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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 17-232
	)	
MICHAEL T. FLYNN,	)	
	)	Washington, D.C.
Defendant.	)	Friday, December 1, 2017

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TRANSCRIPT OF PLEA HEARING  
BEFORE THE HONORABLE RUDOLPH CONTRERAS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	Brandon Lang Van Grack, Esq. Zainab N. Ahmad, Esq. U.S. DEPARTMENT OF JUSTICE Special Counsel's Office 950 Pennsylvania Avenue, NW Washington, DC 20004
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For the Defendant:	Robert K. Kelner, Esq. COVINGTON & BURLING 1201 Pennsylvania Avenue, NW Washington, DC 20004
	-and-
	Stephen Pierce Anthony COVINGTON & BURLING LLP One City Center 850 Tenth Street, NW Suite 326N Washington, DC 20001

Also Present:	Special Agent William Barnett
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Court Reporter:	PATRICIA KANESHIRO-MILLER, RMR, CRR United States Courthouse 333 Constitution Avenue, NW Washington, D.C. 20001
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Proceedings reported by stenotype shorthand.  
Transcript produced by computer-aided transcription.

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P R O C E E D I N G S

(10:34 a.m.)

THE DEPUTY CLERK: This is Criminal Case 17-232,  
United States v. Michael T. Flynn.

Counsel, please step forward to the podium and state  
your appearances for the record.

MR. VAN GRACK: Good morning, Your Honor. Brandon  
Van Grack and Zainab Ahmad on behalf of the United States.

THE COURT: Good morning.

MR. VAN GRACK: And with us at counsel table is  
Special Agent William Barnett.

THE COURT: Good morning.

MR. KELNER: Good morning, Your Honor. Robert Kelner  
with Covington & Burling for the defendant, Michael T. Flynn.  
I'm joined by Stephen Anthony from Covington & Burling.

THE COURT: Good morning.

Give me a moment to look at the paperwork.

(Pause)

THE COURT: Are we ready to get started?

MR. KELNER: Yes, Your Honor.

MR. VAN GRACK: Yes, Your Honor.

THE COURT: Why don't you guys come to the podium.  
I gather that Mr. Flynn wishes to enter a plea of  
guilty; is that correct?

MR. KELNER: Yes, Your Honor.

1 THE COURT: Okay. Mr. Flynn, I assume you have never  
2 been through this process before.

3 THE DEFENDANT: Never, Your Honor.

4 THE COURT: Let me give you the most important  
5 particulars of how we are going to proceed.

6 There are going to be a number of questions. As part  
7 of this process, you're going to be giving up a number of  
8 your rights, both statutory and constitutional, so it is  
9 critical that you understand everything that goes on here  
10 because I have to determine at the end whether you have given  
11 up those rights knowingly, voluntarily, and with the advice  
12 of your counsel.

13 If there is anything I ask you that you don't  
14 understand, feel free to ask me to clarify it or, better yet,  
15 take a moment to discuss the issue with your counsel in  
16 private, if necessary.

17 You got that?

18 THE DEFENDANT: Thank you.

19 THE COURT: Okay. We're going to swear you in.

20 (Defendant sworn)

21 THE DEPUTY CLERK: Can you please state your name for  
22 the record.

23 THE DEFENDANT: Michael Thomas Flynn.

24 THE COURT: Mr. Flynn, do you understand that you're  
25 now under oath?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And that any answers that you give can be  
3 later used against you in this or another proceeding? Do you  
4 understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And that if you do not answer my  
7 questions truthfully, you could be prosecuted for perjury or  
8 making a false statement? Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: As I said, I'm going to ask you a number  
11 of questions. If you choose to enter a plea of guilty today,  
12 I need to know that you're entering that plea of guilty  
13 knowingly, voluntarily, and intelligently, with the advice of  
14 your attorney.

15 As I said, if you don't understand my question or  
16 anything else about these proceedings, please tell me, and I  
17 will try to explain. But most importantly, you may consult  
18 with your attorney privately, if necessary, at any point in  
19 time.

20 I'm going to start with the routine questions. How  
21 old are you, sir?

22 THE DEFENDANT: 58.

23 THE COURT: I assume you can read and write English.

24 THE DEFENDANT: Yes.

25 THE COURT: How far did you go in school?

1 THE DEFENDANT: Master's level.

2 THE COURT: Okay. And I assume you were born in this  
3 country.

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Have you ever been treated  
6 for any type of mental illness or psychological or emotional  
7 problem?

