

Politics

Trump legal team readies attack on Flynn's credibility

By **Carol D. Leonnig** December 27 at 4:09 PM

President Trump's legal team plans to cast former national security adviser Michael T. Flynn as a liar seeking to protect himself if he accuses the president or his senior aides of any wrongdoing, according to three people familiar with the strategy.

The approach would mark a sharp break from Trump's previously sympathetic posture toward Flynn, whom he called a "wonderful man" when Flynn was ousted from the White House in February. Earlier this month, the president did not rule out a possible pardon for Flynn, who is cooperating with special counsel Robert S. Mueller III's investigation into Russian interference in the 2016 election.

Attorneys for Trump and his top advisers have privately expressed confidence that Flynn does not have any evidence that could implicate the president or his White House team. But since Flynn's cooperation agreement with prosecutors was made public earlier this month, the administration has been strategizing how to neutralize him in case the former national security adviser does make any claims.

Flynn is the most senior former Trump adviser known to be providing information to Mueller's team. The lenient terms of his plea agreement suggest he has promised significant information to investigators, legal experts said.

Earlier this month, he pleaded guilty to one felony count of lying to the FBI, a charge that carries a maximum sentence of five years in prison. Prosecutors said they will recommend a sentence from zero to six months in prison as part of his cooperation deal. Flynn's son, who served as his chief of staff, also faced the risk of criminal charges, according to people familiar with the plea negotiations, but was spared.

Trump's legal team has seized on Flynn's agreement with prosecutors as fodder for a possible defense, if necessary. In court filings, the retired lieutenant general admitted that he lied to the FBI about conversations he had with the Russian ambassador to the United States during the December 2016 transition.

"He's said it himself: He's a liar," said one person helping craft the strategy who was granted anonymity to describe private conversations.

Robert Kelner, an attorney for Flynn, declined to comment. Ty Cobb, the White House attorney overseeing the response to the special counsel investigation, also declined to comment.

Defense lawyers have said privately that Flynn will be unable to point to White House or campaign records turned over in the probe to bolster any claims of a criminal scheme. None of those records suggest a conspiracy by Trump or his inner circle to improperly work with Russians to defeat Democratic candidate Hillary Clinton, according to people who have reviewed the documents.

The private talks about assailing Flynn's credibility come even as Trump has signaled that a pardon is not off the table.

"I don't want to talk about pardons for Michael Flynn yet," the president said Dec. 15. "We'll see what happens. Let's see. I can say this: When you look at what's gone on with the FBI and with the Justice Department, people are very, very angry."

Some of Flynn's family members appear to be counting on Trump to act. On Tuesday, one of Flynn's brothers tweeted a message urging the president to pardon his former adviser, responding to a tweet by Trump alleging bias in the FBI.

"Mr. President, I personally believe that a pardon is due to General Flynn, given the apparent and obvious illegitimacy of the manner in which the so called 'crimes' he plead guilty to were extracted from him," Joseph Flynn wrote. "I ask for quick action on this. Thank you and keep up the good work!"

Joseph Flynn did not respond to requests for comment.

Outside legal experts said that discussing ways to undermine a possible witness is a natural first step for defense lawyers to consider.

"It's pretty predictable," said Randall D. Eliason, a former public corruption prosecutor in the U.S. Attorney's Office in Washington. "Defense will always argue that a cooperator who lied previously should not be believed, and that there is insufficient evidence of the conspiracy. It's Defense Strategy 101."

He added: "How effective it would be depends entirely on the strength of the other evidence that the prosecution can present to prove its case and corroborate Flynn."

Barbara Van Gelder, a veteran white-collar defense lawyer and former prosecutor, called it "textbook" for the defense team to raise doubts about Flynn's version of events.

"They will pull out all the arguments: 'You pleaded guilty. You don't have anything more than your word, and you probably got your son off with this. You got the deal of the century,'" she said.

Securing documents that corroborate the statements of cooperators such as Flynn is often key when the case comes down to dueling accounts, legal experts said.

“People’s recollections can be faulty but . . . you can’t cross-examine a document,” Van Gelder said. “It is what it is.”

Exactly what Flynn might offer Mueller about what he saw inside the Trump operation remains a mystery. Van Gelder noted that in the way the special counsel structured Flynn’s plea agreement, prosecutors avoided sharing the guts of their ongoing investigation.

“That is what I thought was the brilliance of the Flynn plea,” she said. “It said: ‘I’m giving just enough to have the judge sentence you within the guidelines, but not giving anything to anybody else.’”

White House advisers have noted Flynn did not plead guilty to being a co-conspirator in any criminal scheme, which they argue shows he is not able to provide evidence of a larger conspiracy.

Some legal experts said prosecutors could still rely on Flynn’s testimony to allege such a scheme. However, others said persuading a jury to charge a conspiracy that did not include a key witness would be more difficult.

If Mueller opted not to charge him in a conspiracy, Van Gelder asked, “how much of a crime is it, really?”

Julie Tate contributed to this report.

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Carol Leonnig is an investigative reporter at The Washington Post.  Follow @CarolLeonnig

