

To: Blier, William M.(OIG)Per OIG (b)(6)USDOJ.GOV]
From: AMZ
Sent: Mon 6/25/2018 12:50:22 AM
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Bill, Do you have five minutes to talk tomorrow at some point?
Thanks much. Aaron

Aaron Zebley
Special Counsel's Office
(b) (6)

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Sent: Wed 6/27/2018 7:23:52 PM
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From: AMZ
Sent: Tuesday, June 26, 2018 12:23 PM
To: William M. Blier (OIG) **Per OIG (b)(6)** USDOJ.GOV) <**Per OIG (b)(6)** USDOJ.GOV>
Subject: FW:

Bill, The motion itself is just the first 10 pages. Thanks.

Aaron Zebley
Special Counsel's Office
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

PAUL J. MANAFORT, JR.,

Defendant.

Criminal No. 1:18-cr-00083-TSE

Judge T. S. Ellis, III

**DEFENDANT PAUL J. MANAFORT JR.'S REPLY TO THE OFFICE OF SPECIAL
COUNSEL'S OPPOSITION TO THE MOTION TO REQUIRE A HEARING
REGARDING IMPROPER DISCLOSURES RELATING TO CONFIDENTIAL GRAND
JURY INFORMATION AND POTENTIALLY CLASSIFIED MATERIALS**

Defendant Paul J. Manafort, Jr., by and through counsel, files this reply to the opposition memorandum submitted by the Office of Special Counsel (Dkt. # 61) to his motion to require a hearing regarding improper disclosures relating to confidential grand jury information and potentially classified materials. The Special Counsel may view the requested hearing as a risk to “derail[] this case on satellite issues” (Dkt. # 61 at 16), but the defendant most certainly does not view unauthorized and intentional government leaks of confidential and classified information in violation of federal law and his Fifth and Sixth Amendment rights as “satellite issues.”

The Special Counsel focuses his attention on violations of Federal Rule of Criminal Procedure 6(e) and all but ignores that certain press reports by *The New York Times* and CNN cite to current and former government officials as sources for classified information included in the articles. Not only is leaking classified information a felony, but it was also apparently intended to

create the false public narrative that Mr. Manafort was colluding with Russian intelligence officials during the Trump presidential campaign. This smear campaign may have in fact irreparably prejudiced the jury pool in violation of the defendant's Constitutional rights.

Moreover, the Special Counsel so narrowly construes *United States v. Rosen*, 471 F. Supp.2d 651 (E.D. Va. 2007), as to suggest that if the media accounts disclose confidential grand jury information provided by government sources, but such reports do not specifically mention "the grand jury," then the defendant cannot have made the *prima facie* showing necessary for a hearing with respect to those Rule 6(e) violations.¹ But the Special Counsel has entirely ignored the factual context and unusual circumstances under which the Special Counsel took over the prior investigation(s) of the defendant. In essence, the Special Counsel invites the Court to view this matter in a vacuum; however, more transparency—not less—is what is needed to get to the bottom of these violations in this highly unusual investigation and prosecution.² At a minimum, information should be provided to this Court with respect to the activities of the lead attorney for the Special Counsel in the government investigations related to Mr. Manafort prior to the appointment of Special Counsel, including the details of the lead attorney's communications with the Associated Press regarding ongoing grand jury investigations.

BACKGROUND

The Substantial Harm from the Government Leaks Is Obvious

In the memorandum in support of the defendant's instant motion (Dkt. # 44), a number of media accounts were specifically identified to demonstrate that the information reported in the press articles (1) came from government sources, and (2) that such information was subject to

¹See Dkt. # 61 at 3-5.

²Regarding the issue of transparency, in its memorandum in opposition, the Office of Special Counsel continues to submit matters *ex parte* to keep them from the defendant, and no general explanation is proffered as to why the matter must be addressed *ex parte*. (See Dkt. # 61 at 3, n.1).

grand jury secrecy, was potentially classified intelligence information, or was simply false. (Dkt. # 44 at 3-7). Given the enormous amount of negative press coverage that the defendant has endured since the Special Counsel took over the prior investigations, it hardly seemed controversial to limit the review of such deleterious media accounts in his own court filings—especially where the threshold for making a *prima facie* showing for a hearing is not difficult.³ A simple Google search of “Mr. Manafort and Special Counsel” yields hundreds of articles almost uniformly negative to Mr. Manafort and often disclosing confidential and classified information. These articles routinely disclose the grand jury investigations of former Ukrainian President Yanukovich, Mr. Manafort and his political campaign activities in Ukraine, and purported counterintelligence surveillance of the defendant. Adding reams of newspaper cites to such repetitive reporting seemed unnecessary. Indeed, the extraordinary public reach of CNN, *The New York Times* and the Associated Press (among others) is more than sufficient to reasonably show the magnitude of harm to Mr. Manafort by these reports based on government leaks.

