



Michael Flynn's immunity request is premature, according to lawmakers, experts

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President Donald Trump's former national security adviser Michael Flynn stepped back into the ongoing controversy over possible ties between Trump associates and the Russian government when his lawyer issued a statement on Thursday saying that Flynn wanted immunity from prosecution in exchange for testimony before the House and Senate Intelligence Committees. After floating the offer, the overwhelming response has been that it's too soon to grant that request.

According to Flynn's lawyer, Robert Kelner, the retired general "certainly has a story to tell," and he is willing to tell it to the lawmakers conducting the intelligence probe into Russian election interference, if he is guaranteed immunity from "unfair prosecution." But as of Friday, members of Congress were not interested in making a deal.

NBC News was the first to report that the Senate Select Committee on Intelligence (SSCI) is currently not open to Flynn's immunity request. Flynn's lawyer was allegedly told that immunity was "wildly preliminary" and "not on the table" at this point, according to a senior congressional official.

Spokespersons for SSCI chairman Richard Burr (R-N.C.) and ranking member Mark Warner (D-Va.) would not provide on-the-record comments to confirm or deny whether the committee had officially rejected the lawyer's request.

Earlier this week, Sen. Burr announced that his committee is actively pursuing a list of 20 individuals to provide testimony in connection to the Russia investigation. Burr indicated that Flynn was one of those individuals, telling reporters that "you would think less of us if General Flynn wasn't on that list."

Ranking Democrat on the House Intelligence Committee, which has been rocked by instability in recent weeks, issued a statement on Friday saying it is too soon for the committee to consider granting Flynn immunity, characterizing the request as a "grave and momentous step."

In February, Flynn resigned from his national security post after it became clear that he misled top officials in the Trump White House, including Vice President Mike Pence, about the nature of his conversations with Russian Ambassador Sergey Kislyak. During the transition period, the two reportedly discussed U.S. economic sanctions on Russia, according to leaked intelligence reports.

Flynn has been under intense public scrutiny about his communications with the Russian ambassador. Under these circumstances "no reasonable person, who has the benefit of advice from counsel, would submit to questioning in such a highly politicized, witch hunt environment," according to his lawyer.

On Friday, President Trump weighed in to support the legal advice, tweeting that Flynn "should ask for immunity" because the media and political opponents are waging "a witch hunt ... of historic proportion!"

So far a handful of lawmakers have reached the conclusion that Flynn should not receive immunity at this early stage of the congressional investigations, including the chairman of the House Oversight Committee, Rep. Jason Chaffetz (R-Utah).

"I don't think Congress should give him immunity," Chaffetz said in a Fox News interview, adding that he also doesn't believe President Trump should be weighing in on a potential legal issue concerning his former top adviser.

Congressional immunity, Chaffetz said, is something that is generally used "very sparingly," and the request for immunity during the very early "fact-finding" phases of the congressional intelligence investigation raises questions. Overall, the congressman concluded, "It doesn't look good."

Rep. Eric Swalwell (D-Calif.), a member of the House Intelligence Committee, also indicated that the statement from Flynn's lawyer was not the best public relations strategy. Swalwell told CNN "Generally, innocent people don't seek immunity." The congressman added that he is not interested in hearing Flynn's testimony "in a setting where there are conditions."

Swalwell is not the first person to reach the conclusion that asking for immunity gives the appearance of impropriety. Flynn himself said as much on the campaign trail, after it was revealed that five of Hillary Clinton's staffers were given an immunity deal from the Department of Justice.

"Five people around [Clinton] have had, have been given immunity," Flynn said in a September 25 interview on Meet the Press. "When you are given immunity, that means that you have probably committed a crime."

At a campaign rally around the same time, Trump slammed the Clinton immunity deal, posing the question to a crowd of his supporters, "If you're not guilty of a crime, what do you need immunity for?"

For Patrick Eddington, an intelligence policy analyst at the Cato Institute, the immunity request is not an admission of guilt "by any stretch of the imagination." But given Flynn's unique

circumstances, it is likely that his lawyers want him to avoid any testimony that could come back to bite him.

"If someone believes they are the target of a federal investigation, the last thing their lawyer is going to want them to do is say anything publicly that could potentially be seized upon by the prosecutors to be used in the formulation of an indictment and then used at trial," Eddington explained.

While Flynn may have valuable information that could advance the House and Senate investigations into Russian election interference, "what he might reveal about his own role in these activities could open him up to indictment and to prosecution."

After FBI Director James Comey announced in public testimony to Congress that the Department of Justice had opened a counterintelligence investigation around possible ties between Russia and Trump associates starting in July 2016. Based on the reporting on Flynn's intercepted communications with the Russian ambassador and a host of other developments,

Eddington noted that "if you're Flynn, you have to assume that you're at least one of the targets."

According to John Shattuck, senior fellow at the Harvard Kennedy School of Government and former State Department official, given the vast amount of evidence the congressional committees must still sort through, a rejection of the immunity request "is understandable" at this stage in their investigation.

"If you grant immunity early to a witness, then you may foreclose both the opportunity of gathering more evidence from other people, but most importantly you foreclose the prospect of uncovering actual criminal conduct by the witness to whom you're giving the immunity," Shattuck explained. And if criminal conduct is uncovered, then there is no way to hold the individual accountable.

This is why Congress rejected the immunity request of President Richard Nixon's White House Counsel, John Dean early on in the Watergate investigation. Ultimately, the committee investigating Watergate did grant Dean immunity, and his testimony implicated numerous White House officials, including Nixon himself.

Back in December, Shattuck penned an opinion piece raising the specter of treason by members of the Trump team given their suspicious relationships with Russia.

Since that time, Gen. Flynn has been at the center of a number of legal scandals, including his intercepted discussion with the Russian ambassador about U.S. sanctions relief, which could violate a federal law banning private American citizens from conducting foreign policy. It was also recently revealed that Flynn failed to register as a foreign agent when his firm was paid \$530,000 to do work on behalf of a businessman with close ties to the government of Turkey. The work was done while he was a top adviser to candidate Trump.

"The whole broad scope of criminal conduct is opened up when you testify, and particularly in this case about the Russian connections," Shattuck said. "I think we just have to assume that

[Flynn] wants to be sure that he can speak freely without being charged with a crime, which suggests there is criminal activity that he may testify about."

So far, there has not been any smoking gun in the Trump-Russia investigation suggesting the president directly colluded with Moscow to impact the outcome of the 2016 election, but the investigation has only just begun.

Speculation that Flynn's testimony could potentially reveal some new damaging information about President Trump is mostly premature, according to Washington, D.C. lawyer and national security expert Mark Zaid.

"Whether Mr. Flynn has a 'story' to tell, as his lawyer asserted, is something the public will likely eventually learn," Zaid said. "I would not yet interpret that to mean the story is one the president will not like, but I imagine there are many people in D.C. right now that are sweating a little bit more than yesterday waiting to find out."

At the end of the day, whether Trump is feeling any heat boils down his involvement in anything improper, Eddington said, if he had any. Until new information is revealed, it is important to let the congressional investigations move forward, let them interview witnesses on the appropriate timetable as they gather all the facts.

"This is something that is going take quite awhile. This investigation is not going be over by this year, I don't remotely see how it could be," he noted. "My advice would be: buckle up."