



Written by [Bob Adelman](#) on September 1, 2020

Appeals Court Allows Lower Court's Persecution of Michael Flynn to Continue

As expected, the liberal, Democrat-appointed majority of judges populating the U.S. Court of Appeals for the District of Columbia has ignored the Constitution, its separation of powers doctrine, and judicial precedent.

On Monday [it ruled](#) that District Court Judge Emmet Sullivan may continue his vendetta against former Trump National Security Advisor General Michael Flynn. Eight of the 10 judges approved of the move, while two, both appointed by Republican presidents, dissented.



Judge Sullivan now has full rein to become the prosecution, the judge, and the jury in continuing a case that both the federal government and Flynn have asked to be dismissed. It's clear from the testimony given prior to the court's decision that Sullivan wants to know why the government wanted to drop the case. It's increasingly clear that the move is entirely political: He and the appeals court are hoping to find a "smoking gun" behind the government's move to dismiss its case against Flynn.

Flynn pleaded guilty in December 2017 to lying to two federal agents over a conversation he had with a Russian diplomat earlier that year. It turned out later that that "conversation" was planned in advance to entrap Flynn. When the government learned about the entrapment, it sought to dismiss its case against Flynn.

The judge, instead of dismissing the case against Flynn, delayed, forcing Flynn's lawyer, Sidney Powell, to ask the District Court to intervene and demand that the lower court judge dismiss forthwith. A three-judge panel ordered him to do so.

Instead, the judge, Emmet Sullivan, asked the entire appeals court to consider Powell's demand and reverse the three-judge panel's order.

On Monday, the full court agreed with Sullivan and now Flynn's retrial begins, just in time for the election.

The *Wall Street Journal* weighed in on the extra-legal nature of the court's decision:

The en banc appeal of a writ is all but unheard of, but then the D.C. Circuit these days is stacked with liberals appointed by Barack Obama [and Bill Clinton].

In an unsigned opinion, the en banc court ducked the essence of the panel ruling, which concerned judicial meddling in the executive branch's prosecution power. Instead the en banc judges made a procedural case that the harm to the separation of powers was "speculative" because Judge Sullivan hadn't yet issued a formal ruling in the case.

That was precisely the reason that Judge Neomi Rau (appointed by President Trump) dissented:



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The Department of Justice has moved to dismiss the criminal charges against General Michael Flynn, but the district court insists on further factfinding to scrutinize the motives and circumstances behind the Department's decision.

While a district court plays a limited role in granting "leave of court" to an unopposed motion to dismiss, it is long settled that a district court cannot supervise the prosecutorial decisions of the Executive Branch.

In our system of separated powers, the government may deprive a person of his liberty only upon the action of all three branches:

Congress must pass a law criminalizing the activity; the Executive must determine that prosecution is in the public interest; and the Judiciary, independent of the political branches, must adjudicate the case.

The Constitution divides these powers in order to protect individual liberty from a concentration of government authority.

In Flynn's case, the prosecution no longer has a prosecutor.

Yet the case continues with district court proceedings aimed at uncovering the internal deliberations of the Department.

The majority gestures at the potential harms of such a judicial intrusion into the Executive Branch, but takes a wait-and-see approach, hoping and hinting that the district judge will not take the actions he clearly states he will take.

While mandamus [Flynn's demand to dismiss the case against him] remains an extraordinary remedy, it is appropriate here to prevent this judicial usurpation of the executive power and to correct the district court's abuse of discretion.

I respectfully dissent.

In covering this case for *The New American*, this writer has repeatedly suggested that the motives are political, not judicial. Perhaps Judge Sullivan hopes that in his newly granted extra-legal powers to continue to investigate the reasons behind the government's decision to request dismissal of its case against Flynn that he will find misconduct.

Sullivan presided over the 2008 trial of U.S. Senator Ted Stevens (R-Alaska), during which he held four prosecutors in contempt when he learned that evidence that might have helped defend Stevens was deliberately withheld.

Perhaps he might find something of a similar nature. Liberal commentators have strongly suggested that the move to dismiss was only made after Attorney General William Barr asked an assistant attorney to review the case. After review additional exculpatory evidence was uncovered which dismantled entirely the government's case against Flynn and the government asked Sullivan to dismiss its case against Flynn.

The timing is perfect. Sullivan will now be free to devote all of his time in demanding the government produce its evidence and its reasoning behind its move to dismiss. With any luck at all, his fishing expedition might find something, just before November 3.

Sullivan's target isn't Flynn. It isn't even the government. It's the president whom the Deep State has determined must not be allowed a second term. Sullivan is just another tool to assist in that effort.



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Photo: AP Images

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