Mentions in the document "thank you for your elegant outline." If you turn back to the .. . ones with the bullet point.[can't find document]

G: Shows his copy...

G: Your copied on this; it says he and you had discused this Truth campaign and these are the basic bullets. IS that something that you discussed with Bijan.

M: I believe we did.

G: To best of recollection?

M: Yes. It's a basic assessment process for a proposal.

G: Then August 10; "starts with gentlemen" just finished in Ankara.

Here, this MFA Kavasulu. He was the minister of foreign affairs. It says, I have a green light to discuss confididentiality, budget scope." "is it your understanding that the green light was coming from these folks (MFA, Economy).

M: It is. Not sure I saw this email; I just know that in our conversations and the early phase of this thing, I think at that time if you had asked me, who doing it on behalf of, I'm not sure if we were doing it on behalf of Gov of Turkey or Ekim, but I'm trusting you to do it the right way.

G: I understand. Your understanding was that whether it was through Ekim or someone, you understand this involved highest levels of Turkish government, is that right?

M: It is.

G: And green light; does that refresh your memory? Regarding the money

M: I think at this point of time it became clear we're going to get documents.

G: I understand this: From your conversations with Bijan when he's telling you we got this contract; from those conversations did you understand that this contract was whether directly or through Ekim, was it with the government of Turkey/

M: I would say it was in support of Government of Turkey. Would not necessarily say it was in direct support of Turkey. It was with their understanding, and involvement.

G: With their involvement?

M: Absolutely. The way it was described to me what we were going to be doing. That all transpired in various conversations at the beginning.

G: Was it your understanding that the initial approval for this project was coming from the Gov of Turkey and in fact these high-level officials.

M: Yeah

BVG: If you recall one of the first meetings in the middle of August there was a meeting with Jim Court, Sphere, question is whether recall being in August a preliminary meeting.

M: I don't recall a meeting. I know Bijan had spoken about different people that he used prior.

BVG: Some of the emails show discussions that it's only the three of us that know about this project; do you recall not bringing in other people into the fold until you received an approval; the green light?

M: We had talked about until we were certain that it was going to happen; 100 percent, keep it small.

BVG: But do you recall in terms of the decision to start bringing people in the fold, hearing that GOT had provided some sort of approval.



M: Not sure what you're asking. If you're asking, let's keep it at us 3 and then once it was approved . . . .

M: I want to make sure... you're going through a sequence and with this particular green light thing, there was a point in time where Bijan said we're going to approve this, may have been a phone call, maybe an email.

G: I understand how you have it compartmentalized, but with the emails I show you, you may not have been copied on them . . . .

M: He started using this Virtru thing too. Not sure if I was ever able to get this open on an iPhone. For Virtru had to have special permissions.

G: And that Virtru software had been something typically used before this project?

M: Do not remember using it before/

G: Do you recall any convo w/ Bijan about why he started using it?

M: No, just that it was secure means of communicating.

G: In terms of how your understanding of the project evolved, may help me understand who the conversation with Bijan evolved. Your understanding is that it was approved by GOT?

M: My understanding is that it was approved by someone within GOT. Someone about GOT. My understanding is that Ekim was talking to someone in GOT at fairly senior levels. I didn't really care who was going to pay for it; my belief was that it didn't really matter to me; we got the contract, good. It's certainly working on behalf of the government of Turkey. Working in support of them. That's how I would describe it. Working directly for them? Can't say I know that. Working on their behalf.

ET: In light of that, your understanding was the money was flowing from GOT; either directly, or through Ekim's company?

M: Not sure I gave it any thought. I don't know whether there was an article, or maybe we'd talked about it where Ekim confirmed somewhere in some comm that the money did not come from GOT; after election, or statement he made, not sure where that information came from. When I heard that I thought, okay, well that makes this... the FARA stuff was happening. I wasn't sure where the money came from other than Ekim. Whether the gov was paying him.

G: Who is paying is relevant, but doesn't really matter for our purposes. You've already said was working on behalf of / to support the GOT.

M: That was pretty clear.

G: And to be clear that was clear from emails/ other comms with Bijan?

M: Yes.

G: Had the Aug 10 email that we were just looking at; that lays out the bullets. That is the one where Alptekin writes back and says met with MOFA; so he's receptive. Then on Aug 11, you've got ... tracking on the discussions and where this are. [Shows email . . .CONFIDENCE THROUGH CLARITY CAMPAIGN subj.] Go back to the July email. You'll see at the one on July 30 - TRUTH CAMPAIGN, with bullet points. And then there is the intervals where talk about -- Gov of Turkey is giving the green light if you will. And now have August 11th email that now is under subject OPERATION CONFIDENCE. You had earlier said that from the beginning it was the same project. Is that right?

M: Yes.

G: Is this an example of how it stayed the same project?

M: Yes. I'd call this Confidence.

G: Regardless of the name, is the project the same.

M: Yes.

G: And does this email demonstrate that for you?

M: Yes, and side bar; where he talks about having done this before -- this was FIG's first project. So Ekim took the Azerbaijan project he did with Woolsey and applied it here. That's likely what he means when he says done this before. I believe that Bijan had actually showed me the video that Bijan did on that project. So to answer specific question - yes, this is the same thing. And I believe that Bijan applied template from previous business deal to this. That's why this part, we have done this before successfully -- we had not.

G: More details on Azerbaijan?

M: It was via Nawruz connection. Lack of relationship between Az and US, and somehow Bijan got involvd. May have been when he first got out of gov, but I know he did it with JW.

