



Written by [Bob Adelman](#) on October 8, 2020

Flynn Attorney Demands Judge's Removal From the Case

The hearing over the dismissal of the case against General Michael Flynn on Tuesday, September 29, degenerated into a circus and a shouting match, according to Americans listening to the hearing online.

Mollie Hemmingway summed up the circumstances at the *Federalist*:

Federal Bureau of Investigation (FBI) agents tasked by fired former Director James Comey to take down Donald Trump during and after the 2016 election were so concerned about the agency's potentially illegal behavior that they purchased liability insurance to protect themselves less than two weeks before Trump was inaugurated president, previously hidden FBI text messages show....

Despite the overwhelming evidence that Flynn did not lie to agents, [that] the FBI had no legal basis to interview him, that the FBI later hid exculpatory documents from Flynn's defense team, [that] Flynn did not discuss financial sanctions during his phone calls with Kislyak, and [that] the FBI agents who interviewed Flynn did not believe he lied, federal trial Judge Emmet G. Sullivan has refused to dismiss the case against Flynn.



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Sullivan's failure to dismiss and instead continue the case against Flynn has enraged Sydney Powell, Flynn's lead attorney. She sat through nearly six hours of the so-called hearing designed to review the reasons why he should dismiss the case against Flynn as the government had requested back in May and, near the end, demanded that Judge Sullivan recuse himself from the case due to his obvious bias against Flynn.

Sullivan interrupted her and said that if she had a complaint she should file it formally. Yesterday she did just that. In filing for his dismissal from the case, Powell wrote:

General Michael T. Flynn moves to disqualify Judge Emmet G. Sullivan from further participation in this case.



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At least by the time of his failure to follow the mandamus of the D.C. Circuit panel and his decision with his own retained counsel to take the unprecedented and improper step of filing his petition for rehearing en banc, Judge Sullivan cast an intolerable cloud of partiality over his subsequent judicial conduct and risked undermining the public's confidence in the judicial process.

She quoted from a relevant case precedent:

“All that must be demonstrated to compel recusal,” then, is “a showing of an appearance of bias ... sufficient to permit the average citizen reasonably to question a judge's impartiality.”

Sullivan satisfied that standard when he actively litigated against General Flynn.

He has since far exceeded it — rising to the level of demonstrating actual bias. The court's contempt and disdain for the defense was palpable throughout the hearing on September 29, 2020, including when defense counsel made an oral motion for his immediate disqualification, which he refused to allow even to be fully stated for the record.

Accordingly, the defense files this motion to confirm the oral motion made at the hearing.

She covered numerous examples of Sullivan's bias against Flynn, summing them up:

The circumstances of this case lead any reasonable observer to believe that the current judge has a personal interest in the outcome, is irreparably biased against General Flynn, and is actively litigating against him.

His continued presence in the case has become a national scandal undermining confidence in the impartiality of the federal judicial system and faith in the rule of law writ large.

The Constitution compels, and all statutory bases require (“shall recuse”), that Judge Sullivan recuse himself from any further proceedings.

“Most courts,” she added, “would have granted the [government's] motion to dismiss as a matter of routine on the record within days of filing.” But, even when ordered to by a higher court, “this court did not grant the motion. Instead, it litigated the issues itself.”

In so doing, Judge Emmet Sullivan became prosecutor, judge, and jury. Said Powell, “Never has a court worked so hard or stretched the facts and the law so far to smear a defendant and his counsel.... The court's hostile tenor [during the September 29 hearing] made its abject bias resounding to thousands who listened or who read the transcript. Countless tweets from Americans who were watching what became a circus reflect their view of the judiciary.”

She concluded:

Judge Sullivan's increasingly hostile and unprecedented words and deeds in what has become his own prosecution of General Flynn mandate his disqualification from further participation in these proceedings....

The appearance of bias here is terrifying and mandates [your] disqualification.



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Powell added an addendum to her motion containing a number of tweets from citizens who listened to the circus:

“Judge Sullivan isn’t stupid. He’s just trying to delay and run out the clock until a Biden administration in the hope Flynn can be prosecuted.”

“Judge Sullivan should have been RECUSED during Gen. Flynn’s first hearing. He personally went after Flynn ... bias from Day One.”

“I listened to the entire hearing and was ashamed of Judge Sullivan. No judge should behave like he did. He obviously is carrying Obama’s water and should be removed for political bias. He is an embarrassment.”

It’s likely that Powell’s plea for his recusal will be ignored. It’s likely that Sullivan will delay as long as possible and then on his own recognizance sentence Flynn to jail for perjury and lying. That case will be appealed to the Supreme Court which will likely reverse. But by then the damage will have been done.

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