

GOVERNMENT CAUGHT BETWEEN A RECUSAL MOTION AND DESPERATION

Last week, Sidney Powell made her first formal request that Judge Emmet Sullivan recuse.

In response, Judge Sullivan said (while noting the proper time for such a request was last year), file a motion.

Sidney did.

It was a shitshow.

Nevertheless, Judge Sullivan politely invited the government to weigh in.

They've now done so. While not disagreeing with Flynn, they argue that the way to proceed is on the motion to dismiss – and press for urgent response.

The United States of America, by and through its undersigned counsel, respectfully files this response to General Michael T. Flynn's Motion to Disqualify Judge Emmet Sullivan, United States v. Flynn, 17-cr-232 (Doc. 161), filed on October 7, 2020. As this Court is aware, during the mandamus proceedings before the en banc Court of Appeals for the D.C. Circuit, General Flynn asked that "any further proceedings be conducted by a different judge." In re Flynn, No. 20-2153, Doc. 1846621 at 24. While the government did not address that request in its written pleadings, when asked during oral argument, the government offered that it had "reluctantly come to the view that there is now at least a question about appearances of impartiality" because this Court's filing of a petition for en banc review suggested a "level of

investment in the proceedings that is problematic.” In re Flynn, No. 20-2153, Doc. 1859900 (Transcript of the August 11, 2020, Hearing) at 54. The D.C. Circuit rejected that view. In re Flynn, No. 20-5143, 2020 WL 5104220, at *16 (D.C. Cir. Aug. 31, 2020).

Based in part on subsequent events, including the hearing held before the Court on September 29, 2020, General Flynn again raises the serious charge that this Court is biased and has engaged in misconduct. The government does not believe that adjudicating General Flynn’s motion is the most appropriate way for this Court to proceed. Consistent with the en banc D.C. Circuit’s statement that “[a]s the underlying criminal case resumes in the District Court, we trust and expect the District Court to proceed with appropriate dispatch,” In re Flynn, 2020 WL 5104220, at *7, the government respectfully submits that instead the Court should immediately grant the unopposed motion to dismiss the criminal information with prejudice. Doing so would avoid any further delay to General Flynn and to the government, and would eliminate any need for the Court to address the disqualification motion, which would be moot.

This is a nifty way to use the purportedly agreeing sides against each other.

The government wants this done by November 3. That makes Sullivan’s response to Powell on recusal easier.