

Overkill

Written by Jay Beskin, BT Contributor
March 2019

Let's put the civil back into civil liberties



ou cannot support civil liberties without being civil. That would seem to be an elemental enough proposition, yet here in South Florida we've witnessed some hyper-partisans lately who are all too eager to throw all this away for the sake of scoring partisan points. And that's always a very bad idea.

Readers of this space are well acquainted with my history as an activist and donor to the American Civil Liberties Union, dating all the way back to my college days. That was a tough time for a Jewish kid to be associated with the ACLU because the group was suing to allow a neo-Nazi group in Illinois the right to march in the Chicago suburb of Skokie, which at the time boasted a 75 percent Jewish population.

Now the ACLU is being sharply criticized by one of the great civil libertarians of all time, Alan Dershowitz, in a January 29 column for the Gatestone Institute.

If you haven't followed the Roger Stone story, here's a synopsis: Roger Stone is a political "strategist" who hires himself out to campaigns, mostly to Republican candidates. He's also the author of a number of books, one claiming that Lyndon Johnson was behind the JFK

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assassination; two pushing conspiracies about the Clintons' sex lives and the Bush "crime family"; two touting Trump's victories; and his own "rules" for winning.

When he's hired as a "strategist" by campaigns, Stone is generally kept far in the background. If he can legally be hired by some third party, without his name showing up on a campaign payroll, candidates are relieved. His specialty is opposition work, creating negative narratives about opponents; such operatives are sometimes called "dirty tricksters," an identity around which Stone built his image.

In fact, as Samantha Bee has pointed out on her program, part of the modus operandi of this kind of provocateur is to take credit for *everything* negative that comes out about the opposition. Say, if Roger Stone is on staff and a reporter uncovers scandalous information about the opponent, Stone will be out there whispering that *he* was the one who tipped off that reporter. He cultivates the image of the gadfly who is single-handedly causing campaign chaos. In Bee's inspired phrasing: "Finally, Roger is in trouble for some s*** he actually did."

Whether or not he actually did the s*** will be likely determined in a courtroom, but Stone has been charged by Special Prosecutor Robert Mueller with lying to Congress and indicted by a grand jury. The indictment is available online if you're curious about the multiple charges being brought against him. In this case, someone with ties to the Russian government and intelligence stole e-mails from the Democratic National Committee and by "spear-phishing" John Podesta, who was chairman of Clinton's presidential campaign.

"Spear-phishing" involves sending someone a legitimate-looking e-mail and asking the recipient to click on a legitimate-looking link, which then allows the hacker access to the victim's computer. The stolen e-mails were forwarded to Julian Assange for publication on WikiLeaks. Assange published them on the eve of the Democratic Convention.

Some of the e-mails exposed a pattern of the Democratic National Committee, under the leadership of Debbie Wasserman Schultz, tilting the playing field in the Democratic primary toward Clinton and against my candidate, Bernie Sanders. That exposure forced Wasserman Schultz to resign on the first day of the convention.

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Roger Stone engaged in a series of e-mail exchanges before the convention in which he claimed to have a pipeline to Assange, to know what he had, and to have an idea of Assange's scheduled release time. Whether Stone actually knew those facts or was creating the illusion that is his stock in trade will be determined later, but he clearly was acting as though he knew. He later testified to the House Intelligence Committee that he never did know or claim to know. That seems to be a pretty clear falsehood; hence the charges.

The problem is that this 66-year-old imp, half buffoon and half scoundrel, was not any kind of flight risk. He's had so much publicity and has enough presence, he can't slink off anywhere, and he's too broke to flee, claiming in a recent court hearing that he's "having a hard time putting food on the table." Nor was he likely to resist any arrest. At best, or at worst, he's a white-collar criminal whose idea of assault is to spread a rumor.

There was really no need to send agents to his home in Fort Lauderdale to make an arrest. The FBI could have called his lawyer and asked him to show up at an appointed time. Instead they did a noisy, flashy overkill arrest with 27 or 29 agents surrounding his home with guns drawn, and a CNN crew set up across the street televising the proceedings.

"The ACLU has been absolutely silent in regard to the questionable tactics employed by Mueller," writes Dershowitz. "They, too, would have been up in arms had these tactics been employed against their favorite candidate and mine, Hillary Clinton. They would have demanded an explanation as to why the extraordinary power of arrest, which is supposed to be reserved only for cases warranting this use of force, was employed in this case. Their silence speaks volumes about their partisanship and lack of neutral standards of civil liberties."

And here is former federal prosecutor George Parry in the *Philadelphia Inquirer*: "I shake my wooly gray head and wonder aloud if any of these two-fisted crime fighters who took down the cunning and dangerous Roger Stone are in any way embarrassed by their participation in this vaudeville act. I mean, come on! 29 agents? Seriously? Once upon a time, you could have invaded a small country with that much firepower, much less arrest a white haired gadfly who allegedly lied to the authorities. Is the wimp quotient really that high in today's FBI?"

Again, no one needs to doubt my liberal credentials. Like Dershowitz, I voted for Hillary Clinton in the last election, although I preferred Sanders in the primary and donated to his campaign. Nor am I a big fan of Roger Stone.

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I don't know the facts well enough to determine if he lied to Congress, and I'm fully cognizant of the fact that witnesses lie to Congress every day without being charged. But if Mueller feels it's appropriate to charge Stone for these crimes, I have no objection.

On civil liberties, though, I'm with Dershowitz -- 29 agents to arrest a senior citizen, white-collar criminal is wrong. It ain't civil, and it ain't liberty.

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