

Federal Judge Orders Mueller to Turn over Flynn Material

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*In a surprising move, U.S. District **Judge Emmet G. Sullivan** ordered Mueller late Wednesday to turn over all of the government's documents and "memoranda" related to Flynn's questioning. This follows a Flynn filing that described an effective trap set by agents who encouraged him not to bring a lawyer and left inconsistencies unaddressed in what has been described by critics as a "perjury trap." I have practiced in front of Judge Sullivan for years and he is a respected judge who has a keen eye for prosecutorial and investigative abuse. That does not mean that he will find such abuse here and could ultimately make a finding that nothing improper occurred. Yet, despite a recommendation of no jail time, Sullivan wants to review the entire record before deciding on the issue.*

Sullivan's order gives Mueller a 3:00 p.m. EST Friday deadline for the special counsel's office to produce the FBI documents. Those include 302 field reports that have been widely discussed in the media, including one which reportedly shows **then-FBI Deputy Director Andrew McCabe** pushing Flynn not to have an attorney present during the questioning. McCabe of course was later fired from the Justice Department and is viewed by critics as someone who had an anti-Trump agenda. Many however have defended his actions and denounced efforts, including President Trump, to make him a villain without any clear evidence of political bias. The scene however is made all the more suspicious for Trump supporters with the involvement of Peter Strzok, who was also later fired.

Some have also noted that McCabe never warned Flynn that false statements to investigators are crimes or that this was not some routine sit-down during the very busy opening days of the Administration. The fact is however that Flynn was not in custody and thus was not guaranteed a Miranda warning.

On the other hand, the false statement that Flynn allegedly made was not reportedly viewed by the agents as an intentional lie. His meeting with the Russians was not illegal or even unprecedented as the incoming National Security Adviser. He did not deny the meeting but a memory of sanctions being discussed. Robert Mueller however decided to reexamine the statement and charge it as a violation of 18 U.S.C. 1001.

In reality, it was doubtful that Flynn would ever get jail time for such an alleged false statement. His range as a first offender started at 0 and that is likely where it would remain even without the recommendation of Mueller.

There is no question that this was an aggressive approach to an interview at a time when the subject was in the middle of establishing a new office for a new Administration in the midst of serious national security pressures. Moreover, Flynn "clearly saw the FBI agents as

allies,” according to the 302 prepared by Strzok and another agent. They made the conscious decision that “If Flynn still would not confirm what he said, ... they would not confront him or talk him through it.” Again they have no duty to reveal the discrepancy but it is unclear why they would adopt such a seemingly hostile or aggressive stance toward Flynn.

Flynn is set to be sentenced next Tuesday.

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