

# Fox News' newest bogeyman is election lawyer Marc Elias

**Conservative insurrectionists use lies about Durham filing to smear Elias**

WRITTEN BY ZACHARY PLEAT

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Fresh off manufacturing outrage that a new court filing from special counsel John Durham shows that Hillary Clinton's 2016 presidential campaign "spied on" former President Donald Trump during the campaign and throughout his administration, Fox News is now using those lies to smear Democratic Party election lawyer Marc Elias.

Fox News and other conservative media outlets have for days advanced lies about Durham's court filing. According to Durham's actual filing, former Democratic Party lawyer Michael Sussmann had previously told intelligence officials from the CIA that one of his clients, Rodney Joffe, had informed him that someone using a Russian-made smartphone was connecting to data networks at Trump Tower and the White House. Right-wing media took this comment from Durham's legal brief and skewed it to claim that Joffe and Sussmann themselves had worked to "infiltrate" Trump Tower and the White House, spying on Trump on behalf of the Clinton campaign.

The likely references to Marc Elias in Durham's filing ("Campaign Lawyer-1," who worked as the Clinton campaign's general counsel) only mention that Sussmann and Joffe "had met and communicated with" him about the information they gathered. (Media Matters is represented by Elias Law Group.) There is no allegation that Elias had committed any sort of crime, Durham's legal brief doesn't use the word "infiltrate," nor does it describe any surveillance against Trump, and there's no evidence Joffe or his company were ever hired by the Clintons. (In fact, there is no allegation that any of the three men had committed any crime against Trump associates or affiliated organizations.)

On February 14, The New York Times, which actually reported on the information contained in Durham's filing months ago, explained that the right-wing media's new spin on the story is "mostly wrong or old news" and that narratives like Fox's "are often based on a misleading presentation of the facts or outright misinformation."

Two days later, Cato Institute senior fellow Julian Sanchez also explained in a long Twitter thread why the conservative media fixating on Durham's filing are completely wrong, pointing out that "nothing in the filing supports breathless claims technically illiterate cable hosts are making." (Sanchez concludes, fairly, that there is a "serious policy issue" relating to whom can have legal access to DNS data, it is just "a million miles away" from conspiracy theories that right-wing media are talking about.)

### **Fox smears Marc Elias with retread Clinton conspiracy theory**

While falsely hyping the filing as "bombshell" news somehow showing the Clinton campaign was involved in some kind of espionage against Trump, Fox is now trying to tar Elias with the same debunked conspiracy theory.

- On February 13, *Fox & Friends Weekend* co-hosts Will Cain and Pete Hegseth failed to make any kind of specific allegation against Elias but repeatedly brought up his name in proximity to their discussion of the Durham investigation in a sad attempt to discredit him.
- On February 14, *Fox & Friends* co-host Brian Kilmeade lied that "the Hillary Clinton campaign, with some very familiar names -- most of all is Marc Elias and Jake Sullivan" had "started to infiltrate into the Trump campaign." Co-host Ainsley Earhardt followed up by repeating the lie, saying: "The Clinton campaign paid lawyers to infiltrate the Trump Tower servers and then later the servers at the White House."
- Later that day, *The Five* co-host Harold Ford Jr. joined in on this lie, saying: "They're saying that the three -- that the two or three lawyers that Mr. Durham has leveled these charges with, and they said they went out and perhaps hired someone to infiltrate then-candidate Trump's servers."
- Also on February 14, Fox host Jeanine Pirro said on *Gutfeld!* that Elias is "one of those attorneys" mentioned in the Durham filing and baselessly suggested he was involved in a crime: "Bottom line is this. They're getting close to indictments, and they will indict. People are now giving information. They've got an organized criminal enterprise. This is a fraud against the United States government."
- On February 15, Republican Reps. Jim Jordan (R-OH) and Jim Banks (R-IN) joined in spreading the narrative while on *The Ingraham Angle*. Jordan lied that Elias, whom he described as "the Democrats' go-to lawyer," was "involved with the effort by the campaign of the Clintons to spy on the sitting president, President Trump." Banks said the Durham filing proved that "Donald Trump was right. He was right all along that they were spying on him, they were spying on his campaign, and they were spying on the sitting president of the United States of America."
- And on February 16, Fox host Jesse Watters attacked Elias for his work to defend voting access and challenging GOP gerrymanders, calling him "the fixer" and "the Wolf himself, crooked Hillary's top election lawyer, one of the Democrats' dirtiest dirty

tricksters.” Watters' rant attempted to tie Elias to several other Fox News boogeymen, including the so-called "Russia hoax" and nefarious "Soros money."

During their appearance, Jordan and Banks may have given the game away, explaining why conservatives are trying to smear Elias with these lies. Jordan noted that Elias had “filed lawsuit after lawsuit going after Republicans and redistricting.” Indeed, in 2020, Elias filed dozens of lawsuits to expand voter access amid the limitations imposed by the COVID-19 pandemic. He also helped defeat dozens more court cases brought by the Trump campaign to challenge election results in multiple states. And, starting in 2021, Elias was bringing lawsuits against GOP-introduced bills to limit voting access across the nation and challenge unfair congressional redistricting maps that heavily favor Republicans.

Banks further complained that Elias has “been pushing election theories to take Donald Trump's name off the ballot, never let his name ever appear on the ballot again. He is doing it to our colleague Madison Cawthorn, to kick his name off the ballot. And then this week ... they’re trying to take my name off the ballot, and saying that I violated the 14th Amendment because I objected to unconstitutional elections that were conducted in 2020.”

Banks was referring to a ballot challenge recently filed against him for “violation of the 14th Amendment supporting an insurrection” as part of efforts by Trump and his supporters to overturn the election results leading to the January 6, 2021, Capitol insurrection. If successful, the challenge would invoke Civil War-era language in the Constitution to bar insurrectionists like Banks, Jordan, and Trump -- all of whom tried to overturn the presidential election -- from ever holding elected office in the United States. The New York Times reports that the success of this strategy, which Elias has promoted as a tool to hold insurrectionists and their enablers accountable, remains a longshot, but that hasn’t stopped Fox News and other conservative media outlets from attacking him. As Elias has explained, “The term insurrection has legal consequences.”

Now, the insurrectionists and their right-wing media allies are using fabricated lies about Durham’s filing to attack a litigator complicating their attempts to reclaim power and possibly destroy American democracy in the process. Legitimate news organizations shouldn’t give these smears the slightest credence.