



Written by [Bob Adelman](#) on June 24, 2020

Appeals Court Orders Lower Court Judge to Dismiss Case Against Michael Flynn

Michael Flynn was President Trump's chosen National Security Advisor. Before Trump took office, Flynn talked to Russian diplomats to try to calm an escalating international situation. Obama-era FBI officials who were then investigating Democratic claims that Trump was aided in his election by Russia (despite no proof of such collusion) had tapped Flynn's phone and heard his entire conversation with them.



Nothing was uttered in Flynn's conversation with the Russians that suggested any involvement of the Russians with Trump's election, yet afterward FBI agents entrapped Flynn into saying something about the conversation that was untrue, and charged him with lying to the FBI — all the while knowing that Flynn was guilty of nothing. Flynn originally accepted a plea deal saying that he said something misleading and was sentenced to prison (though Democrats lie under oath almost constantly and don't get charged with anything). When Flynn got new legal representation and tried to take back his plea deal, it was learned that the DOJ and FBI had always known that Flynn was innocent of wrongdoing, yet he was questioned and entrapped anyway.

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Rightly, the DOJ decided to drop the charges against Flynn, but District Court Judge Emmet Sullivan wouldn't allow the charges to be dropped, and he assigned a prosecutor of his own to keep the case going, saying that the law said that it was up to the court to decide whether to drop charges or not — not up to the DOJ. Now a higher court has told Sullivan point blank, he was wrong. The order from the D.C. Circuit Court of Appeals to District Court Judge Emmet Sullivan [was terse](#):

Upon consideration of the emergency petition for a writ of mandamus [presented by Michael Flynn's new attorney Sydney Powell], the responses thereto [by Judge Sullivan], and the reply [penned by Sullivan's "friend of the court" ex-judge John Gleeson], the briefs of amici curiae in support of the parties, and the argument by counsel, it is ORDERED that Flynn's petition for a writ of mandamus be granted in part....

[Sullivan is] directed to grant the government's Rule 48(a) motion to dismiss, and [Sullivan's] order appointing [ex-judge Gleeson] is hereby vacated as moot, in accordance with the opinion of the court.

The decision was 2-1, with an Obama-appointed judge issuing a dissent.

As *The New American* noted, it was the pesky phrase that charges were to be dismissed when requested with "leave of court" that was used by Sullivan to keep the case against Flynn alive after the government requested that it be dismissed. Said the appeals court:

Whatever the precise scope of Rule 48's "leave of court" requirement, this is plainly not the rare case where further judicial inquiry is warranted.



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To begin with, Flynn agrees with the government's motion to dismiss, and there has been no allegation that the motion reflects prosecutorial harassment.

Additionally, the government's motion includes an extensive discussion of newly discovered evidence casting Flynn's guilt into doubt.

Sydney Powell, the lioness litigator who took over from Flynn's previous attorneys, didn't get quite everything she requested, thus the "in part" phrase used by the appeals court. She wanted Sullivan to be taken off the case and reassigned because of his obvious bias against Flynn exhibited during the trial and then afterward when he refused to let the case against Flynn go away.

As egregious as Sullivan's conduct was, it wasn't enough to cause the appeals court to assent to Powell's demands: "We deny Flynn's petition to the extent [that] he seeks reassignment of the district judge. This case does not meet the 'high bar' for reassignment, which would be appropriate only if [Sullivan's] conduct was 'so extreme as to display clear inability to render fair judgement'.... We therefore decline to reassign the case to a new judge simply to grant the government's Rule 48(a) motion to dismiss."

There is more to the case than just Sullivan's misuse of that pesky phrase, however. At issue also is the separation of powers doctrine that leaves prosecutorial powers only in the hands of the executive branch (hence the Department of Justice) and not the judicial branch (Sullivan) of the government. The court clarified that critical separation:

In this case, the district court's actions will result in specific harms to the exercise of the Executive Branch's exclusive prosecutorial power.

The contemplated proceedings would likely require the Executive to reveal the internal deliberative process behind its exercise of prosecutorial discretion, interfering with the Article II charging authority [granted by the U.S. Constitution to the executive branch exclusively].

This decision is an unvarnished victory for the Trump administration, which has claimed all along that the persecution of Flynn was political in nature and not legal — that Flynn represented an existential threat to the establishment as a part of the newly inaugurated President Trump who sought to expose the Deep State.

Questions remain. Will Sullivan comply or will he find still another reason to continue his prosecution of the former Trump administration official? Will Flynn find work in the Trump administration to complete the work he had barely started in exposing the machinations behind the Deep State?

For Flynn's attorney, Sidney Powell, her future is bright. Revealed as a law tiger, she will no doubt find other important and satisfying work successfully defending others wrongly charged with crimes by the Deep State. And for the former Obama administration people who instigated this unwarranted charge against Flynn? Will they find other work in positions detrimental to the security of the Republic? Or will they find work making license plates in an iron-bar motel?

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