8 THE DEFENDANT: No.

9 THE COURT: All right. Have you ever been treated  
10 for addiction to narcotic drugs or alcohol?

11 THE DEFENDANT: No.

12 THE COURT: Are you, in fact, addicted to narcotic  
13 drugs or alcohol?

14 THE DEFENDANT: No.

15 THE COURT: Are you under the influence today of any  
16 medicine or other narcotic that might impact your ability to  
17 understand what's going on here today?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Are you ill in any way that might impact  
20 your ability to understand what's going on here today?

21 THE DEFENDANT: I'm not.

22 THE COURT: Does defense counsel have any question  
23 whatsoever as to the defendant's competency to pled at this  
24 time?

25 MR. KELNER: No, Your Honor.

1 MR. ANTHONY: No, Your Honor.

2 THE COURT: Mr. Flynn, have you had sufficient time  
3 to consult with your attorneys about this case?

4 THE DEFENDANT: I have.

5 THE COURT: Are you satisfied with the services that  
6 they have provided you?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had the opportunity to discuss  
9 with them the charge against you and whether or not you  
10 should enter a plea of guilty?

11 THE DEFENDANT: I have.

12 THE COURT: Counsel, have you had sufficient time to  
13 review and investigate the law and the facts of this case?

14 MR. KELNER: Yes, Your Honor.

15 THE COURT: In your opinion, does the defendant  
16 understand the nature of the charge pending against him?

17 MR. KELNER: Yes, Your Honor.

18 THE COURT: Do you believe that he is mentally  
19 competent to enter this plea?

20 MR. KELNER: Yes, Your Honor.

21 THE COURT: Mr. Flynn, as I mentioned earlier, before  
22 I accept your plea, I need to explain to you certain rights.  
23 You have to make sure that you understand them because you're  
24 going to be waiving a significant number of them.

25 THE DEFENDANT: Uh-huh.

1           THE COURT: Please listen closely. Be patient  
2 because it is going to take a little bit of time. And again,  
3 let me know if you do not understand anything. And finally,  
4 again, at any point in time, if you need to consult with your  
5 attorneys, please take the time to do that.

6           Do you understand that the charge against you is a  
7 felony charge?

8           THE DEFENDANT: I do.

9           THE COURT: Because it is a felony charge, you have a  
10 constitutional right to have the members of a grand jury  
11 indict and charge you with that felony. A federal grand jury  
12 is composed of at least 16 and not more than 23 citizens of  
13 the District of Columbia. In order to charge you, at least  
14 12 of them must find that there is probable cause to believe  
15 that a crime has been committed and that you were the person  
16 that committed that crime. And if they charged you, they  
17 would list the charges in a written indictment. If you do  
18 not give up your right to be charged by grand jury  
19 indictment, the government cannot file felony charges against  
20 you on its own.

21           Do you understand that?

22           THE DEFENDANT: Yes.

23           THE COURT: In this case, the felony charges against  
24 you have been brought by the Special Counsel's Office by the  
25 filing of an Information.

1           If you do not give up your right to be charged by  
2 grand jury indictment, the government may present the case to  
3 the grand jury and ask them to indict you, and a grand jury  
4 might indict you, but then there is always the possibility  
5 that they won't.

6           Do you understand that?

7           THE DEFENDANT: I do.

8           THE COURT: Okay. If you do give up your right to be  
9 charged by a grand jury in an indictment, the case will  
10 proceed against you on the Special Counsel's Office  
11 Information, just as though you had been indicted. Do you  
12 understand that?

13          THE DEFENDANT: Yes.

14          THE COURT: Mr. Flynn, do you understand your right  
15 to indictment by a grand jury?

16          THE DEFENDANT: Yes.

17          THE COURT: Have you discussed giving up your right  
18 to indictment by the grand jury with your attorneys?

19          THE DEFENDANT: I have.

20          THE COURT: Have any threats or promises other than  
21 the promises made in the plea agreement been made to you to  
22 induce you to give up your right to the indictment?

