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Samantha Leach is culture editor at Bustle. She previously worked at Glamour, Random House, and was a production assistant at Joan Didion: The Center won't hold. Follow her on Twitter and Instagram: @\_sleach. The Justice Department asked him to drop the case against Michael Flynn. Here are 13 questions a judge should ask a government lawyer. May 11, 2020 Patrick Semansky /AP U.S. District Judge Emmett G. Sullivan probably has no choice but to join the Justice Department's outrageous motion that it dismiss the case against Lt. Gen. Michael Flynn despite Flynn pleading guilty to false statements more than two years ago. Existing legislation gives it little power to decide whether to release the case. However, he should not dismiss the case without comment. As with any motion filed with a federal district judge, it allows a judge to question the government, which is now asking him to drop the case it has disputed since reaching a plea deal with Flynn in December 2017. He can examine the reasoning outlined in the extraordinary brief of the department. He can understand the rather obvious policy of applying for dismissal. And he can test whether the Justice Department is formulated a position that it would like to see courts apply in the future, or whether it simply gives an unforeseen loyal ally of President Donald Trump.Flynn's guilty plea has admitted that he lied to FBI agents about his phone conversation with Russian Ambassador Sergey Kislyak regarding new U.S. sanctions against Russia, among other issues. The criminal charges against Flynn depended on the fact that his lies were material under the relevant law, that is, predictably capable of influencing ... official decision. Reversing its previous position that Flynn's statements were material - a position that both Flynn and Judge Sullivan agreed to, the Justice Department now argues that Flynn's lies could not have significantly affected the FBI investigation, and therefore could not have been criminal because, according to the department, the investigation was not legitimate in the first place, the FBI failed to prepare the necessary predicate in accordance with its own rules. Here are 13 questions that we would ask a government lawyer if we were Judge Sullivan: One striking feature of your brief is that he does not seem to claim that any of Flynn's constitutional rights were violated or that you acknowledged that any government action regarding this investigation was unlawful. Am I reading the government's position correctly that you want to drop this case without acknowledging that Flynn's rights were actually infringed? Can you identify another case in which the government advocated dismissing the guilty plea or newly discovered evidence of actual innocence or the discovery of any violation of the defendant defendant Rights? As I understand your position, you believe that the Flynn case should be dropped because the investigation did not have a proper predicate at the time of the FBI interview, and that his lies thus could not have been material. Did you know of any other case in which the Government requested the dismissal of any charge at the level that the investigation did not have a proper predicate? And are you aware of any other circumstances in which the government in the case of false statements sought dismissal, because the alleged absence of a predicate for the investigation made the lie allegedly inconsequential? The federal government usually accuses defendants of lying to investigators. Did the Department intend to conduct a similar analysis of the predication and materiality of past false statements and seek dismissal on other matters that could now be considered, which could lead to a failure to implement its new position? Claiming that the investigation was not properly predetermined, the government points to the FBI's internal discussions on whether to close its investigation into Flynn-discussions that took place before the bureau learned of Flynn's conversation with the Russian ambassador. That knowledge, in turn, prompted the FBI to continue its work and eventually seek an interview with Flynn. The phone call, the government said, was not an adequate predicate for the probe to continue. Is the Government's position that, in general, the issue of law or policy, the question of predestination should be re-evaluated at each stage of the investigation just because the closure of the case was discussed? Could the Government cite another case in which it had ever accepted that view? The FBI decided to interview Flynn after it discovered his phone conversation with Ambassador Kislyak and learned that Flynn had lied about it to Vice President Mike Pence and White House Press Secretary Sean Spicer, who then unknowingly repeated the public's lies. Since then, Justice Department officials testified under oath that they are concerned that this put Flynn at risk of blackmail by the Russian government, because the Kremlin would certainly know that Flynn actually spoke to Kislyak. Does the Government really believe that there would be no threat to the Russian Federation of counterintelligence to know that the national security adviser lied to the Vice-President about contacts with his government related to election