G: Aug 11 email, couple of things to note: now talking about a Dutch company. This is what you're talking about where it wasn't clear who was paying, whether Ekium and Dutch company.

M: Yes

G: Did having Dutch company change the project in anyway.

M: I don't think it did.

G: Is that based on convos with Bijan, your impresssion., something else?

M: I don't believe it changed anything. I went and looked at Inovo website. I'm not sure that that jumped out at me. Not sure that made any difference./

G: To be clear; that it made any difference between what the project was and what it was going to be.

M: Yes, like you said, wouldn't have mattered if engaged by milk man. Was about restoring confidence in government turkey in the US.

G: Mostly concerned with what said earlier, about this being on behalf of or for the benefit for Gov of Turkey. Still fair to say?

M: No change there.

G: That to me is a critical fact. Very important that I not encourage you to say that. That if that's the case, based on comms with Bijan, when I'm asking these questions; that's where I'm headed with that.

M: To summarize - the conversation about who was going to pay went back and forth. During this period it was very clear that Ekim was engaging senior officials of the government; conversations about Erdogan and MOFA, and Minister of Economy. And that the overall intent was to restore confidence between gov of Turkey and gov US through Ekim's business and government contracts.

G: And so, as you were saying, your focus was not on the Dutch client?

M: My focus was on the fact that Ekim was the face we were working with. It was pretty clear that he wasn't Dutch. I don't want to be too facetious. I'm not from Delaware, but that's where our business is. In a way there was a naiveté in the technical business stuff.

ET: When said restoring confidence in gov to gov relationships, is that distinct from business restoration.

M: All one in the same to me.

ET: But all work seemed to be about Gulen, right?

M: As we were going through project, it changed to be about Gulen.

ET: It seemed to be about Gulen from the beginning, the project document was all about all Gulen/

M: Yeah, his name came up; his involvement; causing the rift between gov.

BVG: Can you think of a single doc or product from the project that didn't deal with Gulen?

M: Everything I saw seemed to be; I didn't see the video. All came down to him. Not need to speak to a biz group and tell them how wonderful things are.

G: Do you recall, you were saying that whether it was from the start, it became more and more apparent, that Gulen was the focus of this project.

M: He was a component from the beginning; the narrowing down . . . it was a 90 day project, the narrowing down was focusing on him and assess what could or could not be done.

G: And was this meeting that you had in NY with the Turkish officials, was that in keeping with this understanding that started from the beginning that this was on behalf of or for the benefit for GOT.

M: Believe that it was; believe Ekim wanted to show had the right connections the right people; believe he wanted to show that; wanted to get their confirmation about that. That they were satisfied that Ekim had the right people and that this was going in the right direction.

G: Where did you get that understanding?

M: The dynamics of the meeting and Bijan caveating the meeting, wanting to get the right people there, timing, looking at dynamics of the room; seemed to me like Ekim's relationship with the son-in-law was pretty good. Knew each other more than knew MOFA. That sort of dynamic gave me the impression that they were satisfied. That the gov of turkey officials were satisfied; with what Ekim had presented about us. Just in the back and forth that had talked to me about; this has visibility at highest levels of government. Bijan - our project has visibility at highest levels.

G: They were satisfied?

M: Yes.

G: Was there some kind of convo or discussion about how going to interact with Turkish officials in context of project?

M: May have been TPs.

[Rob prompts: may have been plan for lunch.]

M: There was a plan; believe Bijan and Brian took a train up that day; may have actually taken train back. Believe they took a train up that day. Believe there may have been TPs for that meeting. And then during that day... Woolsey already up there with his wife; didn't know what he was doing at the time, but found out after had met with Turks.

G: That meeting, planned lunch beforehand, TPs, all to do with meeting with Turks?

M: I remember meeting at hotel with Bijan beforehand. Got into hotel, went up to room... bijan, myself, W there. Talked for 10-15 minutes before Turks showed up.

G: What did you talk about?

M: How going to choreograph meeting?

G: Choreograph vis-à-vis the project. Fair to say?

M: Choreograph was have you spoken to Ekim; working for him; want to make sure the right things are stated; 5 Ws. Nothing really specific.

G: So I'm clear on it. Ministers weren't just bystanders to you making presentation to Ekim over the project. It was so you could make presentation to the ministers?

M: This wasn't, hey can you stop back. This was we are providing an update on Project Confidence to these government officials.

G: Your impression was that they were satisfied?

M: I walked away that they were satisfied.

G: Conversation you had were about project Confidence?

M: Yes

G: And Project was same project from the get go.

M: Yes.

ET: Do you remember any feedback that FIG received?

M: Don't recall that; don't recall the direction going that way; more a discussion about what were doing. Nothing were they were giving me feedback. A couple of times where discussed in Turkish; what Bijan may have provided to Bijan after; I don't know. Think Bijan left with them.

G: Mentioned before that this was FIGs first contract/engagement. So pretty important.

M: I looked at it as let's make sure everything is right. Be professional. Could become bigger project down the road. We had another one that was consummated at roughly the same time; think it was Sep, Oct. Had to deal with real estate. . .

G: From emails, appears that this engagement was disclosed or other folks brought in, only after changed to a Dutch company, rather than Project Truth, where more openly discussed with ministers or Ekim. Does that ring any bells / mean anything?

M: Doesn't mean anything. Doesn't ring any bells. Keeping the group small was about not wasting anybody's time if not going anywhere.

G: Ever recall anything about Israeli company?

M: I don't recall anything like that. I don't.

G: So if we can turn to your Statement of Facts. Last paragraph - Statement of Facts

G: Going to turn to FARA filing itself and circumstances around that.

