

Crossfire in the Crosshairs:

Why prosecutions are necessary in the interests of the Republic

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Conducting intelligence operations on political opponents is the hallmark of an authoritarian regime. Stealth authoritarianism is an approach where governments use the legitimate mechanisms of government, such as criminal investigations and legislative and judicial hearings to give their actions the patina of legitimacy, while the reality is that their actions amount to a criminal abuse of power for political ends. This all together makes such activity difficult to prosecute as the court of public opinion is divided with supporters of the corrupt regime viewing their actions as the legitimate work of government while the supporters of the challengers rightly view it as systemic corruption. This is what happened with the *Crossfire* investigations into Donald Trump's 2016 president campaign, namely *Dragon*,¹ *Typhoon*,² *Razor*,³ *Fury*,⁴ *Hurricane*,⁵ and others. The Federal Bureau of Investigation (FBI) knew that there was not "a single justifiable reason"⁶ to begin these investigations and knew this was nothing more than an opposition conspiracy. This paper will examine stealth authoritarianism and the illegitimacy of the investigations, the criminal actions conducted by members of the FBI and the Obama administration, and why it is in the interests of our constitutional republic to prosecute this criminality.

Stealth Authoritarianism at work in the Obama administration

What is Stealth Authoritarianism?

Ozan Varol coined the term stealth authoritarianism to describe emerging, "more subtle, mechanisms of authoritarian control that rely on the same legal rules that exist in regimes with favorable democratic credentials."⁷ Stealth authoritarianism is an approach "to protect and entrench power when direct repression is not a viable option,"⁸ such as in the United States' constitutional republic. The aim is to create a de facto one-party state, also known as a dominant-party state, with the illusion of representation.⁹ Varol lists six mechanisms that are primarily used to institute stealth authoritarianism. They are:

- A. The use of judicial review to consolidate power.
- B. The use of libel lawsuits against dissidents to create a culture of self-censorship.
- C. The adoption of [favorable] electoral laws.
- D. The use of non-political crimes, such as laws criminalizing tax evasion or embezzlement, to prosecute political dissidents.
- E. The use of internationally backed surveillance laws and institutions to blackmail or discredit political dissidents.

¹ *Crossfire Dragon* was the FBI investigation into Carter Page.

² *Crossfire Typhoon* was the FBI investigation into George Papadopoulos.

³ *Crossfire Razor* was the FBI investigation into Lt. Gen. Michael T. Flynn USA (Retd.).

⁴ *Crossfire Fury* was the FBI investigation into Paul Manafort.

⁵ *Crossfire Hurricane* was the FBI investigation into President Donald J. Trump.

⁶ Kevin R. Brock, "New FBI Document Confirms the Trump Campaign was Investigated without Justification," *The Hill*, May 27, 2020.

⁷ Ozan O. Varol, "Stealth Authoritarianism," *Iowa Law Review* 100, no. 4 (2015): 1678.

⁸ *Ibid.*

⁹ A one-party state is a regime where no political opposition exists and a dominant-party state refers to a regime where a single, dominant party governs subject to political opposition. Axel Hadenius and Jan Teorell, "Pathways from Authoritarianism," *Journal of Democracy* 18, no. 1 (2007) 147-148.

- F. The enactment of democratic reforms and use of rule-of-law rhetoric to shape perceptions and deflect attention from anti-democratic practices.¹⁰

