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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
)	July 18, 2019
BIJAN RAFIEKIAN,)	9:00 a.m.
)	
Defendant.)	Day 4 (AM Session)
)	Pages 659 - 799

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE
AND A JURY

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

United States v. Rafiekian

R. Kelley - Direct 856

1 Q. Did you have a role with the Nowruz Commission?

2 A. I was secretary general. I was -- I attended the board

3 meetings, but I was not on the board.

4 Q. Did you provide legal services at all for the Nowruz

5 Commission?

6 A. No.

7 Q. And Mr. Rafiekian, did he have a role in it as well?

8 A. Yes, he was the vice chairman.

9 Q. And did there come a time -- again, we're talking about

10 the second half of 2016 -- when Mr. Rafiekian contacted you

11 about a legal matter?

12 A. Yes.

13 Q. Do you recall about when that happened?

14 A. It was in the first week of September 2016.

15 Q. And do you recall how he contacted you? In telephone?

16 In person?

17 A. Yes, telephone. He telephoned me. And he knew my number

18 from -- it was a friend.

19 Q. And what did you understand him to be interested in legal

20 advice about?

21 A. He said that we have to register at FARA, the Justice

22 Department Foreign Agents Registration Act. And if you could

23 come out, he said, to assist me with the registration.

24 Q. When you say "we," was he talking about a particular

25 business company?

United States v. Rafiekian

R. Kelley - Direct

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1 A. I don't know. I don't know.

2 Q. Okay.

3 A. It was Flynn Intelligence Group, I think.

4 Q. Okay. And what did you know about the Flynn Intel Group
5 at the time when Mr. Rafiekian --

6 A. I don't know anything about him.

7 Q. You just knew --

8 A. At the time.

9 Q. Okay. And what did you learn in your initial discussion
10 with Mr. Rafiekian about the Flynn Intel Group and what he was
11 interested in?

12 A. Well, I -- I assumed that I was not a part of the Flynn
13 Intelligence Group and I should steer away from -- I didn't --
14 did not want to pry about how much the money they're making
15 or -- it was a client.

16 Q. And when Mr. Rafiekian contacted you, how specific was he
17 in describing the issue?

18 A. He said that I have to -- the firm has to register at the
19 Foreign Agents Registration Act.

20 Q. And following this initial contact, did there come a time
21 when a meeting took place?

22 A. Sunday afternoon -- or in early September.

23 Q. Do you recall where that was?

24 A. In his house.

25 Q. Was anyone else present?

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United States v. Rafiekian

R. Kelley - Direct

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1 A. No.

2 Q. And did you gather further information at that meeting at
3 Mr. Rafiekian's home?

4 A. No. I said that I was -- is it a foreign government or a
5 foreign political party, and he said, no, it's a private
6 company.

7 And I said, You don't have to register at FARA. You
8 can register at LD -- Lobbying Disclosure Act in the Congress.

9 Q. About how many times in your career had you had a client
10 in some fashion inquire or led you to discuss with them the
11 Foreign Agents Registration Act versus the LDA?

12 A. About 30 times.

13 Q. Thirty times.

14 A. I represented -- at the Law Office of John Sears, I
15 represented South Africa and Belize Ambique and Japan Airlines
16 and Japan automobile manufacturers. And I filed for both of
17 them, all of them, four of them, every six months for ten
18 years.

19 Q. You mentioned a minute ago, is there a common alternative
20 to the Foreign Agents Registration Act, FARA?

21 A. There's the Lobbying Disclosure Act. The Foreign Agents
22 Registration Act was passed in 1938 by Congress and signed
23 into law by F.D.R. And it was a disclosures statute and you
24 can do anything you want, but you have to disclose it to the
25 government and to the American people. The public records are

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1 on file.

2 And in 1995, the -- the Congress passed the Lobbying
3 Disclosure Act, which removed a class of lobbyists for the
4 governments and foreign governments and foreign political
5 parties.

6 Q. Under what circumstances in your practice did you
7 typically advise a client to file under the LDA versus FARA?

8 A. I didn't. I made the decision in 1993 to register at
9 FARA -- oh, LDA, Lobbying Disclosure Act, for the Japanese
10 automobile manufacturers because I was lobbying and I fell
11 under the statute.

12 Q. Let's go back to the day you met with Mr. Rafiekian at
13 his home.

14 What -- did you learn anything that led you to reach
15 a conclusion about whether FARA or the LDA was the proper
16 place to register?

17 A. Yeah. I said that the -- it was a -- I asked the
18 question: Is it a foreign government or foreign political
19 party?

20 And they said no -- and he said, no, it was a
21 private company.

22 And I said, You don't have to register at Foreign
23 Agents Registration Act. You can register in the U.S.
24 Congress.

25 And I asked him, Will lobbying be involved?

1 And I said -- he said, It might.

2 And I said, You can register at Lobbying Disclosure
3 Act.

4 Q. Why is the fact that the contract was with a private
5 company an important consideration for you?

6 A. Well, the 1995 act removed a class of lobbyists who are
7 representing a foreign company and -- or the private company
8 altogether, American companies, and they didn't have to
9 register at FARA.

10 Q. And you testified a few minutes ago that Mr. Rafiekian in
11 his initial contact with you said, I need to register with
12 FARA.

13 Is that a fair summary?

14 A. Yes.

15 Q. And what was it that made you steer --

16 A. It was a private company and it didn't have to register
17 at -- he didn't have to register at FARA.

18 Q. Was that the advice you gave Mr. Rafiekian?

19 A. Yes.

20 Q. About how soon after this meeting with Mr. Rafiekian do
21 you recall you filed the Lobbying Disclosure Act registration?

22 A. I think it was in September or a couple weeks afterwards.

23 Q. Where did you find -- how did you gather the information
24 that you used to fill out the form?

25 A. I knew how to fill out the form.

United States v. Rafiekian

R. Kelley - Direct 861

1 Q. Where did you gather the factual information that you
2 entered?

3 A. Oh, I called -- I asked Bijan what was the address of the
4 private company, and he said it was the Netherlands and he
5 gave me his address and I wrote it down. And so the client
6 was a Dutch company.

7 Q. Do you recall the name of the company?

8 A. Inovo.

9 MR. MACDOUGALL: Your Honor, to avoid having
10 competing exhibits, I would like to use the government's
11 exhibits with this witness.

12 THE COURT: That's fine.

13 MR. GIBBS: No objection, Judge.

14 BY MR. MACDOUGALL:

15 Q. Mr. Kelley, I would like you to please have a look at
16 what's been previously marked as Government Exhibit 166. And
17 that's just for identification right now.

18 Thank you, Mr. Burns.

19 A. 166.

20 Q. Yes, sir.

21 A. I've got it, I think. It's the lobbying registration --
22 Lobbying Registration Act, Government Exhibit 166.

23 Q. Okay. Could you tell the jury or tell the Court if you
24 recognize this document?

25 A. Yes.

United States v. Rafiekian

R. Kelley - Direct

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1 Q. And if you'd just repeat, please, what it is.

2 A. The lobbying registration. It's LDA -- LD-1 disclosure
3 form. It says it at the top.

4 Q. Did you prepare this yourself?

5 A. Yes.

6 Q. Do you recall about what date?

7 A. Something -- I remember in late September.

8 Q. Did anyone help you do this or did you do this yourself?

9 A. I used an intern, Sam Soberie (ph), who is the -- is
10 sitting at the front desk, and later he was a paralegal or
11 something.

12 Q. Is it at your law firm?

13 A. Yeah.

14 Q. Okay. So it was a paralegal or intern at your law firm?

15 A. Yeah.

16 Q. Okay. And where did you file this form once you
17 completed it for Flynn Intel Group?

18 A. The clerk of the Senate or the -- the Senate -- Secretary
19 of the Senate and the clerk of the House. It was filed
20 online. It was different than earlier when I went to the
21 Japanese Automobile Manufacturers Association and I -- they
22 didn't have it online and it was a clerk of the House, and it
23 was papers everywhere.

24 Q. So you filed this online and I take it you affixed your
25 signature electronically as well; is that right?

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1 A. Yes.

2 MR. MACDOUGALL: Your Honor, the defense would move
3 the admission of Government Exhibit 166.

4 THE COURT: I believe it's already in.

5 MR. GIBBS: Yeah. And there will be no objection.
6 But I think it is, and just to confirm that, but if it's not
7 in, we have no objection.

8 THE COURT: All right. Exhibit 166 is in.

9 THE WITNESS: There should be a second page to this.
10 There's only one page. My digital signature is on the other
11 side of -- oh, here.

12 BY MR. MACDOUGALL:

13 Q. Do you have the entire document, Mr. Kelley?

14 A. Yes. I took it out of the plastic.

15 Q. That's perfectly fine.

16 A. Yeah.

17 Q. Are you able to see --

18 A. It says September 30th, 9/30/2016, digitally signed by
19 Robert Kelley.

20 Q. Just a few questions about this document.

21 MR. MACDOUGALL: If I could ask it to be published
22 to the jury, Your Honor.

23 THE COURT: Yes.

24 BY MR. MACDOUGALL:

25 Q. Who is registrant under this Lobbying Disclosure Act form

United States v. Rafiekian

R. Kelley - Direct

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1 that you completed after meeting with Rafiekian --

2 A. Flynn Intelligence Group is the line of the registrant.

3 Q. What's the address for Flynn Intel Group?

4 A. 44 Canal Center Plaza. I call it 44 Canal Square,
5 Alexandria, Virginia.

6 Q. Mr. Kelley --

7 A. It was on the Potomac River.

8 Q. Mr. Kelley, who is listed as the individual contact on
9 the form?

10 A. Me.

11 Q. Why did you list --

12 A. Since the -- I was filling out the form and I was -- it
13 made sense to put myself down as the contact person.

14 Q. And did you believe that you would be doing any lobbying
15 for Flynn Intel Group and Mr. Alptekin --

16 A. I think so, yeah.

17 Q. Is that right?

18 A. Yes, yes.

19 Q. And is that the reason that you put yourself down as the
20 contact?

21 A. Yes.

22 Q. Going forward, after you filed the Lobbying Disclosure
23 Act form after Flynn Intel Group, what discussions, if any,
24 did you have regarding a regular working relationship with
25 that firm?

