

Politics

# Inside the day that set in motion Michael Flynn's guilty plea

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By **Michael Kranish** December 8

On the day that set in motion former national security adviser Michael Flynn's guilty plea and cooperation with the special counsel, President-elect Donald Trump was ensconced at his Mar-a-Lago resort in Palm Beach, Fla., contending with the latest news from the Obama White House.

It was Dec. 29, 2016, and President Barack Obama had just imposed sanctions against Russia for its alleged interference in the election. Trump aides were trying to decide how to respond.

Trump's incoming national security adviser, Michael T. Flynn, was on vacation in the Dominican Republic, so the president-elect was scheduled to be briefed by Flynn's top deputy, Kathleen Troia "K.T." McFarland.

A crucial chain of events unspooled over the day, according to court filings, congressional documents and people familiar with the interactions: Flynn and McFarland discussed by phone that Trump's transition team did not want Russia to escalate the situation. McFarland told other Trump advisers Flynn was reaching out to Russian Ambassador Sergey Kislyak. Flynn called the ambassador, urging Moscow not to retaliate — and Russia later surprisingly agreed.

Whether Trump knew of the back channel with Kislyak and whether he urged Flynn to discuss the sanctions are questions that loom before special counsel Robert S. Mueller III as he investigates contacts between Russia and the Trump operation.

Some legal experts say the special counsel could be examining whether Flynn's conversations with Kislyak violated the Logan Act, a 1799 law that prohibits private citizens from conducting U.S. foreign affairs without the permission of the government.

There has never been a successful prosecution for a violation of the act. Mueller could seek to use the law as leverage over Flynn — and possibly Trump, if he were involved in the back channel with Kislyak, said Ryan Goodman, a law professor at New York University.

"If the president-elect was involved in authorizing, instructing or encouraging Flynn to engage in a conversation with the Russians that violates the Logan Act, then Trump himself would be liable under federal law as an aider, abettor or co-

conspirator,” said Goodman, who served as legal adviser on national security to the Pentagon in the last year of the Obama administration.

Goodman said the events of Dec. 29 “have to be reinterpreted” in light of new information about what happened that day.

A White House spokesman declined to comment. An attorney for Flynn did not respond to a request for comment. McFarland did not respond to a request for comment.

The stage was set the day before, on Dec. 28, when it was widely reported that Obama would announce new sanctions on Russia for interfering in the election. At Mar-a-Lago, which was festooned with Christmas decorations, Trump vented that the outgoing president was undermining him.

“Doing my best to disregard the many inflammatory President O statements and roadblocks. Thought it was going to be a smooth transition — NOT!” he wrote on Twitter.

Trump spent much of the day working on his inaugural address and meeting with old friends, including boxing promoter Don King.

At one point, the president-elect wandered onto the patio, where he chatted about the historic importance of the inauguration with his friend, Chris Ruddy, the chief executive of Newsmax Media, and historian Douglas Brinkley.

Ruddy said in an interview that he had a prior conversation in which Trump was “very excited” about the prospect of resetting relations with Russia. The issue didn’t come up that day. Trump seemed relaxed, Ruddy said, and returned to the library, where he met with health-care executives.

That night, Trump stood with King and greeted reporters in the doorway of Mar-a-Lago’s ornate stone entrance. Trump rejected the idea there was a need to punish Russia, saying, “I think we ought to get on with our lives.”

The next morning, the Obama White House announced it was imposing the sanctions on Russian entities and individuals, and ordered 35 Russian diplomats to leave the United States.

Russia “intended to influence the election, erode faith in U.S. democratic institutions, sow doubt about the integrity of our electoral process, and undermine confidence in the institutions of the U.S. government,” the White House said in a statement.

Many of Trump’s top advisers were absent as the president-elect absorbed the news. The president-elect’s son-in-law and adviser, Jared Kushner, was on vacation in Hawaii with his wife, Ivanka Trump. Vice President-elect Pence, who was in charge of the transition, was at home in Indiana and did not call into the foreign policy briefing on that day, a spokeswoman said.

McFarland was slated to brief Trump, according to a schedule of his day provided to reporters. It is not known what they discussed.