Historic practice of stealth authoritarianism in the United States

In his famous dissertation, John Adams wrote in 1765 that “liberty cannot be preserved without a general knowledge among the people, who have a right...and a desire to know ... the characters and conduct of their rulers.”¹¹ To that end, the media, and other such entities, are supposed to act as a watchdog. This used to be the case. An example of historical practice of stealth authoritarianism in the U.S. took place during the Civil Rights Movement with the landmark decision of *New York Times Co. v. Sullivan* (1964). In that case, Police Commissioner Lester Sullivan in Montgomery, Alabama, filed a libel lawsuit against the *New York Times*, which had published an advertisement claiming police brutality had occurred against civil rights activists.¹² Sullivan and its companion cases sought nearly \$6 million in damages, which “threatened the financial solvency of the *Times*” at that time.¹³ By the time of this ruling, multiple Southern officials had used libel as lawfare to silence critics, filing actions totaling \$388 million.¹⁴ With the *Sullivan* decision, the U.S. Supreme Court (SCOTUS) established the malice requirement for libel,¹⁵ creating a heightened threshold for such cases and preventing lawfare against the media for reporting on civil rights abuses.¹⁶

Another practice is the use of non-political crimes to target political opponents. In the late 1950s, segregationists in the Southern United States began to use a litany of laws unrelated to race to prosecute civil rights activists.¹⁷ Examples include Alabama attempting to prosecute Martin Luther King, Jr. on charges of “tax evasion and perjury related to his taxes”¹⁸ and Virginia targeting the NAACP under the façade of enforcing legal ethics requirements.¹⁹

Modern day practices of stealth authoritarianism in the United States

As previously stated, the media, and other such entities, are supposed to act as a watchdog against such abuses. However, with more recent practices of stealth authoritarianism, there has been no watchdog, mainly due to the incestuous relationship between the Obama administration and the media.²⁰ In the run-up to the 2012 midterms, Obama’s Internal Revenue

¹⁰ Varol, "Stealth Authoritarianism," 1686-7.

¹¹ John Adams, "A Dissertation on the Canon and Feudal Law (1765)," in *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson, Illustrated ed. (Liberty Fund, 2001), 20-35.

¹² *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

¹³ Aimee Edmondson, "In Sullivan's Shadow: The use and Abuse of Libel Law Arising from the Civil Rights Movement, 1960–89," *Journalism History* 37, no. 1 (2011) 28.

¹⁴ Edmondson, "In Sullivan's Shadow," 28

¹⁵ *Sullivan*, 376 U.S., 279–80

¹⁶ Edmondson, "In Sullivan's Shadow," 27-28

¹⁷ Christopher W. Schmidt, "*New York Times v. Sullivan* and the Legal Attack on the Civil Rights Movement," *Alabama Law Review* 66, no. 2 (2014) 293, 295.

¹⁸ Schmidt, "*Sullivan* and the Civil Rights Movement," 302

¹⁹ *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).

²⁰ Paul Farhi, "Media, Administration Deal with Conflicts," *The Washington Post*, Jun 12, 2013.

Service selectively targeted conservative organizations, including the Tea Party Movement for increased scrutiny under the guise of enforcing the tax laws.²¹ This was to preoccupy them with tax audits, rather than effectively competing in an election.

Then, in the run-up to the 2016 general election, intelligence apparatus of the United States were turned against the presidential campaign of Donald J. Trump, who was challenging Hillary Clinton for the presidency. It has since become clear that the agencies involved knew that there was no legitimate evidence to support the Russian collusion narrative.²² They also knew that the evidence they were using to justify their investigation had been fabricated by the Clinton campaign.²³ This was all an elaborate detraction from the criminal activity of Hillary Clinton, in relation to the use of classified material on an insecure server that had ended up in the hands of the enemies of the U.S.²⁴

Whilst the political aims of Obama administration to seek to continue control of the executive branch by its party, the Democratic party, are clear, what is not clear is to the motivations of our intelligence and law enforcement agencies to go along with such actions they knew to be unwarranted, or, in the case of Hillary Clinton's criminal acts,²⁵ to turn a blind eye to them. To understand this, one must understand that these agencies are run by people with their own political proclivities, and, while we may stipulate that they must be apolitical in the carrying out of their duties, political beliefs are as important to people as their religious beliefs. Requiring someone to act in a way that is not in accordance with their religious beliefs is protected against under the free exercise clause of Amendment I of the U.S. Constitution.^{26,27} However, even this protection does not allow an individual to act in a criminal manner, as we have seen with the politically motivated actions of senior members of these agencies.