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United States v. Rafiekian

R. Kelley - Direct

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1 A. Well, Bijan asked me to be the general counsel of the
2 Flynn Intelligence Group, and I didn't move from -- I didn't
3 have an office in the Flynn Intelligence Group. I stayed at
4 14th and K, Jefferson Waterman law firm.

5 Q. That was your law firm?

6 A. Yes. And I thought of him as a client.

7 Q. In your experience, is that completely usual that a
8 lawyer may remain physically present in a law firm while
9 providing general counsel?

10 A. Yes.

11 Q. Along those same lines, did you have an office at the
12 Flynn Intel Group ever?

13 A. No.

14 Q. How about an e-mail address?

15 A. I think I had an e-mail, but I never checked it. I -- my
16 wife have to ask about Twitter.

17 Q. I understand. I do too.

18 Tell me the reason why you never checked your e-mail
19 box beyond just a lack of --

20 A. Well, I was -- you know, if you have 15 things to check,
21 it's not sensible. I -- if a person wanted to send me an
22 e-mail, they knew this e-mail address.

23 Q. It was really important to call you, right?

24 A. Yes. And Bijan traditionally called me.

25 Q. One more question on Government Exhibit 166. Mr. Kelley,

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R. Kelley - Direct 866

1 could you have a look, please, at line item 12, which you will
2 find at the very bottom of the first page?

3 A. Yes.

4 Q. That asked a question: Specific lobbying issues (current
5 and anticipated.)

6 What did you respond there?

7 A. I responded the registrant will advise on U.S. domestic
8 and foreign policy, period, and S.1635 and the House
9 counterpart H.1735 and the Senate counterpart.

10 Q. Let's take those one at a time. S.1635, what was that
11 about?

12 A. I think it was the National Defense Authorization Act.

13 Q. And S stands for Senate; is that right?

14 A. Huh?

15 Q. S in the S.165 [sic] stands for Senate?

16 A. Yes, yes, the U.S. Senate.

17 Q. And the other entry is H.R.1735. And HR stands for House
18 of Representatives, right?

19 A. Yes.

20 Q. Okay. What was that about? What --

21 A. I think it was the State Department authorization bill.

22 Q. Why did you enter those statutes here where the form
23 asked for specific lobbying issues current and anticipated?

24 A. Well, it was not -- it was the committee action. And the
25 Senate Foreign Relations Committee and the Senate Armed

United States v. Rafiekian

R. Kelley - Direct

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1 Services Committee, they had hearings. And they -- one Pompeo
2 goes to the hearing on the budget of the State Department. I
3 know the guy that prepared the binder. And he doesn't ask --
4 the congressmen do not ask questions of Pompeo, but why are we
5 in Yemen or why is NATO demanding to increase the
6 contribution. They don't ask about the budget.

7 And I knew that the -- from my experience with the
8 Japan automobile -- automobile manufactures and the Japan
9 airlines, that private company is interested in U.S. foreign
10 policy and defense policy and the State Department.

11 Q. So that was your best estimate at the time?

12 A. Yes.

13 Q. And did Mr. Rafiekian ask you to put that in?

14 A. No. I just put it in myself.

15 Q. Could you please have a look -- in the same binder,
16 Mr. Kelley, at Government Exhibit 168 for identification?

17 A. It is the --

18 Q. And you're welcome to take it out of the sleeve if you'd
19 like.

20 A. Okay.

21 Q. Do you recognize that document?

22 A. It's the Department of State Authorities Act fiscal year
23 2017.

24 Q. And on the upper right-hand corner of the first page,
25 there's a numerical designation that follows.

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United States v. Rafiekian

R. Kelley - Direct 868

1 A. S.1635.

2 Q. And how does that relate to the entry you had made on

3 the --

4 A. I made the entry following the -- I was going to monitor

5 the State Department authorization bill. They call it the

6 authorization bill and for the next year fiscal year 2017.

7 And they had -- typically they would have a lot of hearings.

8 And Pompeo would come up and Secretary of -- Secretary of

9 State Tillerson, was it, and he testified but not on the

10 budget, the -- but the process.

11 Q. So in other words, Exhibit 169 was one of the pieces of

12 legislation you cited in the --

13 A. Yes.

14 Q. -- application; is that right?

15 A. I was going to monitor the committee hearings.

16 MR. MACDOUGALL: Your Honor, may I ask the Court to

17 take -- I'm sorry -- Government Exhibit 168, may I ask the

18 Court to take judicial notice of --

19 THE COURT: 168 or 169?

20 MR. MACDOUGALL: Well, it's 168 initially, then

21 169 --

22 THE COURT: Right. I believe they're both in

23 evidence. They're already in evidence.

24 MR. GIBBS: They are.

25 MR. MACDOUGALL: Thank you, Your Honor.

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1 BY MR. MACDOUGALL:

2 Q. So I'm sorry, I misspoke. Mr. Kelley, if you could have
3 a look quickly at Government Exhibit 169, which should be
4 right after that in the binder?

5 A. Yes. Okay. Defense Authorization Act for fiscal year
6 2016.

7 Q. And how does that document relate to the entry you made
8 in -- on space 12 of the --

9 A. Well, I know it was -- after the fact, I knew it was
10 vetoed, but -- by President Obama, but it was -- it was the
11 process that I was interested in, not the bill number. And
12 they have -- Richard Thornberry -- Mac -- William Mac
13 Thornberry, I went to see him for when I represented the vice
14 president of Iraq and the -- I was in Iraq for two years in
15 2003 through 2005. And I had a Top Secret clearance. And I
16 was organizing a company at the -- the senators and
17 representatives, and they came about every three days and --
18 for the period of time for two years. And it was 350 or
19 something. And --

20 Q. So were you paid by the Flynn Intel Group for the legal
21 work you did?

22 A. Yes.

23 Q. Do you recall how much?

24 A. I think \$10,000.

25 Q. Do you remember who paid you?

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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 18th day of July, 2019.

I further certify that the foregoing 116 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 18, 2019.



Tonia M. Harris, RPR
Official Court Reporter

COVINGTON & BURLING LLP

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November 1, 2017

Memorandum

To: Rob Kelner, Steve Anthony, Brian Smith, Mike Chertoff, Josh Debold, and Roger Polack

From: Alexandra Langton

Re: November 1, 2017 Notes from Covington's Meeting with the Special Counsel's Office

On November 1, 2017, Robert Kelner ("Rob"), Stephen Anthony ("Steve"), and Alexandra Langton met Brandon Van Grack ("BVG") and Zainab Ahmad ("ZA") at the Special Counsel's Office ("SCO") at 395 E Street SW, Washington, DC from approximately 1:00p.m. to 1:45p.m. This memorandum summarizes the discussion at that meeting. Information in brackets is information that I have added for context or clarification. Information separated by asterisks indicates non-verbal gestures.

I. Summary of the Meeting

BVG: We wanted to invite you here because we know if has been a couple of months since we've spoken. You guys have been very cooperative with us and quiet in the media and we really appreciate that.

We have a number of decisions points that we are going to have to make and we wanted to gage your interest in talking to us before we have to make those decisions. General Flynn has said on a number of things regarding having a story to tell and we'd like to explore that.

Rob: General Flynn very much wants to cooperate. We have spent a lot of time talking to him about what he knows. At the end of the day, there are a few things we don't quite know what to make of. There are some issues not related to Russia that he has questions about. You all might have specific things you could present to him to refresh his recollection. We don't think that there is a "smoking gun," but we are open to making General Flynn available.

BVG: There is information that you or your client might not be aware of. From where we're sitting, there might still be value in sitting down with your client. We have a good sense of what Flynn knows and what Flynn doesn't know.

Rob: Refreshing recollection is key with General Flynn. He often doesn't have a sense of what is important and tends to forget even mundane things.

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November 1, 2017

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BVG: We're at a point where we can have a conversation with Flynn with prompts. I will say, the value of whatever information he has will be different now than it will be in two weeks or a month. We're interested in talking to him even if he doesn't think he has a smoking gun.

Steve: What sort of protections are you willing offer so his words aren't against him?

BVG: A proffer letter.

Rob: Queen for a day?

BVG: *Nods*

Rob: We would need to discuss that. We need to get comfortable with the situation. We would feel better with something stronger than a proffer letter like statutory immunity.

Steve: I have to ask, where are you guys going with respect to charges against General Flynn?

BVG: (1) FARA (failure to register); (2) FARA false statements; and (3) false statements to government officials regarding contacts with Russian officials during the transition.

Steve: On the last point, do you mean the White House interview?

BVG: False statements at an FBI interview at the White House.

Rob: Frankly, we are surprised by that. That is not consistent with what we have learned from press reports and other sources.

Steve: Would you be willing to give us the 302?

BVG: We're not currently in a posture where we're providing that information. We're certainly willing to hear what you have to say if you think that we're wrong.

ZA: We're not saying no; we'll think about it. You might be entitled to it soon anyway. We feel like we know all we can know short of talking to him. We're at a fork in the road and we want to talk to him (General Flynn) to decide how to move forward.

Rob: He would be willing to tell his story if you are, in good faith, willing to tell us that if he comes in and you think that he is being truthful, that you may not take action against him. However, it could be that the interview is just a way for the SCO to get information to help its case against General Flynn.

ZA: Look, all options are on the table . . . no pros? We are like a typical USA's office. We want to get all the facts. It doesn't have to be that he has a smoking gun. We haven't thought a lot about deals. It would all depend on how the interview with Flynn goes.

Steve: I'm just imagining getting ready for trial to begin, thinking to myself, "jeez, why did I let my client do this interview?" I don't know if it makes sense to expose ourselves with only a proffer letter in return.

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BVG: We feel confident that your client has value to provide. This isn't supposed to be a "gotcha" interview. This is meant to get input from your client for our broader investigation.

Rob: I can imagine ways in which we come in. Agreeing only to a proffer could put him at risk. We don't want our client charged or found guilty of a felony offense. We don't think he has committed a felony offense.¹ It would be helpful to get more details about where you are going.

ZA: We've given you the universe of charges. I don't know if we can provide any additional assurances beyond what we've already mentioned. If he gives us useful information, we can talk and negotiate from there. You don't know everything he knows.

BVG: No decisions have been made with respect to Flynn because we want to talk to him first. Turkey or FARA wouldn't necessarily be the focus. Questions about the campaign would not be the first thing we talk about. There are things that we know that you and your client would not necessarily have focused on.

Steve: This would definitely be a leap of faith on our part.

