

Hunting Leaks, Trump Officials Focused on Democrats in Congress

The Justice Department seized records from Apple for metadata of House Intelligence Committee members, their aides and family members.



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Published June 10, 2021 Updated June 14, 2021

WASHINGTON — As the Justice Department investigated who was behind leaks of classified information early in the Trump administration, it took a highly unusual step: Prosecutors subpoenaed Apple for data from the accounts of at least two Democrats on the House Intelligence Committee, aides and family members. One was a minor.

All told, the records of at least a dozen people tied to the committee were seized in 2017 and early 2018, including those of Representative Adam B. Schiff of California, then the panel's top Democrat and now its chairman, according to committee officials and two other people briefed on the inquiry. Representative Eric Swalwell of California said in an interview Thursday night that he had also been notified that his data had been subpoenaed.



Prosecutors, under the beleaguered attorney general, Jeff Sessions, were hunting for the sources behind news media reports about contacts between Trump associates and Russia. Ultimately, the data and other evidence did not tie the committee to the leaks, and investigators debated whether they had hit a dead end and some even discussed closing the inquiry.

But William P. Barr revived languishing leak investigations after he became attorney general a year later. He moved a trusted prosecutor from New Jersey with little relevant experience to the main Justice Department to work on the Schiff-related case and about a half-dozen others, according to three people with knowledge of his work who did not want to be identified discussing federal investigations.

The zeal in the Trump administration's efforts to hunt leakers led to the extraordinary step of subpoenaing communications metadata from members of Congress — a nearly unheard-of move outside of corruption investigations. While Justice Department leak investigations are routine, current and former congressional officials familiar with the inquiry said they could not recall an instance in which the records of lawmakers had been seized as part of one.

Moreover, just as it did in investigating news organizations, the Justice Department secured a gag order on Apple that expired this year, according to a person familiar with the inquiry, so lawmakers did not know they were being investigated until Apple informed them last month.

Prosecutors also eventually secured subpoenas for reporters' records to try to identify their confidential sources, a move that department policy allows only after all other avenues of inquiry are exhausted.

The subpoenas remained secret until the Justice Department disclosed them in recent weeks to the news organizations — The Washington Post, The New York Times and CNN — revelations that set off criticism that the government was intruding on press freedoms.

The gag orders and records seizures show how aggressively the Trump administration pursued the inquiries while Mr. Trump declared war on the news media and perceived enemies whom he routinely accused of disclosing damaging information about him, including Mr. Schiff and James B. Comey, the former F.B.I. director whom prosecutors focused on in the leak inquiry involving Times records.



Former President Donald J. Trump repeatedly attacked Representative Adam B. Schiff, the top Democrat on the House Intelligence Committee. Anna Moneymaker for The New York Times

“Notwithstanding whether there was sufficient predication for the leak investigation itself, including family members and minor children strikes me as extremely aggressive,” said David Laufman, a former Justice Department official who worked on leak investigations. “In combination with former President Trump’s unmistakable vendetta against Congressman Schiff, it raises serious questions about whether the manner in which this investigation was conducted was influenced by political considerations rather than purely legal ones.”

A Justice Department spokesman declined to comment, as did Mr. Barr and a representative for Apple.

As the years wore on, some officials argued in meetings that charges were becoming less realistic, former Justice Department officials said: They lacked strong evidence, and a jury might not care about information reported years earlier.

The Trump administration also declassified some of the information, making it harder for prosecutors to argue that publishing it had harmed the United States. And the president’s attacks on Mr. Schiff and Mr. Comey would allow defense lawyers to argue that any charges were attempts to wield the power of law enforcement against Mr. Trump’s enemies.

But Mr. Barr directed prosecutors to continue investigating, contending that the Justice Department’s National Security Division had allowed the cases to languish, according to three people briefed on the cases. Some cases had nothing to do with leaks about Mr. Trump and involved sensitive national security information, one of the people said. But Mr. Barr’s overall view of leaks led some people in the department to eventually see the inquiries as politically motivated.

Mr. Schiff called the subpoenas for data on committee members and staff another example of Mr. Trump using the Justice Department as a “cudgel against his political opponents and members of the media.”

“It is increasingly apparent that those demands did not fall on deaf ears,” Mr. Schiff said in a statement. “The politicization of the department and the attacks on the rule of law are among the most dangerous assaults on our democracy carried out by the former president.”

He said the department informed him in May that the investigation into his committee was closed. But he called on its independent inspector general to investigate the leak case and others that “suggest the weaponization of law enforcement,” an appeal joined by Speaker Nancy Pelosi.

Early Hunt for Leaks

Soon after Mr. Trump took office in 2017, press reports based on sensitive or classified intelligence threw the White House into chaos. They detailed conversations between the Russian ambassador to the United States at the time and Mr. Trump’s top aides, the president’s pressuring of the F.B.I. and other matters related to the Russia investigation.

