

EXHIBIT A

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Ex-F.B.I. Official Is Said to Undercut Justice Dept. Effort to Drop Flynn Case

Prosecutors questioned a former F.B.I. official whose notes were used to buttress their motion to dismiss the charge against the president's first national security adviser.



Bill Priestap, a former top F.B.I. official, played a central role in the agency's 2016 investigation into Russia's efforts to interfere in the presidential election. Alex Wong/Getty Images



By **Adam Goldman** and **Katie Benner**

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WASHINGTON — A key former F.B.I. official cast doubt on the Justice Department's case for dropping a criminal charge against President Trump's former national security adviser [Michael T. Flynn](#) during an interview with investigators last week, according to people familiar with the investigation.

Department officials reviewing the Flynn case interviewed Bill Priestap, the former head of F.B.I. counterintelligence, two days before making their extraordinary request to drop the case to Judge Emmet G. Sullivan. They did not tell Judge Sullivan about Mr. Priestap's interview. A Justice

Department official said that they were in the process of writing up a report on the interview and that it would soon be filed with the court.

The department's motion referred to notes that Mr. Priestap wrote around the bureau's 2017 questioning of Mr. Flynn, who later pleaded guilty to lying to investigators during that interview. His lawyers said Mr. Priestap's notes — recently uncovered during a review of the case — suggested that the F.B.I. was trying to entrap Mr. Flynn, and Attorney General William P. Barr [said investigators were trying](#) to “lay a perjury trap.”

That interpretation was wrong, Mr. Priestap told the prosecutors reviewing the case. He said that F.B.I. officials were trying to do the right thing in questioning Mr. Flynn and that he knew of no effort to set him up. Media reports about his notes misconstrued them, he said, according to the people familiar with the investigation.

The department's decision to exclude mention of Mr. Priestap's interview in the motion could trouble Judge Sullivan, who [signaled late on Tuesday](#) that he was skeptical of the department's arguments.

Mr. Priestap and the Justice Department declined to comment. Mr. Priestap told investigators that he did not remember the circumstances surrounding the notes that he took, and that he was giving them his interpretation of the notes as he read them now, according to a person familiar with his interview.

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Former prosecutors and defense lawyers called the department's position hypocritical and troubling.

“If it is accurate that the F.B.I. official provided context around those notes, which is materially different from what they suggest, this could be a game changer in terms of how the court views the motivations behind the request to dismiss the case,” said Edward Y. Kim, a former federal prosecutor in Manhattan.

The department’s decision to drop the Flynn case was a stunning reversal, widely regarded as part of an effort by Mr. Barr to [undermine the Russia investigation](#). The prosecutor who led the case, Brandon L. Van Grack, withdrew from it, and only the interim U.S. attorney in Washington, Timothy Shea, a longtime adviser to Mr. Barr, signed the motion.

Both Mr. Van Grack and Jocelyn Ballantine, another prosecutor on the case, were upset with Mr. Barr’s decision to drop the charge and his overall handling of the Flynn review, according to people familiar with their thinking.

Mr. Barr, who has long said that he had misgivings about the decision to prosecute Mr. Flynn, asked the top federal prosecutor in St. Louis, Jeff Jensen, earlier this year to scrub the case for any mistakes or improprieties.

Mr. Priestap’s notes were among the documents that Mr. Jensen found. The prosecutors already on the case, Mr. Jensen’s team and the F.B.I. disagreed about whether they were exculpatory and should be given to Mr. Flynn’s lawyer, Sidney Powell. Mr. Jensen prevailed and gave them to Ms. Powell, who declared that they would exonerate her client, people familiar with the events said.

Mr. Priestap played a central role in the F.B.I. investigation into Russian interference in the presidential election and was involved in high-level discussions about whether to question Mr. Flynn, whose phone calls to the Russian ambassador at the time, Sergey I. Kislyak, had aroused investigators’ suspicions.

Mr. Jensen and Ms. Ballantine, herself a veteran prosecutor, interviewed

Mr. Priestap along with another prosecutor, Saylor Fleming, and an F.B.I. agent from St. Louis who was there to memorialize the encounter.

Justice Department investigators spoke with Mr. Priestap while they were embroiled in a debate that began last month about whether to drop the Flynn case.

