

FLYNN FTCA -- Additional Sheets

8. Basis of Claim

Michael Thomas Flynn (Flynn) began serving as a national security advisor to candidate Trump's presidential campaign in or about February 2016. Previously, on August 30, 2014, Flynn had retired after 33 years of service in the U.S. Army, including rising to the rank of Lieutenant General, serving as Assistant Director of National Intelligence in the Office of the Director of National Intelligence (ODNI), and serving as the 18th Director of the Defense Intelligence Agency. Thereafter, Flynn and his son Michael G. Flynn, Jr., ran the Flynn Intel Group, Inc. until 2016 which provided intelligence services for businesses and governments.

On or about July 2016, the FBI began to express disdain for candidate Donald J. Trump and began to consider ways in which it could hamper Donald Trump as candidate or as President, were he to win the 2016 election. As part of these efforts, the FBI began to target Flynn. Flynn was no stranger to the FBI and its leadership, many of whom considered Flynn to be a personal enemy of the FBI and the success of their own FBI careers. This personal animosity against Flynn arose for many reasons, including the following:

1. In 2014, Flynn roiled FBI leadership by intervening on behalf of Robyn Gritz, a decorated counterterrorism agent who specifically named and accused Andrew McCabe and other top FBI officials of sexual discrimination and retaliation in her complaint. Flynn's support of Gritz included a letter in 2014 on his official Pentagon stationary, a public interview in 2015 supporting Gritz's case, and an offer to testify on her behalf. His offer to testify made him a hostile witness against McCabe, who was soaring through the FBI leadership ranks. The FBI even sought to block Flynn's support for the agent, asking a federal administrative law judge in May 2014 to keep Flynn from becoming a witness in Gritz's EEOC discrimination and retaliation case.
2. Gritz also filed a complaint against McCabe alleging social media photos she found show McCabe campaigned for his wife's Virginia state senate race in violation of the Hatch Act. Relatedly, the Justice Department's Inspector General investigated allegations from Senate Judiciary Committee Chairman Charles Grassley that McCabe may not have properly disclosed campaign payments to his wife on his ethics report and should have recused himself from Hillary Clinton's email case.
3. McCabe, who became a central player in the FBI's Russia election tampering investigation, eventually became the FBI's second highest ranking executive and, for a time, its Acting Director, putting him in perfect

positions to influence and impact the criminal inquiry against Flynn. According to reports, several FBI employees personally witnessed McCabe make disparaging remarks about Flynn before and during the time Flynn emerged as a figure in the Russia case.

4. McCabe also personally disliked Flynn because Flynn came from the opposite end of the political spectrum. Flynn was a key Trump supporter and accused President Obama of facilitating the rise of ISIS through his policies and inaction. McCabe was a Democratic loyalist whose wife campaigned for state office in Virginia as a Democrat with heavy Democratic financial support, especially from Democrat Governor Terry McAuliffe, a close political ally of Hillary Clinton. McCabe's imprudent efforts to get his wife elected even became the subject of multiple federal probes.

The initial FBI investigation which ultimately led to the criminal prosecution of Flynn, was named "Crossfire Razor," as part of the FBI's "Crossfire Hurricane" investigation prompted by the now discredited Steele dossier. The Steele dossier, among other things, alleged that the Trump campaign had illegal ties to the Russian government. In late 2016, shortly before the 2016 election, Peter Strzok (Strzok) and Lisa Page (Page), both agents of the FBI, texted each other about their mutual dislike of candidate Trump and that if he were elected, they had an "insurance policy" and that they would "stop him." The next day, Strzok and Page opened an investigation into Flynn, and Strzok bragged that he invented the name for the investigation: "Crossfire Razor." From the beginning, McCabe directed and oversaw the operation against Flynn. Shortly thereafter, Joe Pientka purported to attend a national security briefing with candidate Trump and Flynn, but Pientka's true motive was to observe Flynn as part of "Crossfire Razor." In pursuing the "Crossfire Razor" and "Crossfire Hurricane" investigations related to Flynn, FBI agents including Pientka made multiple false statements to the Foreign Intelligence Surveillance Court (FISA court) in order to secure surveillance warrants.

On or about November 10, 2016, two days after the Presidential Election, President-elect Trump met with President Obama in the Oval Office. During this meeting, President Obama warned President-elect Trump he had profound concerns about hiring Flynn for any sensitive, high-level national security positions. President Obama made this statement despite himself having appointed Flynn to the position of Director of the Defense Intelligence Agency in 2012. On or about November 18, 2016, Flynn accepted President-elect Trump's offer to become his National Security Advisor.