ZA: The information is much more valuable for us than it might be in a traditional context. Non-smoking gun information is valuable to us.

BVG: Yes, our mission here is to answer questions.

Rob: And you believe this is information that he *actually* has?

BVG/ZA: Yes. *Both nodding emphatically.*

Rob: We have spent a lot of time a lot of time trying to elicit information from him. He doesn't have the memory of a lawyer. It would be a very time-consuming process.

Steve: You said that the information would be more valuable today than it would be a month from now?

BVG: Yes.

ZA: *Nods.*

BVG: There's one more issue I want to bring up. One of the charges we mentioned was false statements under FARA. Because Covington prepared the FARA registration, that would make you (Rob) a fact witness. It isn't something we are considering.

Rob: If we were to get to that point, we would litigate it very aggressively.

ZA: We're not saying it's not waivable. We just want to make sure you talk it through with your client.

¹ Zainab made a note of this point.

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Rob: Well, we say what you guys did with Manafort, and we'll definitely raise it with our client.

BVG/ZA: *Both visibly uncomfortable.*

Rob: When do you guys want to hear back from us?

BVG: By the end of the week if possible.

Rob: That's going to be hard for a variety of reasons.

Steve: One of which is I am going to be in Oregon for another matter.

BVG: Let's plan on talking on Tuesday morning.

Rob: Thank you for the accommodation.

All: Small talk about Portland coffee.

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November 3, 2017

Memorandum

To: Rob Kelner, Steve Anthony, Brian Smith, Mike Chertoff, Josh Debold, and Roger Polack**From:** Alexandra Langton**Re:** **November 3, 2017 Notes from Covington's Call with Special Counsel's Office**

On November 3, 2017, Robert Kelner ("Rob"), Stephen Anthony ("Steve"), and Alexandra Langton had a call with Brandon Van Grack ("BVG") and Zainab Ahmad ("ZA") at the Special Counsel's Office ("SCO") from approximately 8:30a.m. to 9:10a.m. This memorandum summarizes the discussion on that call.

I. Summary of the Call

Rob: I know we had said we'd talk on Tuesday, but we wanted to have at least an interim conversation today. We have been thinking about the discussion the other day and that has left us with a few critical questions as to whether we could get comfortable bringing him in for a proffer.

You suggested that there is something General Flynn knows that would be valuable to your investigation, although it wouldn't be as valuable several weeks from now. You also said you're confident that he knows this information and you want to ask him about it. You haven't given us a sense about the topic. That leaves us in a situation where we'd be bringing him in completely cold as to that issue without us having any chance to test with him his recollection. It would be in everyone's interest to not bring him in cold. Is it a meeting? Something that happened in the WH? Is it classified? Do you have more specific information so we can assess whether he can give you what you need and we could bring him in. That's the first of a couple of key issues. I'll stop there to let you react.

BVG: I'm glad you raised that. One of the important takeaways is understanding that there is value we think your client has. The timing point is related to where we are in the broader investigation and not necessarily the notion of the specific information. I want to make sure we separate the two. The timing issues relates to where we are in the investigation.

ZA: Another way to say that is this is the best moment for us to talk to General Flynn and hear his story based on where we are in our investigation. We don't necessarily agree with your characterization of this being best for everyone. This is the right moment given the arch of our investigation to hear him out.

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November 3, 2017

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BVG: Perhaps a slight misunderstanding on or end. There isn't a particular question that we think General Flynn is going to answer. There are a number of different points, communications, perceptions, and meetings that are helpful to our investigation. This is not a situation where there is one particular question from one day where we know he has the answer. It is broader than that. Broadly, the focus of the questions would be:

- Communications your client had during transition with foreign officials, including Russian officials.
- Whether anyone provided him directions on those communication.
- Communications he is aware of that other members of the transition had with foreign officials.
- Communications he had with foreign officials during his time at the WH.
- Communications other people had with foreign officials.

Steve: We had a slightly different takeaway from our meeting. We're still interested in exploring this. I don't think it's in anyone's interest to reach a misinformed conclusion that we have to keep him away from you. We'd like to get to yes. We'd like to explore how we could make this work. Are the topics you want to ask about inculpatory? Are there questions you view as being relevant to exposure to some other person or do you want to ask about things that are the subject of the charges against him?

BVG: I do take your point. I think we represented what the charges are: FARA and false statements. There are a number of them. When we talk about topics that could in incrimination. Those wouldn't be our initial focus. The only incriminating thing would be false making a false statement. If he's being truthful about what was said, I don't think we would be setting your client up for culpability.

ZA: We're eventually going to want to talk about everything. That will include topics he has criminal exposure on. We aren't interested in Turkey right now. We're asking him to come in because we think he has information that will shed criminality on other actors. It will cover everything.

Steve: Cutting to the chase, are you going to ask him "what is Inovo" or do you intend to leave Turkey aside and talk about the types of things Brandon was talking about?

BVG: When you talk about a general proffer, at some point, your client will need to have a truthful discussion about any topic we'd want to talk about. What I would propose is, right now, we want to talk to your client initially for more than one day. Right now, initially, we are fine not talking about Turkey or the FARA piece because our investigation is not focused on Turkey/FARA. In terms of broader next steps, at some point, we would need to have that conversation.

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Rob: There are a number of issues. Regarding contacts with foreign officials during the transition or his time at the WH, without getting into attorney-client conversations, this is a topic on which he doesn't necessarily have a granular recollection on every interaction. It is not an incredibly attractive topic on which to bring somebody in to pass a test of candor. Frankly, if you asked me about meetings I had with clients, I don't know if I could pull it off with any precision. To ask someone about meetings and calls during an incredibly busy period of his life as an evaluation of candor is not a particularly attractive option. What I am hearing now is that you want a general proffer.

BVG: I want to make sure we all have clarity. I will just say a couple of things. It seems like you think there is a specific topic we think he can answer. That's true; we have multiple topics. This is a multiple question exam and not a single question exam. Just to be clear, we're interested in a broader range of topics than it seems that you walked away with.

Rob: What we thought was that there was some topic or episode where he had information regarding your investigation of some third party. If that were the case, we were contemplating a limited proffer on that topic. We now see that we misunderstood and what I'm hearing now is more of a conventional, general proffer. You also want the ability to question him on the variety of topics on which he has exposure. Is that a fair description?

BVG: I want to be sincere. The reason why it is important to knowing there is value is that there is a broad range of topics and information that General Flynn has. We feel confident having him coming in and being truthful will be helpful. I don't think there is exposure for your client. The only potential exposure is false statements by your client. That's the exposure of anyone coming in for a proffer.

Steve: You mean false statements during the interview?

BVG: That's right. I thought you were clear in our meeting about the importance of the use of prompts. I can set him up and say, you were in Mar-a-Lago on this date, show him the record, and set him up that way. We have prompts that can help jog his memory and a lot of information you might not have.

Rob: I want to reiterate something we said the other day. We've spent a lot of time with him. It can be difficult to reconstruct a recollection. Not because of any intention on his part to conceal, there is sometimes a quality of fogginess to consider that requires a lot of work. That's one reason why this requires a good bit of thought. I think I clearly understand what you're asking and what is on the table. It is going to be a tough call for us.

Steve: I think where, possibly, the misunderstanding came from is our discussion of how this is different from a typical white collar case. I think it was in the course of that conversation, you guys gave us reasons to persuade us that this would be something we could wisely do. I think your premise is there are topics that wouldn't have exposure to him, and topics that are of interest in your investigation. I take it that this could have real value to you and General Flynn could do himself good even if he's talking about topics that wouldn't be obvious to us or to him.

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Rob: We don't think there's a FARA violation. We don't think he made false statements. You think he did. Inevitably, what that means is he's going to come in and give you answers to questions, and you won't agree with his answers to at least some of the questions. I sense there will be numerous points of disagreement as to what happened. That's why coming in for a general proffer, although we would like to get to yes, is difficult. We feel we have strong defenses across these issues and you feel differently. It doesn't tee up a situation where you will nod and accept his answers.

BVG: This is not a usual situation. If all we were charging someone with a false statement, we wouldn't need to have this conversation with your client at all because the only crime is he lied and this opportunity wouldn't present itself. We think there is other information he has that doesn't involve criminal activity he did. If we were in EDVA, we would not be having this conversation because if it is false statements; there's nothing your client could provide. I don't think you walked away with the wrong impression. We want to talk about information he has that doesn't have to do with his potential criminal activity.

Second, to the extent your questions involve Turkey/FARA, I would propose our initial session doesn't cover Turkey/FARA. In terms of a long-term proffer, that would have to be on the table. In terms of our priorities for our broader investigation, we would be fine having the initial sessions be focused on his time as NSA, the transition, etc.

Rob: I think we understand that clarification. We just want to note a couple factual points. Apart from the fact that this is a guy who doesn't have a detailed catalogue of dates, times, and places, he also was not in fact a central player in the campaign in the way that he was perceived to be publically. He did, certainly, spend a lot of time with the candidate traveling, but I want to make sure you guys are aware of that.

BVG: That's not a surprise to us and that doesn't change our prior representation.

Rob: Ok, good. The information he has is not as encyclopedic as others' might be. We had also asked about seeing the 302. You said that you would think about it. We would like to renew that request in the context of figuring this out. We have not thought of the FBI interview as being a significant point of exposure. If we are wrong about that, it would be clarifying to see why you think we're wrong. That's why the 302 is important. It seemed that you were highlighting the FBI interview in particular.

BVG: The answer right now is not at this time in terms of sharing the 302 because it might reveal more about our investigation and other investigative priorities. It is about what has been widely reported regarding the December 29, 2017 call. We can't now because I have confidence that your client will be able to provide helpful information on those communications.

Rob: There are a few other points, but I want to talk to Steve about it first. We'll caucus on our end and we might circle back with a couple other questions.

BVG: Let me say two things before we leave. I would still like to set a time on Tuesday to talk. I would propose 9:00a.m. on Tuesday. I have not circulated our standard proffer letter. I will send it to you guys. If we do move forward, we can talk about the specifics of the proffer letter on Tuesday.

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Steve: We appreciate you working in good faith with us. Thank you.