The Counterintelligence Leaks Investigation is Narrow in Scope

Recently, the House Permanent Select Committee on Intelligence released the results of its investigation into the FBI counterintelligence investigation of the Trump campaign which began in July 2016.⁴ The report confirms that Mr. Manafort was part of investigation from its early stages. The investigation was conducted by a small group at the FBI.⁵ Information collected during the investigation was only shared with a small group including officials from the Department of

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³ “A *prima facie* case is one which has proceeded upon sufficient proof to that stage where it will support finding if evidence to the contrary is disregarded.” *United States v. Rosen*, 471 F. Supp.2d 651, 656 (E.D. Va. 2007) (internal quotations and citations omitted).

⁴ House Permanent Select Committee on Intelligence, Report on Russian Active Measures, March 22, 2018, at page 47, 114.

⁵ Andrew C. McCarthy, *The Strzok-Page Texts and the Origins of the Trump-Russia Investigation*, Nationalreview.com, May 14, 2018 (Exhibit 1).

Justice, White House, State Department and CIA.⁶ Recent reporting puts the number of DOJ officials briefed at “a handful” according to government officials.⁷ Despite protestations from the Office of Special Counsel, it appears that an investigation into government leaks surrounding the counterintelligence investigation of the Trump campaign—as it pertains to Mr. Manafort—would involve a small number of current and former government officials.

The Grand Jury Leaks Investigation Is Narrow in Scope

The focus on grand jury leaks is likewise limited, primarily concerning communications between the Special Counsel’s lead attorney and four reporters from the Associated Press. It appears that this investigation would involve approximately nine DOJ employees, including attorneys and FBI agents. The primary basis for having this inquiry comes from the questions raised by the House Permanent Select Committee on Intelligence, and the reporting of freelance journalist, Sara Carter.

On January 5, 2018, freelance journalist Sara Carter reported that:

- ☐ The senior attorney for Special Counsel Robert Mueller, described as his righthand man, has a significant role in the investigation which appears to be expanding from its original edict to investigate alleged collusion between members of the Trump campaign with Russia, to a broader financial investigation of Trump, members of his family and campaign officials.

Sara Carter, *Mueller’s “Pit Bull” Andrew Weissmann under scrutiny as Rosenstein agrees to turn over documents to Nunes*, saraacarter.com, Jan. 5, 2018 (Exhibit 3); Letter from D. Nunes to R. Rosenstein, dated January 4, 2018 (Exhibit 4).

⁶ *Id*

⁷ Matt Apuzzo, Adam Goldman and Nicholas Fandos, *Code Name Crossfire Hurricane: The Secret Origins of the Trump Investigation*, The New York Times, May 16, 2018 (Exhibit 2).

On January 21, 2018, freelance journalist Sara Carter reported that:

- ☐ A senior Justice Department prosecutor in Robert Mueller's Special Counsel Office held a meeting with Associated Press⁸ (AP) journalists last spring to discuss an investigation into Paul Manafort's financial records, a day before the wire service published a major exposé disclosing alleged money laundering made by the former and now embattled Trump campaign chairman.

[REDACTED]

⁸Associated Press articles that were published in the spring of 2017 were previously identified in the defendant's memorandum in support of the instant motion (Dkt. # 44 at 4-6):

On March 22, 2017, the Associated Press reported that:

- ☐ People familiar with the relationship between Paul Manafort and Russian oligarch Oleg Deripaska said money transfers to Mr. Manafort amounted to tens of millions of dollars and continued through 2009. They spoke on the condition of anonymity because they were not authorized to discuss secret payments publicly.
- ☐ Paul Manafort had been a leading focus of the U.S. intelligence investigation of Trump's associates and Russia, according to a U.S. official. The person spoke on the condition of anonymity because details of the investigation are confidential. Meanwhile, federal criminal prosecutors became interested in Manafort's activities years ago as part of a broad investigation to recover stolen Ukrainian assets. Jeff Horwitz & Chad Day *Before Trump Job Manafort Worked to Aid Putin*, Associated Press, Mar. 22, 2017.