23          THE DEFENDANT: No.

24          THE COURT: I gather there's a written waiver. Let  
25 me get that in front of me.



1           Could you just confirm that that is your signature on  
2 that document?

3           Is that a "yes"?

4           THE DEFENDANT: Yes.

5           THE COURT: Okay. The signature on that document  
6 waiving your right to a grand jury, it's yours; correct?

7           THE DEFENDANT: Yes.

8           THE COURT: Counsel, is there any reason the  
9 defendant should not waive his right to a grand jury?

10          MR. KELNER: No.

11          THE COURT: I find that the waiver of indictment by  
12 grand jury is knowingly and voluntarily made, and it is  
13 accepted, and the signed waiver will be filed.

14          Mr. Flynn, you have the right to plead not guilty to  
15 any offense charged against you. Do you understand that?

16          THE DEFENDANT: Yes.

17          THE COURT: You would have the right to challenge the  
18 government's case against you by seeking to have the charges  
19 dismissed or having the evidence against you suppressed or  
20 thrown out. Do you understand you would have that right if  
21 you did not waive them?

22          THE DEFENDANT: Yes.

23          THE COURT: All right. Under the Constitution and  
24 the laws of the United States, you have the right to a jury  
25 trial in this case. That means that 12 citizens of the

1 District of Columbia would sit as the jury and determine  
2 whether you are guilty or not guilty based upon evidence  
3 presented in this courtroom.

4 Do you understand your right to a jury trial?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: If you choose to go to trial, you would  
7 have a right to be represented by your attorneys at that  
8 trial. Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: At a trial, you would have the right  
11 through your lawyers to confront and cross-examine any  
12 witnesses against you. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: You would also have the right to present  
15 your own witnesses, and you would have the right to subpoena  
16 them to require them to testify in your defense at trial. Do  
17 you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: At a trial you would have the right to  
20 testify yourself and to present evidence on your behalf if  
21 you wanted to, but you would not have to testify or present  
22 any evidence if you did not want to because you cannot be  
23 forced to incriminate yourself, that is, to present evidence  
24 of your own guilt. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: If you chose not to testify or to put on  
2 any evidence at a trial, those choices could not be used  
3 against you to infer or suggest your guilt. Do you  
4 understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Unless and until I accept your guilty  
7 plea, if you choose to enter one today, you are presumed by  
8 the law to be innocent because it is the government's burden  
9 through competent evidence to prove your guilt beyond a  
10 reasonable doubt, and until it does, you cannot be convicted  
11 at trial. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you went to trial and you were  
14 convicted, you would have the right to appeal your conviction  
15 to the Court of Appeals and to have a lawyer help you prepare  
16 that appeal. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that by pleading  
19 guilty, you will be generally giving up your rights to  
20 appeal? Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, to summarize, do you understand that  
23 if you plead guilty in this case and I accept your guilty  
24 plea, you will give up all the rights I just explained to you  
25 because there will not be any trial and there will probably

1 be no appeal and you will waive your right not to incriminate  
2 yourself, because in order for me to accept your plea, you  
3 have to admit your guilt. Do you understand that?

4 THE DEFENDANT: I do.

5 THE COURT: Mr. Flynn, do you wish to give up your  
6 rights to a trial, your right to an appeal in most  
7 circumstances, and all of the rights I have explained that  
8 you have if your case went to trial? Do you wish to do that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. And there is a signed waiver  
11 of trial by jury. If you could confirm that that is your  
12 signature on that page.

13 It is?

14 THE DEFENDANT: Yes.

15 THE COURT: Counsel, is there any reason the  
16 defendant should not waive a jury trial and his right against  
17 self-incrimination as to the charge to which a plea of guilty  
18 will be made?

19 MR. KELNER: No, Your Honor.

20 MR. VAN GRACK: No, Your Honor.

21 THE COURT: I find that the waiver is knowingly and  
22 voluntarily made, and it is accepted, and the signed waiver  
23 will be filed, as well.

24 Mr. Flynn, have you and your attorney received a copy  
25 of the Information in this case, which contains the written

1 charges against you?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you read that document and has your  
4 lawyer explained it to you, the charges contained therein?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had the opportunity to discuss  
7 the charges and the case in general fully with your  
8 attorneys?