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

DECLARATION OF MICHAEL T. FLYNN

I, Michael T. Flynn, declare:

1. I am a citizen of the United States and more than 18 years old.
2. I served over thirty-three years in the United States Army. Five of those years I spent deployed in active combat in Afghanistan, Iraq, and elsewhere around the world in support of United States foreign policy objectives.
3. I was a life-long Democrat and President Barack Obama twice appointed me to positions that required Senate confirmation. In my final military assignment, I served as head of the Defense Intelligence Agency (DIA) until September 2014.
4. On December 1, 2017 (reiterated on December 18, 2018), I pled guilty to lying to agents of the FBI.
5. I am innocent of this crime, and I request to withdraw my plea.
6. In December 2016, while I was working on then President-Elect Trump's transition team, I received a letter from the FARA unit at the Department of Justice. In that letter I learned that the FARA unit sought information about work that my former business, the Flynn Intel

Group, did for a company called Inovo BV that related to Turkey. I responded by seeking out respected counsel who were known and respected FARA lawyers; I chose Rob Kelner and his colleagues at Covington & Burling. I met with Covington lawyers on several occasions about FIG's FARA issues. I gave them the information they requested and answered their questions truthfully. The most important instruction I gave them was to "be precise."

7. On January 20, 2017, I entered office as the President's National Security Advisor. Four days later, FBI Deputy Director McCabe called me and asked if I would meet with a couple of FBI agents at the White House. I agreed.
8. While I was willing to oblige Deputy Director McCabe by meeting with a couple of agents on the fourth day of the new administration, I was extremely busy and only had a limited amount of time to give them. I tried to answer their questions as best I could during that brief meeting before again moving on to a schedule packed with new presidential and national security requirements.
9. I was an intelligence officer for over 33 years. Since 1981 and throughout my military and government career, I have held the highest-level security clearances our government provides. When FBI agents came to the White House on January 24, 2017, I did not lie to them. I believed I was honest with them to the best of my recollection at the time.
10. I still don't remember if I discussed sanctions on a phone call with Ambassador Kislyak nor do I remember if we discussed the details of a UN vote on Israel. In regards to the sanctions issue, I told the agents that tit-for-tat is a phrase I use, which suggests that the topic of sanctions could have been raised. The phone calls with Kislyak are still events of

which I do not have a clear memory and it related to a general category of information (phone calls about foreign policy) that are both sensitive and classified.

11. My baseline reaction to questions posed by people outside of my superiors, immediate command, or office of responsibility is to protect sensitive or classified information, except upon “need to know” and the proper level of security clearance. That type of filter is ingrained in me and virtually automatic after a lifetime of honoring my duty to protect the most important national and military secrets.
12. I am and was fully aware that federal officials routinely monitor, record, and transcribe such conversations with foreign officials.
13. Of course, I was embarrassed and angered by the furor that erupted in the press over the felonious leak of highly sensitive and classified information that was my phone call with Ambassador Kislyak. It was distracting to my work to be the center of such a commotion and it was upsetting to be the cause of disruption to the busy and important work in support of the new President of the United States.
14. I resigned as National Security Advisor on February 13, 2017.
15. I believe my resignation letter to President Trump stated quite accurately what happened and both he and the Vice President graciously accepted my apology. The transition period was an incredibly intense time. I was communicating with representatives of multiple foreign countries on countless and varied issues every day. Frankly, of the national security dangers and concerns that weighed on our minds at that time, “sanctions” on Russia were far from the most pressing threat or concern. We were dealing with many more serious crises around the world. The calls with Ambassador Kislyak were brief and few; they were no more exceptional than my numerous calls and personal interactions with senior

representatives of governments from around the world during an exceedingly demanding work schedule.

16. After I left the White House, I agreed to engage Kelner, his colleague Stephen Anthony, and other Covington lawyers to represent me in any FBI investigations and, eventually, the Special Counsel's Office investigation. They also continued to represent me and FIG in regards to FARA related issues. At one of my first meetings with Mr. Kelner and Mr. Anthony they asked me if I "had anything" on President Trump, as it would provide much more leverage with the government. I told them from the beginning that I was unaware of President Trump doing anything wrong.
17. With respect to the FARA filing, my Covington counsel did not explain to me that there were any problems with the FARA filing that required Covington to re-examine any of the issues in August 2017. I would have hired independent counsel to reevaluate the FARA filing and amend it if necessary, had I known the severity of the conflict.
18. To the best of my recollection, and from my re-examination of the emails from August 2017, the vast majority of email traffic between me and Covington during that time was focused on the creation of my Legal Defense Fund to pay my skyrocketing legal defense fees (by that time approaching \$3 million). To that end, we put our Alexandria, Virginia home on the market in late November or early December 2017 timeframe to help pay the rising legal bills that we were incurring. We then moved to our family home in Rhode Island.
19. In late August 2017, my wife and I were in Rhode Island. Kelner and Anthony emailed us to arrange a telephone call. The call then occurred while we were driving to have dinner with some friends. It was an approximately 15-minute phone call, where we had pulled off

to the side of a highway. They informed us that there was a development regarding a conflict of interest. They also mentioned the possibility of Bijan being indicted. Speaking to the conflict of interest, they stated that they were prepared to defend us vigorously, if the conflict became an issue. We told them we trusted them.

20. In November 2017, the Special Counsel's Office (SCO) created sudden and intense time-pressure on me to plead guilty. On November 4, 2017, I believe, my Covington attorneys told my wife and me that the Special Counsel's Office (SCO) wanted to conduct a proffer session with me. They told me the SCO "had yet to make a decision about how to proceed with me" and doing a proffer session would be a good way to let the SCO prosecutors "get to know the real Mike Flynn." During this same meeting, my previous lawyers, Mr. Kelner and Mr. Anthony proceeded to walk us through a series of items—essentially describing the risks of doing the proffer. From this meeting, I believe the following day, I agreed to do the proffer, primarily based on my understanding that they said if the proffer went well, being indicted would be less likely; otherwise my indictment would be soon. They did not raise FARA issues with me that day or anything about a conflict of interest.
21. November 16, 2017, was the first day of the proffer with the SCO. That same evening, after concluding the first proffer, we returned to the Covington offices where my attorneys told me that the first day's proffer did not go well and then proceeded to walk me through a litany of conceivable charges I was facing and told me that I was looking at the possibility of "fifteen years in prison."
22. They reiterated the threat of charges against me, my son, as well as the potential of a long term prison sentence. That evening, we discussed and they encouraged me to use words

and phrases they believed would help me “get through” the next day’s proffer and satisfy the special counsel, phrases that are not part of my normal vocabulary.

23. During the second day of the proffer, I used words and phrases that were not really my own voice, and I regret that—just as I regret pleading guilty. People think that a three-star general must know everything, but I was a fish-out-of-water in a terrifying and completely foreign situation, with none of the legal skills necessary to deal with the many things being thrown at me. I hired the team of the best lawyers I had been told I could find, and I relied on them completely. One of the ways a person becomes a 3-star general is by being a good soldier, taking orders, being part of a team, and trusting the people who provide information and support. Lori and I trusted Mr. Kelner and Mr. Anthony to guide us through the most stressful experience of our lives, in a completely incomprehensible situation. I have never felt more powerless. I should have stood my ground firmly for what I knew to be the truth—that I did not lie to the agents, and I should have told this Court on December 18, 2018, that I needed to consult new counsel. My relationship with Covington disintegrated soon thereafter.

24. This effort to “say-what-they-want” approach during the proffer was noted by one of the interviewing agents, who stopped me at some point to ask whether what I was saying was something that really happened, or whether I was just speculating—analyzing the past with the benefit of hindsight. I agreed with the agent I was mostly speculating.

25. I recall Mr. Kelner’s mention of a conflict of interest in late August in a brief phone call, but I did not attach any serious significance to it. Likewise, I did not understand the legalistic email I received on November 19, 2017, the eve of my third day of proffers—

almost three months later. We trusted my attorneys and expected them to put my interests first—as they said they would do.

26. To have devoted my life to my country, only to be accused of crimes, slandered in the media with false and outrageous claims, and have my family threatened was an unimaginable nightmare—one that those who have not walked in these shoes will find difficult to comprehend.

27. Following the four-day proffer, on November 22, 2017, Kelner and Anthony called my wife and me as we were driving home to Rhode Island to spend Thanksgiving with family to tell me the SCO planned to bring charges and that I should consider a plea.

28. The week leading up to November 30, 2017, Kelner and Anthony advised that if I did not plead, I would be indicted on multiple counts and that my son, Michael G. Flynn could or would face indictment. They repeated that I would be looking at the potential of fifteen years in prison, and said that I would be subjected to “the Manafort treatment.”

29. On November 30, 2017, as plea negotiations with the SCO were coming to a head, I reiterated to my former lawyers, specifically Robert Kelner and Stephen Anthony, that I did not believe that I had lied in my White House interview with the FBI agents. I reminded them that I had spoken to representatives of well over thirty countries, many in a single 24-hour period, during that very busy holiday season and presidential transition period. In fact, some of these calls occurred while I was supposedly on “vacation” out of the country. Although I may have had an incomplete memory of the many details of certain conversations when speaking to the agents, I did not consciously or intentionally lie.

30. During this same day, later in the afternoon, Kelner and Anthony explained their view of how the government would go about proving its case and urged me to accept the plea deal

that was on the table. They walked me through the “Final 302” in detail. They explained if I did not accept the plea deal, that I should “expect to be indicted the next day.”

31. Still struggling with the decision whether to plead guilty, I asked my former attorneys to make further inquiry with the SCO prosecutors about whether the FBI agents believed that I had lied to them. In the preceding months leading up to this moment, I had read articles and heard rumors that the agents did not believe that I lied, something I also firmly believed.
32. Mr. Kelner and Mr. Anthony left the room to call the SCO prosecutors. When they returned, they informed my wife and me that they had been told that the “agents stand by their statements.” Because I was then unaware that the agents had made the statements described in this Declaration, and because I was unaware of what had passed between my former lawyers and the SCO outside of the room, I then understood them to be telling me that the FBI agents believed that I had lied.
33. My Covington attorneys counseled me to sign the Statement of Offense.
34. I agreed to plead guilty that next day, December 1, 2017, because of the intense pressure from the Special Counsel’s Office, which included a threat to indict my son Michael, and the lack of crucial information from my counsel. The SCO had already made Michael the subject of their investigation and taken all his files and communications devices (computer, phone, files, and thumb drive). At the time, Michael and his wife had a four-month old baby. Nonetheless, I would not have pled guilty if my former lawyers had informed me that both agents who interviewed me at the White House on January 24, 2017, had advised that a) I displayed a “sure demeanor;” b) I “did not give any indications of deception”; and

c) both agents believed there was “no indication that I was lying, or that I believed I was lying.”