On March 23, 2017, the Associated Press reported that:

- ☐ Treasury agents in recent months obtained information connected to Paul Manafort's transactions from Cypriot authorities according to a person familiar with the matter who was not authorized to speak publicly.
- ☐ The time period covered under the request for Mr. Manafort's transactions from the Treasury Department's Financial Crimes Enforcement Network was not immediately clear. Jack Gillum, Menelaos Hadjicostis & Eric Tucker, *US Probe of Ex-Trump Aide Extends To Cyprus*, Associated Press, Mar. 23, 2017.

On April 12, 2017, the Associated Press reported that:

- ☐ Now, financial records newly obtained by the AP confirm that Paul Manafort's firm received at least some money listed in the so called "black ledger."
- ☐ Federal prosecutors in the U.S. have been investigating Mr. Manafort's work in Eastern Europe as part of a larger anti-corruption probe. Jack Gillum, Chad Day and Jeff Horwitz *Manafort Firm Received Ukraine Ledger Payout*, Associated Press, Apr. 12, 2017.

On June 3, 2017, the Associated Press reported that:

- ☐ The Special Counsel investigating possible ties between Trump's campaign and the Russian government has taken over a separate criminal probe involving former Trump campaign chairman Paul Manafort.
- ☐ The expansiveness of Mueller's investigation was described to the AP. No one familiar with the matter has been willing to discuss the scope of his investigation on the record because it is just getting underway and because revealing details could complicate its progress. Sadie Gurman, Eric Tucker, and Jeff Horwitz, *Special Counsel's Trump Investigation Includes Manafort Case*, Associated Press, Jun. 3, 2017.

[REDACTED]

[REDACTED]

- ☐ The meeting with the Associated Press was also attended by other employees and agents of the U.S. Department of Justice, U.S. Attorney's Office and FBI.
- ☐ The senior DOJ attorney's role in arranging the meeting did not go over well with FBI officials, who issued a complaint to the Justice Department suggesting that the attorney did not follow normal procedures for dealing with journalists.

Sara Carter, *Weissmann met with AP to discuss Manafort case before joining special counsel*, saraacarter.com, Jan. 21, 2018 (Exhibit 5).

Just recently, on May 16, 2018, *The Washington Times* confirmed that the chairman of the House Permanent Select Committee on Intelligence asked the Department of Justice for information on a meeting that a senior attorney with the Special Counsel's Office conducted with news reporters last year when he headed the Fraud Section on the Criminal Division.⁹

ARGUMENT

For months, Mr. Manafort has sought information from the Special Counsel regarding unauthorized leaks by government officials. Despite multiple discovery and *Brady* requests, the Special Counsel has not produced any materials in this regard. When finally compelled to ask for the Court's intervention and to require a hearing on these violations, the Special Counsel's Office responds that "Manafort's speculative claim of improper conduct is far short" of what is necessary to warrant a hearing on potential violations of Rule 6(e) or his Constitutional rights. (Dkt. # 61 at 2).

As an initial matter, the Special Counsel's resistance to finding out who has been responsible for these unauthorized and unlawful government leaks was perplexing. As a general proposition, prosecutors are interested in investigating potential wrongdoing. However, the

⁹Rowan Scarborough, *Mueller moves to muscle out Manafort's lawyers from grilling prosecutors*, *The Washington Times*, May 16, 2018. (Exhibit 6)

Special Counsel's memorandum in opposition contained a footnote that may explain the reluctance. (Dkt. # 16 at 16, n.12). Apparently, the Special Counsel's Office is concerned that prosecutors on the trial team could be called to provide testimony. *Id.* Based upon the congressional inquiry and reporting noted above that concern may well be justified, but that decision is for the Court to make, not the defendant.

