

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Leave to file GRANTED

Emmet G. Sullivan
United States District Judge

9-28-2020

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Crim. No. 17-232 (EGS)

**MOTION OF WATERGATE PROSECUTORS FOR LEAVE TO
FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY**

Pursuant to the Court's Order of May 19, 2020, 17 individuals who served in the Justice Department's Watergate Special Prosecution Force ("Watergate Prosecutors") hereby seek leave to file a brief as *amici curiae*.¹ The Watergate Prosecutors are listed by name below. They seek to advance a position not adequately represented by either party: that the Court has broad authority to inquire into, and if warranted, deny, the Government's Rule 48(a) motion.

The Court may appropriately accept an *amicus* brief "when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1064 (7th Cir. 1997)); *United States v. Saena Tech Corp.*, 140 F. Supp. 3d 11 (D.D.C. 2015); *see also* Brief for Judge Emmet G. Sullivan, *In re Michael T. Flynn*, Case No. 20-5143, Doc. 1845144, at 29-30 & n.4 (D.C. Cir. filed June 1, 2020) (collecting cases). The D.C. Circuit has granted a similar group of Watergate Prosecutors leave to file an *amicus* brief

¹ The United States and Flynn take no position as to whether the Watergate Prosecutors should be granted leave to file a brief as *amici curiae*.

in the related mandamus proceeding. *See Order, In re Michael T. Flynn*, Case No. 20-5143, Doc. 1845434 (D.C. Cir. filed June 2, 2020).

The Watergate Prosecutors bring a unique perspective to the issues before the Court. This prosecution was commenced, and Flynn's conviction (in the form of a guilty plea) was secured, by the office of a Special Counsel appointed to ensure an appropriate degree of independence from the United States Attorney's Office and litigating divisions of the Department of Justice. 28 C.F.R. § 600.1(b). The Watergate Prosecutors were likewise appointed to pursue investigations of politically connected officials in an objective, non-partisan way. Because of their work as members of the Watergate Special Prosecutor's Office, they have insight into prosecutorial independence and the respective responsibilities of the Executive and Judicial Branches when close associates of the President are suspected of crimes.

The Watergate Prosecutors' proposed brief will assist the Court by setting forth legal analysis and argument on (i) a district court's responsibilities under Rule 48(a) of the Federal Rules of Criminal Procedure to exercise discretion whether to grant "leave of court" to dismiss a criminal prosecution after a guilty plea; (ii) the possible bases to deny the Government's Rule 48(a) motion in this case; and (iii) the procedural avenues available to the Court.

The Watergate Prosecutors are listed below with brief biographies.

Nick Akerman served as an Assistant Watergate Special Prosecutor. In addition he has served as an Assistant US Attorney in the Southern District of New York and has been in the private practice of law.

Richard Ben-Veniste served as an Assistant Watergate Special Prosecutor and Chief of the Watergate Task Force. In addition he has served as an Assistant US Attorney in the Southern District of New York where he was Chief of the Corruption Unit, a member of the National

Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), Chief Minority Counsel on the Senate Whitewater Committee, and has been in the private practice of law.

Richard J. Davis served as an Assistant Watergate Special Prosecutor and Chief of the Dirty Tricks and ITT Task Forces. In addition he has served as a Law Clerk to Federal Judge Jack B. Weinstein, as an Assistant US Attorney in the Southern District of New York, as Assistant Secretary of the Treasury (Enforcement and Operations), as Chair of the NYC Commission to Combat Police Corruption, as a member of the Task Force on Police Community Relations, as Chair of the Criminal Justice Council of the NYC Bar Association, as a member of the NYC Campaign Finance Board, as Chair of the Legal Aid Society and has been in the private practice of law.

Carl B. Feldbaum served as an Assistant Watergate Special Prosecutor. In addition he has served as Inspector General for Defense Intelligence in the Defense Department, Assistant to the Secretary of Energy, as Chief of Staff to Senator Arlen Specter and as President of the Biotechnology Industry Organization.

George T. Frampton, Jr. served as an Assistant Watergate Special Prosecutor. In addition he has served as a Law Clerk to Supreme Court Justice Harry Blackmun, President of the Wilderness Society, Assistant Secretary of the Interior for Fish, Wildlife and Parks, Chair of the White House Council on Environmental Quality, CEO of the Partnership for Responsible Growth and has been in the private practice of law.

