

Politics

Trump lawyer says president knew Flynn had given FBI the same account he gave to vice president

By **Carol D. Leonnig**, **John Wagner** and **Ellen Nakashima** December 3

President Trump's personal lawyer said Sunday that the president knew in late January that then-national security adviser Michael Flynn had probably given FBI agents the same inaccurate account he provided to Vice President Pence about a call with the Russian ambassador.

Trump lawyer John Dowd said the information was passed to Trump by White House counsel Donald McGahn, who had been warned about Flynn's statement to the vice president by a senior Justice Department official. The vice president said publicly at the time that Flynn had told him he had not discussed sanctions with the Russian diplomat — a statement disproved by a U.S. intelligence intercept of a phone call between Flynn and then-Russian Ambassador Sergey Kislyak.

Trump was aware of the issue a couple of weeks before a conversation with then-FBI Director James B. Comey in which Comey said the president asked him if he could be lenient while investigating Flynn, whom Trump had just fired for misleading Pence about the nature of his conversations with the Russian.

According to notes kept by Comey, Trump asked if he could see "his way clear to letting this go, to letting Flynn go." Trump fired Comey in May.

In a pre-dawn tweet Sunday, Trump issued a fresh rebuttal to Comey, writing: "I never asked Comey to stop investigating Flynn. Just more Fake News covering another Comey lie!" The tweet was part of a running commentary from Trump that began Saturday, a day after [Flynn pleaded guilty to lying to the FBI](#) and indicated he would cooperate with special counsel Robert S. Mueller III, who is probing Russian interference in the 2016 election.

Trump's Saturday tweets stoked controversy, as he wrote that "I had to fire General Flynn because he lied to the Vice President and the FBI." Previously, the White House had cited only the false statements to Pence as a rationale for dismissing Flynn.

Dowd confirmed Sunday that he had drafted the tweet for Trump and acknowledged that it was sloppily worded. He said it was inaccurate to say the president was told that Flynn had lied to the FBI. Dowd said Sunday that Trump knew only what acting attorney general Sally Yates had told the White House counsel: that Flynn's accounts to the agents interviewing him were the same as those Flynn gave Pence, and "that the [Justice] Department was not accusing him of lying."

People familiar with Yates's account say she never discussed any part of the FBI investigation with the White House.

Dowd played down the significance of Trump's tweet. He said he did not intend to make news and declared, "I'm out of the tweeting business."

But several legal experts said the tweet, and some of Dowd's comments about what the president may have known, could increase the president's legal exposure.

If Trump knew that Flynn might not have been accurate with the FBI, it could provide motivation for any alleged effort to obstruct justice, said Barak Cohen, a former federal prosecutor who does white-collar defense work at the Perkins Coie law firm. "It bolsters the intent for committing obstruction," he said.

Even if Dowd wrote the tweet, Cohen said, "if President Trump sends it, then Trump has adopted it. It's his statement. . . . The bottom line is the tweet is still bad for Trump — it makes things worse for him."

A person close to the White House involved in the case termed the Saturday tweet "a screw-up of historic proportions" that has "caused enormous consternation in the White House."

The person, who, like others, spoke on the condition of anonymity to speak candidly, said that White House officials quickly realized the tweet could significantly assist Mueller if he chooses to pursue an obstruction case. The development sparked particular concern because others around Trump were not certain that Trump knew Flynn had made a false statement to the FBI at the time he fired him, the person added.

Democrats were quick to pounce on the development during appearances on Sunday morning's public affairs shows.

In an interview, Sen. Dianne Feinstein (D-Calif.) said it looked to her that "what we're beginning to see is the putting together of a case of obstruction of justice."

Appearing on NBC's "Meet the Press," Feinstein, the top Democrat on the Senate Judiciary Committee, said she based her assessment on the indictment of Flynn on Friday and three other Trump associates previously, as well as the "hyper-frenetic attitude of the White House: the comments every day, the continual tweets."

"And I see it, most importantly, in what happened with the firing of Director Comey, and it is my belief that that is directly because [Comey] did not agree to lift the cloud of the Russia investigation," Feinstein said. "That's obstruction of justice."

Sen. Mark R. Warner (Va.), the top Democrat on the Senate Intelligence Committee, said Trump should have taken action against Flynn sooner if he knew his then-national security adviser had lied to the FBI.

