

FLYNN STEPS IN IT 2.0: EMMET SULLIVAN WILL MAKE SIDNEY POWELL EXPLAIN WHY SHE ASKED TO DECLASSIFY TOTALLY IRRELEVANT SECRETS

Back when Mike Flynn got cute in his sentencing memo, I warned that his false allegations about the circumstances of his investigation might backfire. It did. It led Judge Emmet Sullivan to order the release of his 302, showing how damning his lies were.

Flynn may have just done it again.

As I noted, in the joint status report submitted last week in the Mike Flynn case, his lawyers claimed they could not attend hearings on September 4, 5, 9, or 10, which were the dates the government suggested for a status conference.

The government is available on September 4th, 5th, 9th or 10th of 2019, or thereafter as the Court may order. Defense counsel are not available on those specific dates.

In response, Emmet Sullivan scheduled a status conference for September 10, a date Flynn's lawyers had said they could not attend.

MINUTE ORDER as to MICHAEL T. FLYNN. In view of the parties' [107](#) Joint Status Report, the Court, sua sponte, schedules a status conference for September 10, 2019 at 11:00 AM in Courtroom 24A. Signed by Judge Emmet G. Sullivan on 8/30/2019. (lcegs3) (Entered: 08/30/2019)

Set/Reset Hearings as to MICHAEL T. FLYNN:Status Conference set for 9/10/2019 at 11:00 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 08/30/2019)

The fact that this hearing remains scheduled on September 10 may suggest Flynn's lawyers were not telling the truth about their ability to attend a hearing on that date, in an attempt to

forestall the status conference for 30 days as they had requested to do in the status report.

They were *definitely* lying about their ability to attend a hearing on September 5, because they did attend one, a sealed *ex parte* hearing before Sullivan where they discussed their demand that they all receive security clearances so they could review a bunch of evidence that doesn't help their client.

Hearing (Ex Parte) for proceedings before Judge Emmet G. Sullivan held on 9/5/2019 as to Michael T. Flynn. The Court held an ex parte and sealed hearing with Mr. Flynn and defense counsel to consider Mr. Flynn's request for the Court's intervention on counsels request for security clearances. See Joint Status Report, ECF No. 107 at 2-3 (stating "the government continues to deny [Mr. Flynn's] request for security clearances. [Mr. Flynn's] attempts to resolve that issue with the government have come to a dead end, thus requiring the intervention of this Court."); see also *United States v. Musa*, 833 F. Supp. 752, 756-57 (E.D. Mo. 1993) (to determine the need for a security clearance, a Court may conduct an ex parte hearing). The Court advised counsel that it intends to resolve [102](#) Motion to Compel Production of Brady Material before addressing any Court intervention regarding security clearances for Mr. Flynn's counsel. Bond Status of Defendant: PERSONAL RECOGNIZANCE; Court Reporter: SCOTT WALLACE; Defense Attorney: SIDNEY POWELL, JESSE BINNALL, WILLIAM HODES, MOLLY MCCANN, LINDSAY MCKASSON; (mac) (Entered: 09/05/2019)

MINUTE ORDER as to MICHAEL T. FLYNN. In view of [102](#) Defendant's Motion to Compel Production of Brady Material, the Court will set a briefing schedule and a motion hearing date at the September 10, 2019 Status Conference. The Court will apply the standard set forth in *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989) to resolve the pending motion. Signed by Judge Emmet G. Sullivan on 9/5/2019. (lcpq5) (Entered: 09/05/2019)

As noted, in response, Judge Sullivan issued an order saying that before he'll rule on whether they get security clearances, he will first rule on the Brady motion full of demands to see information that is not helpful to their client.

In response to Flynn's motion that had basically said Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens Ted Stevens, literally invoking the Senator whose prosecution has led Judge Sullivan to distrust government claims to have complied with discovery obligations 21 times, Sullivan instead said "Fawaz Yunis."

Fawaz Yunis is one of the first terrorists the US prosecuted in the US. In preparation for his trial, he demanded a bunch of transcripts of conversations an informant had with him, some of which a judge later characterized as "trivia." Nevertheless the judge ordered the government turn over those transcripts. The government appealed, which led to the DC Circuit decision governing the Classified Information Procedures Act in DC that the government cited in the status report.

A defendant and his/her cleared counsel in a criminal prosecution may only obtain access to classified U.S.

government information when such classified material is deemed both “relevant” and “helpful to the defense.” See *United States v. Yunis*, 867 F.2d 617, 623-24 (D.C. Cir. 1989).

The DC Circuit reviewed the transcripts in question and reversed the District Court’s decision, finding that it had abused its discretion in the CIPA process by ordering the disclosure of the transcripts to the defendant.

[T]he District Court abused its discretion in ordering the disclosure of classified information to a defendant where the statements in question were no more than theoretically relevant and were not helpful to the presentation of the defense or essential to the fair resolution of the cause.

In reaching that decision, the Circuit also noted the importance of protecting sources and methods regarding,

the time, place, and nature of the government’s ability to intercept the conversations at all. Things that did not make sense to the District Judge would make all too much sense to a foreign counter-intelligence specialist who could learn much about this nation’s intelligence-gathering capabilities from what these documents revealed about sources and methods.

This is trouble for Flynn’s latest attempt to (as all the DC lawyers I know continue to joke) snatch defeat from the jaws of victory on his defense.

That’s true, first of all, for the one classified item that Flynn might make a sound argument he should be able to obtain: the transcripts of his calls with Sergey Kislyak. The *Yunis* decision is directly on point to

whether a defendant can get transcripts made in the course of national security investigations, and the DC Circuit upheld the principle that the government's interests in hiding (say, from Russia) details of how it collects on Russian diplomats can limit discovery to Flynn in the interests of protecting the ability to wiretap Russian diplomats in the future.

The *best thing* that can happen for Flynn is that Emmet Sullivan – who has already asked whether Mueller considered charging Flynn with treason – will review the transcript and see for himself how damning Flynn's comments were (though, given that at sentencing Sullivan said he has reviewed a lot of classified information in this case, he may already have seen it). If Sullivan reviews the transcript and believes it does nothing but make Flynn look more guilty, then Flynn is not going to get the transcript, and Sullivan may grow even more appalled by Flynn's conduct.

Then there are the Strzok-Page texts Flynn has demanded. If Sullivan has to review those, he'll have a sense of what Peter Strzok was looking at to make him so concerned about Trump's ties to Russia. He'll also see that Strzok was pursuing a range of counterintelligence cases, not a single-minded "coup" against first candidate and then President Trump. He'll even see how aggressively Strzok pursued the guy who leaked details about Carter Page's FISA order. Any derogatory bits about *Strzok* from these texts have already been released publicly; anything additional Sullivan would see would be other counterintelligence cases or derogatory information about Flynn and his buddies.

Worse still are the other completely unrelated things Sidney Powell demanded in her "Brady motion." Using public evidence, I was able to show most of the demands were crap. In one case, Powell demanded the declassification of a memo that shows National Security Advisor Mike Flynn oversaw the NSA slow-walking a response to FISA. In another, Powell made a false claim that, if true, would mean her client had broken the law

for 30 years as an intelligence officer.

Now Powell is going to have to make the case that this stuff is relevant, which is going to be very difficult for her to do.

And Emmet Sullivan is happy to sanction *any* lawyers who play games in his courtroom, whether they're prosecutors or defense attorneys or Fox pundits.