

# FLYNN WAS HIDING THAT HE COORDINATED HIS KISLYAK CALL WITH MAR-A-LAGO

One of the defenses the frothy right – from Billy Barr down to bots on Twitter – keeps making about Mike Flynn is that because he knew his calls with Sergey Kislyak would be recorded, he would know that the FBI knew what he had said during his January 24, 2017 interview, and so had no reason to lie.

Indeed, whereas DOJ reclassified stuff from an Andrew McCabe memo that was made public last year (hiding McCabe's concern about leaks), the only new line in McCabe's memo they declassified served to substantiate Flynn's acknowledgment that FBI knew what he had said to Kislyak.

Mr. Flynn, himself a former Director of the Defense Intelligence Agency, stated that he readily expected that the FBI already knew the contents of his conversations with the ambassador, stating: "you listen to everything they say."

In their motion to dismiss the Flynn prosecution, DOJ used this quotation of Flynn to claim that because FBI already knew what he said with Kislyak, they had no need to interview Flynn.

In any event, there was no question at the FBI as to the content of the calls; the FBI had in its possession word-for-word transcripts of the actual communications between Mr. Flynn and Mr. Kislyak. See Ex. 5 at 3; Ex. 13. at 3. With no dispute as to what was in fact said, there was no factual basis for the predication of a new counterintelligence investigation. Nor was there a

justification or need to interview Mr. Flynn as to his own personal recollections of what had been said.

Except DOJ and all of Flynn's frothers are missing (or suppressing) something so obvious I pointed it out when Flynn's 302 was first released in heavily redacted form 18 months ago.

Flynn wasn't lying to hide what he said to Kislyak.

He was lying to hide that he had coordinated with people at Mar-a-Lago before speaking with Kislyak.

In the 302 of his January 24, 2017 interview, for example, FBI agents described Flynn attributing the delay in returning Kislyak's text on December 28 (and, we now know, the Russian Embassy's call) to the shitty cell reception in Dominican Republic.

Shortly after Christmas, 2016, FLYNN took a vacation to the Dominican Republic with his wife. On December 28th, KISYLAK sent FLYNN a text stating, "Can you call me?" FLYNN noted cellular reception was poor and he was not checking his phone regularly, and consequently **did not see the text until approximately 24 hours later**. Upon seeing the text, FLYNN responded that he would call in 15-20 minutes, and he and KISLYAK subsequently spoke.

After Agents circled around to ask whether he had discussed the expulsions of diplomats (which, incidentally, I think is a fourth lie, one not charged, suggesting his comments on expulsions go beyond what appears in public reports), Flynn claimed he didn't know that Obama had imposed the sanctions at all because he wasn't watching the news and his government BlackBerry wasn't working (thereby confirming he returned Kislyak's call using a device the government couldn't obtain without legal

process).

The interviewing agents asked FLYNN if he recalled any conversation with KISLYAK surrounding the expulsion of Russian diplomats or closing of Russian properties in response to Russian hacking activities surrounding the election. FLYNN stated that he did not. FLYNN reiterated his conversation was about the PUTIN/TRUMP VTC and the "Astana thing" (the Kazakhstan conference described earlier). **FLYNN noted he was not aware of the then-upcoming actions** as he did not have access to television news in the Dominican Republic and his government BlackBerry was not working.

When cued with his specific "tit-for-tat" comment, Flynn again claimed not to have known about the sanctions before his call.

The interviewing agents asked FLYNN if he recalled any conversation with KISLYAK in which the expulsions were discussed, where FLYNN might have encouraged KISLYAK not to escalate the situation, to keep the Russian response reciprocal, or not to engage in a "tit-for-tat." FLYNN responded, "Not really. I don't remember. It wasn't, 'Don't do anything.'" The U.S. Government's response was a total surprise to FLYNN. **FLYNN did not know about the Persona Non-Grata (PNG) action until it was in the media.**

When asked one more time about his calls that day, he again pointed to Dominican Republic's shitty cell service to claim ignorance of the sanctions.