Government Leaks Regarding Grand Jury Investigations of Mr. Manafort

A *prima facie* case is a case in which sufficient proof has been presented where it will support the finding if evidence to the contrary is disregarded. *Rosen*, 471 F. Supp.2d at 656. Far from being "speculative," the media reports identified in the motion and this reply clearly demonstrate that unauthorized disclosures of Rule 6(e) information and potentially classified materials have occurred. Indeed, it is hard to fathom how the Special Counsel contends Mr. Manafort's claim is speculative when the chairman of the House Permanent Select Committee on Intelligence has asked the Department of Justice for information on the meeting that the lead prosecutor in this case conducted with news reporters last year. How can it be that the legislative branch, in exercising its oversight responsibilities regarding the Russian collusion investigation, has demanded (and is to receive) this relevant information, and the Court and the defendant in this criminal prosecution cannot?

As noted *supra*, it has been reported that a complaint was made to the Justice Department by the FBI with respect to the meeting with the AP reporters, which suggests that normal procedures were not followed in this case.¹⁰ (See Exhibit 5). The thrust of this motion requests

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¹⁰ Again, the Special Counsel attempts to preempt any inquiry into this matter. (Dkt. # 61 at 16, n.12). As a general principle, the defense would agree that the taking of testimony of any lawyer who is trying a case should ordinarily be avoided. But this is by no means an ordinary case. Indeed, it is troubling that in discussing the AP stories, the Special Counsel first points out that the disclosed information must come from a person subject to Rule 6(e) secrecy, for which there is no argument from the defendant, but then attempts to convince the Court that "when [the AP stories] do refer to information provided by individuals, the context strongly suggests that those individuals are persons outside of the U.S. government. . . . *Id.* (¶ 12-13). This suggestion is made without any mention or disclosure that the

that the Court hold a hearing on these unauthorized government leaks, and if there has been an internal investigation (or investigations) regarding such leaks, or if emails, notes or memoranda exist regarding the same, the Court and the defendant—whose Constitutional rights are actually at issue—are entitled to review the same. The Special Counsel may view the requested hearing as a risk to “derail this case on satellite issues” (Dkt. # 61 at 16), but the defendant most certainly does not view unauthorized and intentional violations of Rule 6(e) and his Fifth and Sixth Amendment rights as “satellite issues.”

Sensing the weakness in his argument, the Special Counsel seeks to narrowly construe the Court's decision in *Rosen* to avoid having a hearing on the unauthorized Rule 6(e) disclosures.¹¹ In *Rosen*, however, the Court was dealing with an Espionage Act prosecution that involved national defense information. *Rosen*, 471 F. Supp. 2d at 652. The Court explained that law enforcement investigations and grand jury investigations differ and there was nothing in the media articles cited by the defendants that related to a "matter occurring before the grand jury." *Id.* at 654-56. Given the sensitivity of the national defense information involved in *Rosen*, it is reasonable to infer that classified information may not have been presented *in toto* to the grand jury and, without more, the defendants were not able to meet their burden. It is also clear from the Court's analysis that if there were evidence that (a) a grand jury was empaneled and (b) matters occurring before that grand jury were disclosed by government sources to the media, then a *prima facie* showing would have been made.

In this highly unusual case, where a Special Counsel was appointed and thereafter wandered far from his core mandate to investigate Russian collusion in the 2016 presidential

subject meeting with the AP reporters by the lead attorney in this case (and other government attorneys and FBI agents) is under scrutiny by the House Permanent Select Committee on Intelligence.

¹¹ The Special Counsel ignores the potential leaks of classified material and false information, which the defendant also contends requires exploration in a hearing. ☐

election, the facts are quite different. Based on their own admission during the May 4 motions hearing, the Special Counsel's Office took over investigations regarding the defendant that antedated by years the Special Counsel's appointment. (See Transcript of Motions Before the Honorable T.S. Ellis, III, dated May 4, 2018, at p. 4). Based upon information provided by Special Counsel, it appears that there have been two grand jury investigations and, as such, any matters occurring before those grand juries were protected under Rule 6(e).