Kenneth S. Geller served as an Assistant Watergate Special Prosecutor. In addition he is the co-author of *Supreme Court Practice* and has served as a Law Clerk to Federal Judge Walter R. Mansfield, Deputy Solicitor General of the United States and has been in the private practice of law.

Gerald Goldman served as an Assistant Watergate Special Prosecutor. In addition he has served as a Law Clerk to Supreme Court Justice William J. Brennan, Jr., as a direct commissioned officer in the U.S. Coast Guard in the General Counsel's Office of the Department of Transportation, as Vice Chair of the DC Legal Ethics Committee, as a volunteer attorney at the Natural Resources Defense Council and has been in the private practice of law.

Stephen E. Haberfeld served as an Assistant Watergate Special Prosecutor. In addition he has served as Law Clerk to Federal Judge Leonard P. Moore, as a US Magistrate Judge, as President of the Los Angeles Special Committee on Investigative Oversight, as a Settlement Judge of the Nevada Supreme Court and has been an ADR private judge.

Henry L. Hecht served as an Assistant Watergate Special Prosecutor. In addition he has served as a Lecturer in Residence at the University of California, Berkeley, School of Law, as President of The Hecht Training Group and has been in the private practice of law.

Paul Hoerber served as an Assistant Watergate Special Prosecutor. In addition he has served as an Acting Professor of Law at the University of California, Berkeley, School of Law, Special Attorney for the FBI investigation for the Civil Rights and Criminal Divisions of the Department of Justice and has been in the private practice of law.

Philip A. Lacovara served as Counsel to the Watergate Special Prosecutor. In addition he has served as Deputy Solicitor General of the United States, Special Counsel to the House of Representatives Ethics Committee, President of the DC Bar, Chair of the DC Public Defender Service, Chair of the Advisory Committee on Procedure of the Court of Appeals for the DC Circuit, Presidential member of the DC Judicial Nomination Commission, as an Adjunct Professor of Law and has been in the private practice of law.

Michael Lehr served as an Assistant Watergate Special Prosecutor. In addition he has served in the Department of Housing and Urban Development, as an Assistant US Attorney for the District of Columbia and has been in the private practice of law.

Paul R. Michel served as an Assistant Watergate Special Prosecutor. In addition he has served as Deputy Philadelphia District Attorney for Investigations, Assistant Counsel for the Senate Select Committee on Intelligence, Assistant Chief of the Department of Justice Public Integrity Section, Chief of Staff to Senator Arlen Specter and Chief Judge of the US Court of Appeals for the Federal Circuit.

Robert L. Palmer served as an Assistant Watergate Special Prosecutor. In addition he has served as a Law Clerk to Federal Judge Harold Leventhal, President of the Arizona Center for Law in the Public Interest, as a member of the Napa County Mental Health Board Executive Committee and has been in the private practice of law.

Frank Tuerkheimer served as an Associate Watergate Special Prosecutor. In addition he has served as a Law Clerk to Federal Judge Edward Weinfeld, as an Assistant US Attorney in the Southern District of New York, as United States Attorney for the Western District of Wisconsin, as Commissioner of the National Commission on Judicial Discipline and Removal and has been in the private practice of law.

Jill Wine-Banks served as an Assistant Watergate Special Prosecutor. In addition she has served in the Organized Crime and Racketeering Section in the Department of Justice, as General Counsel of the US Army, Solicitor General and Deputy Attorney General of Illinois, Chief Operating Officer of the American Bar Association, Chief Officer of Career and Technical Education for the Chicago Public Schools, as a member of the Secretary of Defense Subcommittee

of the Judicial Proceedings Panel on Sexual Assault in the Military and has been in the private practice of law.

Roger M. Witten served as an Assistant Watergate Special Prosecutor. In addition he has served as a Law Clerk to Federal Judge Harrison L. Winter, is co-author of *Complying With the Foreign Corrupt Practices Act* and has been in the private practice of law.

CONCLUSION

The Watergate Prosecutors respectfully request that the Court grant them leave to file the accompanying brief.

Dated: June 10, 2020

Respectfully submitted,

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