


Byron York: OBAMA HAS BEEN CREATING THE "RUSSIA SCANDAL" TARGETING TRUMP FOR OVER TWO YEARS

Obama and Valerie Jarrett Have Been Sitting Over In His Bricked Up Mansion In DC Running The Whole Russia Attack On Trump

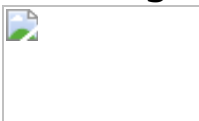
by [Byron York](#) |

 Initially, Justice Department officials suspected Michael Flynn of violating the Logan Act, a 218-year-old law under which no one has ever been prosecuted. (AP Photo/Carolyn Kaster)

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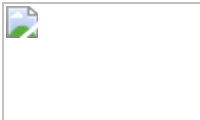
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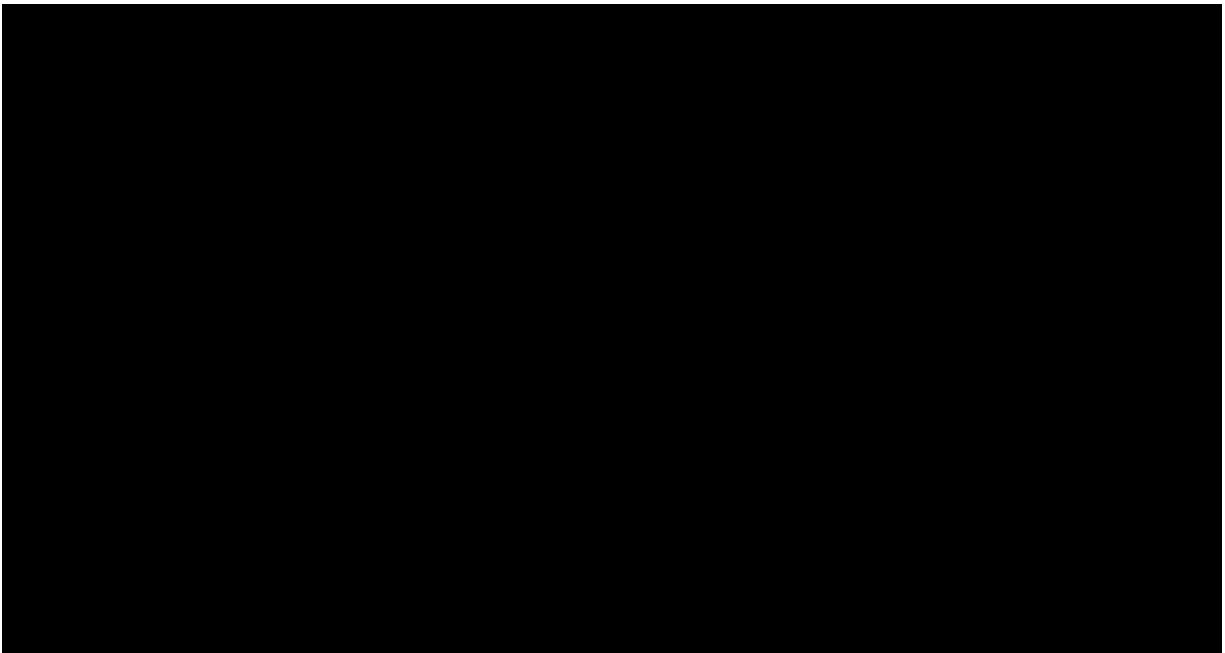
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The documents outlining [Michael Flynn's guilty plea](#) in the Trump-Russia investigation do not allege collusion or conspiracy between the Trump campaign and Russia to influence the 2016 election. They do, however, suggest that the Obama Justice

Department was intensely interested in Flynn's discussions with Russian ambassador Sergey Kislyak about policy issues — [sanctions against Russia](#), a United Nations resolution on Israel — during the presidential transition, when Barack Obama was still in the White House and Donald Trump was preparing to take office.

At the time, top Justice officials suspected Flynn of [violating the Logan Act](#), the 218-year-old law under which no one has ever been prosecuted, that prohibits private citizens from acting on behalf of the United States in disputes with foreign governments. Starting in the summer of 2016 and intensifying in the transition period, the Logan Act, while mostly unknown to the general public, became a hot topic of conversation among some Democrats. A number of lawmakers, former officials, and commentators called on the Obama administration to investigate the Trump team for a possible Logan Act violations — and to do it while Democrats still controlled the executive branch.



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At the same time, inside the Obama Justice Department, it appears the Logan Act became a paramount concern among some key officials in the critical weeks of December 2016 and January 2017. Former Deputy Attorney General Sally Yates has told Congress that the Logan Act was the first reason she intervened in the Flynn case — the reason FBI agents were sent to the White House [to interview Flynn](#) in the Trump administration's early days. It was that interview, held on Jan. 24, 2017, that ultimately led to Flynn's guilty plea.

In short, there's no doubt the Logan Act, a law dismissed as a joke or an archaic irrelevancy or simply unconstitutional by many legal experts, played a central role in the Obama administration's aggressive and enormously consequential investigation of its successor.

