

MIKE FLYNN COMMITS TO WAIVING PRIVILEGE

When it got reported that Bill Barr had ordered St. Louis US Attorney Jeffrey Jensen to second-guess the Mike Flynn prosecution, I thought that might rescue Flynn from a very precarious step: a hearing on whether or not he can withdraw his guilty pleas based on a claim that his very competent Covington team gave him incompetent advice. Even if Flynn could make such a compelling argument, it would still leave him exposed for perjury charges.

The two sides just submitted an order and stipulation officially waiving Flynn's privilege. This will give the US an opportunity to get Covington's testimony and records about warnings they gave Flynn on any possible conflict and an opportunity to explain how they passed on information about DOJ's certainty that he had lied about Russia, the current bases for his ineffective assistance of counsel claim. Given that records already published make it clear Flynn lied to his lawyers, it's likely the Covington will be able to establish that they gave Flynn competent counsel (and that he stiffed them on payment).

Flynn did, however, protect himself in one way. Originally, prosecutor Jocelyn Ballantine had specifically asked to be able to use anything obtained from Covington in a perjury prosecution.

This limitation on the use of information should not, however, preclude the government from prosecuting the defendant for perjury if any information that he provided to counsel were proof of perjury in this proceeding.

But the stipulation specifically prohibits that.

12. The government agrees that it will

not use any information or documents or records or any other writing that it obtains under this Stipulation for any purpose other than for further litigation of Mr. Flynn's motions to withdraw his guilty plea, and any further litigation on those motions, including any appeals and/or collateral attacks.

13. The parties agree that nothing in this Stipulation would prevent the government from prosecuting Mr. Flynn for perjury in connection with the litigation of his Motions to withdraw his guilty plea. In light of Paragraph 12 of this Stipulation, however, the government agrees that in any such prosecution, it will not use any information or other material that it obtained under this Stipulation. Straker, 258 F. Supp. 3d at 158.

Flynn's still at some exposure for perjury, because his existing statements are wholly incompatible.

Before I get into that meat, though, note that with a sworn declaration Flynn submitted with this filing, he has given four sworn statements in this matter:

- *December 1, 2017: Mike Flynn pled guilty before Judge Rudolph Contreras to lying in a January 24, 2017 FBI interview.*
- *December 18, 2018: Mike Flynn reallocated his guilty plea before Judge Emmet Sullivan to lying in a January 24, 2017 FBI interview.*

- *June 26, 2018: Mike Flynn testified to an EDVA grand jury, among other things, that “from the beginning,” his 2016 consulting project “was always on behalf of elements within the Turkish government,” he and Bijan Kian would “always talk about Gulen as sort of a sharp point” in relations between Turkey and the US as part of the project (though there was some discussion about business climate), and he and his partner “didn’t have any conversations about” a November 8, 2016 op-ed published under his name until “Bijan [] sent me a draft of it a couple of days prior, maybe about a week prior.” The statements conflict with a FARA filing submitted under Flynn’s name.*
- *January 29, 2020: Mike Flynn declared, under oath that, “in truth, I never lied.”*

And it's unclear to me whether the government could rely on Covington *witnesses* against Flynn if they ultimately want to lay out how he lied to them about his work for Turkey.

But for now, Covington will have an opportunity to defend their reputation in court.