FLYNN remembered making four to five calls that day about this issue, but that the Dominican Republic was a

difficult place to make a call as he kept having connectivity issues. FLYNN reflected and stated he did not think he would have had a conversation with KISLYAK about the matter, as **he did not know the expulsions were coming.**

Three different times in this interview, Flynn claimed he did not know about the sanctions before speaking with Kislyak, and in a fourth response, he falsely attributed all the delay in returning Kislyak's call exclusively to the shitty cell service. But according to the Mueller Report, he had found out about the sanctions from a text a KT McFarland assistant sent him, if not before.

Russia initiated the outreach to the Transition Team. On the evening of December 28, 2016, Kislyak texted Flynn, "can you kindly call me back at your convenience."1229 Flynn did not respond to the text message that evening. Someone from the Russian Embassy also called Flynn the next morning, at 10:38 a.m., but they did not talk. 1230

The sanctions were announced publicly on December 29, 2016. 1231 At 1 :53 p.m. that day, McFarland began exchanging emails with multiple Transition Team members and advisors about the impact the sanctions would have on the incoming Administration. 1232 At 2:07 p.m., a Transition Team member texted Flynn a link to a New York Times article about the sanctions. 1233 At 2:29 p.m., McFarland called Flynn, but they did not talk. 1234 Shortly thereafter, McFarland and Bannon discussed the sanctions. 1235 According to McFarland, Bannon remarked that the sanctions would hurt their ability to have good relations with Russia, and that Russian escalation would make things more difficult. 1236 McFarland believed she told Bannon that Flynn was scheduled to talk to Kislyak

later that night. 1237 McFarland also believed she may have discussed the sanctions with Priebus, and likewise told him that Flynn was scheduled to talk to Kislyak that night. 1238 At 3:14 p.m., Flynn texted a Transition Team member who was assisting McFarland, "Time for a call???"1239 The Transition Team member responded that McFarland was on the phone with Tom Bossert, a Transition Team senior official, to which Flynn responded, "Tit for tat w Russia not good. Russian AMBO reaching out to me today." 1240

In fact, Flynn's specific testimony was not that he had waited to call Kislyak back because of connection issues (though that was probably part of it), but because he wanted to consult with McFarland and others first. He returned Kislyak's call immediately after consulting with McFarland.

Flynn recalled that he chose not to communicate with Kislyak about the sanctions until he had heard from the team at Mar-a-Lago.1241 He first spoke with Michael Ledeen, 1242 a Transition Team member who advised on foreign policy and national security matters, for 20 minutes. 1243 Flynn then spoke with McFarland for almost 20 minutes to discuss what, if anything, to communicate to Kislyak about the sanctions. 1244 On that call, McFarland and Flynn discussed the sanctions, including their potential impact on the incoming Trump Administration's foreign policy goals. 1245 McFarland and Flynn also discussed that Transition Team members in Mar-a-Lago did not want Russia to escalate the situation. 1246 They both understood that Flynn would relay a message to Kislyak in hopes of making sure the situation would not get out of hand.1247

Immediately after speaking with McFarland, Flynn called and spoke with Kislyak. 1248 Flynn discussed multiple topics with Kislyak, including the sanctions, scheduling a video teleconference between President-Elect Trump and Putin, an upcoming terrorism conference, and Russia's views about the Middle East. 1249 With respect to the sanctions, Flynn requested that Russia not escalate the situation, not get into a "tit for tat," and only respond to the sanctions in a reciprocal manner.1250

Not only did Flynn make efforts – by lying – to hide his consultation with Mar-a-Lago when he was interviewed on January 24, but after Kislyak relayed to Flynn that Putin had specifically taken Flynn's call into account, Flynn took immediate efforts to hide that sanctions had come up by writing McFarland a cover email she could share with others that didn't mention sanctions.