9 THE DEFENDANT: I have.

10 THE COURT: You understand that the Information  
11 charges you with the offense of making false statements in a  
12 matter within the jurisdiction of the Executive Branch of the  
13 Government of the United States, in violation of  
14 18 U.S.C. § 1001? Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Before I accept your guilty plea, I must  
17 make a determination that there's a factual basis for that  
18 plea.

19 I'm going to have the government come up and make a  
20 presentation as to what it believes it can prove beyond a  
21 reasonable doubt at trial. I know that there is a written  
22 signed statement of offense, as well. So if you can just  
23 confirm that that is your signature on page 6 of that  
24 document.

25 It is?

1 THE DEFENDANT: It is.

2 THE COURT: The government's presentation is going to  
3 largely duplicate that, but I still need you to listen  
4 closely, and at the end of it, if you disagree with anything  
5 they have said -- I will give you another opportunity to  
6 disagree with anything in the written document -- you need to  
7 tell me. So please listen carefully, okay?

8 THE DEFENDANT: Yes.

9 THE COURT: Go ahead and have a seat.

10 Let me hear from the government. Why don't you start  
11 with the elements of the charges.

12 MR. VAN GRACK: Your Honor, the elements for  
13 violating 18 U.S.C. § 1001 are that the defendant made a  
14 false statement that was material, the defendant acted  
15 knowingly and willfully, and the statement pertained to a  
16 matter within the jurisdiction of the Executive Branch of the  
17 United States Government.

18 THE COURT: Why don't you go through the facts that  
19 you think you can prove at trial.

20 MR. VAN GRACK: That the defendant made material  
21 false statements and omissions during an interview with the  
22 Federal Bureau of Investigation on January 24, 2017, in  
23 Washington, D.C.

24 At the time of the interview, the FBI had an open  
25 investigation into Russia's efforts to interfere in the 2016

1 presidential election, including the nature of any links or  
2 coordination between individuals associated with Russia and  
3 the campaign of President Donald Trump.

4 Specifically, during that January 24th interview, the  
5 defendant falsely stated that he did not ask Russia's  
6 Ambassador to the United States to refrain from escalating  
7 the situation in response to sanctions that the United States  
8 had imposed against Russia. The defendant also falsely  
9 stated that he did not remember a follow-up conversation in  
10 which the Russian Ambassador stated that Russia had chosen to  
11 moderate its response to those sanctions as a result of the  
12 defendant's request. In truth and in fact, the defendant  
13 then and there knew that:

14 On or about December 29, 2016, the day sanctions  
15 against Russia were announced, the defendant called a senior  
16 official of the Presidential Transition Team, who was with  
17 other senior members of the Presidential Transition Team at  
18 the Mar-a-Lago resort, to discuss what to communicate to the  
19 Russian Ambassador about sanctions. On that call, the  
20 defendant and the official discussed sanctions, including  
21 that members of the transition team at Mar-a-Lago did not  
22 want Russia to escalate the situation.

23 Immediately after that phone call, the defendant  
24 called the Russian Ambassador and requested that Russia not  
25 escalate the situation and only respond to the U.S. sanctions

1 in a reciprocal manner.

2           Shortly after his phone call with the Russian  
3 Ambassador, the defendant spoke again with the senior  
4 official to report on the substance of his call with the  
5 Russian Ambassador, including their discussion of sanctions.  
6 Two days later, the Russian Ambassador called the defendant  
7 and informed him that Russia had chosen not to retaliate in  
8 response to the defendant's request. After that phone call,  
9 the defendant spoke with senior members of the transition  
10 team about his conversations with the Russian Ambassador  
11 regarding sanctions and Russia's decision not to escalate the  
12 situation.

13           During that same January 24th interview with the FBI,  
14 the defendant made additional false statements about his  
15 calls to Russia and other countries regarding a resolution  
16 submitted to the United Nations Security Council on  
17 December 24, 2016. The defendant falsely stated that he only  
18 asked the countries' positions on the resolution and that he  
19 did not request that any of the countries take any particular  
20 action on the resolution. The defendant also falsely stated  
21 that the Russian Ambassador never described to him Russia's  
22 response to his request. In truth and in fact, the defendant  
23 then and there knew that:

24           On or about December 22, 2016, a very senior member  
25 of the transition team directed the defendant to contact



1 officials from foreign governments, including Russia, to  
2 learn where each government stood on the resolution and to  
3 influence those governments to delay the vote or defeat the  
4 resolution.