35. At no time before my plea did my former lawyers explain or disclose this to me. Had I been informed of these disclosures, I never would have pled guilty. Moreover, I would have expected my Covington counsel to refuse to allow me to plead guilty with that information.

36. I have spent my entire adult life accepting great responsibility. I accepted the plea agreement to stop the pain and threats to my family and to accept responsibility for what the government I have defended and served for more than thirty-three years said I did wrong. However, if my counsel had informed me both agents said I showed “sure demeanor,” “did not give any indications of deception,” and that I showed “no indication that I was lying, or that I believed I was lying,” I would not have signed the plea agreement, or entered a guilty plea.

37. My former lawyers from Covington also assured me on November 30, 2017, that if I accepted the plea, my son Michael would be left in peace. After I signed the plea, the attorneys returned to the room and confirmed that the SCO would no longer be pursuing my son.

38. It was well after I pled guilty on December 1, 2017, that I heard or read that the agents had stated that they did not believe that I had lied during the January 24, 2017, White House interview (and the other information described in this Declaration). Still later, I heard it reported that former FBI Director Comey and FBI Deputy Director McCabe testified to Congress that the agents did not believe I lied. After learning this information, I reiterated


to my former attorneys numerous times that I did not lie to the agents and questioned if I might be able to withdraw my plea.

39. Each time I raised this issue with my former attorneys, they urged me to stick with my plea deal, "it was a good deal," or the government would indict me for multiple other offenses and also drag my son back into the crosshairs. Their constant refrain was to "stay on the path" with the deal they had negotiated.
40. In the days leading up to the December 18, 2018, sentencing hearing, Robert Kelner and Steven Anthony continued to urge me to "stay on the path." They predicted (correctly) that the government would recommend a term of probation and that my son would not be further targeted.
41. However, during the December 2018 hearing, Judge Sullivan's decision to proceed with an extended plea colloquy took both me and my former counsel completely by surprise. They had not prepared me for what occurred. The Court's comments that day stunned me. The entire experience was surreal, and that day was one of the worst days of my life.
42. My Covington attorneys had only prepared me for a simple hearing in which I would be sentenced to probation, as the government had agreed. I was not prepared for this Court's plea colloquy, much less to decide, on the spot, whether I should withdraw my plea, consult with independent counsel, or continue to follow my existing lawyers' advice. Prior to the sentencing hearing, they counseled me that if the Court were to ask me if I wanted to withdraw my plea, that I should say "no," because "the Court would be giving you the rope to hang yourself." Regretfully, I followed my lawyers' strong advice to confirm my plea even though it was all I could do to not cry out "no" when this Court asked me if I was guilty.

43. During the break in the hearing offered by the Court, my former attorneys were as shocked as I was at the colloquy and the way in which the hearing had proceeded. My wife Lori counseled me (and my attorneys) that we should accept the Court's offer to postpone sentencing.
44. In late spring 2019, when Covington actually insisted I seek "independent counsel," I did. New counsel immediately identified the conflict of interest and I then terminated Covington.
45. I realize my statement and determination to assert my innocence means the prosecutors, who already seek to imprison me, may retaliate further by seeking additional charges against me and dramatically increasing the penalty I face.
46. I express my profound apology to this Court, my family, the President, our country, and all who have supported and had faith in me throughout this incomprehensible ordeal. I tried to "accept responsibility" by admitting to offenses I understood the government I love and trusted said I committed. In truth, I never lied. My guilty plea has rankled me throughout this process, and while I allowed myself to succumb to the threats from the government to save my family, I believe that I was grossly misled about what really happened.
47. I will not confirm a plea of guilty I should never have entered. I have served my country honorably all my life, and accepted responsibility for myself and others from a young age (as my sister Clare wrote to you in her beautiful letter on behalf of my siblings). As God is my witness, the truth is I am innocent of these charges and any other alleged "criminal conduct," and I request to withdraw my plea of guilty, and I will fight to restore my good name.

48. To the best of my recollection, the foregoing is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 29th day of January, 2020.


Michael T. Flynn

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 17-232-EGS

DECLARATION OF LORI J. FLYNN

I, Lori J. Flynn, understand the obligations of an oath. Being duly sworn, I state the following:

1. I am a citizen of the United States and more than 18 years old.
2. I am the wife of LTG Michael T. Flynn, U.S. Army, (Ret). We have been happily married for 38 years.
3. In late August of 2017, Mike and I were driving to meet friends for dinner. We were running late. Mike's attorneys at Covington & Burling called us, and we pulled over to the side of the road to take their call.
4. The discussion lasted about 15 minutes, and they relayed to us that Bijan Rafiekian was likely going to be indicted any day. They told us that it was possible that Rob could be called as a witness against Flynn Intel Group, which could pose a conflict of interest for them. They said we could hire a separate firm to represent FIG. I remember thinking we have invested so much time and money with Covington up to this point; the thought of changing law firms or adding another firm at this late date was scary. They assured us that

they would represent us zealously. Our impression was that ok, if there was a conflict, our lawyers saw no reason that they couldn't continue to represent us. We left the conversation thinking it was no big deal. Covington could handle it.

5. In early November, Mike and I met with Covington and discussed doing a proffer with the SCO. They said it was our decision, but that it might be a good way for the SCO to "see the real Gen. Flynn." Never did I understand how dangerous such an interview could be, given his imprecise memories during that time, or how detrimental to his case it could be, and never during that meeting did they advise us of any conflict created for the firm regarding FARA. The proffer was always referred to as a positive thing that they recommended would help him in the long run.
6. On November 30, 2017, Mike and I were led to the conference room at C&B to discuss the plea agreement and court appearance on December 1. We spent hours talking about how surreal it all was that we were in this situation because we knew Mike didn't lie to the FBI.
7. Steve Anthony went over a 302 and Steve showed all the statements where the SCO would say Mike lied.
8. Also, Steve said Mike could be charged with FARA charges as well.
9. They told us Mike would have no chance at a fair trial in a D.C. courtroom and that there was a 96% conviction rate.
10. They told us Mike would get the "Manafort" treatment and SCO would indict him the next day if he didn't accept the plea.
11. Most important was the fact that the SCO was considering charging our son Michael if Mike didn't accept the plea. That was unacceptable to us.

12. We had heard a rumor that the FBI agents didn't think Mike lied at all in the interview that occurred on January 24, 2017, so we asked Rob [Kelner] and Steve [Anthony] if there was any way they could call the SCO to specifically call the agents and ask if that was the case. Rob and Steve left the room and came back and said that both agents were sticking with their stories in the 302.
13. They both asked if we wanted some privacy to talk and we agreed. We couldn't believe there was no other way and the pressure we were facing was painful. With the understanding that the agents stood by the 302 and believed Mike lied to them, he accepted the plea agreement.
14. To the best of my recollection, the foregoing is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 29th day of January, 2020.


Lori J. Flynn

Re: talking points

From: "Anthony, Stephen" </o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpow01.anthonysp">
To: "Kelner, Robert" <rkelner@cov.com>
Date: Mon, 06 Nov 2017 20:46:59 -0500

Prepping a witness but will look at 10 pm. Thanks for doing.

Sent from my iPhone

On Nov 6, 2017, at 8:11 PM, Kelner, Robert <rkelner@cov.com<mailto:rkelner@cov.com>> wrote:

My day got away from me, and I am only now turning to batting out draft talking points for our 9am call with BVG and ZNA tomorrow. See what you think of the points below:

Good morning. We have spent a lot of time thinking about our discussions last week and talking the issues through with our client.

We've considered carefully your request to interview General Flynn under a proffer agreement.

To cut to the chase, we are prepared to bring him in to answer your questions. As you proposed, we would hold questions on the Inovo contract for a subsequent proffer.

We will need some time to get him ready to meet with you, and having time to do that adequately is important to us. We can talk about timing in a bit.

We do want to make a few things clear.

First, as we said when we met with you recently, General Flynn has always wanted to cooperate with the Special Counsel's investigation, and as Brandon may recall, even before the Special Counsel was appointed, we offered to answer questions about documents we were producing.

Second, we are very, very cognizant of the various risks of bringing a client who has been told he's a target in to be interviewed, with the limited immunity provided in a proffer letter (especially, if we may editorialize briefly, the rather stingy proffer letters currently in use by the Department of Justice....)

We are nonetheless taking those risks, and General Flynn is taking those risks, in the interest of cooperating as fully as we can, but also because we hope and expect that you will emerge from the proffer with a clearer view of the facts, which we believe should weigh heavily against any felony charges against General Flynn. We want you to have the benefit of the information he can share, as you make the judgments that you need to make.

Finally, just to make sure that you do not misinterpret our decision to let General Flynn participate in the proffer, we do want to reiterate that we are firmly of the view that he did not commit any felony offenses. There are no circumstances under which he would plea to a felony offense. Regardless, even without any commitment by the SCO regarding charging decisions, he is prepared to be interviewed.

Robert Kelner

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[U.S. NEWS](#)

Mueller Has Enough Evidence to Bring Charges in Flynn Investigation



Retired Lt. Gen. Michael T. Flynn talks to the media as he arrives with his son Michael G. Flynn, left, at Trump Tower in New York on Nov. 17, 2016. Carolyn Kaster / AP file

Nov. 5, 2017, 10:09 AM EST / Updated Nov. 5, 2017, 8:41 PM EST

By Julia Ainsley, Carol E. Lee and Ken Dilanian

WASHINGTON – Federal investigators have gathered enough evidence to bring charges in their investigation of President Donald Trump's former national security adviser and his son as part of the probe into Russia's intervention in the 2016 election, according to multiple sources familiar with the investigation.

Michael T. Flynn, who was fired after just 24 days on the job, was one of the first Trump associates to come under scrutiny in the federal probe now led by Special Counsel Robert Mueller into possible collusion between Moscow and the Trump campaign.



[Mueller Has Enough Evidence to Bring Charges in Flynn Investigation](#)

NOV. 5, 2017 02:10

Mueller is applying renewed pressure on Flynn following his indictment of Trump campaign chairman Paul Manafort, three sources familiar with the investigation told NBC News.