Democrats began accusing Trump of Logan Act violations in the summer of 2016, immediately after the Republican convention, when Trump sarcastically invited Russia to produce the 30,000-plus emails that Hillary Clinton deleted rather than turn over to investigators. "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing," Trump said during a July 27 news conference. "I think that you will probably be rewarded mightily by our press — let's see if that happens, that'll be nice."

The next day, Tom Vilsack, Obama's secretary of agriculture and on Hillary Clinton's vice presidential short list, accused Trump of

violating the Logan Act. "That's a no-no, you can't do that," Vilsack said. "That's not legal."

Following Vilsack was Democratic Sen. Claire McCaskill. "I believe it violates the Logan Act," McCaskill said, "and I think he should be investigated for that."

House Minority Leader Nancy Pelosi called Trump's statement "a treasonous act." Senate Minority Leader Harry Reid said it "borders on treason."

Harvard Law professor Laurence Tribe weighed in the next day. "The Logan Act, which was enacted back in 1799 and fundamentally says that you cannot engage in negotiations with a foreign power," Tribe told MSNBC's Lawrence O'Donnell. "It hasn't been used, but that's because we haven't had very many Donald Trumps, thank God, in our history. I think he's violated that act."

On Aug. 3, two more Democratic senators, Chris Coons and Sheldon Whitehouse, called for a hearing on Trump and the Logan Act. "Mr. Trump's comments implicate U.S. criminal laws prohibiting engagement with foreign governments that threaten the country's interests, including the Logan Act and the Espionage Act," they wrote.

On Aug. 9, Democratic Reps. Patrick Murphy, Andre Carson, and Eric Swalwell called for a House hearing to examine whether Trump violated the Logan Act, among other statutes.

In September, Rep. John Conyers, the top Democrat on the House Judiciary Committee, asked the FBI's then-director, James

Comey, whether the bureau was investigating Trump for a possible violation of the Logan Act. Comey declined to answer.

At that same hearing, another Democrat, Rep. Ted Deutch, asked Comey about reports that sometime Trump foreign policy advisory board member Carter Page traveled to Moscow in July 2016. "If an American citizen, Director Comey, conducted meetings with a Russian individual who has been sanctioned by the United States about potential weakening of U.S. sanctions policy, in violation of the Logan Act, would the FBI investigate?" Deutch asked.

"I don't think it's appropriate to answer that," Comey responded.

There wasn't much public discussion of the Logan Act in October and November, as the campaign reached its final weeks and the political world dealt with the shock of Trump's victory. The subject re-emerged in December as Democrats, stunned and angry, watched Trump prepare for the presidency — and prepare to undo many of Obama's policies.

On Dec. 8, Democratic Rep. Jared Huffman introduced the "One President at a Time Act of 2016." The bill would have amended the Logan Act to specify that a president-elect, or anyone acting on a president-elect's behalf, was specifically subject to its restrictions. The bill "just makes it explicitly clear that the president-elect is just like every other private citizen during the transition period," Huffmann told MSNBC's O'Donnell. "They can't go around purporting to conduct U.S. foreign policy."

On Dec. 20, Reps. Conyers and Sheila Jackson Lee asked the Justice Department to investigate Trump for a possible violation of the Logan Act.

On Dec. 22, former Obama State Department official Wendy Sherman told MSNBC that Trump's actions on a UN resolution concerning Israeli settlements implicated the Logan Act. "People have said to me today it crosses the line of the Logan Act," Sherman said. "We have one president at a time. And Donald Trump is really playing with fire."

On the day Sherman appeared, Flynn spoke on the phone with Kislyak about that pending U.N. resolution concerning Israeli settlements. "Flynn informed the Russian ambassador about the incoming administration's opposition to the resolution, and requested that Russia vote against or delay the resolution," said the "Statement of the Offense," the Mueller document released with Flynn's guilty plea. The next day, Dec. 23, the two men spoke again and Kislyak informed Flynn that Russia would not do as the Trump team requested.

A few days later, on Dec. 29, Flynn and Kislyak spoke again, according to the Mueller statement. This time the subject was the new sanctions Obama imposed on Russia in retaliation for election meddling. Flynn "requested that Russia not escalate the situation and only respond to the U.S. sanctions in a reciprocal manner."

Two days later, on Dec. 31, Kislyak called Flynn to say that "Russia had chosen [not to retaliate](#) in response to Flynn's request."

U.S. intelligence agencies [recorded the calls](#); Kislyak was the subject of American monitoring, so a wiretap on him on these occasions picked up Flynn, too. It appears Obama administration officials immediately saw the Flynn-Kislyak conversations as a possible Logan Act violation. They knew, of course, that given the history of the law, a Logan Act prosecution was a virtual

impossibility. They knew that many foreign policy experts would see such contacts between an incoming administration and a foreign power as an acceptable and normal course of business in a presidential transition. Nevertheless, approaching the Flynn-Kislyak talks in the context of a criminal violation — the Logan Act — gave the Obama team a pretense to target Flynn, and thus the new Trump administration.