Indeed, in a recent filing, the Special Counsel acknowledges the existence of one of the grand jury investigations. (Dkt. # 66). To oppose the defendant's motion to dismiss Count Eleven of the Superseding Indictment (see Dkt. ## 41 and 42), the Special Counsel advises that his Office sought and obtained an *ex parte* order¹² in June 2017 suspending the running of the statute of limitations. (Dkt. # 66 at 2-3). To secure such a tolling order, however, the Special Counsel was required by statute to apply to the court where *the grand jury* was investigating the offense. 18 U.S.C. Section 3292(a)(1). There is no question that the Special Counsel obtained financial information based upon the investigative powers of the grand jury.

Importantly, for purposes of the case at bar, violations of Rule 6(e) concern "matters occurring before the grand jury" that, among other things, disclose or "reveal the strategy or direction of a grand jury investigation, or report when the grand jury will return an indictment." *Rosen*, 471 F. Supp.2d at 655 (citations omitted). The articles referenced in the subject motion and this reply clearly implicate Rule 6(e).

Government Leaks Regarding the Counterintelligence Investigation

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¹² The Special Counsel only recently produced this order to the defense after the filing of the response to the motion to dismiss Count Eleven (Dkt. # 66 at 4), and the issue will be addressed in the defendant's reply to that memorandum in opposition.█

The Special Counsel has avoided addressing the counterintelligence leaks to *The New York Times* and CNN regarding the surveillance of Mr. Manafort. There ~~is~~¹³ evidence that the highest-level FBI and intelligence officials authorized leaks to the press and, in fact, leaked themselves. The identified officials include former FBI Director James Comey, and former FBI Deputy Director Andrew McCabe.¹³ Recently, it has also been confirmed that James Clapper, then the Director of National Intelligence, leaked details of what is known as the “Steele dossier” to CNN in January 2017.¹⁴ The Steele dossier was relied on by DOJ in applying for FISA surveillance of individuals associated with the Trump campaign. James Comey has confirmed that the information in the dossier could not be confirmed. The public has only recently learned that the dossier was part of political opposition to Trump that was compiled and paid for by the Hillary Clinton campaign for president.

The Special Counsel’s assertion of national security and classified information concerns to withhold information from the defendant and this court strains credulity. The highest-level counterintelligence officials at the FBI and National Intelligence Agency leaked the very same information to the press when it served their purposes to disclose details of counterintelligence investigations and the results of the investigations.

Just last week, government officials leaked more classified information about the FBI counterintelligence investigation of the Trump campaign to *The New York Times*.¹⁵ The leakers confirmed that only a small group was privy to information about the investigation.¹⁶ Therefore,

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¹³ Jonathan Turley, *McCabe just made life tough for Comey and the special counsel*, TheHill.com, March 17, 2018 (Exhibit 7).

¹⁴ Sean Davis, *Declassified Congressional Report: James Clapper Lied About Dossier Leaks to CNN*, thefederalist.com, April 27, 2018 (Exhibit 8).

¹⁵ Matt Apuzzo, Adam Goldman and Nicholas Fandos, *Code Name Crossfire Hurricane: The Secret Origins of the Trump Investigation*, The New York Times, May 16, 2018 (Exhibit 2).

¹⁶ Andrew C. McCarthy, *The Strzok-Page Texts and the Origins of the Trump-Russia Investigation*, Nationalreview.com, May 14, 2018 (Exhibit 1).

a leaks investigation in this regard would be limited in scope and manageable. The House Intelligence Committee's report also disclosed documents that contain the redacted names of individuals at the White House, State Department, DOJ and CIA who were privy to this information. Therefore, the individuals that would be the focus of a leaks investigation are readily identifiable.

Moreover, *The New York Times* and CNN articles cited in defendant's motion clearly identify government officials as the source of counterintelligence information, including the details of the investigation and the surveillance of Mr. Manafort. If the media reports of these leaks of classified information are accurate, they constitute felonies. And if the leaks were/are false, they constitute an inexcusable public smear campaign.¹⁷ Either way, the leaks constitute outrageous government conduct intended to deprive Mr. Manafort of his Fifth and Sixth Amendment Constitutional rights to due process and a trial by an unbiased jury of his peers. In light of the mass media coverage of these leaks in print, on television, radio and the internet, it seems unlikely that there is a jury questionnaire, instruction or change of venue that could cure the irreparable harm to Mr. Manafort's Constitutional rights resulting from leaks by the highest-level government officials.