Shortly thereafter, Flynn sent a text message to McFarland summarizing his call with Kislyak from the day before, which she emailed to Kushner, Bannon, Priebus, and other Transition Team members. 1265 The text message and email did not include sanctions as one of the topics discussed with Kislyak. 1266 Flynn told the Office that he did not document his discussion of sanctions because it could be perceived as getting in the way of the Obama Administration's foreign policy.1267

Flynn knew the FBI had access to the Kislyak transcripts when they interviewed him. Kislyak was a foreign target and so fair game.

But Flynn believed the FBI might not access his communications with the rest of the team (indeed, once Trump's people discovered Mueller had obtained the Transition communications from

GSA in the wake of Flynn's guilty plea, they threw an every-loving hissy fit). Not just Flynn, but everyone else, was trying to cover up those conversations in which they had strategized the call. Indeed, even after Flynn pled guilty, the White House scripted Bannon to deny them.

And the difference – the fact that Flynn wasn't trying to hide his calls with Kislyak so much as he was trying to hide his consultations with the people at Trump's resort – conclusively demonstrates why the lies were material. The FBI knew what Flynn had said to Kislyak, but on January 24, they FBI *didn't* know how many calls Flynn had exchanged with others at Mar-a-Lago before calling Kislyak. The Mary McCord 302 reveals analysis of Flynn's call records had not yet been done by February 16.

McCord's notes (page 42) reflect that at that time, analysis of Flynn's phone records was nearly done.

The FBI would have used those call records – of what Flynn made clear in his interview were for his personal, not his government issued (secure) phone – to identify whether it was true that Flynn had been cut off in Dominican Republic, and whether it was true that he really didn't know about sanctions when he spoke to Kislyak.

Indeed, the FBI were still trying to understand all the details about the discussions at Mar-a-Lago until they obtained the Transition emails with a warrant, which probably happened on August 25, 2017. KT McFarland claimed not to remember the 20 minute call with Flynn in her second interview on September 14, 2017, something she would un-forget after Flynn pled guilty, though Barr's DOJ is hiding the rest of the details about that call. And FBI didn't get a full accounting of what happened between Flynn and Mar-a-Lago at least until McFarland started unforgetting on December 22, 2017 in the wake of Flynn's plea.

In short, it took the FBI almost an entire year to get a general understanding of the events surrounding that call in significant part because of the lies Flynn told in the interview, lies about stuff that didn't show up in the Kislyak transcript. For much of that time, FBI would have had reason to believe Flynn had acted on his own, giving FBI every reason to believe Flynn was secretly working with Russia (like they were coming to understand he had secretly been on the payroll of Turkey).

That's the definition of materiality. And, as I've noted, Bill Barr's DOJ is on the record agreeing, in the still-active sentencing memorandum for Mike Flynn submitted in January, that it was material precisely because FBI needed to understand who ordered him to make that call.

Any effort to undermine the recently imposed sanctions, which were enacted to punish the Russian government for interfering in the 2016 election, could have been evidence of links or coordination between the Trump Campaign and Russia. Accordingly, determining the extent of the defendant's actions, why the defendant took such actions, and at whose direction he took those actions, were critical to the FBI's counterintelligence investigation.

[snip]

As the Court has already found, his false statements to the FBI were material, regardless of the FBI's knowledge of the substance of any of his conversations with the Russian Ambassador. See Mem. Opinion at 51-52. The topic of sanctions went to the heart of the FBI's counterintelligence investigation. Any effort to undermine those sanctions could have been evidence of links or coordination between the Trump Campaign and Russia.



Had Trump admitted, right from the start, that he ordered the Code Red, this wouldn't have been material. Had Mike Flynn been honest that he had coordinated his response with advisors sitting at Mar-a-Lago with Trump, this might not have been material. Had KT McFarland admitted her side of the consultations when interviewed by the FBI in August and September 2017, it might change the materiality of Flynn's lies.

But Donald Trump and Mike Flynn and KT McFarland treated this as something to hide for almost the entirety of a year. And that's why the lies mattered.