ET: Just one more email; from August 8, 2016. Re: Truth. Another example of Government of Turkey involvement?

M: Yes.

ET: Believe have said aware of two payments of \$40k each that made to Inovo.

M: I am aware.

ET: Ever aware of them being referred to as lobbying or PR refunds that were not performed?

M:

ET: TO best of your knowledge, were they refunds?

M: Not sure I paid attention to that.

ET: Anything that makes you think they were refunds?

M: Nothing that I'm aware of that would make them refunds.'

ET: From the earliest days, Ekim was going to get 20 percent.

M: Right, going to give 20 percent for services.

ET: okay... need to strike while iron hot; before the election. You're the iron right? You said that last time.

M: The context as a whole and my involvement. My connections to getting something published.

BVG: Well Bijan wasn't the iron. Ekim wasn't the iron.

M: No certainly not.

ET: Thanks for cooperation; not trying to get any admissions out of you; not getting new false statements. But need to ask about some of those statements. Believe that previously told us: done for or behalf of gov of turkey and officials had awareness, feedback and were given updates. Before FARA filing ever tell Covington attorneys was done for Turkey's benefit or on their behalf?

M: Don't believe I used those words.

ET: Did you ever say that it was for helping the Government of Turkey?

M: Don't think I ever said it as strongly as I'm saying it now; don't think I ever used those words.

ET: Reads false statement para 5: "FIG did not know whether or the extent to which Rep of Turk involved in project"; is that the basis of the false statement; the stuff we just discussed?

M: Yes.

ET: Anything else that would make this a false statement?

M: I don't think so.

BVG: To clarify; if there is maybe a question that we didn't ask, please flag.

M: I told this to you the other day, I don't go over the FARA filing with Bijan at all. I don't know if that makes any difference to you all. But it wasn't ... learn a lot of things in hindsight. Would it have adjusted what I, how I stated, how I filled out, can't say that it may have adjusted what I filled out; can't say it would or would not have.

ET: Just asking that what I learned from you is the basis for the false statement. So in terms of op-ed, was written because there wasn't any deliverables yet under the project.

M: I said there was previous discussions about the op-ed for the project.

ET: But you and Bijan did not previously discuss this specific op-ed and you did not see the draft of the op-ed a head of time.

M: That's right.

ET: Here is an email. Is this the first time you saw this?

M: Think maybe I saw it directly from Bijan. Remember receiving the op-ed from Bijan; not sure if this is the email.

BVG: Do not remember drafting?



M: No.

BVG: Do not remember doing any specific brainstorming about this op-ed?

M: No.

ET: "Op-ed written in the Hill was his own .. ." Is that basis of statement?

M: Yes.

ET: All work was about Gulen, all meetings about Gulen. No meetings with business community to help business community. Basis of the statement?

M: Don't follow your question. [Reads para. 5.b.]

ET: Are the facts that all work was focused on Gulen, was that reason for false statement?

BVG: key word is FOCUS. Was it false to say that FOCUS was on business community?

M: Yes, that's false. At this point, focus was on Gulen.

ET: Did ever tell Covington attorneys that there were two separate projects involving Turkey?

M: No. Not aware of two separate projects. At that time I was not aware of two separate projects.

G: What we're getting at is the essential facts are

ET: Like to tell you what questions going to ask.

R: Explain what it's going to look like.

G: Explains GJ process.

ET: Tell you what questions are:

1. State name and spell
2. How employed
3. What job retire from
4. Also worked in private sector
5. Involved in Flynn intel Group
6. When was FIG created
7. Still in existence
8. When FIG ceased operations
9. Who was FIG Vice Chairman
10. What did Bijan do

11. Aware of Project FIG involved with Turkey
12. How did you first become aware
13. What stage was project at when Bijan first approached
14. Who if anyone Bijan told you he'd already spoken to about it
15. Who is Ekim
16. Before project, what relationship if any did Bijan have with Ekim
17. How did they know each other
18. What comms if any are you of Bijan having with Ekim about project
19. How did you know those convos took place
20. During what time period was this
21. How often comms
22. What methods used to communicate Bijan / Ekim
23. During initial convo with Bijan about project what was focal point of project
24. Did that focal point change at any point during the project?
  - a. Initial focus was business community -
25. Focal point for the work done for the project
26. What work if any done about researching state of biz climate in turkey
27. What meetings done with biz groups
28. What work about investments in Turkey
29. What work done to improve biz climate in Turkey for US/foreign businesses
30. Ever heard country of Israel mentioned
31. Ever heard that country of Israel would benefit from project
32. During project what doing day to day in life?
33. When began traveling with Trump?
34. For how long travel with him?
35. Who was manager of project within FIG?
  - a. Initially Bijan and then would assign Mike Boston as lead
36. Change to: Who oversaw FIG's work on the project.

[BVG: What doing WRT your book at this time? M: Multiple engagements regarding book signing. Also had LLC activities involved in. Combo of activities involved in.]

37. Who at FIG was the most knowledgeable about the project?
  - a. Bijan had fingerprints all over it; in Comms
38. What foreign govs if any were involved in the project?
39. How was the government of Turkey involved?
40. Who was intended beneficiary of the project?
41. What officials of gov of turkey were involved, to your knowledge
42. Whether Turkish gov officials provided some direction on the project
43. Who at FIG if anyone discussed the involvement of Turkish gov officials with you
  - a. Bijan
44. Do you recall anyone bragging about high-level officials in the project?
45. G: From the beginning to the end? M: Yes pretty much. G: On weekly telephone calls, he continued to relay that officials were satisfied. M: Yes. G: That was basically the purpose of the weekly calls, right? G: That's what I viewed those weekly calls as; brief

Ekim so he could update Turkish officials. He'd give us feedback on those conversations with government officials. That interaction was clear to me that keeping not only us informed, but Turkish officials.