5 On or about December 26, 2016, the defendant  
6 contacted the Russian Ambassador about the pending vote. The  
7 defendant requested that Russia vote against or delay the  
8 resolution.

9 The next day the defendant again spoke with the  
10 Russian Ambassador, who informed him that if it came to a  
11 vote, Russia would not vote against the resolution.

12 In addition, on March 7, 2017, the defendant filed  
13 multiple documents with the Department of Justice pursuant to  
14 the Foreign Agents Registration Act pertaining to a project  
15 performed by him and his company for the principal benefit of  
16 the Republic of Turkey. In those filings, the defendant made  
17 materially false statements and omissions, including by  
18 falsely stating that his company did not know whether or the  
19 extent to which the Republic of Turkey was involved in the  
20 project; that the project was focused on improving U.S.  
21 business organizations' confidence regarding doing business  
22 in Turkey; and an op-ed by the defendant published on  
23 November 8, 2016 was written at his own initiative. In  
24 addition, the defendant omitted in those filings that  
25 officials from the Republic of Turkey provided supervision

1 and direction over the project.

2 THE COURT: Thank you.

3 MR. VAN GRACK: Your Honor, I want to correct two  
4 dates that I read: That the resolution before the United  
5 States Security Council was submitted on December 24, 2016;  
6 and that the second call that the defendant made with the  
7 Russian Ambassador about that UN vote was on December 23rd.

8 THE COURT: All right. Thank you.

9 Mr. Flynn, if you could come back to the podium,  
10 please.

11 Are those dates correct in the written statement?

12 MR. VAN GRACK: Yes, they are, Your Honor.

13 THE COURT: So they don't need to be corrected there,  
14 as well.

15 MR. VAN GRACK: No, Your Honor.

16 THE COURT: Okay.

17 Mr. Flynn, now that you've read the written statement  
18 of facts, you've heard the government's oral presentation,  
19 are there any corrections or errors that you need to point  
20 out?

21 THE DEFENDANT: Nothing that I heard, Your Honor, no.

22 THE COURT: Or that you read?

23 THE DEFENDANT: Or that I read.

24 THE COURT: Is that factual summary true and correct?

25 THE DEFENDANT: It is.

1 THE COURT: Did you, in fact, do what the government  
2 has stated that it can prove at trial?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Flynn, there is a written letter  
5 outlining the plea agreement in this case. Do you have a  
6 copy of that agreement?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you read it carefully?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you had the chance to discuss it  
11 fully with your attorneys?

12 THE DEFENDANT: I have.

13 THE COURT: Do you understand it?

14 THE DEFENDANT: I do.

15 THE COURT: If you can confirm that that is your  
16 signature on page 10 of that document.

17 It is?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. By signing that agreement, are you  
20 accepting and agreeing to the terms of the agreement?

21 THE DEFENDANT: I am.

22 THE COURT: Okay. Is your willingness to plead  
23 guilty here today the result of the discussions you had with  
24 the government through your attorneys?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Does that written agreement  
2 represent the entire understanding you have with the  
3 government?

4 THE DEFENDANT: Yes, I believe it does.

5 THE COURT: Okay. There are no side oral agreements?

6 THE DEFENDANT: None.

7 THE COURT: Does the government counsel agree that  
8 that is correct?

9 MR. VAN GRACK: Yes, Your Honor.

10 THE COURT: Okay. Does government counsel wish to  
11 summarize it or file the written agreement and rely upon it?

12 MR. VAN GRACK: File the written agreement and rely  
13 on it.

14 THE COURT: Okay. We will go ahead and do that and  
15 get that filed.

16 Mr. Flynn, as I understand it, you're proposing to  
17 plead guilty to the offense of making false statements in a  
18 matter within the jurisdiction of the Executive Branch of the  
19 Government of the United States, in violation of  
20 18 U.S.C. § 1001.

21 Do you understand that if I accept your guilty plea  
22 in this case, you could receive a maximum sentence of  
23 5 years' imprisonment. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you also understand that I can impose

1 a fine of up to \$250,000?