Criminal actions of federal agencies related to the *Crossfire* investigations

Durham Special Investigation

On May 13, 2019, then-Attorney General William Barr appointed United States Attorney John Durham to conduct a preliminary review into matters related to the 2016 presidential

²¹ Treasury Inspector General for Tax Administration, [TIGTA], *Inappropriate Criteria were used to Identify Tax-Exempt Applications for Review* (Washington, D.C. [2013]).

²² Glenn Greenwald, "Robert Mueller did Not Merely Reject the Trump-Russia Conspiracy Theories. He Obliterated them." *The Intercept*, April 18, 2019, para. 3

²³ Senator Grassley of Iowa speaking regarding the Russia Investigation, *Cong. Rec.*, 117th Cong, 2nd sess., 2020, Vol. 168, no. 90: S2647-8.

²⁴ Senate Committee on the Judiciary, Chairman Graham Releases Information from DNI Ratcliffe on FBI's Handling of Crossfire Hurricane, 117th Cong., 2nd sess., September 29, 2020.

²⁵ Federal Bureau of Investigation, Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, July 5, 2016.

²⁶ "The Free Exercise Clause protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest." "First Amendment and Religion," United States Courts, accessed November 27, 2022.

²⁷ US Constitution, amend. 1

election campaigns.²⁸ Subsequent to that review, a criminal investigation became necessary, which continues to this day. With the looming general election of 2020, it became necessary for AG Barr to appoint Durham with order 4878-2020 as Special Counsel for the Department of Justice to investigate:

whether any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law-enforcement activities directed at the 2016 presidential campaigns, individuals associated with those campaigns, and individuals associated with the administration of President Donald J. Trump, including but not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller, III.²⁹

Special counsels are appointed to ensure independence in the investigation, especially when there is the potential of a conflict of interest, perceived or legitimate, within the normal prosecuting authority.³⁰ As current members of agencies and the government were under the microscope, it necessitated the appointment of a special counsel. Additionally, the special counsel himself decides when an investigation will terminate, with or without formal charges being pursued, in accordance with Title 28, and the investigation is normally concluded with the issuance of a final report.³¹ While a special counsel may be disciplined or removed by the AG, and only the AG, for cause, namely misconduct, dereliction of duty, incapacity, conflict of interest,³² it is not politically expedient to do so, and if Congress were to even suspect that such a dismissal was not warranted, would likely trigger impeachment proceedings against the AG. As members of the Biden administration were also members of the Obama administration, which was suspected of wrongdoing by this investigation, a special counsel protects against the termination of a politically damaging investigation by the current administration. To date, only three individuals have been charged by the Durham investigation and only one of those has been convicted.

Michael Sussmann

Sussmann was charged with one count of making a false statement to the FBI contrary to Title 18 of the U.S. Code³³ during his meeting with then-FBI General Counsel James Baker on Sept. 19, 2016. In this meeting, he produced information alleging a covert communications channel between the Trump Organization and Russia's Alfa Bank. The charges relate to

²⁸ Attorney General, Order, "Appointment of special counsel to investigate matters related to intelligence activities and investigations arising out of the 2016 presidential campaigns, Order 4878-2020," Special Counsel's Office (October 19, 2020): 1

²⁹ AG, "Order 4878-2020," 1-2

³⁰ U.S. National Archives and Records Administration, Office of the Federal Register, "Office of Special Counsel," *Federal Register* 64, no. 131 (9 July 1999): 37038

³¹ U.S. NARA, "Office of Special Counsel," 37043

³² *Ibid.*

³³ False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

Sussman's statements that he was providing the information on his own behalf, not on behalf of a client or company, when he was, in fact, working for both Hillary Clinton's presidential campaign and technology executive Rodney Joffe.³⁴ However, a jury, which can objectively be viewed as tainted, unanimously found him not guilty.³⁵

