

Litigators of the Week: Covington Pair Score the Plea Deal Read Round the World

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By **Cogan Schneier**

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For the past year, Lt. Gen. Michael Flynn has reportedly faced a laundry list of potential criminal charges—everything from money laundering to violating the Logan Act to conspiracy to kidnap a Turkish cleric.

That's why when news broke last week that Flynn, the former National Security Adviser to President Donald Trump, would plead guilty in federal court to a single count of lying to federal investigators, it sent shockwaves not only through the media, but also through the Washington, D.C. legal community.

While we may never know what Robert Mueller III, the dogged special counsel, had on Flynn, it's hard to imagine a much better outcome for the retired general. That **deal** is a testament to the work of his lawyers, a team at Covington & Burling led by partners Robert Kelner and Stephen Anthony.

Kelner and Anthony declined comment, but their peers in the white collar bar are clearly impressed by the result they achieved.

"It's the lawyers who need to assess litigation risk and optimal outcome, then advise their client," said Jacob Frenkel, chair of the government investigations practice at Dickinson Wright and a former federal prosecutor. "They clearly negotiated effectively and enjoyed the trust and confidence of their client, which is essential in such life-altering cases."



Robert Kelner and Stephen Anthony

If found guilty of any number of the crimes for which Mueller was reportedly investigating, Flynn could have served decades in prison. In fact, the government's **statement of the offense**, filed in court, even notes that Flynn lied in documents he filed to the Justice Department pursuant to the Foreign Agents Registration Act. Yet Flynn was not charged with any FARA violation.

Former Trump campaign chairman Paul Manafort was not so lucky; he pleaded not guilty to a 12-count indictment including FARA charges in October and could face at least a decade in prison.

Flynn's single charge carries a maximum prison sentence of five years. But the plea deal shows the government agreed that the appropriate sentencing range for Flynn would be zero to six months—the lowest

possible option. While only the judge can decide his sentence, Flynn could avoid jail altogether, as could his son, Michael Flynn Jr., who was reportedly under investigation by Mueller as well.

Though the deal makes no mention of Flynn, Jr., who has not been charged with any crimes, it's possible investigators are showing leniency toward him, said Rob Walker, of counsel at Wiley Rein, also a former federal prosecutor.

"My understanding is that [the deal] kept the government away from Flynn's son as a potential target, and also, at least in theory, could result in little or no jail time," Walker said. "Obviously under the circumstances I think it is a good result for Flynn and that his lawyers did a strong job in achieving that result for him."

For Kelner and Anthony, that success appears to stem from their years of experience, a multi-disciplinary approach to the case and consistent media strategy.

Kelner, who is coming up on 20 years with Covington, is one of very few FARA experts in Washington, and has handled dozens of criminal cases over the years, many with a political aspect. He represented John Lopez, chief of staff to former U.S. Sen. John Ensign. Lopez was granted immunity in a Senate Ethics Committee and DOJ investigation into the senator's efforts to cover up an affair. Kelner also represented Rep. Tom Petri, who was cleared of all wrongdoing after a House Ethics Committee investigation into his advocacy for certain companies in which he owned stock.

Then there's Anthony, approaching 18 years at Covington. No stranger to public corruption and white collar cases, Anthony spent five years as a federal prosecutor in the U.S. Attorney's Office in Washington, D.C. and three at Main Justice. He's

repped numerous companies and individuals in all kinds of criminal cases, including the Lieutenant Governor of American Samoa, whose indictment on fraud charges was dismissed following a complex trial and hung jury.

Between the two of them, Kelner and Anthony have a mix of expertise and also overlap in key areas, which was likely essential in scoring a win in such a complex case. Plus, they have a crack team supporting them at Covington, which includes of counsel Brian Smith and associates Josh DeBold, Alexandra Langton and Roger Polack.

Kelner and Anthony have also been noticeably absent from press reports, issuing only a handful of statements here and there. Public relations and crisis management, it seems, was likely part of their winning recipe.

Still, the work is far from over for the Covington team. Multiple congressional committees are entrenched in ongoing investigations into Flynn. Just Wednesday, a letter from a top Democrat on the House Oversight and Government Reform Committee revealed whistleblower allegations that Flynn texted a former business partner minutes after the inauguration to indicate they were "good to go" on a deal to build nuclear reactors in the Middle East.

Notably, the New York Times' story on the letter stated that "a lawyer for Mr. Flynn declined to comment."

Expect to read more lines like that in stories about Flynn for months to come.

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