WHEREFORE, Defendant Manafort respectfully requests a hearing with respect to the government's unauthorized leaks in this case and any other such relief needed to allow Mr. Manafort an opportunity to seek legal redress for all violations of his Constitutional rights.

¹⁷ See, e.g., Martin London, *Spiro Agnew's Lawyer: How the Russia Leaks Could Backfire in Court*, Time.com, June 7, 2017 (Exhibit 9).

Dated: May 21, 2018

Respectfully submitted,

s/ Kevin M. Downing

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Exhibit 1

WHITE HOUSE

The Strzok-Page Texts and the Origins of the Trump-Russia Investigation

By ANDREW C. MCCARTHY | May 14, 2018 5:10 PM



The J. Edgar Hoover Federal Bureau of Investigation Building in Washington, D.C. (Aaron P. Bernstein/Reuters)

Peter Strzok and Lisa Page's texts shine a highly redacted light on how the Trump-Russia investigation

begins

negate.

It was July 31, 2016. Just days earlier, the Obama administration had quietly opened an FBI counterintelligence investigation of Russian cyber-espionage — hacking attacks — to disrupt the 2016 election. And not random, general disruption; the operating theory was that the Russians were targeting the Democratic party, for the purpose of helping Donald Trump win the presidency.

FBI special agent Peter Strzok was downright giddy that day.

The Bureau had finally put to bed “Mid Year Exam.” MYE was code for the dreaded investigation of Hillary Clinton’s improper use of a private email system to conduct State Department business, which resulted in the retention and transmission of thousands of classified emails, as well as the destruction of tens of thousands of government business records. Strzok and other FBI vets dreaded the case because it was a go-through-the-motions exercise: Everyone working on it knew that no one was going to be charged with a crime; that

was going to be charged with a crime, that Mrs. Clinton was going to be the next president of the United States; and that the

FBI's goal was not to be tarnished in the process of "investigating" her — to demonstrate, without calling attention to the suffocating constraints imposed by the Obama Justice Department, that the Bureau had done a thorough job, and that there was a legal rationale for letting Clinton off the hook that might pass the laugh test.

That mission was accomplished, Strzok and his colleagues believed. with Director James

Comey's press conference on July 5,
outlining the evidence and recommending

against charges that "no reasonable
prosecutor" would bring. Now, having run
the just-for-show interview of Hillary
Clinton on July 2 — long after Comey's press
statement that there would be no charges
was in the can — Strzok was on the verge of
a big promotion: to deputy assistant director
of counterintelligence.

Even better: Now, he was working a *real*
case — the Trump-Russia case. He was
about to fly to London to meet with
intelligence contacts and conduct secret
interviews.

Not so secret, though, that he could contain
himself.

As was his wont several times a day, Strzok
texted his paramour, Lisa Page, the FBI
lawyer in the lofty position of counsel to
Deputy Director Andrew McCabe — which
made Page one of the relative handful of
Bureau officials who were in on the new
probe. Late Sunday night, as he readied for
his morning flight, Strzok wrote to Page,
comparing the investigations of Clinton and

Trump.

And damn this feels momentous.
Because this matters. The other
one did, too, but that was to
ensure that we didn't F
something up. This matters
because this MATTERS.

This MATTERS.

The Strzok-Page Texts: An Invaluable Narrative

As my weekend column detailed, the House Intelligence Committee is spearheading a congressional effort to pry disclosure from the Justice Department regarding how and why the so-called Russia investigation was opened. With Justice and anonymous intelligence-community leakers having provided conflicting explanations, the latest controversy involves the role played by a CIA and FBI informant, based in Britain, who appears to have been deployed against marginal Trump-campaign figures (such as George Papadopoulos). Several bloggers began reporting the likely identity of this source over the weekend; I am going to follow the lead of the *Wall Street Journal's* Kim Strassel and resist mentioning the name — I am not in the news-breaker business, and it is likely to be confirmed

soon enough.

I want to make a different point.

House Intelligence Committee chairman Devin Nunes is pressing for limited disclosure of information from the government's closely held files. He is right to do so. No government operations can be completely beyond the examination of the people's representatives in our constitutional republic. Here, the Obama administration took extraordinary measures to withhold information from Congress about its Trump-Russia probe — such as not briefing the bipartisan leaders of the both chambers and their intelligence committees, the “Gang of Eight.” (See transcript of Director Comey's Testimony, March 20, 2017, questioning by Representative Elise Stefanik (R., N.Y.), House Intelligence Committee.) Besides, having litigated classified-information issues under procedures prescribed by federal law, I am confident that there are ways to get essential information disclosed without compromising intelligence methods and sources.