The White House was adamant that the sources be found and prosecuted, and the Justice Department began a broad look at national security officials from the Obama administration, according to five people briefed on the inquiry.

While most officials were ruled out, investigators opened cases that focused on Mr. Comey and his deputy, Andrew G. McCabe, the people said. Prosecutors also began to scrutinize the House Intelligence Committee, including Mr. Schiff, as a potential source of the leaks. As the House’s chief intelligence oversight body, the committee has regular access to sensitive government secrets.

Mr. Trump fired James B. Comey as F.B.I. director in 2017. Al Drago/The New York Times

Justice Department National Security Division officials briefed the deputy attorney general's office nearly every other week on the investigations, three former department officials said.

In 2017 and 2018, a grand jury subpoenaed Apple and another internet service provider for the records of the people associated with the Intelligence Committee. They learned about most of the subpoenas last month, when Apple informed them that their records had been shared but did not detail the extent of the request, committee officials said. A second service provider had notified one member of the committee's staff about such a request last year.

It was not clear why family members or children were involved, but the investigators could have sought the accounts because they were linked or on the theory that parents were using their children's phones or computers to hide contacts with journalists.

There do not appear to have been similar grand jury subpoenas for records of members or staff of the Senate Intelligence Committee, according to another official familiar with the matter. A spokesman for Republicans on the House Intelligence Committee did not respond to a question about whether they were issued subpoenas. The Justice Department has declined to tell Democrats on the committee whether any Republicans were investigated.

Apple turned over only metadata and account information, not photos, emails or other content, according to the person familiar with the inquiry.

After the records provided no proof of leaks, prosecutors in the U.S. attorney's office in Washington discussed ending that piece of their investigation. But Mr. Barr's decision to bring in an outside prosecutor helped keep the case alive.

A CNN report in August 2019 about another leak investigation said prosecutors did not recommend to their superiors that they charge Mr. Comey over memos that he wrote and shared about his interactions with Mr. Trump, which were not ultimately found to contain classified information.

Mr. Barr was wary of how Mr. Trump would react, according to a person familiar with the situation. Indeed, Mr. Trump berated the attorney general, who defended the department, telling the president that there was no case against Mr. Comey to be made, the person said. But an investigation remained open into whether Mr. Comey had leaked other classified information about Russia.

Revived Cases

In February 2020, Mr. Barr placed the prosecutor from New Jersey, Osmar Benvenuto, into the National Security Division. His background was in gang and health care fraud prosecutions.

Through a Justice Department spokesman, Mr. Benvenuto declined to comment.

Mr. Benvenuto's appointment was in keeping with Mr. Barr's desire to keep matters of great interest to the White House in the hands of a small circle of trusted aides and officials.

William P. Barr brought a trusted prosecutor in from New Jersey to help investigate leak cases. Al Drago for The New York Times

With Mr. Benvenuto involved in the leak inquiries, the F.B.I. questioned Michael Bahar, a former House Intelligence Committee staff member who had gone into private practice in May 2017. The interview, conducted in late spring of 2020, did not yield evidence that led to charges.

Prosecutors also redoubled efforts to find out who had leaked material related to Michael T. Flynn, Mr. Trump's first national security adviser. Details about conversations he had in late 2016 with the Russian ambassador at the time, Sergey I. Kislyak, appeared in news reports in early 2017 and eventually helped prompt both his ouster and federal charges against him. The discussions had also been considered highly classified because the F.B.I. had used a court-authorized secret wiretap of Mr. Kislyak to monitor them.

But John Ratcliffe, the director of national intelligence and close ally of Mr. Trump's, seemed to damage the leak inquiry in May 2020, when he declassified transcripts of the calls. The authorized disclosure would have made it more difficult for prosecutors to argue that the news stories had hurt national security.

Separately, one of the prosecutors whom Mr. Barr had directed to re-examine the F.B.I.'s criminal case against Mr. Flynn interviewed at least one law enforcement official in the leak investigation after the transcripts were declassified, a move that a person familiar with the matter labeled politically fraught.

The biweekly updates on the leak investigations between top officials continued. Julie Edelstein, the deputy chief of counterintelligence and export control, and Matt Blue, the head of the department's counterterrorism section, briefed John C. Demers, the head of the National Security Division, and Seth DuCharme, an official in the deputy attorney general's office, on their progress. Mr. Benvenuto was involved in briefings with Mr. Barr.

Mr. Demers, Ms. Edelstein, Mr. Blue and Mr. Benvenuto are still at the Justice Department. Their continued presence and leadership roles would seem to ensure that Mr. Biden's appointees, including Attorney General Merrick B. Garland, would have a full understanding of the investigations.

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A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: Hunting Leakers, Justice Dept. Got Democrats' Data