

THE PROCEDURAL WEAKNESS OF SIDNEY POWELL'S ATTEMPT TO BLOW UP MIKE FLYNN'S PLEA DEAL

As I noted earlier this week, after six months of threatening to do so, Mike Flynn has formally moved to blow up his plea deal. His initial motion to justify doing so was all but silent about the main crime he pled guilty to – lying about his phone calls with Sergei Kislyak – and instead presented a bunch of block quotes purporting to show Brandon Van Grack pushed him to lie, but often in fact laying out proof that Flynn lied – to the FBI, to his own lawyers, even to Judge Emmet Sullivan himself.

So the bid to gain any advantage beyond delay until such time as Trump can pardon Flynn isn't going so well, as a matter of legal argument.

But a recent docket gaffe demonstrates the degree to which this effort is a procedural shitshow, too.

The parties were supposed to be operating under Emmet Sullivan's order, dated December 16, to provide supplements to the sentencing memos they submitted back in 2018, which – after several government continuances – meant the government's supplement sentencing memo was due January 7 and Flynn's was due January 22. The government met that deadline.

Sometime after the government submission, Flynn's lawyers asked the government for a continuance based on the government's changed recommendations, which the government alerted Flynn to last September. The government agreed to a delay – for sentencing. But then at the last minute, after planning to do so for six months, Flynn's team pulled a head fake, and informed the government they really wanted a

delay so they could figure out some basis on which to withdraw his plea.

Mr. Flynn also requests a continuance of the sentencing date set for January 28, 2020, for thirty days or until February 27, 2020, or such other subsequent day that is convenient to the Court and counsel, and a corresponding extension of time to file any supplemental sentencing memorandum (from January 22, 2020, to February 21, 2020). The continuance is requested to allow time for the government to respond to the most recent aspects of this Motion and for Mr. Flynn to provide the additional briefing he needs to protect the record and his constitutional rights in light of significant developments in the last thirty days.

In response, Sullivan deferred on Flynn's motion to withdraw his plea, and set the following new deadlines in response to the request for continuance:

- January 22: Supplemental motion to withdraw
- February 5: Government response to motion to withdraw
- February 12: Flynn reply on motion to withdraw

There was no explicit new deadline in there for a new sentencing memo from Flynn, meaning it would be due on January 22.

In response, Flynn asked for two more days, allowing it time to respond on sentencing and bumping the withdraw 2 days out on the first two deadlines, or 5 on the reply. Flynn also asked for 5PM deadlines even though Sullivan has been insisting on noon deadlines for months.

- January 24, 5:00PM: Supplemental motion to withdraw
- February 7, 5:00PM: Government response to motion to withdraw
- February 17, 5:00PM: Flynn reply on motion to withdraw

Sullivan, today, responded to that request by granting the initial deadlines but shortening the last and insisting on his noon deadlines.

- January 24, 12:00PM: Supplemental motion to withdraw
- February 7, 12:00PM: Government response to motion to withdraw
- February 13, 12:00PM: Flynn reply on motion to withdraw

All that's fairly uncontroversial, just a dance over how much time Sullivan is willing to bump a sentencing after trying to get it done so that Flynn can lay what will amount to a basis for appeal on a risky scheme to blow up his plea.

But that left Flynn with two sets of documents: the sentencing memo, due January 22, which will be critical if they lose the request to withdraw, which is likely, and the supplemental motion to withdraw, due January 24, which must meet a very high legal bar and lay the groundwork for appeal, which is probably where this is going.

And then Flynn just spluttered out something called a supplemental brief to withdraw. The brief was just six pages, didn't advance any new legal arguments, and repeated many of the same arguments (and one of the same exhibits) submitted last week. Effectively, that amounted to legally shooting their wad on an argument

totally insufficient to an attempt to take back two guilty pleas, without ever addressing the crime to which Flynn actually pled guilty, lying about his Kislyak conversations.

Again, Flynn's team has known they were going to make this argument since June, and they spluttered out their argument just like that.

They must have realized that they, formally at least, had fucked up, because they resubmitted the same thing but with a footnote:

This is not Mr. Flynn's "Supplemental Motion to Withdraw for Alternative Additional Reasons" currently due to be filed on January 22, 2020, for which we have requested two additional days to complete and file.

This is just an honest fuckup by people who are playing a really high stakes game of poker and really frazzled about it, even if they've been planning on all this since June.

But it appears Flynn really hasn't thought up a good reason to argue why he has to withdraw even from his plea agreement, much less the underlying lies about Kislyak.

Which is a pretty lousy position to be in when you're playing such a high stakes gambit.