The investigators are speaking to multiple witnesses in coming days to gain more information surrounding Flynn's lobbying work, including whether he laundered money or lied to federal agents about his overseas contacts, according to three sources familiar with the investigation.

From left, retired Lt. Gen. Michael T. Flynn, his son Michael G. Flynn, and Boris Epshteyn, a spokesman for President-elect Donald Trump, board an elevator at Trump Tower in New York on Nov. 17, 2016. Carolyn Kaster / AP file

Mueller's team is also examining whether Flynn attempted to orchestrate the removal of a chief rival of Turkish President Recep Erdogan from the U.S. to Turkey in exchange for millions of dollars, two officials said.

A spokesperson for the special counsel had no comment.

Related: [Mike Flynn's Son Is Subject of Federal Russia Investigation](#)

Flynn's son, Michael G. Flynn, who worked closely with his father, accompanied him during the campaign and briefly worked on the presidential transition, could be indicted separately or at the same time as his father, according to three sources familiar with the investigation.

If the elder Flynn is willing to cooperate with investigators in order to help his son, two of the sources said, it could also change his own fate, potentially limiting any legal consequences.

The pressure on Flynn is the latest signal that Mueller is moving at a rapid and steady pace in his investigation. Last week, investigators unsealed indictments of Manafort and Manafort's business partner Rick Gates. They pleaded not guilty.

Michael G. Flynn at an RT event with his father Ret. Lt. Gen. Mike Flynn in Moscow in 2015. RT

Investigators also revealed Monday that former Trump campaign adviser George Papadopoulos had pleaded guilty to lying to federal officials and had been cooperating with Mueller's investigation.

If the senior Flynn is charged, he would be the first current or former Trump administration official formally accused of criminal wrongdoing by the Mueller team.

So far, the probe has only ensnared campaign officials, and the White House has argued that the connection to the president is minimal. An indictment of the president's former national security adviser and his son would scramble that dynamic.

Related: [Flynn, Manafort Are Key Figures in Mueller's Russia Probe](#)

A former senior law enforcement official said that in the weeks after Trump's inauguration the FBI was asked to conduct a new review of Turkey's 2016 request to extradite Fethullah Gulen, an elderly Muslim cleric living in the U.S. whom President Erdogan blames for orchestrating a coup to overthrow him.

The FBI pushed back on the request because Turkey had supplied no additional information that could incriminate Gulen following a review of the case during the Obama administration, the official said. It is unclear whether the request to investigate Gulen came from Flynn or through the typical diplomatic channels at the State Department.

U.S.-based cleric Fethullah Gulen, whose followers Turkey blames for a failed coup, speaks to journalists at his home in Saylorsburg, Pennsylvania, on July 16, 2016.

Greg Savoy / REUTERS TV / Reuters, file

The FBI is also investigating former [CIA Director Jim Woolsey's account](#) to The Wall Street Journal – which he confirmed to MSNBC – that Flynn and Turkish officials discussed a potential plan to forcibly remove Gulen from the country in September 2016, according to sources close to Woolsey, who say the former director has spoken to FBI agents working for Mueller about the matter.

Flynn was fired in February following public revelations that he had lied to Vice President Pence about his dealings with the Russian ambassador to the U.S., Sergey Kislyak.

Flynn's lawyer, Robert Kelner, declined to comment.

The younger Flynn's lawyer, Barry Coburn, declined to comment.

[Father and Son](#)

Both Flynn's have for months been subjects of the Mueller investigation.

The elder Flynn, an Army lieutenant general, was pushed out as head of the Defense Intelligence Agency in 2014 and retired from the military. He then founded a lobbying firm, Flynn Intel Group, where his son worked closely with him. The younger Flynn was involved in the daily operations of his father's firm and functioned as his chief of staff. He often attended meetings with his father and would communicate with prospective clients.

The elder Flynn was paid \$530,000 last year for work the Justice Department says benefited the government of Turkey. The elder Flynn did not register as a foreign lobbyist at the time, but did so retroactively this year. The issue has been part of Mueller's probe.

FBI Director Robert Mueller testifies before a Senate Judiciary Committee hearing on oversight of the FBI on June 19, 2013 in Washington.

Tom Williams / CQ-Roll Call file

His lawyer later said Flynn didn't need to register because his client was a Turkish businessman and not a government official, but had opted to do so retroactively.

According to Flynn's Justice Department filing, the Flynn Intel Group was hired to gather information about Gulen, and to produce a short film about its findings.

During the contract, which ended the day after Trump won the election, Flynn had at least one meeting, in September 2016, with Turkish officials, according to officials. Woolsey says that it included a discussion about kidnapping Gulen and flying him to Turkey.

Flynn also was paid some \$35,000 in 2015 by Russian state television for a speech in Moscow at a gala where he sat next to Russian President Vladimir Putin. The younger Flynn accompanied him on that trip. The trip raised concerns among federal officials.

NBC News has reported that others under scrutiny by Mueller include Carter Page, a Trump campaign ally; Jared Kushner, the president's son-in-law and senior White House adviser; and the president's son, Donald Trump Jr. They have denied any collusion with Russia.



Exclusive: Michael Flynn's Son is A Subject of Russia Investigation

SEPT. 13, 2017 01:50

President Trump has denied any collusion with Russia during the campaign and has called the investigation a politically motivated witch hunt.

Kelner has declined to comment when asked if Flynn denies colluding with the Russian election interference effort.

Turkey has long demanded the U.S. extradite Gulen, saying he is considered a terrorist. Erdogan forcefully renewed that request after the attempted coup against him in July 2016. U.S. officials have said the Justice Department has not found sufficient evidence linking Gulen to the coup attempt despite the boxes of documents Turkey has submitted to the U.S. that Ankara says back up its claim.

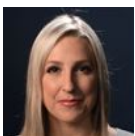
Extradition requests are processed through the U.S. justice system and are not determined by the White House or other agencies.

Any quid-pro-quo deal such as the alleged agreement between Flynn and Turkey would be illegal, officials said.



Julia Ainsley

Julia Ainsley is a correspondent covering the Department of Homeland Security and the Department of Justice for the NBC News Investigative Unit.



Carol E. Lee

Carol E. Lee is an NBC News correspondent.



Ken Dilanian

Ken Dilanian is a correspondent covering intelligence and national security for the NBC News Investigative Unit.



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RE: status

From: "Langton, Alexandra" <alangton@cov.com>
To: "Kelner, Robert" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.kelnerrk">, "Smith, Brian" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa02.smithbd">, "Polack, Roger" <"/o=covington & burling/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=7d7e836d400a47d799f871ab9352509c-pola">, "DeBold, Joshua" <"/o=covington & burling/ou=cb/cn=recipients/cn=deboldjn">
Cc: "Anthony, Stephen" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.anthonysp">, "Chertoff, Michael" <"/o=covington & burling/ou=cb/cn=recipients/cn=chertoffm">
Date: Wed, 15 Nov 2017 14:42:47 -0500

Yes, we'll start working on this today.

From: Kelner, Robert
Sent: Wednesday, November 15, 2017 2:41 PM
To: Smith, Brian <bdsmith@cov.com>; Polack, Roger <RPolack@cov.com>; Langton, Alexandra <ALangton@cov.com>; DeBold, Joshua <jdebold@cov.com>
Cc: Anthony, Stephen <santhony@cov.com>; Chertoff, Michael <mchertoff@cov.com>
Subject: status

We finished prepping General Flynn for the proffer tomorrow and Friday.

Steve and I just spoke with Brandon Van Grack. He said that if the proffer tomorrow and Friday "goes well," they likely would want Flynn to come back in Monday to proceed to the proffer on Turkey/Inovo/FARA. We said that we've not yet prepared him for that. Brandon said politely that because of time pressures they have related to something else in their investigation, he wasn't sure, but they might need to tell us to be prepared to do the Turkey proffer Monday. We said we would plan accordingly, and would be ready to prep him this weekend for a proffer session Monday. General Flynn was going to head to RI this weekend but we will tell him he needs to stay here. I will change some weekend travel plans to be ready for this.

Alex and Roger: Because of this, we need to turn asap to pulling together Turkey/Inovo documents. Because that story is complex, I think we need an outline of how we will walk him through the Turkey/Inovo/FARA filing story and associated emails, texts, and documents. Alex, though you will be at the proffer tomorrow, you are probably in the best position to craft the outline and to help oversee pulling this together, with help from Roger. Can you get started on it today?

Brian, are you around this weekend because if this goes forward, I'd like you to help prep him on Turkey/FARA?

To be clear, this all turns on whether tomorrow and Friday "go well," and they may have a very different idea of what "well" means than we do.

Robert Kelner

Covington & Burling LLP
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RE: status

From: "Kelner, Robert" <rkelner@cov.com>
To: "Anthony, Stephen" <santhony@cov.com>
Date: Wed, 15 Nov 2017 15:39:10 -0500

I have some thoughts on this. More questions than thoughts.

Robert Kelner

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From: Anthony, Stephen
Sent: Wednesday, November 15, 2017 2:44 PM
To: Kelner, Robert <rkelner@cov.com>
Subject: RE: status

Dropping ccs: I was thinking during the BVG call that we (i.e., the general public) may see significant developments before Thanksgiving or the Monday following Thanksgiving.

From: Kelner, Robert
Sent: Wednesday, November 15, 2017 2:41 PM
To: Smith, Brian <bdsmith@cov.com>; Polack, Roger <RPolack@cov.com>; Langton, Alexandra <ALangton@cov.com>; DeBold, Joshua <jdebold@cov.com>
Cc: Anthony, Stephen <santhony@cov.com>; Chertoff, Michael <mchertoff@cov.com>
Subject: status

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Case 1:17-cr-00232-EGS Document 160-28 Filed 01/29/20 Page 2 of 2
position to craft the outline and to help oversee pulling this together, with help from Roger.
Can you get started on it today?

Brian, are you around this weekend because if this goes forward, I'd like you to help prep him on Turkey/FARA?

To be clear, this all turns on whether tomorrow and Friday "go well," and they may have a very different idea of what "well" means than we do.

Robert Kelner

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your system.
Thank you
for your
cooperation.

RE: Brandon/Zainab call

From: "Kelner, Robert" <rkelner@cov.com>
To: "Anthony, Stephen" <santhony@cov.com>
Date: Thu, 16 Nov 2017 10:50:04 -0500

Though I would make a pretty good defense witness....