46. Questions on funding:
47. Originally what was planned source of funding for project
48. How do you know that
49. Whether that planned source of funding changed
50. what was new source of funding for the project
51. Where was Inovo incorporated / based
52. When the source of funding changed, what else about the project changed?
53. How did the scope of the project changed
54. FIG's role changed?
55. Timeline changed?
56. Whether before or after heard anything about FIG performing separate project w/ gov of Turkey?
57. Separate project with Ekim? Inovo? About radical Islam?
58. Anything about FIG refunding money for Ekim for PR / lobbying?
59. FIG refunding money to anyone ICW the project?
60. Did you become aware of two payments of 40 k to Inovo
61. Whether those payments were refunds for lobbying / PR or refunds for anything?
62. NYC meetgin - aware of meeting?
63. Related to Turkey project?
64. Who attended that meeting?
65. Who set up the meeting?
66. Do you recall having met Ekim prior to the meeting?
67. Purpose of the meeting - Whether purpose of the meeting was to demonstrate FIG's capabilities to Turkish Government officials
  - a. Introduce leadership team and provide update
68. What potential additional business was discussed at the meeting?
69. Who did most of the talking at the meeting?
70. What focus of convo was?
71. Goal was of the Turkish officials regarding Gulen
72. What deliverables if any as part of project were discussed?
  - a. ET: At that meeting were Congressional hearings discussed? not aware
  - b. ET: Op-eds? Not aware
  - c. M:
73. Conversations about deliverables for the project at FIG?
  - a. Types of conversations about what we could do. Him driving the video, Gulenopolgy game, op-eds that we could write. Don't recall engaging Congress as a specific thing. May have talked about it in a general sense.
74. Update calls
75. After meeting on 19th any convos with Ekim?
76. How often?
77. Who else from FIG participated?
78. What was subject matter of work FIG provided on projects?
79. Working on other issues other than Gulen on the project?

80. What did Ekim saying he was doing with information?
81. Which Turkish gov officials was he passing the officials?
- a. Engaged with MOFA, previous individuals whom he was talking with; Economy, mentioned Prime Minister's awareness
  - b. ET: Reads Oct 22 - text, walked him through . . . brings up discussing with Minister of Foreign Affairs.
82. What feedback if any receive during these calls?
83. From whom was the feedback?
84. How did you know that?
85. Other than participating in these calls, what work did he provide on the project?
- a. M: Provided advice on assistance on how to negotiate with the Turkish government
86. What contacts if any between FIG and professional staffers on the project?
- a. At time, not aware had contact with congressional staffers. As I sit here now, know that Homeland Security senior staffer -- Miley or something like that.
87. Briefly described the circumstances of those contacts
88. GOING TO SKIP CONGRESSIONAL STAFFER QUESTIONS
89. What op-eds if any were published as part of the project?
90. Give op-ed; do you recognize, where was it published, when was it published, title, whose name listed as the author, how did first find out op-ed was in the works
91. Conversations if any had about writing this op-ed before receiving email with draft attached
92. What Bijan said to you if anything about why he drafted the op-ed.
- a. M: Had discussions about writing this op-ed as a product for this project
  - b. ET: Was it drafted because no other deliverables had been produced on the Turkey project at that point? Know that had discussed them as a product.
93. Why published when it was published?
- a. M: Thought it might have a great impact. Could get it published beforehand because of the environment. Felt like it was going to be easier to get it published before.
  - b. ET: Also true that thought it would have greater impact? M: Yes, would get wider readership.
  - c. ET: Is that because of your high-profile during election?
94. G: Ask about initial LDA. Two particular statements, Robert Kelley being the lobbyist and the other being the purpose of the lobbying being these two senate and house bills.
- a. M: Took it at face value.

Contact info:

95. G: 571-289-3625

96. ET: 202-598-5315

<p style="text-align: center;"><b><u>ALLEGED FALSE STATEMENT #1:</u></b></p> <p style="text-align: center;"><b>FLYNN INTEL GROUP, INC. DID NOT KNOW WHETHER OR TO THE EXTENT TO WHICH THE REPUBLIC OF TURKEY WAS INVOLVED WITH ITS RETENTION BY INOVO FOR THE THREE-MONTH PROJECT</b></p>	
<p><b>Actual FARA Filing 03/07/17</b></p>	<p>Flynn Intel Group does not know whether or the extent to which the Republic of Turkey was involved with its retention by Inovo for the three-month project. Flynn Intel Group is aware that Mr. Alptekin consulted with officials of the Republic of Turkey regarding potential work by Flynn Intel Group, and Mr. Alptekin introduced officials of the Republic of Turkey to Flynn Intel Group officials at a meeting on September 19, 2016, in New York.</p>
<p><b>Prosecution Statement of Offense 12/01/17</b></p>	<p>“FIG did not know whether or to the extent to which the Republic of Turkey was involved in the Turkey project”</p>
<p><b>Government Sentencing Memorandum 01/07/2020</b></p>	<p>“The filings affirmatively stated that FIG did not know whether or the extent to which the Republic of Turkey was involved in the Turkey project.”</p>
<p><b>FACTS:</b></p>	<p>The government excised the language “with its retention by Inovo for the three-month project”.</p>

**ALLEGED FALSE STATEMENT #2:****THE CONTRACT WAS FOCUSED ON IMPROVING U.S. BUSINESS ORGANIZATIONS' CONFIDENCE REGARDING DOING BUSINESS IN TURKEY**