Like Flynn, McFarland supported the idea of resetting relations with Russia. A former foreign policy and Pentagon aide in the Nixon, Ford and Reagan administrations, she wrote in a 2013 Fox News commentary, “Vladimir Putin is the one who really deserves that Nobel Peace Prize,” referring to Russia’s role in Syria at the time.

At some point on Dec. 29, Flynn called McFarland to strategize a plan about what to tell Kislyak about the sanctions, according to court documents and people familiar with her role. The two “discussed that the members of the Presidential Transition Team at Mar-a-Lago did not want Russia to escalate the situation,” according to court filings.

Flynn then immediately called Kislyak, urging Russia “not escalate the situation,” according to the documents. After he spoke to the Russian ambassador, Flynn called McFarland and briefed her on the discussion.

McFarland alerted other Trump advisers about Flynn’s outreach to Kislyak, according to a person familiar with her email, which was forwarded to incoming chief of staff Reince Priebus and strategist Stephen K. Bannon, among others.

A lawyer for Priebus said his client does not remember seeing the email. Bannon did not respond to a request for comment.

Obama was trying to “box Trump in diplomatically with Russia,” McFarland wrote in the message, according to the New York Times. She said she feared Obama’s sanctions were a “trap” that would prevent Trump from improving relations with Russia.

“If there is a tit-for-tat escalation Trump will have difficulty improving relations with Russia, which has just thrown U.S.A. election to him,” she wrote, according to the Times. A White House lawyer told the Times McFarland was describing how the Democrats were portraying Trump’s win.

Russia, which initially said it would punch back, held off.

“Although we have the right to retaliate, we . . . will plan our further steps to restore Russian-U.S. relations based on the policies of the Trump Administration,” Putin said Dec. 30. He criticized Obama for imposing the sanctions and invited the children of U.S. diplomats in Russia to attend a Christmas party in the Kremlin.

Trump was delighted, tweeting later that day, “Great move on delay (by V. Putin) — I always knew he was very smart.”

The following day, Kislyak called Flynn “and informed him that Russia had chosen not to retaliate in response to Flynn’s request,” according to court filings.

A Kremlin spokesman this week denied that Flynn’s appeal had any impact on Russia, saying Putin “makes decisions on his own.”

Among Trump aides, that Flynn and Kislyak spoke on Dec. 29 was well-known, according to an individual familiar with the conversations who spoke on the condition of anonymity to describe private conversations. On Jan. 12, that was made public when The Washington Post’s David Ignatius reported Flynn and Kislyak spoke several times as the sanctions announcement was released.

Flynn repeatedly told Trump aides he did not discuss sanctions with the ambassador. William Burck, an attorney for Priebus, said the chief of staff “confronted General Flynn several times, including in front of others, on whether he had talked to Kislyak about sanctions and was consistently told he had not.”

Four days after Trump was inaugurated, Flynn repeated his denial to the FBI, saying he did not raise the topic with Kislyak, according to court documents. Flynn made the same denial to Pence.

Meanwhile, the incoming national security adviser appeared confident that Trump would do away with sanctions on Russia, telling a former business associate the measures would immediately be “ripped up” by the new administration, according to a witness who spoke to congressional investigators.

On Feb. 9, The Post reported Flynn discussed sanctions on the call with Kislyak. Flynn resigned four days later.

On Feb. 14, Trump asked then-FBI Director James B. Comey to consider “letting Flynn go,” Comey later testified. Trump, who later fired Comey, denied he urged him to drop the matter.

McFarland, meanwhile, stayed on for several months as deputy national security adviser before being nominated by Trump to be U.S. ambassador to Singapore.

Her nomination has been held up amid questions about whether she was forthcoming with the Senate Foreign Relations Committee, which would vote on her nomination, about her knowledge of Flynn’s interactions with Kislyak.

Trump, meanwhile, said Flynn’s crime was not talking to Kislyak but lying about it to the FBI. “It is a shame because his actions during the transition were lawful,” Trump tweeted on Dec. 2. “There was nothing to hide!”

*Rosalind S. Helderman, Jenna Johnson and Steven Rich contributed to this report.*

 **499 Comments**

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