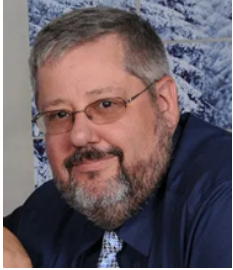


Carter Page's Lawsuit Dismissed



By Paul Engel

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- “Operation Crossfire Hurricane” seems to be the gift that keeps on giving.
- Can someone sue the federal government for lying to a court or violating the Constitution?
- Can the federal government use the theory of “sovereign immunity” to prevent such a suit?

I’m sure you’ve heard of “Operation Crossfire Hurricane”, sometimes called “Russia-gate”. Carter Page was caught up in this investigation and sued the Department of Justice for lying to the FISA court in order to acquire warrants to surveil him. A district court recently granted the DOJ’s motion to dismiss the case. The reasons why and the logic behind them is worth looking into.

2016 was a very busy year. We had the Flint water crisis, the Pulse nightclub shooting, oh yeah, and a presidential election. While not the first time lies were used to impact an election, 2016 began the era of “fake news”. From the fake hacking of the DNC to the infamous “pee-pee tape”, lies seem to spread faster than wildfire. In the middle of this was “Operation Crossfire Hurricane”.

On July 31, 2016, the FBI opened a counterintelligence investigation named “Operation Crossfire Hurricane” to

determine whether individuals associated with the Trump presidential campaign were involved in coordinated activities with the Russian government.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

One of the targets of this investigation was Carter Page.

According to Page, the FBI obtained four successive FISA warrants to electronically surveil him, despite there being no probable cause to suspect that he was a Russian agent.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

The defendant in the case, James Comey and others, asked the District Court for the District of Columbia to dismiss the case on several grounds. Based on the evidence presented thought, it seems pretty bad for Mr. Comey and the other defendants.

As alleged, the FBI's conduct in preparing the FISA warrant applications to electronically surveil Page was deeply "troubling." ... Indeed, the government has conceded that it lacked probable cause for two of the warrants. ... And the FISC has found that the government violated its "duty of candor in all four applications." Similarly, Page alleges that the individual defendants intentionally provided false information and omitted material facts in all four applications. To the extent these allegations are true, there is little question that many individual defendants, as well as the agency as a whole, engaged in wrongdoing.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

But the defendant's motion to dismiss was granted. Why?

Even so, Page has brought no actionable claim against any individual defendant or against the United States.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

As is so often the case, the devil is in the details. So let's look at those details. The judge lists three statutory roadblocks to Mr. Page's case as justification for his opinion. Let's look at them individually.

Private Right of Action

The first problem in the judge's eye is a question of standing.

First, Congress has not created a private right of action against those who prepare false or misleading FISA applications.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

In short, when Congress passed the Foreign Intelligence Surveillance Act (FISA), they did not include the legal authority for private individuals to sue in this situation. How can that be?

Both the plain language and the structure of FISA make clear that civil liability under 50 U.S.C. § 1810 attaches only to those who conduct or perform electronic surveillance.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

Could that be true?

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation

[50 U.S.C. §1810](#)

The specific language of §§1810 & 1809 deal specifically with electronic surveillance, not providing false or misleading information in order to obtain a warrant.

Constitutional Violations

Second, the judge states that the FISA law does not allow for damages from violations of constitutionally protected rights.

Second, Congress has not provided for damages claims against federal officers for constitutional violations stemming from unlawful electronic surveillance in the national security context.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

I'm sorry, but that just is not true. While not in the FISA statute, Congress has provided for damages from any violation of the Constitution.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,

[42 U.S.C, §1983](#)

As the judge has already noted, the government conceded that it lacked probable cause for two of the warrants, and violated their duty of candor for all four of them. This caused Mr. Page to be deprived of his right to be secure from unreasonable searches by cause the court to issue an invalid warrant.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[U.S. Constitution, Amendment IV](#)

Furthermore, by providing false information under oath of affirmation on the application for the warrant, agents of the FBI have committed perjury. While that is a criminal charge, not a civil one, it certainly was used to cause Mr. Page to be subject to a violation of his rights protected by the Constitution.

Sovereign Immunity

The last, and in my mind most egregious, is this idea of sovereign immunity.

And third, Congress has not waived the United States's sovereign immunity for this kind of claim.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

What is "sovereign immunity"?

The legal protection that prevents a sovereign state or person from being sued without consent.

[Sovereign Immunity – The Free Legal Dictionary](#)

While courts may claim that the federal government cannot be sued without the consent of Congress, this would seem to violate the Petition Clause of the First Amendment.

Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

[U.S. Constitution, Amendment I](#)

Granted, Congress has not passed a law prohibiting the people from petitioning for redress in this circumstance, but by requiring that Congress explicitly allow such petitions in each and every section of the law, the courts have denied the people this right. This has effectively made Congress, and by extension the entire federal government, superior to the people. After all, what good is have the right to petition protected by the supreme law of the land if Congress has the power to allow or ignore it at their will.

Core Claim

But what about Mr. Page's claim that the FBI misled the court in order to get a warrant?

When it comes to Page's core claim—that the defendants misled the FISC to obtain surveillance warrants without probable cause—the Court cannot create a cause of action that Congress did not enact. “[P]rivate rights of action to enforce federal law must be created by Congress,” Alexander v. Sandoval, ... and courts may not usurp that power “no matter how desirable that might be as a policy matter,” ... Any future remedy for these alleged FISA abuses must come from Congress, not this Court.

[Carter Page v. James B. Comey et al., Memorandum of Opinion](#)

But what about the supreme law of the land? If courts cannot enforce the Constitution without the blessing of Congress, does that not violate the oath the judges took to support it?

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

[U.S. Constitution, Article III, Section 2, Clause 1](#)

The judicial power of the United States is not limited to the laws of the United States created by Congress, but cases

arising under the Constitution itself, which this one is.

Conclusion

I guess this is what happens when we allow the opinions of judges, euphemistically called "constitutional law" to supersede the Constitution itself. While Congress did not include civil penalties under the FISA law for deceiving the court, they already exist in U.S. Law under 42 U.S.C. 1983 since it caused a deprivation of rights for Mr. Page. Furthermore, the claim of sovereign immunity deprives the American people of a method to petition for a redress of grievance, which violates the First Amendment. Claiming that the courts do not have the power to offer redress to a violation of the Constitution is a dereliction of duty, which certainly is bad behavior in my book.

I have not seen the suit that Mr. Page filed, so I am not entirely sure if this problem rests solely with the judge. After all, if Mr. Page's attorneys didn't realize that 50 U.S.C. 1810 only offered civil penalties for electronic surveillance and not deciding the FISA court, bad on them. Since the judge did not mention any claim of violation under 42 U.S.C. §1983, I am forced to assume the attorneys did not make such a claim. Another reason why it is so important that:

Every member of the State ought diligently to read and to study the constitution of his country..."

John Jay, First Chief Justice of the supreme Court of the United States

Remember, attorneys are there to counsel you, not be the sole word on the case itself.

I cannot say that I'm surprised at this opinion. It is pretty much what I've come to expect from our judiciary. Hopefully, this example to propel you into studying the Constitution and preparing yourself to defend your rights. Because being

dependent on the legal system today to protect your rights is a fool's errand.

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