



Written by [Bob Adelman](#) on August 13, 2020

Appeals Court Likely to Allow Lower Court to Question Motives Behind Government's Request to Dismiss Its Case Against Flynn

Following a [four-hour-long virtual hearing](#) on Tuesday by the D.C. District Court of Appeals over whether a lower court judge should be permitted to ask why the government decided to drop its case against former Trump National Security Advisor General Michael Flynn, commentators were persuaded that it would do so.

The ruling is expected shortly.

Flynn pleaded guilty in December 2017 to lying to two federal agents over a conversation he had with a Russian diplomat earlier that year. It turned out later that that "conversation" was planned in advance to entrap Flynn. When the government learned about the entrapment, it sought to dismiss its case against Flynn.

The judge, instead of dismissing the case against Flynn, delayed, forcing Flynn's lawyer, Sidney Powell, to ask the District Court to intervene and demand that the lower court judge dismiss forthwith. A three-judge panel ordered him to do so.

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Instead, the judge, Emmet Sullivan, asked the entire appeals court to consider Powell's demand and reverse the three-judge panel's order.

The full court agreed with Sullivan, and on Tuesday 10 judges, seven of them appointed by Democrat presidents, heard arguments pro and con.

Margot Cleveland, who served for 25 years as a law clerk to a federal appellate judge and as an adjunct professor at Notre Dame, sat in on the virtual hearing.

At *The Federalist* she noted:

[Judge] Sullivan made clear in his petition for rehearing [the case against Flynn] that he intended to question the government's motives....

Everything Sullivan has done since the government filed its motion to dismiss the criminal charge against Flynn tells of his intent to intrude on the executive branch's prosecutorial decisions.

This appears to many, including this writer, to be completely political. The reasoning goes: Flynn was charged and convicted of lying. He changed attorneys and changed his plea from guilty to not guilty, as a plea bargain under duress is unenforceable. Sullivan saw his chance to stretch out the case against him into November, intending it to be a distraction and possibly damaging to the president during his





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reelection campaign. After all, seven of the 10 judges deciding whether to let Sullivan question the government's motives were appointed by Democrat presidents.

And this being the year of all-out war by Democrats to keep Trump from serving another four years, voila!: Let's let Sullivan question the government and see what he might be able to uncover.

There could be another motive keeping Sullivan in the fight. Let Sullivan's Wikipedia entry explain:

Sullivan presided over the 2008 trial of U.S. Senator Ted Stevens, who was convicted of seven felony ethics violations in October.

During the trial, the judge refused requests by the defense for a mistrial to be declared, after information was revealed that the prosecution had withheld exculpatory Brady material...
[Emphasis added]

As more evidence of prosecutorial misconduct became known in early 2009, Judge Sullivan held four prosecutors in civil contempt of court. [Emphasis added]

On April 1, 2009, following a Justice Department probe that found additional evidence of prosecutorial misconduct, the Department of Justice recommended that Stevens' conviction be dismissed. [Emphasis added]

On April 7, 2009, Sullivan set aside the conviction and appointed a lawyer to investigate the prosecution team for criminal contempt. [Emphasis added]

Subsequently, one of the four prosecutors held in contempt committed suicide.

Ultimately, Sullivan dismissed the civil contempt charges, and no additional charges were brought against the three surviving prosecutors.

Perhaps Sullivan's target in this case isn't Flynn but the government that initially brought charges against him and then decided later to ask Sullivan to dismiss the case once Attorney General Barr intervened.

In any event, expect the Flynn case to continue to capture headlines during the presidential election campaign.

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