

Judicial Barratry in Action

“THE DISTRICT OF DEEP STATE”

by [Joseph DeMaio](#), ©2020



<https://www.dcd.uscourts.gov/content/district-judge-emmet-g-sullivan>

(May 16, 2020) — In the continuing sad, sorry saga of General Michael Flynn’s ordeal, each passing day reveals why his case needs to end..., and why Judge Emmet Sullivan should either (a) answer for breaches of judicial ethics; (b) resign from the bench; or (c) in lieu of being impeached by Congress, be sanctioned by the appropriate judges of the U.S. District Court for the District of Columbia. Hear me out.

First, from a purely legal standpoint, there is no longer any plausible argument that the case against Michael Flynn should continue. The Department of Justice (“DOJ”) – the prosecuting agency – has filed a motion to dismiss the case. And General Flynn – the defendant – does not object. The only person in a position to have any say in the matter – Judge Sullivan – refuses to grant the DOJ motion, relying on a local court rule stating that “with leave of the court” he is empowered to withhold “leave” to allow criminal charges to be dismissed by prosecutors against a defendant. Sullivan’s cavalier (other adjectives come to mind....) actions, masquerading as prudent judicial orders, have already been addressed and dismantled [here](#), [here](#), and [here](#).

Not only is Sullivan contumaciously withholding his ministerial “leave” to permit the charges to be dropped, he has only exacerbated the continuing ordeal for General Flynn. This occurs as a result of him allowing – indeed, inviting an open-ended delay in resolution of the issue – third-party, as-yet-unidentified “interested individuals and organizations” to file “*amicus curiae*” briefs opining on whether or not he should grant

“leave” to dismiss the charges. Judge Sullivan’s behavior gives new and unpleasant meaning to the term “judicial temperament.”

Outrageously, he has also *sua sponte* (i.e., “of one’s own will”) appointed his own personal “*amicus*” counsel, retired federal judge John Gleeson, to specifically “present arguments in opposition to the government’s Motion to Dismiss” and “address whether the Court should issue an Order to Show Cause why Mr. Flynn should not be held in criminal contempt for perjury....” Seriously?

Sullivan has become the poster child for nearly everything that is toxic about the Deep State. When you have judges willing to illegally and unconstitutionally usurp the jurisdiction and authority of the DOJ to determine whether or not to continue the prosecution of a three-star general who was framed by politically-motivated, Obama-era government officials, illegally surveilled and financially ruined, you know there is something very wrong in the District of Deep State, previously known as the District of Columbia.

And, speaking of “wrongs,” yet another cogent quote from the recent Supreme Court decision in the *United States v. Seneneng-Smith* case (discussed [here](#)) comes to mind. Specifically, Justice Ginsburg there noted that “[c]ourts are essentially passive instruments of government” and that “they do not, or **should not**, sally forth each day looking for wrongs to right. [T]hey wait for cases to [them], and when [cases arise, courts] normally decide only questions presented by the parties.” (Emphasis added)

If Judge Sullivan (or his hapless clerks) were unaware of that May 7, 2020 Supreme Court decision, it having been issued well prior to his orders allowing virtually global *amici curiae* participation and appointing his own *amicus* counsel to specifically explore whether a charge of perjury would lie against General Flynn, they are aware of it now. Yet they persist. Could it be... politics? Ya think?

As for Sullivan’s seeming multiple transgressions of the Canons of the [Code of Judicial Conduct](#) of the District of Columbia Courts, his actions thus far would seem clearly to violate multiple canons of judicial conduct and rules promulgated thereunder. Stated otherwise, perhaps the Chief Judge of the District Court should consider issuing to *Sullivan* an “order to show cause” why – as a result of his actions both before and after the DOJ determined to dismiss the charges against General Flynn – he should not be sanctioned for violating:

1. Canon 1: “A JUDGE **SHALL** UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND **SHALL** AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY;”
2. Canon 1, Rule 1.2: (“Promoting Confidence in the Judiciary. A judge **shall** act at all times in a manner that promotes public confidence in the independence, integrity, *and impartiality* of the judiciary, and **shall** avoid impropriety and the appearance of impropriety.”);

3. Canon 1, Rule 1.3: (“Avoiding Abuse of the Prestige of Judicial Office. A judge *shall not* abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”);

4. Canon 2: “A JUDGE *SHALL* PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY;”

5. Canon 2, Rule 2.2: (“Impartiality and Fairness. A judge *shall* uphold and apply the law, and *shall* perform all duties of judicial office fairly and impartially.”);

6. Canon 2, Rule 2.3: (“Rule 2.3: Bias, Prejudice, and Harassment. (A) A judge *shall* perform the duties of judicial office, including administrative duties, without bias or prejudice [and] (B) A judge *shall not*, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon... *political* affiliation, and *shall not* permit court staff, court officials, or others subject to the judge’s direction and control to do so [and] (C) A judge *shall* require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to... *political* affiliation, against parties, witnesses, lawyers, or others.”);

7. Canon 2, Rule 2.4: (“External Influences on Judicial Conduct. (A) A judge *shall not* be swayed by public clamor or fear of criticism [and] (B) A judge *shall not* permit... *political*, ... or other interests or relationships to influence the judge’s judicial conduct or judgment [and] (C) A judge *shall* not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.”);

8. Canon 2, Rule 2.11: (“Disqualification. (A) A judge *shall* disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) [t]he judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.”).

(Emphasis added)

This list of potential canons of judicial conduct and rules thereunder which Sullivan may have violated (notice the number of commands – not suggestions – labeled “shall” and “shall not”) addresses only a few of the total of forty-three (43) canons and rules governing district court judges in D.C. The list could go on, but the ones listed here seem to be the most obvious ones called into question by Sullivan’s behavior.

But, faithful P&E readers, do not hold your breath for an order to show cause to be served soon on Judge Sullivan by the Chief Judge of the D.C. District Court system. This is because the Chief Judge – the Hon. [Beryl A. Howell](#) – is noted to be one of the federal judges who supervised the [grand jury](#) empaneled for Robert Mueller’s probe into the “Russia collusion” hoax launched against President Trump. And we all know how that worked out. Small world..., no?

Finally, the Felix Frankfurter Professor of Law Emeritus at Harvard Law School, Alan Dershowitz, has chimed in with a soberly-entitled article [captioned](#) “Judge Sullivan: A Prosecutor in Robes.” Professor Dershowitz could not have chosen better or more accurate words to describe what Judge Sullivan has become.

While faithful P&E readers should consume the entire article for its insightful comments on the error of Judge Sullivan’s ways, the best point Professor Dershowitz makes is that, because the DOJ has moved to drop the charges against General Flynn, and General Flynn does not object, there is no longer a “case or controversy” otherwise bestowing subject matter jurisdiction over the matter in Judge Sullivan’s court. By refusing to recognize this rather simple and obvious constitutional reality, Judge Sullivan is in effect practicing a form of [barratry](#), or the “persistent incitement of litigation.” Because these actions are being undertaken by a jurist, let us coin a new term: “judicial barratry.”

What is obvious to Professor Dershowitz and those with IQ’s above room temperature is apparently obscure to Judge Sullivan, his law clerks and John Gleeson. TDS is a truly debilitating condition, even approaching – in some people – the ravages of the Wuhan-COVID-19 virus. Dangerous.

Accordingly, for each and all of the foregoing reasons, the matter in *United States v. Michael Flynn* now pending in the U.S. District Court for the District Of Columbia, Criminal Action No. 17-232 (EGS), needs to come to an end. Boom. Full stop. Done.