Robert Kelner

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From: Anthony, Stephen
Sent: Thursday, November 16, 2017 10:46 AM
To: Kelner, Robert <rkelner@cov.com>
Subject: RE: Brandon/Zainab call

Ah. I see.

From: Kelner, Robert
Sent: Thursday, November 16, 2017 10:45 AM
To: Anthony, Stephen <santhony@cov.com>
Subject: RE: Brandon/Zainab call

Agree. My point is that even if they don't try to DQ, we would litigate (likely) calling a Covington lawyer as a fact witness.

Robert Kelner

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From: Anthony, Stephen
Sent: Thursday, November 16, 2017 10:37 AM
To: Kelner, Robert <rkelner@cov.com>
Subject: Re: Brandon/Zainab call

Yes, although I don't read it as a threat to move to DQ us; rather, as a punctilious exercise in making sure the SCO isn't later criticized. Like: they are checking that box.

Sent from my iPhone

On Nov 16, 2017, at 10:30 AM, Kelner, Robert <rkelner@cov.com> wrote:

Got it. Likely, as our client would say. If they raise it again with him there, I am going to repeat my point that we are prepared to litigate that issue aggressively.

Sent from my iPhone

On Nov 16, 2017, at 10:13 AM, Anthony, Stephen <santhony@cov.com> wrote:

Nothing to worry about. They wanted to ask what they'd previously asked: have we considered and disclosed to the client (a) RK's potentially being a fact witness and (b) Covington's own interest with respect to its prior advice to FIG/MF regarding FARA -- and that the client is OK proceeding with us? Answer: yes. I repeated what we had said in the face-to-face meeting: we are aware of those issues, and, while we are going to keep to ourselves the substance of our discussions with our client and don't waive any A/C privilege, I can assure them the client has been made aware of those matters as well, and that he has knowingly consented to going forward with us as his counsel. I added, with a little acerbity, that you and I are the firm's General Counsels, and that partners come to us for advice on these issues. They chuckled appreciatively. I believe what triggered

this is that a higher-up (Mueller, or maybe Dreeben) told them to make sure they had covered this with us.

Re: PRIVILEGED & CONFIDENTIAL -- Covington Engagement

From: MTFLYNN <rpatriot@mailsol.net>
To: "Anthony, Stephen" <santhony@cov.com>
Cc: "Kelner, Robert" <rkelner@cov.com>, LORI-IV <flynnlmmm@mailsol.net>
Date: Mon, 20 Nov 2017 12:00:38 -0500

Steve,

Thanks for laying this out. It is very clearly stated.

As we've discussed, Lori and I are very confident in you and Rob (and the rest of the team) and, we've felt from day one, Covington, with both of your leadership and guidance, have counseled beyond what we could imagine.

We're good going forward with you all and very much trust that you will continue to guide us through this difficult time.

Thank you.

Mike

Michael T Flynn

Lt. Gen. (R), U.S. ARMY

On Nov 19, 2017, at 13:13, Anthony, Stephen
<santhony@cov.com<mailto:santhony@cov.com>> wrote:

PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

Mike,

As you know, the Special Counsel's Office (SCO) is challenging the accuracy of the FARA filing that Covington prepared and filed on behalf of you and FIG Inc. This brings to a head a topic that we raised and discussed with you on August 30 and in subsequent discussions with you.

As we have discussed, under the D.C. rules of professional conduct, we are required to advise a client if a representation involves a conflict of interest between our firm and the client, so that the client can decide whether to proceed with the representation. This email summarizes in writing our previous explanation of our firm's potential conflict in handling this matter. By this email we seek your informed consent to the conflict.

When someone (here, the SCO) challenges the work product of a law firm, that challenge raises the potential of a conflict of interest between the client for whom the work was done (you) and the law firm that did the work (us). For example, the client might take the position that he gave the lawyers the correct information and that the lawyers made a mistake that shouldn't be attributed to the client.

The SCO's stance toward you also raises the prospect that the SCO may obtain the testimony of Rob (and/or other Covington attorneys) as a fact witness regarding what you told him and what you didn't tell him. The SCO could seek to penetrate the attorney-

client privilege and compel Rob to testify about your communications with Covington. The SCO could then use that testimony against you – for example, to argue that you lied to your lawyers, thereby causing a false FARA filing.

Additionally, we discussed with you the proposition that, any time a law firm's work product is challenged, the lawyers potentially have two interests in mind: (a) the client's interest, and (b) the lawyers' own interest in defending their own prior work. Put another way, it raises the prospect that we will be looking over our shoulder at the same time as we are defending you going forward. You should know that our awareness that our own prior work is being called into question could – even unconsciously – color our advice to you regarding whether to be interviewed by the SCO about the FARA filing, and regarding what to do going forward.

Under Rule 1.7 of the D.C. rules of professional conduct, a lawyer shall not represent a client if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer, unless the client gives informed consent. As described above, our continued representation of you creates a potential conflict under Rule 1.7, because it involves prior work of our law firm, namely our preparation of the FARA filing. Defending a client in a criminal investigation raising issues regarding a law firm's prior legal work may generate a conflict of interest when there is a plausible claim that the prior work was deficient, especially if there are alternative strategies for handling the matter, and one strategy is better for the law firm and a different strategy is better for the client. In that instance, the potential exists that the law firm will pursue the criminal defense strategy that is better for the firm so as to protect its prior work from blame. In this situation, it could be argued that any deficiencies in the FARA filing are (wholly or partly) the fault of Covington. Conceivably, the firm could handle the defense of the criminal investigation so as to minimize that issue. For example, the firm could recommend strategies that avoid criticism of the decisions it made in preparing the FARA filing.

The most likely alternative to your consenting to our continued representation of you in SCO investigation is that you will need to identify and engage other lawyers to handle the SCO matter. Although Covington's continued defense of you in the SCO investigation creates a potential conflict, as described above, we do not believe that our commitment, dedication, and ability to effectively represent you will be adversely affected by our own interests, and we believe that we will be able to provide you with competent and diligent representation.

Nevertheless, in deciding whether to consent to the conflict, you should consider carefully how our prior work for you and our desire to protect our firm's interests may affect you. Although there is no requirement that you do so, because this is an important decision, you may want to consult independent counsel before deciding whether to consent.

As we previously told you, we cannot advise you regarding a conflict of interest between you and us. We therefore recommended on August 30 that you obtain advice from a lawyer independent of Covington. In a later conversation with you, we suggested the name of Tom Mason of Harris, Wiltshire & Grannis LLP (direct dial: (202) 730-1302), a respected lawyer who practices in the area of lawyers' professional duties. As we mentioned, Tom has told us he has determined his firm has no conflicts, and he is willing to be engaged by you for a reduced, fixed fee.

You have decided not to seek independent advice from Tom or from another lawyer. We respect that that's your decision to make.

Now that your discussions with the SCO have progressed to the point where you are prepared to answer questions about the FARA filing, we wanted to put in writing the understandings between us. We ask you to confirm that we have alerted you to the existence of an actual or potential conflict of interest between you and us, that we suggested you seek advice from an independent lawyer about this, and that you have decided to consent to any such conflict and wish to continue moving forward with us as your counsel.

Steve

Stephen Anthony

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5105 | santhony@cov.com<<mailto:santhony@cov.com>>
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RE: FARA client development

From: "Smith, Brian" </o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpow02.smithbd">
To: "Kelner, Robert" <rkelner@cov.com>
Cc: "Anthony, Stephen" <santhony@cov.com>
Date: Mon, 27 Nov 2017 17:25:09 -0500

I agree. I had a conversation last week with Derek, encouraging him and Zack to take advantage of the environment while you and I are constrained from doing so. I like the idea of client briefings, coupled with an advisory. I'm happy to help draft the advisory and update our prior decks, of course.

All that said, I really worry about a press backlash if we launch something right on the heels of a plea. I agree that the General won't mind, but we could take a beating in the press if it's too close to the plea.

With that in mind, we should definitely include Zack and Derek (to make it less of "Flynn's lawyers"). And I think some space from the plea is wise, notwithstanding the challenge that presents with the holidays and doing events while attention is high.

Honestly, I think the attention will remain high, and you doing an event on FARA will generate a lot of attention itself.

From: Kelner, Robert
Sent: Monday, November 27, 2017 3:32 PM
To: Smith, Brian <bdsmith@cov.com>
Cc: Anthony, Stephen <santhony@cov.com>
Subject: FARA client development

I've been thinking about this. Assuming we reach a resolution of the Flynn case this week, after that resolution is fully public, including the FARA discussion, I would feel free to issue a meatier client advisory on FARA. I am trying, as time permits, to work up a draft. After that goes out, I am thinking we could do a client briefing in DC, one in NY, and one in LA. We would need to generate a unique slide deck for this, based partly on the advisory. We could perhaps divide and conquer, pairing with Zack and Derek, so that we could cover more locations quickly. Just sending out announcements of the events would be good advertising.

This may be a lot to bite off, with the holidays coming up, but we may as well strike when the iron is hot, and I think Flynn would be fine with that, since the chances of our getting paid for his case are looking grim.

Steve, let me know if you see any issues with this.

Robert Kelner

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Washington, DC 20001-4956
T +1 202 662 5503 | rkelner@cov.com <mailto:rkelner@cov.com>
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AmLaw Litigators of the Week: Rob Kelner and Steve Anthony

From: "Hall, John" <jhall@cov.com>
To: Attorneys All <attorneysall@cov.com>, Marketing All <marketingall@cov.com>, Paralegals All <paralegalsall@cov.com>, Staff Attorneys <staffattorneys@cov.com>, Management Committee <managementcommittee2@cov.com>, LSS <lss@cov.com>
Date: Fri, 08 Dec 2017 10:39:13 -0500

Colleagues: No doubt most of you saw the photos and video of our colleagues, Rob Kelner and Steve Anthony, accompanying their client Lt. Gen. Michael Flynn to his plea hearing in federal court in Washington last Friday. Those images appeared on every news outlet around the world. Not surprisingly, Rob and Steve were named this morning as the American Lawyer's "Litigators of the Week." Pasted below is the terrific story. It is a wonderful tribute to Rob's and Steve's and their team's outstanding and careful work on this highest-of-high-profile matters. And it is yet another confirmation of Covington's place at the very top of the global legal industry's white collar defense and investigations practices. Please join me in congratulating them! John

Litigators of the Week: Covington Pair Score the Plea Deal Read Round the World

By [Cogan Schneier](#) | December 07, 2017

Robert Kelner and Stephen Anthony



Robert Kelner and Stephen Anthony

For the past year, Lt. Gen. Michael Flynn has reportedly faced a laundry list of potential criminal charges—everything from money laundering to violating the Logan Act to conspiracy to kidnap a Turkish cleric.

