

JUDGE EMMET SULLIVAN TO MIKE FLYNN: YOU SIR, ARE NO TED STEVENS

Judge Emmet Sullivan just denied all of Mike Flynn's efforts to blow up his plea deal. While it addresses his long list of demands one by one, even before he gets there, it's clear he's pretty fed up with this whole effort. Along the way, Sullivan accuses Flynn's lawyer, Sidney Powell, of not ethically citing one of her sources.

The Court notes that Mr. Flynn's brief in support of his first Brady motion lifted verbatim portions from a source without attribution. Compare Def.'s Br., ECF No. 109 at 11-12, 15-16, 15 n.21, with Brief of the New York Council of Defense Lawyers et al. as Amici Curiae Supporting Petitioner, *Brown v. United States*, 566 U.S. 970 (2012) (No. 11-783), 2012 WL 242906 at *5-6, *8, *12-13, *12 n.6. In a footnote, Mr. Flynn's brief merely provides a hyperlink to the "excellent briefing by Amicus [sic] in support of the Petition for Writ of Certiorari in *Brown v. United States*." Def.'s Br., ECF No. 109 at 16 n.22.

The District of Columbia Rules of Professional Conduct apply to the proceedings in this Court. See LCrR 57.26. Rule 8.4(c) provides that "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." D.C. Rules of Prof'l Conduct R. 8.4(c); see *In re Ayeni*, 822 A.2d 420, 421 (D.C. 2003) (per curiam) (lawyer's plagiarized brief violated Rule 8.4(c)). "[C]itation to authority

is absolutely required when language is borrowed.”

He also reminded Flynn that before he pled guilty the second time, he (Sullivan) engaged in a sworn colloquy to prevent precisely the kind of back-tracking on his plea Flynn has been engaged in since June.

On December 18, 2018, this Court accepted Mr. Flynn’s guilty plea a second time. Sentencing Hr’g Tr., ECF No. 103 at 5, 16. During that hearing, the Court extended the plea colloquy in view of Mr. Flynn’s statements in his sentencing memorandum, which raised questions as to whether Mr. Flynn sought to challenge the conditions of the FBI interview. See generally Def.’s Mem. in Aid of Sentencing, ECF No. 50 at 6-18. In response to the Court’s question, defense counsel did not express “any concerns that potential Brady material or other relevant material was not provided to [Mr. Flynn].” Sentencing Hr’g Tr., ECF No. 103 at 10. Defense counsel affirmed to this Court that Mr. Flynn was not entitled to any additional information. Id. at 10-11. Under oath, Mr. Flynn confirmed that his rights were not violated as a result of the circumstances of his January 24, 2017 FBI interview and the allegations of misconduct against FBI officials. Id. at 11-12. And Mr. Flynn declined the Court’s invitation for the appointment of independent counsel to advise him. Id. at 9-10.

But perhaps the worst sign of Sullivan’s frustration with this ploy comes way at the end of his order, where he says explicitly that Flynn’s case does not resemble that of Ted Stevens, even though Powell has tried to make that claim over and over.

This case is not *United States v. Theodore F. Stevens*, Criminal Action No. 08-231(EGS), the case that Mr. Flynn relies on throughout his briefing.

He even hints that if he had found Brady violations, all that would get Flynn would be a trial.

Even if Mr. Flynn established a Brady violation in this case, dismissal would be unwarranted because “[t]he remedy for a Brady violation is retrial, not dismissal.” *United States v. Borda*, 941 F. Supp. 2d 16, 19 n.1 (D.D.C. 2013) (citing *Pettiford*, 627 F.3d at 1228). “[D]ismissal is appropriate only as a last resort, where no other remedy would cure prejudice against a defendant.” *Pasha*, 797 F.3d at 1139.

Sullivan scheduled sentencing for January 28, just over a month away.

Flynn had better hope his continued efforts to piss off Sullivan cool off before then.