

NO, MIKE PENCE IS NOT GOING TO BE INDICTED

For a long time, I've pissed off the frothy anti-Trumpers because I insist there is nothing in the public record that suggests Mike Pence will be indicted as part of the Mueller investigation. Yes, it is true that Paul Manafort – who may yet get indicted six more times at the rate he's going – installed him, but on top of being a Russian-backed sleaze, he's also an expert on getting Republicans elected, and he was right that Trump needed someone with real Evangelical credentials and close ties to the Koch network to get elected. Yes, it is true that he got warnings that Flynn was an unregistered foreign agent, but as Vice President, he's not the guy who decided Flynn would make a swell National Security Advisor. And as I've long argued, the fact that Mike Pence knowingly lied – if that's what he did do – to hide that Mike Flynn had discussed sanctions with Sergei Kislyak is not an indictable offense, not even close to one.

Besides, Robert Mueller seems to believe he didn't knowingly lie.

That's what this passage from the Addendum laying out Flynn's cooperation means.

the 2016 election. Several senior members of the transition team publicly repeated false information conveyed to them by the defendant about communications between him and the Russian ambassador regarding the sanctions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pence is, of course, the most obvious person who repeated the false story that Flynn had not discussed sanctions with Kislyak. But we don't even have to know that to focus on Pence. That's because the sentencing memo itself lays out how the progression from the David Ignatius column to Pence's appearance on Face the Nation led up to Flynn's FBI interview, according that

progression and Pence's role in it particular emphasis.

Days prior to the FBI's interview of the defendant, the Washington Post had published a story alleging that he had spoken with Russia's ambassador to the United States on December 29, 2016, the day the United States announced sanctions and other measures against Russia in response to that government's actions intended to interfere with the 2016 election (collectively, "sanctions"). See David Ignatius, *Why did Obama Dawdle on Russia's hacking?*, WASH. POST (Jan. 12, 2017). The Post story queried whether the defendant's actions violated the Logan Act, which prohibits U.S. citizens from corresponding with a foreign government with the intent to influence the conduct of that foreign government regarding disputes with the United States. See 18 U.S.C. § 953. Subsequent to the publication of the Post article and prior to the defendant's FBI interview, members of President-Elect Trump's transition team publicly stated that they had spoken to the defendant, and that he denied speaking to the Russian ambassador about the sanctions. See, e.g., *Face the Nation* transcript January 15, 2017: Pence, Manchin, Gingrich, CBS NEWS (Jan. 15, 2017).

So the sentencing memo tells us that the progression from Ignatius to Pence was important, and one of the unredacted bits describing Flynn's cooperation states that Flynn conveyed false information to several senior members of the transition team, which they publicly repeated.

And then the passage describing Flynn's cooperation regarding transition events ends with three redacted lines.

I have, in the past, doubted that Flynn told Pence and Sean Spicer that sanctions didn't come up. But Mueller seems to have no doubt.

So when Pence claimed on the teevee that Flynn did not talk sanctions with Kislyak, he believed – because that's what Flynn told him – that Flynn did not talk sanctions with Kislyak.

Where things (especially those three redacted lines) get interesting is when you look at the story Trump's lawyers told Mueller in the wake of Flynn's plea deal in January in an attempt to spin a story McGahn wrote days after Flynn got fired into something that would still hold up almost a year later. Effectively, the original McGahn narrative invented reasons (which are inconsistent with Sally Yates' version of events) why Trump didn't fire Flynn right away on January 26, but instead – in a series of conversations memorialized by the then FBI Director – tried to convince Jim Comey to drop things. The original McGahn narrative further invented reasons why Flynn's lies to Pence mattered on February 13 (when they were used as an excuse to fire Flynn in an attempt to kill the investigation) when they hadn't mattered on January 26.

As I've laid out here, things got still worse when, on January 29, 2018, they had to try to make that story fit Don McGahn's testimony from fall 2017, Transition documents seized during the summer that Trump witnesses only belatedly realized Mueller had, and Flynn's decision to cooperate in November. The most interesting of the glaring problems with the story, however, is this one:

The Trump letter didn't address two of the questions asked about Flynn's firing. In addition to remaining silent about what Trump really knew about what Flynn said to Pence, it doesn't address Trump's involvement in the transition period communications with Sergey Kislyak. That's important because that's the question that Flynn's initial

interview should have revealed. Contrary to what the letter claims, then, Flynn's plea and Trump's silence in the letter about the substance of the plea is proof not that Trump didn't obstruct, but that Trump continues to refuse to explain why Flynn asked Kislyak to hold off on responding to sanctions, to say nothing of whether Flynn did so on his orders.

Remember: according to public reports, Trump refused to answer any questions pertaining to the transition period. Since January 8, 2018, Mueller's team has been trying to get him to address his knowledge and involvement in (among other things):

1. Former National Security Advisor Lt. Gen. Michael Flynn – information regarding his contacts with Ambassador Kislyak about sanctions during the transition process;
2. Lt. Gen. Flynn's communications with Vice President Michael Pence regarding those contacts;

These, then, would be two of the questions Trump refused to answer by asserting Executive Privilege over issues from a period when he was not yet the Executive.

But then, Mueller probably doesn't need Trump to answer questions to which the answer is almost certainly, "I ordered them." As Flynn's addendum on cooperation lays out, "the defendant's decision to plead guilty and cooperate likely affected the decisions of related firsthand witnesses to be forthcoming with the SCO and cooperate," which is (like the comment on Flynn's lies to Pence) followed by several redacted lines, the last of the addendum. We

know, for example, that one of the people that belatedly decided to unforget details she was a party to firsthand after Flynn flipped was KT McFarland, who would have conveyed Trump's orders to Flynn.

In other words, with all the people who've followed Flynn's lead and belatedly unforgotten what really happened, Mueller likely has abundant evidence both *that* Trump ordered both of these actions, and that his team kept inventing stories to try to explain away the aftermath.

As I disclosed in July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.