

FOUR THINGS JUDGE EMMET SULLIVAN SHOULD DO IN THE WAKE OF FLYNN'S PARDON

As I noted, Trump attempted to be expansive with his pardon of Mike Flynn. He failed. I think the chances that Flynn does prison time are almost as high today as they were last week.

And while I think there is absolutely nothing defective in the pardon that Trump signed and while I'm certain that Judge Sullivan will honor that pardon (though DOJ is asking him to dismiss the charges with prejudice; Sullivan should dismiss them without prejudice), there are four things that Sullivan has the means of doing to raise the cost of Trump's pardon. Those are:

- Make Trump name Flynn's crimes
- Establish a record about whether Flynn or Sidney Powell traded electoral assistance for this pardon
- Force DOJ to explain what went into the altered documents
- Identify who wrote the pardon

Make Trump name Flynn's crimes

While whoever wrote this pardon tried (but failed) to make it comprehensive, it only names one of Flynn's crimes: false statements (indeed, that's the only crime that DOJ lists for the

pardon on its website).

NAME	DISTRICT	SENTENCED	OFFENSE	PUBLIC DISCLOSURE
Michael T. Flynn	District of Columbia	N/A	Making false statements to Federal investigators	Download PDF Clemency Records

But by moving to withdraw his plea, Flynn put his other crimes before Judge Sullivan. So Sullivan has every right to inquire whether this pardon includes all of Flynn's crimes. He could issue an order for Trump to come before him to answer whether the pardon forgives Flynn for:

- His lies about what he said to Sergey Kislyak during the transition
- Serving as an undisclosed Foreign Agent for Turkey
- Lying about serving as an undisclosed Foreign Agent for Turkey
- Conspiring with others to hide that he was an undisclosed Foreign Agent of Turkey
- Lying about his own guilt and the circumstances surrounding his guilty pleas
- Lying about lying to Flynn's Covington lawyers

The answer to all those questions is yes. Trump does mean to pardon Mike Flynn for secretly working for Turkey while getting classified briefings. Trump does mean to pardon Flynn for lying to Sullivan (and he does know that Flynn *did* lie to Sullivan). Sullivan has a need to know that explicitly and he should get Trump on the record.

Trump won't show, of course.

Until he is made to, after January 20th.

Note, I'd also make Trump state, under oath, when he signed the pardon. It is dated with Wednesday's date, but I highly doubt that DOJ had it written by then. If Trump signed it after having lunch with Mike Pence yesterday, it's possible that Trump didn't write it this broadly until broaching a pardon for himself with Pence.

Establish a record about whether Flynn or Sidney Powell traded electoral assistance for this pardon

Judge Sullivan also has reason to want to know if someone offered Trump something of value for this pardon. He has evidence they did – in the altered documents designed to serve as a campaign attack on Joe Biden. And the news is full of evidence that Sidney Powell may have offered further benefit, in her efforts to challenge Trump's election loss.

Sullivan should put both Flynn and Powell under oath and require that they confirm or deny whether they have offered favors to Trump for the pardon.

They won't show, of course.

Until they are made to, after January 20th.

None of this would invalidate the pardon, of course. But if Trump got some other benefit from Flynn's lies that went into this pardon, especially efforts to undermine a legal election, then the Attorneys General in those states that already investigating Trump's efforts to steal the election would have reason to want to know that, and Sullivan has the means to get them under oath to do that.

Force DOJ to explain what went into the altered documents

People at both FBI and DOJ altered documents submitted in Sullivan's court, the FBI by adding false dates to exhibits and DOJ by redacting footers indicating that the documents were covered by the protective order. Sullivan has reason to ask how that happened and who was involved in the effort.

Even if Trump pardoned everyone involved, there would still be a means for Sullivan to punish most of those involved, because most of those involved have law licenses and can be disbarred.

Sullivan should schedule a hearing – no need to rush, he might as well schedule it for January 26, after everyone involved gets a COVID shot – to ask the following people if they had a role in altering the documents (or eliciting a corrupt interview with Bill Barnett):

- AUSA Jocelyn Ballantine
- AUSA Sayler Fleming
- AUSA Ken Kohl
- US Attorney Jeffrey Jensen
- FBI Executive Assistant
Director John Brown
- FBI Agent Keith Kohne
- Acting DEA Administrator
Timothy Shea
- AG Bill Barr
- DAG Jeffrey Rosen

Again, most of these people have law licenses that Sullivan could put at issue, and he has good reason to want to hold someone accountable for altering documents in his court.

These people won't want to show. But after January 20th, they may have no way of avoiding

it.

Identify who wrote the pardon

In his confirmation hearing, Bill Barr said that pardoning someone for giving false testimony would be a crime. Trump just committed that crime. Whatever lawyer wrote up the pardon language – whether it's Barr or White House Counsel Pat Cipollone – just conspired to commit a crime.

Judge Sullivan should identify everyone who had a role.

[Fourth item added after the original post.]