Igor Danchenko

Danchenko was charged with five counts of making a false statement to the FBI contrary to Title 18 of the U.S. Code.³⁶ It was alleged that he³⁷:

- a) Lied to the FBI on June 15, 2017, regarding communications with Charles Dolan Jr., a senior Democrat Party operative and executive at the PR firm kglobal, related to the Fusion GPS/Steele Dossier³⁸
- b) Lied to the FBI on March 16, 2017, stating he had received a phone call and agreed to meet with Sergei Millian confirming the existence of a well-developed "conspiracy of cooperation" between the Trump Campaign and Russian officials.³⁹
- c) Lied to the FBI on March 18, 2017, stating he had received a phone call and agreed to meet with Sergei Millian confirming the existence of a well-developed "conspiracy of cooperation" between the Trump Campaign and Russian officials.⁴⁰
- d) Lied to the FBI on November 16, 2017, stating he had spoken with Sergei Millian on the telephone.⁴¹
- e) Lied to the FBI on October 24, 2017, stating he had spoken with Sergei Millian multiple times on the telephone.⁴²

A jury acquitted Danchenko of all charges.⁴³

Kevin Clinesmith

Clinesmith is the only person to have been convicted for his part in the *Crossfire* investigations, and he pleaded guilty to the charges. Clinesmith was working as an FBI attorney

³⁴ Brooke Singman, Jake Gibson, and David Spunt, "Michael Sussmann found not guilty of charge brought by Special Prosecutor John Durham," last modified May 31, accessed November 27, 2022.

³⁵ Singman, Gibson and Spunt, "Michael Sussmann found not guilty," 31 May 2022

³⁶ False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

³⁷ Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 3-4,7-10,37, see also Samuel Chamberlain, "Longtime Clinton crony takes center stage in latest Durham indictment," *New York Post*, last modified November 5, 2021, accessed November 27, 2022.

³⁸ Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 4-7,37, see also Kelly Hooper, "Danchenko trial opens, expected to be last of prosecutor's probe into origins of Trump-Russia investigation," *Politico*, October 11, 2022.

³⁹ *Ibid.* 4-7,38

⁴⁰ *Ibid.*

⁴¹ *Ibid.* 4-7,39

⁴² Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 4-7,37, see also Kelly Hooper, "Danchenko trial opens, expected to be last of prosecutor's probe into origins of Trump-Russia investigation," *Politico*, October 11, 2022.

⁴³ Josh Gerstein, "Durham loses again in court, but trial airs FBI flaws," *Politico*, October 18, 2022.

on the *Crossfire* investigation. As part of the checks and balances required, Clinesmith contacted the Central Intelligence Agency to confirm that Carter Page was not a CIA source for Russia.⁴⁴ The CIA emailed back confirming that Carter Page was indeed a source and made contacts with Russian entities on behalf of the agency.⁴⁵ Clinesmith doctored that email to read that he was not a CIA source, to legitimize a request for surveillance to the FISA court. In his defense, he claimed he was merely taking “an inappropriate shortcut” to save himself some additional checks and balances.⁴⁶ Clinesmith was charged with one count of making a false document contrary to Title 18 of the U.S. Code.⁴⁷ He was awarded 12 months of probation, and 400 hours of community service.⁴⁸ Following a review by the D.C. Bar, Kevin Clinesmith was awarded a 1-year suspension from practicing law, despite a serious felony conviction relating to ethical behavior.⁴⁹ To even the casual observer, Clinesmith seems to have been given the proverbial slap-on-the-wrist, rather than receiving a proportionate punishment for his crimes.