Of all of President Trump's appointees, the Obama White House hated Flynn the most. As the Associated Press reported, "Of all the [sic] Trump's choices, White House officials said it was the selection of Flynn that felt like the most devastating blow,

given the immense authority the national security adviser has over matters of war and peace.” NPR also reported, “Flynn clashed with President Barack Obama’s White House about how the U.S. was waging its wars. He felt the president was not aggressive enough and needed to take a more comprehensive approach, as he wrote later in his book. ‘We can’t win this war by treating radical Islamic terrorists as a handful of crazies,’ Flynn wrote. ‘The political and theological underpinnings of their immoral actions have to be demolished.’ After just two years at DIA, Flynn was ousted; he retired from the Army.”

In an American Enterprise Institute (AEI) blog on November 22, 2016, entitled “The real source of Team Obama’s ‘despair’ over Mike Flynn,” AEI Senior Fellow Marc A. Thiessen reported the Obama White House was so disturbed by Flynn’s selection as NSA

[b]ecause he warned them about the danger of Obama’s Iraq withdrawal and predicted rise of ISIS – and then, after leaving office, called Obama out for failing to heed that advice. It was under Flynn’s leadership that DIA issued a classified report in 2012 predicting everything that has come to pass in Iraq since Obama’s withdrawal of American troops – warning that the chaos in Syria was creating conditions that could allow al-Qaeda in Iraq (now ISIS) to make a comeback and declare an Islamic caliphate. . . . Then, in February 2014 – a month after Obama had publicly dismissed ISIS as the “jayvee team” that is “engaged in various local power struggles and disputes” and is not “a direct threat to us or something that we have to wade into” – Flynn went to Capitol Hill to deliver DIA’s “annual threat assessment” to the Senate Armed Services Committee. He accurately predicted ISIS would probably “attempt to take territory in Iraq and Syria to exhibit its strength in 2014, as demonstrated recently in Ramadi and Fallujah, and [by] the group’s ability to concurrently maintain safe havens in Syria.” Everything Flynn’s DIA predicted came true – and he was pushed out because people in the White House didn’t want to hear it. As Flynn told the New York Times [sic], “it didn’t meet the narrative.” He was right and they were wrong. Now he’s in and they are out. Hence the “creeping sense of despair” on the Obama team.

The Obama White House was in so much “despair” and so distraught by the “devastating blow” of Flynn’s selection as NSA that they calculatingly, and with actual malice and corrupt motives, conspired to and did use the tremendous power of their positions in the Executive Office of the President (and their influence of the DOJ and FBI) to personally oppress and harm Flynn. The outrageous conduct they determined to take, along with the FBI and other allies in the Department of Justice, was executed knowingly, purposely, and in complete disregard of Flynn’s rights.

On or about January 5, 2017, FBI Director James Comey (Comey) and FBI Deputy Director Andrew McCabe (McCabe) met in the Oval Office with President Obama,

Vice President Biden, Deputy Attorney General Sally Yates, CIA Director Brennan, ODNI Director James Clapper, and National Security Advisor Susan Rice. During this meeting, the participants agreed to try to damage incoming President Trump and his new Administration, including by trying to prosecute Flynn, President-elect Trump's incoming National Security Advisor, to cause him to resign as NSA, to cripple President Trump's ability to implement national security and foreign affairs policy changes, and potentially to get Flynn to turn on President Trump. They also agreed to withhold this agreement from the "transition team."

Between the Oval Office meeting on January 5, 2017, and January 24, 2017, Comey and Yates met to discuss the Flynn matter, and thereafter Comey and McCabe discussed and developed a specific plan to interview Flynn about alleged Russian influence. On January 24, 2017, McCabe called Flynn requesting a meeting, to which Flynn agreed, not knowing he was being set up. Later that same day, on January 24, 2017, two FBI counter-intelligence agents met with Flynn at his office. Neither agent informed Flynn prior to or during this meeting that Flynn's statements could, and likely would, be used against him in a criminal prosecution.

