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OPINION | POTOMAC WATCH

The FBI's Flynn Outrage

New documents shock the conscience and demonstrate the need for accountability.



By

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The newest Federal Bureau of Investigation documents in the case of former White House national security adviser Mike Flynn are stunning in themselves. But the totality of Mr. Flynn's treatment shocks the conscience.

Mr. Flynn in 2017 pleaded guilty to a single count of lying to FBI agents about conversations he had with Sergey Kislyak, Russia's ambassador to the U.S. Thanks to new documents the feds belatedly turned over to his attorneys, we know the FBI engineered this "crime." Handwritten notes from former FBI counterintelligence head Bill Priestap, made before the bureau's interview of Mr. Flynn, ask the following: "What is our goal? Truth/Admission, or to get him to lie, so we can prosecute him or get him fired?"

One of the frustrations of the Trump-Russia "collusion" narrative is that the evidence of law enforcement's abuse of power keeps emerging in dribs and drabs. To grasp the outrageous conduct fully, the Flynn documents need to be added to what we already know. The overall evidence paints a scandalous picture: Having labored and abysmally failed in 2016 to build a case that Mr. Flynn was an agent of the Russians, the FBI and Justice Department changed gears—rifling through his communications, inventing a fake crime, and entrapping him on a "lying" charge.

The latest documents reveal the FBI was officially *closing* its Flynn case on Jan. 4, 2017. The FBI's Crossfire Hurricane team spent 2016 checking "databases" for "derogatory" information

on him, running down accusations that he had ties to Russians. They struck out, and the closing document admits Mr. Flynn “was no longer a viable candidate” for investigation. Then, suddenly, also on Jan. 4, FBI agent Peter Strzok sends a text saying: “Hey, if you haven’t closed [the Flynn case], don’t do so yet.” Mr. Strzok explained: “seventh floor involved”—a reference to FBI top brass.

What changed? In late December, Mr. Flynn spoke to Mr. Kislyak. Federal law gives investigators the authority to wiretap foreigners but also requires strict privacy protections for U.S. citizens with whom they speak. The Obama administration superseded those protections and “unmasked” Mr. Flynn in the days following his discussions. They later leaked the classified contents of the call to the press.

The snooping gained them nothing substantive. Mr. Flynn’s conversations were lawful and routine. So Justice Department and FBI officials instead manufactured the absurd theory that Mr. Flynn had violated the Logan Act of 1799, which bars citizens from engaging in unauthorized negotiations in disputes between the U.S. and foreign governments. No one has ever been convicted of violating the act. This week’s handwritten notes show that among the FBI’s hopes in interviewing Mr. Flynn was to “get him to admit to breaking the Logan Act.”

The real goal was to trap him. Remember, the FBI didn’t need to ask Mr. Flynn what he’d said to the Russian ambassador; they had a recording. The only reason for an interview was to coax Mr. Flynn into saying something at odds with that transcript. They worked hard at it. Then-Director James Comey has previously bragged that the FBI went around the White House legal counsel to make sure Mr. Flynn had no lawyer present.

This week’s documents include an email from former FBI lawyer Lisa Page debating ways for the bureau to get around its standard formal admonition against lying, suggesting agents just “casually slip that in” when talking to Mr. Flynn. A document from former Deputy Director Andrew McCabe says that he urged Mr. Flynn to conduct the interview without a lawyer, and that the FBI deliberately dispensed with the admonition altogether.

The abuse then continued under former special counsel Robert Mueller. Mr. Flynn initially explained that he misremembered what he’d discussed with the Russian, a highly plausible

claim. But Mr. Mueller's lawyers pursued him to near penury and threatened to prosecute his son. He succumbed and agreed to a plea deal.

Perhaps the most important aspect of this week's documents is what *isn't* in them. The FBI expresses no concern that Mr. Flynn was "colluding" with Russia or otherwise threatening national security—supposedly the rationale for the FBI's intrusive investigation. By this point, it just wanted a scalp, a means to keep its broader narrative rolling.

The FBI exists to investigate crimes, not to create them. Some might add this shameful behavior to the long list of the FBI's "collusion" malfeasance: the surveillance-court abuse, the Steele dossier, the leaks. But the Flynn case is something different. This isn't the FBI playing fast and loose with sources or the courts. This is law enforcement abusing its most tyrannical power—to strip citizens of their reputations, their livelihoods and their liberty.

The FBI's treatment of Mr. Flynn lives up to Americans' worst fears. Attorney General William Barr was right to order a review of the case. Now someone must be held to account.

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