interference and sanctions? And does it really suggest that it is actually legal to lie to the FBI in such an investigation? Robert S. Litt, who served as general counsel to the Office of the Director of National Intelligence until the end of the Obama administration and thus sat with an intelligence officer for the relevant period, has put the following hypothetical: Whoever holds a grudge against you calls the FBI office and says you are a Russian agent, providing the parts invented you had agents with agents from the Russian Federal Security Service. Prior to this call, the FBI had no information about you, let alone an open predestination investigation, but followed with a search of public records and interviews with you, and determined that there was no basis for a claim. The logic of the department's position in the Flynn case is that the person who maliciously reported you to the FBI cannot be held accountable for making a false statement because at the time the allegations were made, these statements were not material to any viable counterintelligence investigation... initiated by the FBI. Or, to put it another way, the FBI cannot investigate whether someone is a Russian agent if he already has evidence that the man is a Russian agent. Is this a statement about the government's position? And if not, why not? In your brief, you argue that even if the allegations were material, the Government does not believe that it can prove that Mr. Flynn knowingly and intentionally made a false statement beyond a reasonable doubt. Flynn is known to have twice admitted in open court that he lied and signed a statement about the crime, in which he admitted: In fact, and in fact ... Flynn then and there knew that his statements were untrue when he made them to the FBI. Moreover, the document in which he pleaded guilty states that his actions were known and intentional. Your brief message makes no mention of the fact that Flynn's confessions are in themselves a conclusive proof of his guilt. Do you doubt that this is admissible evidence that can be used against him in court? And why did the Government not accept them as evidence in determining that it could not prove its case? The motion to dismiss the case was not signed by a career Justice Department official, but only by Timothy Shea, the D.C. attorney who is a political appointee. Why did no Justice Department official, including assistant U.S. attorneys, who had challenged the case since it was referred back to the Justice Department from the Office of the Special Counsel, sign the petition? In particular, I noticed Brandon Van Grac's motion to withdraw from the case. Van Grik, a career prosecutor, worked on special counsel Robert Mueller's team and has been on the case since the plea agreement was first filed. Moreover, he was one of the signatories of the plea documents. Can you explain to me why Van Grik wants to quit after working on it for so long? Although career officials in the department did not appear to have been involved in the decision, a number of political officials took the decision. As far as I'm concerned, the attorney general himself asked U.S. Attorney for the Eastern District of Missouri, Jeffrey Jensen, to review the case, recommended rejecting it. And Attorney General William Barr agreed with that recommendation, leaving Shea to file a brief now before me. Barr, Shea and Jensen Jensen political appointees. Should I understand that all relevant players in this decision to dismiss the plea agreement, the legitimacy of the brief government does not seem to challenge were political appointees? The plea agreement between the government and Flynn states that the government cannot further accuse Flynn of any conduct outlined in the plea documents. It is not only about Flynn's false statements about his ties to Russian Ambassador Sergey Kislyak about sanctions, but also about Flynn's activities as an unregistered foreign agent in the interests of Turkey and his false statements about both this and his negotiations around the UN Security Council resolution. The plea agreement, however, also contains a provision that if Flynn fails or does not fully comply with all of his obligations under the Agreement, the government's obligations under the plea deal are terminated. Before the government tried to dismiss the case, Flynn filed a motion with the court to withdraw his guilty plea. Does the government believe that Flynn violated his agreement in an attempt to withdraw his statement? In other words, if I take the government's petition, is the government's view that the future attorney general can top up the charges other than the specific false allegations I'm asking to dismiss-against Flynn that the original plea agreement grafted him against? Or does the Government believe that the original provision on the sanctity of the plea agreement is still in force? Finally, can you assure me that many dozen times President Trump has expressed sympathy for Flynn and stated that his belief that his former national security adviser was inhabited by the FBI has nothing to do with the Justice Department's decision that continuing this prosecution will not, as the department claims, serve the interests of justice? Justice? samantha o'sullivan facebook

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