On November 30, 2017, the Special Counsel's Office (SCO), a division of the United States Department of Justice (DOJ), filed a Criminal Information (Information) against Flynn, officially initiating a false, reckless, abusive, and malicious criminal prosecution against him. The Information erroneously charged Flynn with one count of making false statements in violation of 18 U.S.C § 1001(a)(2). SCO falsely asserted that Flynn had intentionally omitted and denied speaking with Russian Ambassador Kislyak (Kislyak) during an interview with two FBI agents, Strzok and an agent referred to as Pientka, on January 24, 2017. SCO was at all relevant times represented by Senior Assistant Special Counsel Brandon Van Grack (Van Grack).

SCO initiated the prosecution despite knowing that Flynn had not made false statements, and it therefore had no reasonable belief that Flynn had committed the criminal offense and therefore no probable cause. At the time, DOJ, by SCO through Van Grack, filed the Information, it was aware that Strzok and Pientka wrote that they did not believe that Flynn had lied during their January 24 conversation. Further, at the time SCO filed the Information, SCO was in possession of Strzok's notes that described an early January 2017 meeting in the Oval Office, wherein President Obama, Vice President Biden, FBI Director James Comey (Comey), and others described Flynn's conversations with Kislyak as "legit." "Legit" in this context meant that Flynn was not conspiring with Russian operatives. During this Oval Office meeting, Vice President Biden suggested using the Logan Act to prosecute Flynn as an alternative theory, despite the fact that the Logan Act has never been used to prosecute any individual in the United States since its enactment in the eighteenth century. SCO knew that Flynn was innocent of any illegal contacts with any foreign power, and yet it commenced the prosecution of Flynn in accordance with its charter: to investigate Russian interference in the 2016 election.

DOJ, through its officers and employees in the SCO, with the assistance of the FBI and in conspiracy with the Office of the White House (White House) had malicious intent when it unlawfully investigated and prosecuted Flynn despite knowing his innocence. Strzok, Page, Pientka, Biden, Comey, McCabe, Van Grack, and others, including those in attendance at the Oval Office meeting on January 5, 2017, were all aware of the fact that Flynn was not a Russian agent and therefore an improper subject of the “Crossfire Razor” investigation. Nevertheless, these federal employees and officials decided to try to prosecute and damage Flynn anyway, to destroy Flynn professionally, block him from holding a position of influence in the government, thwart President Trump, and potentially get Flynn to turn on Trump. Strzok and Pientka continued to participate in the prosecution of Flynn despite having certified that they did not believe he intentionally made the false statements at issue. Van Grack possessed these documents and actually prosecuted Flynn and refused to disclose plainly and fully exculpatory material. From FBI Director Comey to Vice President Biden and everyone else who participated in this unlawful conspiracy, they knew that Flynn’s calls with Kislyak were “legit” and instead of closing the investigation, they tried to think of new, even unprecedented, ways to prosecute Flynn.

Strzok and Page had a stated motive to “stop Trump,” and they designed their investigation and prosecution of Flynn in furtherance of that motive. Page participated and assisted Strzok in his actions. They conceived of the initial investigation into Flynn as an “insurance policy,” should Presidential candidate Hillary Clinton (Clinton) lose the 2016 election. When Clinton lost the election, the “insurance policy” went into motion. Strzok and Page investigated Flynn as a way to “stop Trump” and in an attempt to get false testimony from Flynn that President-elect Trump was a Russian asset, and they continued their scheme when they moved from the FBI to the SCO.

As part of its efforts to “stop Trump,” FBI agents, including Pientka, made false statements to the FISA court during its investigation into Flynn. Later, during the prosecution of Flynn, the SCO willfully failed to disclose exculpatory evidence in violation of its obligations under *Brady v. Maryland*. The exculpatory evidence the SCO failed to disclose includes, but is not limited to, the notes from Strzok and Pientka that show that the FBI believed that Flynn did not lie to them, and the notes describing the Oval Office meeting wherein Comey stated that Flynn’s calls with Kislyak were “legit” and wherein Vice President Biden suggested using the Logan Act as a basis for prosecuting Flynn. Each of these examples are plainly exculpatory, either because they directly tend to show Flynn’s innocence of the § 1001 violation, or because they indirectly tend to show his innocence by revealing the political motivation behind the prosecution. The SCO prosecuted Flynn despite knowing his factual and legal innocence and the abuse of process engaged in during the

investigation and prosecution of Flynn, and the FBI continued investigating him even when it knew that he was not a Russian agent.