<b>Actual FARA Filing 03/07/17</b>	In August 2016, Flynn Intel Group entered into a contract with Inovo, a consulting firm based in the Netherlands. The contract provided that Flynn Intel Group would perform research, engage a public relations firm and a filming and production crew to potentially distribute the results of its research, and hold weekly calls with the client to discuss progress on the project. Flynn Intel Group understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey, particularly with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity. Inovo has represented, through its counsel, that no part of the fees paid to Flynn Intel Group by Inovo was provided by any foreign government.
<b>Prosecution Statement of Offense 12/01/17</b>	"[T]he Turkey project was focused on improving U.S. business organizations' confidence regarding doing business in Turkey"
<b>Government Sentencing Memorandum 01/07/2020</b>	"The filings affirmatively stated that FIG 'understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey."
<b>FACTS:</b>	<p>"The government omits "particularity with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity."</p> <p>See ECF No. 150-5 at 4 and 150-6 at 2 (Kelner 302s); ECF No. 98-3 at Ex. 7 (Entitled Statement of the Problem "How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gulen cult in the United States"); ECF No. 98-3 at Ex. 8 and Ex. 8-A (Covington Feb. 22, 2017 Notes: Commercial Activity → Crystallized → Gulen).</p>

**ALLEGED FALSE STATEMENT #3:**

**AN OP-ED BY FLYNN PUBLISHED IN *THE HILL* ON NOVEMBER 8, 2016, WAS WRITTEN AT HIS OWN INITIATIVE**

<b>Actual FARA Filing</b> <b>03/07/17</b>	<p>13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits your foreign principal(s)?    Yes <input checked="" type="checkbox"/>    No <input type="checkbox"/></p> <p>If yes, describe fully.</p> <p>Because of its expertise, Flynn Intel Group officials frequently write, speak, and give interviews on issues related to national security. Although not undertaken at the direction or control of a foreign principal, it is possible that such activities may have an indirect benefit to a principal. On his own initiative, Michael T. Flynn published an op-ed in <i>The Hill</i> on November 8, 2016, that related to the same subject matters as the Flynn Intel Group work for Inovo BV. Neither Inovo BV, nor any other person requested or directed publication of the op-ed.</p>
<b>Prosecution Statement of Offense 12/01/17</b>	<p>“[A]n op-ed by Flynn published in <i>The Hill</i> on November 8, 2016, was written at his own initiative”</p>
<b>Government Sentencing Memorandum 01/07/2020</b>	<p>“The filings affirmatively stated that the defendant published the op-ed “on his own initiative;” and it was not undertaken at the direction or control of a foreign principal.”</p>
<b>FACTS:</b>	<p>“RAFIEKIAN worked with an editor, Hank COX, to write the op-ed on GULEN.” ECF No. 150-5 at 7.</p> <p>“FLYNN informed SMITH it was his idea to write an op-ed. However RAFIEKIAN, wrote the first draft of the op-ed about GULEN.” ECF No. 150-5 at 7.</p> <p>ECF No. 98-3 at Ex. 8 and Ex. 8-A (“Push for placement of article was for campaign reasons. (fighting until the end to show that Trump campaign was serious on fighting Islamic extremism).”).</p>



**ALLEGED FALSE STATEMENT #4:****FAILURE TO STATE TURKISH OFFICIALS PROVIDED DIRECTION OR CONTROL OVER PROJECT**

<b>Actual FARA Filing 3/07/17</b>	No statement
<b>Prosecution Statement of Offense 12/01/17</b>	Alleges FARA filing is false:  “by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project”
<b>Government Sentencing Memorandum 01/07/2020</b>	The FARA filing DOES NOT contain any statement asserting that the Republic of Turkey provided supervision and direction over the contract/project at issue.
<b>FACTS:</b>	<p><i>See</i> Judge Trenga’s Memorandum Opinion, <i>United States v. Rafiekian</i>, Case No. 1:18-CR-00457-AJT, ECF No. 372 at 30, “There is no evidence, not even in the hearsay statements from Alptekin to Rafiekian, that Alptekin, Inovo, or anyone associated with the Turkish government directed or controlled the work performed by FIG or Sphere personnel.”</p> <p>During that meeting [in New York with the Turkish Officials], there was no discussion concerning any work that FIG was doing or of FIG's relationship with Inovo or the Turkish government, nor was there any request from the Turkish officials or Alptekin for FIG to do anything. See Ex. 10 (McCauley <i>Rafiekian</i> testimony).</p> <p><i>See</i> Judge Trenga’s Memorandum Opinion, <i>United States v. Rafiekian</i>, Case No. 1:18-CR-00457-AJT, ECF No. 372 at 8, “Alptekin was not pleased with the scope or substance of what was presented to him, which included a presentation by McCauley summarizing the findings of the investigation into Gulen and a mockup of the Gulenopoly board game conceived by Sphere.”</p>

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:18-cr-00457  
4 Plaintiff, )  
5 v. ) Alexandria, Virginia  
6 BIJAN RAFIEKIAN, ) July 17, 2019  
7 Defendant. ) 9:04 a.m.  
8 ) Day 3 (AM Session)  
9 ) Pages 364 - 515

9 TRANSCRIPT OF TRIAL  
10 BEFORE THE HONORABLE ANTHONY J. TRENGA  
11 UNITED STATES DISTRICT COURT JUDGE  
12 AND A JURY  
13  
14  
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24

25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

McCauley - Direct

1 have.