A critical moment came two weeks later, on Jan. 12, 2017, when the Washington Post's David Ignatius reported the Flynn-Kislyak calls. Ignatius said his source was a "senior U.S. government official." "What did Flynn say, and did it undercut the U.S. sanctions?" Ignatius asked. "The Logan Act (though never enforced) bars U.S. citizens from correspondence intending to influence a foreign government about 'disputes' with the United States."

It was a stunning leak; the existence and content of U.S. spy intercepts are highly, highly classified. But the Obama administration let the information out.

Ignatius' report set off a new round of media discussion about the Logan Act. That led to more action on Capitol Hill. On the same day Ignatius' column appeared, Rep. Huffman, author of the "One President at a Time Act of 2016," joined 34 other House Democrats to urge Attorney General Loretta Lynch to appoint a special counsel to investigate whether Flynn violated the Logan Act. "Our national interests require that the Logan Act be enforced, especially during the delicate and potentially vulnerable period of a presidential transition," Huffman and his colleagues wrote.

The conversation only intensified in the following days. The Logan Act was central to that conversation — in the media, and inside the Obama Justice Department.

On Jan. 24, with the new administration in office just four days, FBI agents interviewed Flynn in the White House. They questioned him about the Kislyak calls, about sanctions, about the U.N. resolution. FBI officials had a transcript of the original conversations to check Flynn's answers against, and the criminal charge against him today stems from the discrepancy between his answers and the transcript. (One of the mysteries of the whole affair is why Flynn would lie about a conversation that he, as a former top intelligence official, should have known was being recorded.)

But why did the Justice Department, run by Obama holdover Sally Yates, decide to interrogate Flynn in the first place? The answer is the Logan Act.

"Yates, then the deputy attorney general, considered Flynn's comments in the intercepted call to be 'highly significant' and 'potentially illegal,' according to an official familiar with her thinking," the Washington Post reported on Feb. 13. "Yates and other intelligence officials suspected that Flynn could be in violation of an obscure U.S. statute known as the Logan Act, which bars U.S. citizens from interfering in diplomatic disputes with another country."

In its version of the story, the New York Times reported that "Obama advisers" were concerned about the Flynn-Kislyak calls. "The Obama advisers grew suspicious that there had been a secret deal between the incoming [Trump] team and Moscow, which could violate the rarely enforced, two-century-old Logan

Act barring private citizens from negotiating with foreign powers in disputes with the United States," the paper reported. The paper added that the Obama advisers asked the FBI if Flynn and Kislyak had discussed a quid pro quo, only to learn the answer was no.

So even though there was no discussion of a quid pro quo, and even though, as reported in the Post account, Yates knew there was "little chance" of actually bringing a Logan Act prosecution against Flynn — despite all that, Yates went ahead with the questioning of Flynn. And two days after that, Yates, along with an aide, went to the White House to tell counsel Don McGahn that there was a legal problem with the national security adviser.

Yates described the events in testimony before a Senate Judiciary Committee subcommittee on May 8, 2017. She told lawmakers that the Logan Act was the first concern she mentioned to McGahn.

"The first thing we did was to explain to Mr. McGahn that the underlying conduct that Gen. Flynn had engaged in was problematic in and of itself," Yates said. That seems a clear reference to the Logan Act, although no one uttered the words "Logan Act" in the hearing at which Yates testified. "We took him [McGahn] through in a fair amount of detail of the underlying conduct, what Gen. Flynn had done."

Yates and the aide returned to the White House the next day, Jan. 27, for another talk with McGahn. McGahn asked Yates "about the applicability of certain statutes, certain criminal statutes," Yates testified. That led Sen. Chris Coons, who had called for an investigation of the Trump team for Logan Act

violations months before, to ask Yates what the applicable statutes would be.

"If I identified the statute, then that would be insight into what the conduct was," Yates answered. "And look, I'm not trying to be hyper-technical here. I'm trying to be really careful that I observe my responsibilities to protect classified information. And so I can't identify the statute."

While Yates became reticent in the witness chair, the public nevertheless knows from that "official familiar with her thinking" that Yates believed Flynn might have violated the Logan Act, a suspicion she shared with other Obama administration officials.

As for another concern that Yates said she had over the Flynn-Kislyak conversations — the worry that Flynn's lie to Vice President Mike Pence (that sanctions were not discussed on the call) would open Flynn up to possible blackmail — perhaps that is a legitimate concern, but why did it warrant FBI questioning of Flynn under the penalty of prosecution for making false statements? Certainly Yates could have warned the White House about that without interrogating Flynn at all.

Instead, it was the prospect of a Logan Act prosecution that led to the FBI interview, which then, when Flynn lied to investigators, led to his guilty plea on a false statements charge.

From today's perspective, nearly a year later, it has become apparent that, farfetched as it might seem, the Logan Act made it possible for the Obama administration to go after Trump. The ancient law that no one has ever been prosecuted for violating was the Obama administration's flimsy pretense for a criminal prosecution of the incoming Trump team.

And by the way, when it finally came time to charge Flynn with a crime, did prosecutors, armed with the transcripts of those Flynn-Kislyak conversations, choose to charge him with violating the Logan Act? Of course not. But for the Obama team, the law had already served its purpose, months earlier, to entangle the new administration in a criminal investigation as soon as it walked in the door of the White House.