“Well, if he knew that then, why didn’t he act on it earlier?” Warner said on CNN’s “State of the Union.” “It raises a whole series of additional questions.”

Flynn, who had been one of Trump’s closest and most trusted aides during the campaign and transition, admitted lying to the FBI about pre-inauguration communications with Kislyak, regarding efforts to blunt the Obama administration’s Russia sanctions and a U.N. resolution on Israel — potential violations of a rarely enforced law.

Dowd told The Post that Trump knew generally that Flynn’s account to the FBI and Pence were similar because of a conversation with McGahn on or about Jan. 26. Dowd said McGahn relayed what he had learned from Yates.

According to Dowd, Yates told McGahn on Jan. 26, in a meeting she requested, that Flynn appeared to have misled Pence about the nature of his call with Kislyak and that could compromise him, Dowd said. Yates also indicated that the FBI had interviewed Flynn on Jan. 24 about his contacts with Kislyak, Dowd said.

Dowd said Yates did not say that Flynn misled the FBI but suggested that Flynn had given FBI agents “the same story he gave the vice president.”

“For some reason, the [Justice] Department didn’t want to make an accusation of lying,” Dowd said. “The agents thought Flynn was confused.”

Past descriptions of those events by Yates and others are at odds with Dowd’s account.

According to several current and former law enforcement officials who spoke to The Post in February, Yates told McGahn that Flynn had discussed sanctions against Russia in his phone calls with Kislyak, was compromised because he had lied about this to the vice president, and could be vulnerable to blackmail, according to the officials.

She also told McGahn that Flynn had been interviewed by the FBI two days before, the officials said. When McGahn asked her how he did in the interview, Yates did not respond, according to the officials who spoke to The Post. She later testified the same thing at a Senate hearing in May.

“Mr. McGahn asked me how he did, and I declined to give him an answer to that,” Yates said at the hearing.

Yates did tell McGahn that she was concerned about Flynn’s underlying conduct — the calls with the Russian ambassador and the fact that he was not telling the truth to the vice president, according to officials who spoke to The Post in February.

Yates offered to show McGahn the underlying evidence regarding the phone calls, and she said the FBI could pull the material together for him to see, the officials said.

McGahn was told Jan. 30 that the material was ready for his review, the officials said. On that night, Trump fired Yates over her refusal to defend his travel ban.

A person familiar with McGahn's account says the White House counsel did not give Trump any indication in January that Flynn had violated the law in his FBI interview or tell the president that he believed Flynn was under criminal investigation.

When Yates met with McGahn on Jan. 26, it is McGahn's account that she told him that Flynn had been interviewed by the FBI but that she declined to characterize the interview. She also would not say whether Flynn was under investigation, according to the person familiar with McGahn's thinking.

That person said McGahn also recalls that Yates added that Flynn had told the FBI something similar to what he had told Pence, based on Pence's public comments about the issue at the time.

According to the person familiar with his thinking, McGahn informed the president of those facts and told him that if Yates was accurately describing the content of Flynn's contact with Kislyak, then Flynn should be fired.

People familiar with Yates's version of events dispute that she characterized what Flynn told the FBI in any way.

A former senior administration official said Sunday that there was no widespread discussion in the White House of Flynn having lied to the FBI.

"There was never a meeting I was in when someone said, 'Oh, Flynn lied to the FBI; we have to deal with it,'" said the official, who requested anonymity to speak candidly. "It was, 'We don't know if he's telling the truth or not.' And then, 'Okay, he's not telling us the truth.'"

As controversy built Sunday about Trump's actions, he sought to focus attention on news that Peter Strzok — the former top FBI official assigned to Mueller's probe of Russian interference in the 2016 election — was taken off that job this summer after his bosses discovered that he and another member of Mueller's team had exchanged politically charged texts disparaging Trump and supporting Democrat Hillary Clinton.

Strzok was also a key player in the investigation into Clinton's use of a private email server, which ended without charges against her.

"Report: 'ANTI-TRUMP FBI AGENT LED CLINTON EMAIL PROBE' Now it all starts to make sense!" Trump wrote. He also criticized the FBI and promised to bring it back to "greatness" under his administration.


"After years of Comey, with the phony and dishonest Clinton investigation (and more), running the FBI, its reputation is in Tatters - worst in History!" Trump wrote on Twitter. "But fear not, we will bring it back to greatness."

Sari Horwitz, Rosalind S. Helderman and Josh Dawsey contributed to this report.

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