2 THE COURT: All right. May the witness be  
3 excused?

4 MR. GIBBS: He may be, Judge. Thank you.

5 THE COURT: All right. Mr. Smith, you're  
6 excused. Do not discuss your testimony outside of the  
7 courtroom with any other witness.

8 THE WITNESS: Thank you, Your Honor.

9 (The witness stands aside.)

10 THE COURT: The government will call its next  
11 witness.

12 MR. TURGEON: The United States calls Brian  
13 McCauley.

14 THE COURT: Mr. McCauley will come forward.

15 BRIAN MCCAULEY, PLAINTIFF'S WITNESS, AFFIRMED

16 DIRECT EXAMINATION

17 BY MR. TURGEON:

18 Q Could you please tell us your name.

19 A My name is Brian McCauley.

20 Q What is your current occupation?

21 A I'm currently retired.

22 Q What did you do before you were retired?

23 A I was a deputy assistant director with the FBI.

24 Q When did you work at the FBI?

25 A I worked at the FBI from 1997 until I retired in

McCauley - Direct

1 A It was very brief. And Bijan introduced me to  
2 Alptekin and said: This is Brian McCauley. He'll be  
3 helping out on this project.

4 Q Did you and Alptekin have any conversations at  
5 that time?

6 A No, sir.

7 Q After Alptekin left, did you and the defendant  
8 have any discussions?

9 A Yes, sir, we did.

10 Q What did you talk about?

11 A A possible trip to New York to meet with some  
12 Turkish officials.

13 Q Did the defendant tell you anything about that  
14 planned meeting in New York City?

15 A No.

16 Q Did he say with whom you'd be meeting?

17 A Just -- at that point, it was just Turkish  
18 officials.

19 Q Did the defendant say who organized the meeting in  
20 New York City with the Turkish government officials?

21 A Sure. I believe it was Ekim Alptekin, but I  
22 just -- I don't remember seeing it coming out of his  
23 mouth and hearing it.

24 Q Did you eventually attend a meeting in New York  
25 City with Turkish government officials?

McCauley - Direct

1 A Yes, sir, I did.

2 Q Sir, could you please turn to Exhibit -- take a  
3 look at Government Exhibit 2B.

4 A Yes.

5 Q Who is sitting on the right side in that  
6 photograph?

7 A That would be Ekim Alptekin.

8 Q And who is sitting on the left side in that  
9 photograph?

10 A That would be the Turkish foreign minister.

11 MR. TURGEON: Your Honor, at this time, we'd  
12 move Government Exhibit 2B into evidence.

13 THE COURT: Any objection?

14 MR. TROUT: No objection.

15 THE COURT: 2B is admitted.

16 MR. TURGEON: Could we publish that to the  
17 jury?

18 THE COURT: Yes.

19 MR. TURGEON: Thank you.

20 BY MR. TURGEON:

21 Q Did the defendant offer you any compensation for  
22 attending the New York meeting?

23 A Yes.

24 Q How much did he offer you?

25 A My daily rate of \$5,000.

McCauley - Direct

1 officials?

2 A Yes. He was going to meet with or have lunch with  
3 Ekim.

4 Q Do you know if that lunch meeting took place?

5 A No, sir, I don't.

6 Q Around what time of day did you and the defendant  
7 arrive in New York City?

8 A Approximately noontime.

9 Q And what time of day was the meeting with the  
10 Turkish government officials scheduled for?

11 A It was later that night at approximately  
12 10:00 p.m.

13 Q And where in New York City did that meeting take  
14 place?

15 A It took place at the Helmsley Hotel.

16 Q I just want to make sure you've said what time of  
17 day was that meeting.

18 A It was evening. It was about 10:00 p.m.

19 Q Who was at that meeting?

20 A At that meeting, it was Bijan. It was General  
21 Flynn. It was James Woolsey. It was myself, the  
22 Turkish -- Ekim, the Turkish foreign minister, the  
23 minister of energy from Turkey -- that was Erdogan's  
24 son-in-law -- and the translator.

25 Q Now, how do you know that the Turkish minister of

McCauley - Direct

1 Q And for the Turkish side, who sat across from  
2 those folks?

3 A On the Turkish side, from left to right, across  
4 from Bijan, it was Ekim Alptekin. Across from General  
5 Flynn, it was the foreign minister, the Turkish foreign  
6 minister. Across from Jim Woolsey, it was the minister  
7 of energy, Erdogan's son-in-law, and across from me was  
8 the translator.

9 Q Now, at the meeting, did anyone use the  
10 translator?

11 A No, sir.

12 Q After sitting down, how did the meeting begin?

13 A Introductions starting with Bijan, General Flynn,  
14 Jim Woolsey, and myself, and then it went down to the  
15 Turkish side.

16 Q And after those introductions, how did the meeting  
17 begin?

18 A I remember the foreign minister wished General  
19 Flynn and Trump good luck in the election and that he  
20 hoped that the Turkish government would be working  
21 close with the new administration, whoever it is.

22 Q Did the foreign minister say anything else?

23 A Yes. He brought up the subject of Fethullah  
24 Gulen.

25 Q And what was his focus at the meeting?



McCauley - Direct

1 MR. TROUT: Objection, Your Honor. I ask  
2 that he ask what he said.

3 THE COURT: Well, instead of asking that  
4 characterization, why don't you ask what people  
5 actually said.

6 MR. TURGEON: Yes. Thank you, Your Honor.

7 BY MR. TURGEON:

8 Q What did the foreign minister say at that meeting?

9 A The foreign minister said that he was concerned  
10 that they had a terrorist living in the U.S., and they  
11 considered Gulen, Fethullah Gulen, the Osama bin Laden  
12 of Turkey.

