

The FBI Is Not Your Friend

One of the unfortunate ironies of the manufactured “Russiagate” controversy is the perception of the FBI as a friend of liberty and justice. But the FBI has never been a friend of liberty and justice. Rather, as James Bovard writes, it “has a long record of both deceit and incompetence. Five years ago, Americans learned that the FBI was teaching its agents that ‘the FBI has the ability to bend or suspend the law to impinge on the freedom of others.’ This has practically been the Bureau’s motif since its creation in 1908.... The FBI has always used its ‘good guy’ image to keep a lid on its crimes.”

Bovard has made a vocation of cataloging the FBI’s many offenses against liberty and justice, for which we are forever in his debt.

Things are certainly not different today. Take the case of Michael Flynn, the retired lieutenant general who spent less than a month as Donald Trump’s national-security adviser. Flynn has pleaded guilty to lying to the FBI in connection with conversations he had with Russia’s then-ambassador to the United States, Sergey Kislyak, between Trump’s election and inauguration. One need not be an admirer of Flynn — and for many reasons I certainly am not — to be disturbed by how the FBI has handled this case.

One ought to be immediately suspicious whenever someone is charged with or pleads guilty to lying to the FBI without any underlying crime being charged. Former assistant U.S. attorney Andrew C. McCarthy points out:

When a prosecutor has a cooperator who was an accomplice in a major criminal scheme, the cooperator is made to plead guilty to the scheme. This is critical because it proves the existence of the scheme. In his guilty-plea allocution (the part of a plea proceeding in which the defendant admits what he did that makes him guilty), the accomplice explains the scheme and the actions taken by himself and his co-conspirators to carry it out. This goes a long way toward proving the case against all of the subjects of the investigation.

That is not happening in Flynn’s situation. Instead, like [former Trump foreign-policy “adviser” George] Papadopoulos, he is being permitted to plead guilty to a mere process crime.

When the FBI questioned Flynn about his conversations with Kislyak, it already had the transcripts of those conversations — the government eavesdrops on the representatives of foreign governments, among others, and Flynn had been identified, or “unmasked,” as the ambassador’s conversation partner. The FBI could have simply told Flynn the transcripts contained evidence of a crime (assuming for the sake of argument they did) and charged him with violating the Logan Act or whatever else the FBI had in mind.

But that's not what happened. Instead, the FBI asked Flynn about his conversations with Kislyak, apparently to test him. If he lied (which would mean he's pretty stupid since he once ran the Defense Intelligence Agency and must have known about the transcripts!) or had a bad memory, he could have been charged with lying to the FBI.

As investigative reporter Robert Parry explains:

What is arguably most disturbing about this case is that then-National Security Adviser Flynn was pushed into a perjury trap by Obama administration holdovers at the Justice Department who concocted an unorthodox legal rationale for subjecting Flynn to an FBI interrogation four days after he took office, testing Flynn's recollection of the conversations while the FBI agents had transcripts of the calls intercepted by the National Security Agency.

In other words, the Justice Department wasn't seeking information about what Flynn said to Russian Ambassador Sergey Kislyak - the intelligence agencies already had that information. Instead, Flynn was being quizzed on his precise recollection of the conversations and nailed for lying when his recollections deviated from the transcripts.

For Americans who worry about how the pervasive surveillance powers of the U.S. government could be put to use criminalizing otherwise constitutionally protected speech and political associations, Flynn's prosecution represents a troubling precedent.

Why didn't the FBI charge Flynn with an underlying crime? It might be because his conversations with Kislyak were not criminal. McCarthy writes:

A breaking report from ABC News indicates that Flynn is prepared to testify that Trump directed him to make contact with the Russians — initially to lay the groundwork for mutual efforts against ISIS in Syria. That, however, is exactly the sort of thing the incoming national-security adviser is supposed to do in a transition phase between administrations. If it were part of the basis for a "collusion" case arising out of Russia's election meddling, then Flynn would not be pleading guilty to a process crime — he'd be pleading guilty to an espionage conspiracy.

David Stockman shows that the FBI and Special Counsel Robert Mueller themselves indicate the Flynn-Kislyak conversations contained no evidence of criminal behavior.

Flynn spoke to Kislyak to *ask that Russia not escalate tensions* after President Obama imposed sanctions last December for the alleged election meddling and *to ask that Russia not vote to condemn Israel*, via a UN Security Council resolution, for its illegal settlements on occupied Palestinian land. In other words, not only were Flynn's discussions with Kislyak unexceptional — presidential transition-team foreign-policy officials have spoken with representatives of other governments in the past — but the content of those discussions

should have raised no suspicions. Would non-escalation of the sanctions controversy or a UN veto have undermined Obama's foreign policy? I don't see how. (True, the Obama administration abstained on the resolution, but would Obama have objected had Russia vetoed it? By the way, Russia voted for it, and the resolution passed, as it should have.)

The Flynn plea certainly does nothing to indicate "collusion" with the Russians. For one thing, the conversations were after the election. And perhaps more important, Kislyak was not looking for favors from Flynn; on the contrary, Flynn was lobbying the Russians (successfully on the sanctions — Vladimir Putin did not retaliate — and unsuccessfully on the UN resolution.) Where's the evidence of Russian influence on the Trump team? There was foreign influence, but it was from Israel. All indications are that Prime Minister Benjamin Netanyahu asked Trump son-in-law and special envoy to everywhere Jared Kushner to lobby the world to defeat the UN resolution. Kushner, who has helped finance illegal Israeli settlements, then directed Flynn to call every Security Council member, not just Russia.

What about the Logan Act? The Act, enacted in 1799, around the time of the infamous Alien and Sedition Acts, prohibits private citizens from unauthorized "correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title or imprisoned not more than three years, or both."

Right off the bat, the Act appears to violate freedom of speech. And as Parry writes, "That law ... was never intended to apply to incoming officials in the transition period between elected presidential administrations."

Note also that only two indictments have been brought in 218 years: in 1803 and 1852. Both cases were dropped. Far more serious contacts with foreign governments have occurred. In 1968 Republican presidential candidate Richard Nixon (with help from Henry Kissinger who was working in the Johnson administration) had a representative persuade the president of South Vietnam to boycott the peace talks President Lyndon Johnson had been arranging with North Vietnam. That decision most likely prolonged the Vietnam war and resulted in combat deaths that would not have occurred. Unlike the Flynn case, Nixon's action undercut the sitting president's policy and, more important, the interests of the American people.

I hold no brief for Flynn, whose conduct while working for Gen. Stanley McChrystal in Afghanistan, his dubious efforts on behalf of Turkey's strongman Recep Tayyip Erdoğan, and his apparent financial conflicts of interest are enough to make anyone cringe. But that cannot justify what the FBI did in this plea case.

Government law-enforcement agencies should not be allowed to administer credibility tests to Americans or others. If they have evidence of *real* offenses against persons and property, bring charges. Otherwise, leave us all alone.