Mr. Jensen and officials in Mr. Shea's office pushed to give Mr. Flynn's lawyers copies of the notes and other documents they had recently found. Mr. Van Grack and Dana Boente, the F.B.I. general counsel, argued against disclosing them.

Eventually the F.B.I. agreed to release the documents because they contained no classified or sensitive material, even though they believed they were not required to share them with the defense, according to an email from lawyers in Mr. Boente's office on April 23.

By the beginning of May, Mr. Jensen recommended to Mr. Barr that the charge be dropped, and the team began to draft the motion to dismiss it.

Mr. Van Grack and Ms. Ballantine, the prosecutors on the case, acknowledged the facts but vociferously disagreed with Mr. Jensen's legal argument that Mr. Flynn's lies were immaterial to the larger investigation into Russian election interference, according to department lawyers familiar with their conversations.

As the lawyers digested the interview with Mr. Priestap, some prosecutors expressed concern that they were moving too fast. But other officials pointed out that in less than a week the department was due to respond to Mr. Flynn's motion to dismiss the case, and argued against proceeding in that matter if they were about to drop the entire case.

Mr. Jensen agreed, as did Mr. Barr, and they filed their request. Even though they knew it was coming, some prosecutors on the case expressed shock, associates said.

Mr. Flynn's case grew out of phone calls he made to Mr. Kislyak in the final days of 2016, asking that Moscow refrain from retaliating after the Obama administration imposed sanctions on Russia as punishment for interfering in the election. The conversations were captured on routine wiretaps of Mr. Kislyak and prompted concern among the F.B.I. agents investigating Mr. Flynn once they learned of them.

Then the incoming vice president, Mike Pence, publicly denied that Mr. Flynn had asked Russia to hold off on sanctions. Agents began to suspect that Mr. Flynn was lying to other Trump officials about the phone calls and were concerned that he was a blackmail risk because Russia knew the truth of the calls.

Mr. Priestap's notes, taken hours before agents questioned Mr. Flynn on Jan. 24, 2017, showed that F.B.I. officials were debating how to proceed and trying to determine the objective of questioning Mr. Flynn.

Mr. Priestap wrote: "What's our goal? Truth/admission or to get him to lie, so we can prosecute him or get him fired?" Mr. Priestap also mentioned the risks of an interview, adding, "Protect our institution by not playing games" and "If we're seen playing games, WH will be furious."

Those notes reflected Mr. Priestap's own thoughts before meeting with F.B.I. leadership to discuss how to question Mr. Flynn, the people said. A footnote in Mr. Shea's motion included a reference to Mr. Priestap's ruminations. The motion described them as "talking points."

The notes also showed that the F.B.I. softened its interview strategy with Mr. Flynn. Officials decided that agents would be allowed to read back portions of the highly classified phone call transcripts to refresh Mr. Flynn's memory. F.B.I. investigators felt at the time it was important to figure out whether Mr. Flynn would tell the truth in an interview.

Though Mr. Flynn was told ahead of time about the interview, the F.B.I. director at the time, James B. Comey, unilaterally decided to go forward

with it, angering Justice Department officials who said the bureau should have coordinated closely with them and notified the White House Counsel's Office.

Two agents went to the White House to question Mr. Flynn. He lied repeatedly, and prosecutors have said that agents gave him "multiple opportunities to correct his false statements by revisiting key questions."

Mr. Flynn later agreed to plead guilty, entering a plea twice before he later reversed himself, hiring new lawyers and asking Judge Sullivan to allow him to withdraw it.

After the notes and other documents were made public, Ms. Powell seized on them to declare that they cast doubt on the F.B.I.'s decision to question Mr. Flynn and to charge him with lying. She accused the bureau of framing her client.

Mr. Shea also argued that the F.B.I. had no legitimate reason to interview Mr. Flynn. He said that the bureau's counterintelligence investigation into Mr. Flynn had essentially ended and agents had insufficient reason to keep it open and were trying to entrap him.

The interview with Mr. Flynn "seems to have been undertaken only to elicit those very false statements and thereby criminalize Mr. Flynn," Mr. Shea wrote.

Mr. Barr has called Mr. Flynn's conversations with Mr. Kislyak "[laudable](#)" and said that his lies were immaterial to the Russia investigation, rejecting the view of the prosecutors who had said that [Mr. Flynn hurt the inquiry](#) by misleading the F.B.I. agents. Judge Sullivan has also said the lies were material.

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