13 Q Now, what language was the foreign minister  
14 speaking?

15 A English.

16 Q How would you describe his English language  
17 skills?

18 A Fine. I could hear him. I understood him  
19 perfectly.

20 Q Did the foreign minister say anything about the  
21 attempted coup in Turkey?

22 A Yes, he did. He believed that Gulen was  
23 responsible for the attempted coup in Turkey.

24 Q Did he say anything about what the Turkish  
25 government wanted done about Gulen?

McCauley - Direct

1 A He brought up that they would like to have him  
2 tried -- charged and tried in Turkey.

3 Q Did you say anything at the meeting?

4 A Yes, I did. Towards the end of the meeting -- the  
5 meeting lasted 25 minutes -- I did say that if, in  
6 fact, Fethullah Gulen is a terrorist and we found him  
7 violating U.S. law, he would be charged and possibly  
8 deported, but it would be U.S. law.

9 Q What topics were discussed at that meeting other  
10 than Gulen?

11 A Sir, I can't think of any.

12 Q How long did that meeting last?

13 A That meeting lasted approximately 25 to  
14 30 minutes.

15 Q And what happened at the end of the meeting?

16 A Exchange of cards, a handshake, and that was about  
17 it.

18 Q By cards, do you mean business cards?

19 A Business cards, yes, sir. Sorry.

20 Q Did you leave the meeting with anyone?

21 A I left the meeting with Bijan and General Flynn.

22 Q Where did you go?

23 A We went back to the hotel.

24 Q When you got back to the hotel, did you and the  
25 defendant discuss the Gulen project?

McCauley - Direct

1 Q How did that conversation come about?

2 A Bijan called me on the phone and asked me if I  
3 could come into the office.

4 Q And did you go into the office?

5 A Yes, sir, I did.

6 Q And when you got there, what did the defendant  
7 say?

8 A The defendant said that we got the contract.

9 Q Did he say anything about how or why FIG got the  
10 contract?

11 A No, sir.

12 Q What happened next during that meeting?

13 A As I came into the office, Bijan's office, he was  
14 coming out of General Flynn's office. And he said:  
15 Brian, we got the contract.

16 He also mentioned that I was to build a team of  
17 investigative -- retired agents, investigators to build  
18 my team.

19 Q Did the defendant say anything else to you after  
20 coming out of General Flynn's office?

21 A He did.

22 Q What did he say?

23 A He said: Brian, the General wants me to file with  
24 DOJ.

25 He said: But -- and he used his finger. He

McCauley - Direct

1 pointed up. He said; but I have a better idea to file  
2 with -- it was either commerce or Congress.

3 Q Please describe for the jury how the defendant  
4 acted when he said that to you.

5 A He was excited.

6 MR. TROUT: Objection. Your Honor, I'm  
7 sorry. Objection, describing how he acted.

8 THE COURT: Overruled. You can describe his  
9 reaction.

10 MR. TURGEON: Thank you.

11 BY MR. TURGEON:

12 Q Can you please describe the defendant's reaction  
13 or how the defendant acted when he said that to you?

14 A He was very happy, very pleased, excited that we  
15 got this contract.

16 Q Now, what did he say about keeping the project  
17 under the radar?

18 MR. TROUT: Objection, Your Honor.

19 THE COURT: I'm sorry. There's been no  
20 testimony of that.

21 MR. TURGEON: I apologize, Your Honor. I  
22 apologize, Your Honor.

23 BY MR. TURGEON:

24 Q When the defendant came out of General Flynn's  
25 office, do you recall him saying anything else?

McCauley - Direct

1 A Yes. He said: Brian, the General wants me to  
2 file with DOJ.

3 He said: But to keep it under the radar, we'll  
4 file with -- it was either commerce or Congress.

5 Q Did the defendant say why he wanted to keep the  
6 project under the radar?

7 A Not during that conversation.

8 Q Did he ever say anything about that to you?

9 A Yes, he did.

10 Q What did he say?

11 A The purpose of keeping it under the radar was to  
12 avoid detection by Tony Podesta and other members of  
13 Congress who were favorable to Gulen.

14 Q And when was that conversation?

15 A That was a follow-on conversation. I'm not sure  
16 how many days or weeks after.

17 Q Now, what did you say in response to the defendant  
18 saying that he was going to file this other way?

19 A When he told me he was not going to follow General  
20 Flynn's direction and file with DOJ -- excuse my  
21 language, ladies -- I told him: I wouldn't fuck around  
22 with that.

23 Q Why did you say that?

24 A Because I know coming from my previous -- my past  
25 that when you file -- when you work with foreign

McCauley - Direct

1           Could we publish that to the jury, please?

2           THE COURT: Yes.

3 BY MR. TURGEON:

4 Q       Do you see where General Flynn refers to the FM?

5 A       Yes.

6 Q       Who is the FM?

7 A       Foreign minister.

8 Q       How do you know that FM refers to the foreign  
9 minister?

10 A       Again, going back to my previous job, I would meet  
11 with ministers. Prime minister would be PM; FM,  
12 foreign minister; and minister of defense, MD.

13 Q       And who is RA?

14 A       RA is -- it's Robert or Richard Amsterdam. I  
15 believe it's Robert Amsterdam.

16 Q       How do you know that?

17 A       I found out just in discussions with Tom Neer, as  
18 well as Bijan.

19 Q       So after the New York City meeting, did you ever  
20 meet with Alptekin in person again?

21 A       Yes, we did.

22 Q       What was the purpose of that meeting?

23 A       That was to provide him the final -- our 6 weeks,  
24 45 days was up. We were going to provide him the final  
25 product of what we had come up with at that point.