2 THE DEFENDANT: I do.

3 THE COURT: Do you also understand that I could  
4 impose a fine sufficient to pay the government the cost of  
5 any imprisonment, term of supervised release, or period of  
6 probation?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you also understand that although no  
9 restitution issues have been brought to my attention that I  
10 have an independent duty to determine whether any restitution  
11 needs to be made if anyone has sustained a loss as a result  
12 of your actions, and I would be required by law to impose  
13 that amount of restitution?

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand, also, that you would  
17 be obligated to pay any applicable interest or penalties on  
18 fines or restitution that are not timely made? Do you  
19 understand that?

20 THE DEFENDANT: I do.

21 THE COURT: Do you also understand that you would be  
22 subject to a term of supervised release not to exceed  
23 3 years? Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And what that means is that if you're

1 sent to prison that upon your release you will be on  
2 supervision under certain circumstances and rules with which  
3 you must comply. And if you violate those conditions and  
4 rules, you could be sent back to prison for an additional  
5 period of time. Do you understand --

6 THE DEFENDANT: Yes.

7 THE COURT: -- how supervised release works?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you also understand, although no prior  
10 criminal history has been brought to my attention, that if  
11 the probation office determines you have two or more  
12 convictions for a crime of violence or felony drug offenses,  
13 you may be subject to higher penalties provided in the career  
14 offender statutes in the sentencing guidelines? Do you  
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you also understand that you would be  
18 subject to a special assessment of \$100 for a felony offense,  
19 as required by statute? Do you understand that?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: And again, although no forfeiture issues  
22 have been brought to my attention, do you understand that if  
23 they are applicable, the Court can require you to forfeit  
24 certain property to the government? Do you understand that?

25 THE DEFENDANT: I do.

1           THE COURT: Mr. Flynn, do you understand all of these  
2 possible consequences of your plea agreement?

3           THE DEFENDANT: Yes, Your Honor.

4           THE COURT: I'm going to review something with you  
5 that I'm sure your counsel has discussed with you, and that  
6 is the sentencing guidelines.

7           This case falls within the Sentencing Reform Act of  
8 1984, by which Congress created the United States Sentencing  
9 Commission. The Sentencing Commission has issued detailed  
10 guidelines for judges such as myself to consider in  
11 determining the sentence in a criminal case like this. The  
12 Commission has set sentencing ranges for specific offenses,  
13 and those ranges are contained in the guidelines manual.  
14 However, in light of Supreme Court decisions, the sentencing  
15 guidelines are not mandatory, they are advisory, but they  
16 must be consulted by the Court in the first instance in  
17 determining the appropriate sentence. Hence, I will assess  
18 and determine the proper sentence in this case by reference  
19 to and in consideration of the guidelines. And while the  
20 Court, prosecutor, your counsel, and even you have some idea  
21 of what that guidelines range will be based on the charge and  
22 based upon your prior criminal history, nothing will be  
23 certain until the probation office conducts its investigation  
24 and advises me what they believe the sentencing guideline  
25 range is.

1 Do you understand that process?

2 THE DEFENDANT: I do.

3 THE COURT: The probation office will create a  
4 presentence report that contains their conclusions as to what  
5 the range is. That report will come to me, and it would also  
6 go to both sets of attorneys, and all of you will have a  
7 chance to make objections to portions of it or request  
8 changes. Your attorney will go over it with you, and then at  
9 the time of the sentencing I will hear from both sets of  
10 attorneys, and it is only then that I will make a  
11 determination what your advisory sentence and guidelines  
12 range is.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Once I do that in accordance with the  
16 sentencing guidelines, I'm still permitted, however, to  
17 impose a sentence outside of that range, either above or  
18 below that range.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: However, I cannot sentence you to more  
22 than the statutory period which I explained a little earlier.

23 Have you and your attorney talked about the  
24 sentencing guidelines and how they might apply to your case?

25 THE DEFENDANT: Yes, Your Honor.



1 THE COURT: Do you understand that I cannot determine  
2 what the sentence would be under the guidelines until I have  
3 received a presentence report from the probation office and  
4 the government and your attorneys have had the opportunity to  
5 challenge the facts reported by the probation officer?