That's why when news broke last week that Flynn, the former National Security Adviser to President Donald Trump, would plead guilty in federal court to a single count of lying to federal investigators, it sent shockwaves not only through the media, but also through the Washington, D.C. legal community.

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Kelner and Anthony declined comment, but their peers in the white collar bar are clearly impressed by the result they achieved.

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by Mueller as well.

Though the deal makes no mention of Flynn, Jr., who has not been charged with any crimes, it's possible investigators are showing leniency toward him, said Rob Walker, of counsel at Wiley Rein, also a former federal prosecutor.

“My understanding is that [the deal] kept the government away from Flynn’s son as a potential target, and also, at least in theory, could result in little or no jail time,” Walker said. “Obviously under the circumstances I think it is a good result for Flynn and that his lawyers did a strong job in achieving that result for him.”

For Kelner and Anthony, that success appears to stem from their years of experience, a multi-disciplinary approach to the case and consistent media strategy.

Kelner, who is coming up on 20 years with Covington, is one of very few FARA experts in Washington, and has handled dozens of criminal cases over the years, many with a political aspect. He represented John Lopez, chief of staff to former U.S. Sen. John Ensign. Lopez was granted immunity in a Senate Ethics Committee and DOJ investigation into the senator’s efforts to cover up an affair. Kelner also represented Rep. Tom Petri, who was cleared of all wrongdoing after a House Ethics Committee investigation into his advocacy for certain companies in which he owned stock.

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Still, the work is far from over for the Covington team. Multiple congressional committees are entrenched in ongoing investigations into Flynn. Just Wednesday, a letter from a top Democrat on the House Oversight and Government Reform Committee revealed whistleblower allegations that Flynn texted a former business partner minutes after the inauguration to indicate they were “good to go” on a deal to build nuclear reactors in the Middle East.

Notably, the New York Times’ story on the letter stated that “a lawyer for Mr. Flynn declined to comment.”

Expect to read more lines like that in stories about Flynn for months to come.

Re: Brian, Alex, Roger, Josh: Your well-deserved recognition — to be added to your growing clips collection

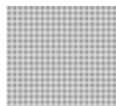
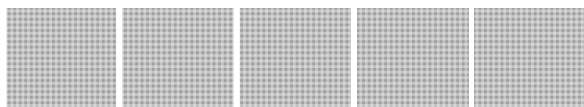
From: "Chertoff, Michael" <mchertoff@cov.com>
To: "Anthony, Stephen" <santhony@cov.com>, "Smith, Brian" <bdsmith@cov.com>, "Langton, Alexandra" <alangton@cov.com>, "Polack, Roger" <rpolack@cov.com>, "DeBold, Joshua" <jdebold@cov.com>
Cc: "Kelner, Robert" <rkelner@cov.com>
Date: Fri, 08 Dec 2017 07:29:07 -0500

Congratulations!

From: Anthony, Stephen
Sent: Friday, December 08, 2017 12:54 AM
To: Smith, Brian; Langton, Alexandra; Polack, Roger; DeBold, Joshua
Cc: Kelner, Robert; Chertoff, Michael
Subject: Brian, Alex, Roger, Josh: Your well-deserved recognition — to be added to your growing clips collection

Litigators of the Week: Covington Pair Score the Plea Deal Read Round the World

By **Cogan Schneier** | December 07, 2017



Robert Kelner and Stephen Anthony

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Sent from my iPhone

Israel representation

From: "Kelner, Robert" <rkelner@cov.com>
To: "Zakheim, Roger" <rzakheim@cov.com>, "Hindin, Doron" <dhindin@cov.com>, "Hester, Timothy" <thester@cov.com>, "Garland, James" <jgarland@cov.com>, "Anthony, Stephen" <santhony@cov.com>, "Smith, Brian" <bdsmith@cov.com>, "Parks, Zachary" <zparks@cov.com>
Date: Sat, 30 Dec 2017 12:59:58 -0500

I received a call this week letting me know that the Government of Israel decided not to retain us to provide FARA advice. While our work on the Flynn matter seems to have initially drawn them to us, the Prime Minister's Office apparently saw things differently and decided that our Flynn representation was a minus and not a plus. They were worried about optics. I suspect they may be worried about other things, too. So they will not be engaging us. They asked for references to other firms and I gave them a few names. Just wanted to let you all know.

Rob

Sent from my iPhone

FW: Joe Pianka

From: "Kelner, Robert" <"/o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.kelnerrk">
To: BVG <bvg@usdoj.gov>, ZNA <zna@usdoj.gov>
Cc: "Anthony, Stephen" <santhony@cov.com>
Bcc: "Langton, Alexandra" <alangton@cov.com>, "Chertoff, Michael" <mchertoff@cov.com>, "Smith, Brian" <bdsmith@cov.com>
Date: Mon, 29 Jan 2018 21:54:35 -0500

Brandon and Zainab:

We just received this rather disturbing email from the New York Times. We'd like to discuss this with you tomorrow.

Rob

Robert Kelner

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503 | rkelner@cov.com
www.cov.com

COVINGTON

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From: Mark Mazzetti [mailto:mazzetti@nytimes.com]
Sent: Monday, January 29, 2018 8:36 PM
To: Kelner, Robert <rkelner@cov.com>
Subject: Joe Pianka

Can we talk? Tonight or tomorrow AM?

Our understanding is that Joe Pianka interviewed Flynn and went to IG and said he was pressured by McCabe to change 302. It's in IG report and one of the reasons Wray pushed McCabe to leave.

We've been told that Hill has informed Flynn and legal team

Sent from my iPhone

Re: Plea Documents

From: "Kelner, Robert" </o=covington & burling/ou=cb/cn=recipients/cn=c&b.cbpowa01.anthonysp">
To: "Smith, Brian" <bdsmith@cov.com>
Cc: "Langton, Alexandra" <alangton@cov.com>, "Polack, Roger" <rpolack@cov.com>, "Chertoff, Michael" <mchertoff@cov.com>, "Anthony, Stephen" <santhony@cov.com>, "DeBold, Joshua" <jdebold@cov.com>
Date: Mon, 27 Nov 2017 20:05:52 -0500

Your point about the caveats in the FARA filings is one I made as well (not surprisingly).

Sent from my iPhone

On Nov 27, 2017, at 7:51 PM, Anthony, Stephen <santhony@cov.com<mailto:santhony@cov.com>> wrote:

All good points. Paragraph 2 of the Statement will grab a headline, no?

From: Smith, Brian
Sent: Monday, November 27, 2017 7:50 PM
To: Kelner, Robert <rkelner@cov.com<mailto:rkelner@cov.com>>; Langton, Alexandra <ALangton@cov.com<mailto:ALangton@cov.com>>; Polack, Roger <RPolack@cov.com<mailto:RPolack@cov.com>>; Chertoff, Michael <mchertoff@cov.com<mailto:mchertoff@cov.com>>; DeBold, Joshua <jdebold@cov.com<mailto:jdebold@cov.com>>
Cc: Anthony, Stephen <santhony@cov.com<mailto:santhony@cov.com>>
Subject: RE: Plea Documents

My reactions:

- The double negatives in the Information (and the Statement) are helpful in that they make the false statements hard to comprehend.
- The parts of the Statement that will get the most attention are paragraph 3.c. (conversation with "incoming NSC official") and paragraph 4.b. ("senior official from the Presidential Transition Team directed Flynn...").
- Paragraph 5 of the Statement (regarding FARA) is hardly brief or passing, as they suggested it would be. Several of the "false statements" are contradicted by the caveats or qualifications in the filing. For example, the Statement says "Flynn made" false statements that are, in the filing, attributed to Arent Fox and the accounting records.
- In page 5 of the Plea, he waives the right to be accompanied by counsel at subsequent interviews.

From: Kelner, Robert
Sent: Monday, November 27, 2017 6:31 PM
To: Langton, Alexandra <ALangton@cov.com<mailto:ALangton@cov.com>>; Smith, Brian <bdsmith@cov.com<mailto:bdsmith@cov.com>>; Polack, Roger <RPolack@cov.com<mailto:RPolack@cov.com>>; Chertoff, Michael <mchertoff@cov.com<mailto:mchertoff@cov.com>>; DeBold, Joshua <jdebold@cov.com<mailto:jdebold@cov.com>>
Cc: Anthony, Stephen <santhony@cov.com<mailto:santhony@cov.com>>
Subject: FW: Plea Documents

Draft plea papers from the SCO.

Robert Kelner

Covington & Burling LLP

One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503 | rkelner@cov.com<mailto:rkelner@cov.com>
www.cov.com<http://www.cov.com>

<image001.jpg>

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From: BVG [mailto:BVG@usdoj.gov]
Sent: Monday, November 27, 2017 6:21 PM
To: Kelner, Robert <rkelner@cov.com<mailto:rkelner@cov.com>>; Anthony, Stephen <santhony@cov.com<mailto:santhony@cov.com>>
Cc: ZNA <ZNA@usdoj.gov<mailto:ZNA@usdoj.gov>>
Subject: Plea Documents

Rob and Steve, after our meeting this morning and subsequent discussions with the Special Counsel, attached is our proposed plea offer. Rather than call you right now to address all of the points you've raised, I'd propose that you first review the documents since they address some of your concerns. That would also give you the opportunity to raise any remaining questions or concerns now that you have the documents in hand. We're available to talk later this evening at your convenience or connect tomorrow at 11:15 (which unfortunately is the earliest we'd be able to talk tomorrow).

Please let us know.
Brandon

Brandon L. Van Grack
The Special Counsel's Office
(202) 514-0529

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Attachments:

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[http://cbentvault01dc.cov.com/EnterpriseVault/ViewMessage.asp?](http://cbentvault01dc.cov.com/EnterpriseVault/ViewMessage.asp?VaultId=1C868D1B9E0E2BE49838A464981CCD7B91110000cbentvaultsite&SavesetId=201803302448307~201711280105540000~Z~E110813DB8751FA1BABE8C543E53FAD1&AttachmentId=1image001.jpg)

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