McCauley - Direct

1 page to the jury?

2 THE COURT: Yes.

3 MR. TURGEON: Thank you.

4 BY MR. TURGEON:

5 Q How did you present this report to Alptekin?

6 A I summarized the report. I gave him a verbal  
7 assessment, and I told him what we had found out is  
8 that there's potentially fraud going on with human  
9 trafficking, immigration fraud, visa fraud, but also  
10 fraud against the United States government in the sum  
11 of \$500 million a year.

12 Q How did Alptekin react to this written report?

13 A He was not dismissive towards me the way he was  
14 with Mike Boston, but he responded: I know this.

15 He said: I'm looking for dirt.

16 Q Did he say anything about how he knew this?

17 A No, sir, I don't remember him saying that.

18 Q Did Alptekin take the report with him when he  
19 left?

20 A No, he didn't. He left it on the table.

21 Q Now, did Alptekin say anything in that meeting  
22 about what he wanted?

23 A He said he wanted dirt, and then he said: Can't  
24 you plant dirt?

25 And I said: No, we cannot.

McCauley - Cross

1 Q Okay. But there was no request from any Turkish  
2 official for Flynn Intel Group to do anything?

3 A No, sir.

4 Q As you've reflected on the meeting, it occurred to  
5 you or it seemed to you that this was simply a meeting  
6 that Mr. Alptekin had set up in order to be able to  
7 demonstrate that he could bring -- to demonstrate to  
8 these Turkish officials that he could bring some big  
9 shots to the meeting, correct?

10 A I felt that it was Alptekin and Bijan. They were  
11 both measuring up, seeing what they could bring to the  
12 table. Yes, sir.

13 Q Now, you mentioned in your testimony that there  
14 were a couple of occasions where Mr. Alptekin conveyed  
15 requests to Flynn Intel Group as part of the work that  
16 it was doing for Mr. Alptekin, correct?

17 A Yes, sir.

18 Q On one of those occasions, you said that he wanted  
19 surveillance, correct?

20 A Yes, sir.

21 Q This was surveillance of Gulenists in the District  
22 of Columbia?

23 A Yes, sir.

24 Q And he wanted some sort of audio surveillance as  
25 well, correct?



McCauley - Cross

- 1 A Yes, sir.
- 2 Q And then you basically told him, You're not doing
- 3 that?
- 4 A I believe I told him: You watch too many movies.
- 5 We don't do that.
- 6 Q In fact, you never did any surveillance, correct?
- 7 A No, sir, I did not.
- 8 Q You also indicated in another conversation he
- 9 wanted dirt on Gulen?
- 10 A He mentioned that several times.
- 11 Q All right. He wanted to be able to show that he
- 12 was a terrorist, correct?
- 13 A Yes, sir.
- 14 Q That's what he wanted you-all to do?
- 15 A Right. Correct.
- 16 Q And you told him you don't do that?
- 17 A We don't do that. FIG doesn't do that. Only the
- 18 FBI does that.
- 19 Q All right. And you didn't do that, correct?
- 20 A Correct, sir.
- 21 Q And he also met with you on November 2, 2016; is
- 22 that correct? That was the meeting that you described
- 23 where he was dismissive of Mike Boston and his work?
- 24 A Sir, I don't -- I'm not sure if it was November 2.
- 25 I know the report said November 2, but I do remember it

McCauley - Cross

1 was the day before the election. So whatever date that  
2 was.

3 Q All right. In any event, you're at a meeting  
4 before the election where he attended?

5 A Yes, sir.

6 Q At that meeting, he said that he wanted something  
7 more. He wanted -- what did he want at that meeting?

8 A I need more than this. I need dirt.

9 Then he said he was kidding. He said: Plant  
10 dirt.

11 I said: We don't do that.

12 Q And he said he was kidding?

13 A Yes, he did say he was kidding.

14 Q In fact, you didn't do anything as a result of any  
15 request that he made at that meeting, correct?

16 A No, sir, we didn't.

17 Q Do you recall any other request that he made of  
18 you that we have not discussed?

19 A No, sir.

20 Q So every request that he made of you in your  
21 presence, you basically rejected, correct?

22 A Correct, yes, sir.

23 MR. TROUT: One moment, Your Honor.

24 (Counsel confer.)

25 MR. TROUT: I have no further questions.

1 into evidence now.

2 THE COURT: All right.

3 MR. MacDOUGALL: Thank you, Your Honor.

4 THE COURT: Any objections?

5 MR. MacDOUGALL: This is Defense 102.

6 THE COURT: Right.

7 MR. MacDOUGALL: This, this is Ms. Langton's e-mail  
8 that had all the attachments with it. We're just moving in 102  
9 that talks about -- that we discussed yesterday.

10 THE COURT: All right. Without objection, Defense  
11 Exhibit 102 will be admitted.

12 (Defendant's Exhibit No. 102 was received in  
13 evidence.)

14 THE COURT: Anything else?

15 MR. GILLIS: No, Your Honor, thank you.

16 THE COURT: All right. We'll convene at 9:00  
17 tomorrow morning.

18 MR. GILLIS: Thank you, Your Honor.

19 (Recess from 5:36 p.m., until 9:00 a.m., July 18,  
20 2019.)

21 CERTIFICATE OF THE REPORTER

22 I certify that the foregoing is a correct transcript of  
23 the record of proceedings in the above-entitled matter.

24

25

\_\_\_\_\_  
/s/  
Anneliese J. Thomson