Additional Crimes and their Perpetrators

While the Durham investigation has not wrapped up, we know that, despite the evidence, they have been unable to obtain convictions, and or when they have, failed to get satisfactory sentences. The problem seems to rest on the fact that the political proclivities in the vicinity of the courts where they try the cases (in the District of Columbia) overwhelmingly lean Democrat, oppose the wronged parties, and are the neighbors, colleagues, and acquaintances of the accused. For example, the District of Columbia (D+91) in 2020 voted 93% for Joe Biden for the presidency⁵⁰ compared to the solid-blue state of California (D+32), which voted 63.5% for the Democrat president.⁵¹

However, if we were to see further charges, who would be liable for prosecution? As the Clinton campaign knowingly passed false information to the FBI relating to Russian collusion, with the full consent and knowledge of Hillary Clinton, she and her campaign members should be charged for conspiring to commit⁵² the felony of providing false information to the FBI⁵³. This would amount to two sentences of up to five years, totaling a maximum of ten years.

What of the government officials who knew from the start that this was all nonsense concocted by the Clinton campaign and other opposition groups? As this constituted electoral interference in the campaign and violation of constitutionally protected liberties such as privacy, the leadership of these agencies and those running the *Crossfire* investigations have made themselves liable for prosecution for three different offenses under Title 18, Chapter 13 of the U.S. Code. These include:

⁴⁴ Josh Gerstein, “Ex-FBI lawyer spared prison for altering Trump-Russia probe email,” *Politico*, January 29, 2021.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(c) (1996).

⁴⁸ Gerstein, “Ex-FBI lawyer spared prison”

⁴⁹ District of Columbia Court of Appeals, Board on Professional Responsibility, Hearing Committee Number 4, “In re. Kevin E. Clinesmith,” Board Docket No. 21-ND-004 (August 11, 2021): 20

⁵⁰ “Washington, D.C. Election Results 2020,” *Politico*. Last modified January 6, 2021.

⁵¹ “California Election Results 2020,” *Politico*. Last modified January 6, 2021.

⁵² *U.S. Code*, tit. 18, sec. 371 (1948).

⁵³ False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

- a) 18 U.S. Code § 241 - Conspiracy against rights, which carries a punishment of up to ten years per count,
- b) 18 U.S. Code § 242 - Deprivation of rights under color of law, which carries a punishment of up to one year per count, and
- c) 18 U.S. Code § 245 - Federally protected activities, which carries a punishment of up to one year per count.

Why should we prosecute those behind *Crossfire*?

With the rise of stealth authoritarianism as a tool of some in the political sphere, and most notably within the recent Obama administration and current Democrat party politics, we risk a situation of it spreading throughout American politics, despite it being an affront to the principles of our founding. Republicans may well view that such behavior is necessary, with a ‘if-we-can’t-beat-them-join-them’ mentality. This has a corrupting influence on our political system.

Deterrence is one of the five recognized penological goals⁵⁴ and is definitely a legitimate goal in this circumstance. At the time of writing, those involved in this criminal enterprise have failed to be brought to task and made to answer properly for their crimes. Without any fear of scrutiny or likelihood of being made to answer for such behavior, those who have committed these crimes will be emboldened to do such things again, and others will view that such behavior has no adverse consequences. To prevent such crimes from reoccurring, we need both general and specific deterrence.⁵⁵

Conclusion

The *Crossfire* investigations is only the latest in a long line of abuses of our intelligence and law enforcement apparatus against the principles of our founding. It lays bare the internal threat that is within our nation and that there are those in positions of investigatory power who are willing to violate their oaths of office to appease the political class when their personal proclivities align with the government of the day. As those proclivities are not in line with our constitutional principle, this should be a ‘five-alarm-fire’ warning to our Nation. Continuing as we are, is not an option. Therefore, it is of vital interest to the U.S. to prosecute these violators of our laws.

⁵⁴ “Punishment has five recognized purposes: deterrence, incapacitation, rehabilitation, retribution, and restitution.” *Criminal Law*, (Minneapolis: University of Minnesota Libraries Publishing, 2012), ch. 1, pt. 5, University of Minnesota Library Open Textbook Database.

⁵⁵ “Specific deterrence applies to an individual [while g] eneral deterrence applies to the public at large.” *Criminal Law*, 1.5

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