6 Do you understand that?

7 THE DEFENDANT: Yes, I understand that.

8 THE COURT: Do you understand that after I have  
9 decided what guidelines range applies in your case, I still  
10 have the authority in my discretion to impose a sentence that  
11 is more severe or less severe than the sentence called for by  
12 the guidelines? Do you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Do you also understand that parole has  
15 been abolished for federal charges and that if you are  
16 sentenced to prison that you will serve the sentence I  
17 impose, with a possible modest reduction for good time  
18 credit, but that you will not be released early on parole as  
19 used to be the case? Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that the offense  
22 to which you are proposing to plead guilty is a felony  
23 offense; and that if your plea is accepted and you're found  
24 guilty of that offense, then, depending upon the specific  
25 circumstances and the jurisdiction in which you reside, such

1 a finding may deprive you of valuable civil rights, such as  
2 the right to vote, the right to hold public office, the right  
3 to serve on a jury, and the right to possess any kind of  
4 firearm?

5 Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you also understand that under some  
8 circumstances, not only you, but also the government may have  
9 the right to appeal any sentence that I impose if the  
10 government believes that the sentence is improper or  
11 unlawful? Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: Do you understand that under this plea  
14 agreement you are generally giving up your right to appeal  
15 any conviction or sentence I impose? Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: There's very limited exceptions to what  
18 you can appeal in this matter. Do you understand that?

19 THE WITNESS: Yes.

20 THE COURT: And you've specifically discussed with  
21 your attorneys the waiver of the right-to-appeal rights?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Do you understand that if the  
24 proper guideline range that I determine is higher than you  
25 expected, as I warn you it could be, or the sentence I impose

1 is more severe than you expected -- again, I warn you it  
2 could be -- you will still be bound by your guilty plea and  
3 will have no right to withdraw it? Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that if I do not accept  
6 any sentencing recommendations made in the plea agreement or  
7 made by the lawyers at the time of sentencing, you will still  
8 be bound by your guilty plea and will have no right to  
9 withdraw it? Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: The plea agreement includes an agreement  
12 by you to cooperate with the United States and an agreement  
13 by the U.S. to make a motion pursuant to Sentencing Guideline  
14 5K1.1 if, but only if, the United States determines that you  
15 have provided substantial assistance in the investigation or  
16 prosecution of another person.

17 Do you understand that the decision whether that  
18 motion under 5K is filed is within the sole discretion of the  
19 United States, and neither you nor the Court can require the  
20 government to file that motion? Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: So if the government decides that your  
23 cooperation is not enough to justify them filing that motion,  
24 that is their call, it is not mine and it is not yours. Do  
25 you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that the Court is  
3 not required to reduce your sentence even if the government  
4 files that motion? That is my decision to make, not theirs.  
5 Do you understand that?

6 THE DEFENDANT: I do.

7 THE COURT: Finally, to repeat again, do you  
8 understand that under the law, I must consider and take into  
9 account the sentencing guidelines, along with all the other  
10 relevant factors, but that the guidelines are advisory,  
11 they're not binding on me, and ultimately the appropriate  
12 sentence will be determined in my discretion, considering the  
13 sentencing guidelines and all of the other relevant factors  
14 under the statute?

15 Do you understand that?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Mr. Flynn, has anyone, including your  
18 attorney, the federal agents, the prosecutor, or any other  
19 person in which you have come in contact promised or  
20 suggested to you that merely because you are pleading guilty  
21 I will give you a lighter sentence?

22 THE DEFENDANT: No.

23 THE COURT: Has anyone made any promises to you as to  
24 what sentence I will impose in this case if I accept your  
25 guilty plea?

1 THE DEFENDANT: They have not.

2 THE COURT: Do you understand that at this time I do  
3 not know what sentence I will impose in your case since I  
4 have not yet heard from the lawyers or from the probation  
5 office?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anyone made any promises to you in  
8 connection with your guilty plea other than those that are  
9 contained in the written plea agreement?

10 THE DEFENDANT: They have not.

11 THE COURT: Has anyone forced, threatened, or coerced  
12 you in any way into entering this plea of guilty?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Flynn, has there been anything about  
15 your plea agreement or these proceedings that you do not  
16 understand or that you wish to consult with your attorneys  
17 about?

18 THE DEFENDANT: There isn't.

19 THE COURT: Is there anything that you want to ask me  
20 before you make a decision whether or not you want to plead  
21 guilty or go to trial?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Counsel for both sides, is there anything  
24 else we need to cover before taking the plea?

