Scandal escalates over secret Justice Department demands for phone records of Democrats, reporters

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Former White House counsel Don McGahn is among those officials told last month by Apple that the Department of Justice (DOJ) subpoenaed information about his email account in 2018, the *New York Times* and other media outlets reported Sunday. McGahn's wife received a similar notice from Apple, the reports said.

McGahn is the first executive branch official to be named among those whose email and telephone metadata information was sought by the Justice Department as part of a leak investigation ordered by then-President Trump, who was furious about media reports citing unnamed officials commenting on his alleged relationship with the Russian government.

The *New York Times* first reported last Thursday that the DOJ had collected email and other metadata information (who is called or emailed and when, but not the actual content of the message) on two Democratic members of the House Intelligence Committee, Adam Schiff and Eric Swalwell.

Apple notified Schiff and Swalwell last month, as well as staff members of the committee and some family members of the two Democrats, after a gag order that had been obtained in February 2018 and repeatedly renewed was allowed to expire. Google was also involved in the DOJ snooping and subject to the same gag order.

A DOJ investigation of two members of Congress and their staff is unprecedented, except in corruption cases. No member of Congress has ever been charged with violating the rules governing classified information, which are for the most part issued by the president, do not have the force of law, and so apply only to employees of the executive branch.

The DOJ collection of private information about members of Congress is a gross violation of the separation of powers between the executive, legislative and judicial branches laid down in the US Constitution. The collection of similar information about the president's own lawyer—Don McGahn—is equally extraordinary but from a different standpoint.

The action could have been taken on Trump's orders, in which case it would have been legal but also expressed the acute crisis of the Trump White House at that point. Trump was furious with McGahn for balking at his order to have special counsel Robert Mueller fired.

McGahn prevailed with Trump on that issue, arguing that the firing would cause more political backlash than any damage Mueller could inflict with his report, a judgment that ultimately proved correct. Afterward, however, Trump berated his top lawyer, calling him a "liar" and a "leaker," according to other insider accounts from the Trump White House.

It is possible, though unlikely, that the DOJ was seeking information on McGahn at the request of Mueller, rather than Trump. When the Mueller report was ultimately issued, in March 2019, it focused attention on several episodes involving McGahn, suggesting that Trump could have engaged in obstruction of justice by seeking to have Mueller fired.

Mueller did not actually suggest such charges, however, following the DOJ policy that the president cannot be indicted for a criminal offense, only impeached.

Both of Trump's attorneys-general, Jeff Sessions and William Barr, have denied that they were aware of the DOJ requests for metadata on the two Democratic

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congressmen.

Sessions had recused himself from all contact with the probe into alleged coordination between the 2016 Trump election campaign and the Russian government, delegating authority to his deputy, Rod Rosenstein. Rosenstein has also denied any knowledge of the DOJ requests for metadata.

If these denials are true—and none of the three has testified under oath—it raises the prospect of an operation being conducted by Trump loyalists within the Department of Justice who continue in their positions under the Biden administration, which has to date changed only the top half-dozen officials in the agency.

According to the *New York Times*, John C. Demers, head of the National Security Division of the DOJ; Julie Edelstein, deputy chief of counterintelligence and export control; Matt Blue, head of counterterrorism; and Osmar Benvenuto, brought in by Barr as a special prosecutor to head the leak investigation, are all Trump appointees who still hold their positions under Biden.

Only a few months ago, the Department of Justice was continuing to defend in court a gag order on executives at the *New York Times*, the *Washington Post* and CNN, who were opposing subpoenas for the email records of their own reporters, all initially sought by the DOJ as part of the Trump-inspired leak investigation.

The gag order was recently lifted, and Attorney General Merrick Garland is to meet today with officials of the three media outlets to discuss "unresolved details" in the court proceedings, according to a report in Sunday's *Times* .

The Biden administration described its policy as one in which prosecutors "will not seek compulsory legal process in leak investigations to obtain source information from members of the news media doing their jobs."

But the administration continues the most notorious and antidemocratic legal action against a journalist, the Espionage Act case against Julian Assange, the founder of WikiLeaks. The Justice Department is continuing to seek extradition of Assange from Britain, where Assange has been held for more than two years in Belmarsh Prison.

Shamefully, the American media, while highlighting the antidemocratic character of the Trump Justice Department seeking metadata information of reporters, says nothing about the Trump and now Biden Justice Department seeking to bring Julian Assange to trial in an American kangaroo court on charges that could bring 175 years in prison.

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