After Flynn was deliberately, knowingly, maliciously, and falsely charged with the §1001 criminal violation, the U.S. District Court for the District of Columbia severely limited Flynn's liberty to travel freely within and without the United States. The court imposed travel restrictions on Flynn, against his will, within the boundaries fixed by the United States and even to boundaries within the United States. As a result of the unlawful prosecution and false arrest and detention, Flynn was unable to travel freely inside and outside of the United States. Not only was his reputation tarnished by the unlawful prosecution, but he was unable to personally carry on his international consulting business. For the above reasons, the restrictions severely curtailing Flynn's movements were unlawful just as the prosecution that created Flynn's movement restrictions was unlawful.

The FBI agents who interviewed Flynn knew that he did not intentionally make any false statements, and yet SCO charged him with intentionally making false statements during that very interview. Further, the FBI certified that it did not believe Flynn was acting as an agent of Russia. Because the SCO prosecuted Flynn when it knew that he was innocent, the SCO had malicious intent. Further, the SCO and FBI lied to the FISA court, proceeded with an investigation into Flynn's supposed "Russian ties" when they knew he had none, and threatened his son, Michael Flynn, Jr., with prosecution unless he pled guilty to the §1001 offense. All of these facts and others demonstrate that the SCO and FBI acted with malice in prosecuting Flynn.

On May 7, 2020, DOJ moved to dismiss in its entirety its prosecution against Flynn. U.S. District Court Judge Emmet Sullivan refused to approve the dismissal, necessitating an appeal by Flynn to the D.C. Circuit Court of Appeals. The D.C. Circuit initially ordered Judge Sullivan to dismiss the charges and case against Flynn, but after en banc review decided to remand the case to Judge Sullivan. On November 25, 2020, Flynn was pardoned by President Trump, and on December 8, 2020, the criminal case against Flynn was finally dismissed by Judge Sullivan in Flynn's favor without any final conviction or sentence.

Flynn was the target of a politically motivated investigation and prosecution that had no merit when it began, no merit during its course, and no merit in the end when the charges were withdrawn by the DOJ and ultimately dismissed by the Court after Flynn received a full pardon. During that meritless and unlawful investigation and prosecution, Flynn was falsely and maliciously painted by the conspirators as a traitor to his nation who acted in concert with a foreign power, and the SCO even threatened Flynn's son with prosecution unless Flynn were to plead guilty. The federal government's targeting of a citizen for baseless criminal prosecution and eliciting a plea bargain through threatening of family members is outrageous conduct of the highest order. The fact that it was orchestrated and carried out at the highest

levels of the FBI, DOJ, and White House makes it all the more outrageous. And the fact it was done intentionally, purposefully, and with reckless disregard for the rights of Flynn as the President's highest ranking national security advisor, as a retired U.S. Army Lieutenant General with 33 years of honorable military service to our country, as a citizen of the United States, and as a human being, makes the conduct despicable, even for partisan Washington standards.

Not surprisingly, Flynn has suffered greatly from the experience of being the subject of a politically driven, personal-animus motivated, and baseless prosecution, and from having his son threatened with prosecution. This harm is exacerbated by the fact that he has dedicated his entire adult life to serving the United States through military service and his attempted civilian service as the National Security Advisor to a President. The betrayal he suffered, by the country that he spent decades serving, has caused severe emotional distress. On top of that, Flynn suffered even more emotional distress in losing the once-in-a-lifetime and priceless opportunity to serve as the highest-ranking national security advisor to a President of the United States on behalf of the citizens of the United States of America.

Flynn was injured in other ways due to the vicious, false attacks on his character, including but not limited to compensatory and financial damages including attorney's fees and expenses, court costs and other legal expenses, reputational damages, loss of good-will, and the loss of earnings and future earnings from his international consulting business. Overall, the harm to Flynn has been and is immense. As a result of this unjustifiable, outrageous, and malicious prosecution of Flynn and the abuse of process engaged in to carry it out by FBI agents, FBI leadership, Justice Department prosecutors, and the highest ranking EOP officials in the Obama Administration – including President Obama and then-Vice President Biden themselves – punitive damages are not only warranted but absolutely essential to deter any present or future FBI, DOJ, and EOP official from harming anyone else like they harmed Flynn. Punitive damages are not allowed under the FTCA, but Flynn is entitled to be fully compensated for each and every one of his pecuniary and non-pecuniary losses resulting from the government's conduct against him.