25 MR. KELNER: No, Your Honor.

1 MR. ANTHONY: No, Your Honor.

2 MR. VAN GRACK: No, Your Honor.

3 THE COURT: Mr. Flynn, are you now ready to make a  
4 decision about whether you wish to enter a plea of guilty or  
5 whether you, instead, wish to go to trial?

6 THE DEFENDANT: I am.

7 THE COURT: Mr. Flynn, how do you plead to the charge  
8 in Count One of the Information, making false statements, in  
9 violation of 18 U.S.C. § 1001; do you plead guilty or not  
10 guilty?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Are you entering this plea of guilty  
13 voluntarily and of your own free will?

14 THE DEFENDANT: I am.

15 THE COURT: Are you entering this plea of guilty  
16 because you are guilty and for no other reason?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Defense counsel, do you know of any  
19 reason why the defendant should not plead guilty to the  
20 charge?

21 MR. KELNER: No, Your Honor.

22 MR. VAN GRACK: No, Your Honor.

23 THE COURT: It is the finding of this Court in the  
24 case of *United States v. Michael T. Flynn*, Criminal Number  
25 17-232, that the defendant, Michael Flynn, is fully competent

1 and capable of making a decision today and entering an  
2 informed plea; that he understands the nature of the charges  
3 against him and the consequences of what he is doing; that he  
4 is acting voluntarily and of his own free will; and that  
5 there is an adequate factual basis for his plea. Therefore,  
6 the plea of guilty is accepted, and I find you guilty as  
7 charged in Count One of the Information.

8 Mr. Flynn, as I explained to you a little bit  
9 earlier, there is going to be a presentence investigation  
10 conducted and a report prepared by the probation office to  
11 assist me in the sentencing. You are going to be interviewed  
12 by a probation officer, and you are required to give truthful  
13 information for that report. Your attorney may be present if  
14 you wish -- and that is generally a good idea -- and then you  
15 and your attorney will be permitted to read the presentence  
16 report, a draft of it, before the sentencing hearing, and  
17 make any objections to any errors that you believe are in  
18 that report. And then at the sentencing hearing, both you  
19 and your attorney will be given an opportunity to speak on  
20 your behalf.

21 Do you understand that process?

22 THE DEFENDANT: I do.

23 THE COURT: I assume that we're deferring sentencing  
24 for the time being?

25 MR. VAN GRACK: Yes, Your Honor.

1 THE COURT: Okay. How do you want to proceed as far  
2 as setting a status report --

3 MR. VAN GRACK: Yes, Your Honor, we've spoken with  
4 defense counsel, and we would like to schedule a status date  
5 in three months.

6 THE COURT: Okay. And defer the presentence  
7 investigation?

8 MR. VAN GRACK: Yes, Your Honor.

9 THE COURT: Okay.

10 THE DEPUTY CLERK: Status date is February 1, 2018.

11 THE COURT: 10 a.m.

12 A status report or status hearing?

13 Mr. VAN GRACK: A status report.

14 THE COURT: Okay. Status report, February 1, 2018.

15 I assume the government is not requesting that we  
16 hold him prior to that?

17 MR. VAN GRACK: No, Your Honor.

18 THE COURT: Okay. I will agree with that.

19 I'm going to have you report weekly by phone, and to  
20 live at the address that is in the pretrial materials. Is  
21 that correct?

22 MR. ANTHONY: Yes, that's the address, Your Honor.

23 THE COURT: I have signed the booking documents.

24 The one last thing I need to advise you, Mr. Flynn,  
25 is when we do finally set a sentencing date, you are required



1 to appear for that sentencing, and the failure to appear as  
2 required is a separate criminal offense for which you could  
3 be sentenced to imprisonment. All the conditions that you  
4 will be released upon now apply, and the penalties for  
5 violating those conditions can be severe, and that committing  
6 a crime while on release can subject you to more severe  
7 punishment than would otherwise be the case if you were not  
8 under the release conditions.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Counsel, is there anything else we need  
12 to cover?

13 MR. KELNER: No, Your Honor.

14 Government?

15 MR. VAN GRACK: No, Your Honor.

16 THE COURT: Thank you. You're excused.

17 (Proceedings adjourned at 11:16 a.m.)  
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Patricia A. Kaneshiro-Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Patricia A. Kaneshiro-Miller  
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PATRICIA A. KANESHIRO-MILLER

December 1, 2017  
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DATE