But all that aside, it may not be necessary to pry into informant files in order to find

answers to the most pressing questions.
Those answers may be found in the

thousands of Strzok-Page texts. These
provide a day-to-day narrative of the goings-
on in the Clinton-emails and Trump-Russia
investigations by two of the highest, most
plugged-in officials in the government.

This fact has eluded us for months, ever
since the existence of the texts was first
made known. Yes, a few explosive messages
have captured our attention, most notably,
Strzok's "insurance policy" assertion: An
account of an August 15 discussion among
top FBI officials in then-deputy director
Andrew McCabe's office, with Strzok
observing that although it was highly
unlikely "Trump gets elected," the
government "can't take that risk" and
needed an "insurance policy" against a
Trump presidency. But for the most part, the
texts have been dismissed as the ravings of
star-crossed lovers whose loathing of Trump
and disdain for Trump supporters should
not be thought to reflect on the Bureau's
legions of hard-working non-partisans.

That's the wrong way to look at it.

Strzok and Page are singularly well-informed, central players in the Clinton and Trump investigations. They tell us exactly what is going on and why — or at least they would if the Justice Department had not blacked out key parts of their running conversation.

Thanks mostly to the dogged work of Senator Ron Johnson (R., Wis.), who chairs the Senate Homeland Security and Governmental Affairs Committee, hundreds of pages of the Strzok-Page texts have been released publicly — trust me on that: I am bleary-eyed from a weekend of reading about half of them. Even in their heavily redacted form, they are a goldmine of insight.

But why are they so heavily redacted? The Justice Department and FBI have blocked out passages — sometimes, several exchanges at a time — that would provide context for the key decisions and actions taken by government officials. And while the names of high-ranking FBI officials who figure constantly in the texts have, for the most part, been revealed, the names of Justice Department, White House, intelligence, and other government officials

have been withheld.

Late July 2016

Let me give you a small window into what we're dealing with, homing in on what Nunes has been inquiring about, the start of the Trump-Russia counterintelligence investigation. (Senator Johnson has posted the texts here. The massive document, covering a couple of years, takes a few seconds to load. I will be addressing the texts beginning on what is paginated DOJ-PROD-0000199; we'll cover just the eight days from July 28 through August 5, 2016.)

We now know that the investigation began in late July 2016, apparently driven by this concatenation: the hacking of Democratic email accounts; the first reports from the Clinton campaign-sponsored opposition-research compilation that became known as the Steele dossier; and information that a low-level Trump campaign adviser, Papadopoulos, had heard the Russians had thousands of Hillary Clinton's emails. The Strzok-Page texts of this period are eye-opening, combining alarm over the Putin regime's suspected hand in the hacking and scrutiny of media stories about Trump ties to Russia.

In the wee hours of Thursday morning, July 28, while they separately watched the Democratic National Convention — cooing over Vice President Joe Biden (“he’s just a really sincere guy”) and grouching over “stupid *ss Bernie supporters” — Strzok and Page perused a Josh Marshall *Talking Points Memo* post entitled, “Trump & Putin. Yes, It’s really a Thing.”

It’s an interesting article. Marshall observed that Donald Trump was deeply dependent on Russian financing. In just the last year, his debt load had increased by \$280 million (to a staggering \$630 million); he’d had trouble finding financing because of prior bankruptcies; and thus he’d relied heavily on Russian capital to rebuild his business. “Russians make up a pretty disproportionate cross-section of a lot of our assets,” Trump’s son Donald Jr. had told a real-estate conference in 2008.

Marshall pointed out that shady Russian oligarchs were involved in Trump development ventures; that Trump’s tax returns might reveal the depth of financial ties to Moscow, but Trump had refused to disclose them; that Trump had chosen to

bring into his campaign Paul Manafort, who had had worked for years for a Kremlin-backed Ukrainian party, and Carter Page, a Putin apologist with financial ties to Gazprom, the Kremlin-controlled energy behemoth; that Putin had “aligned all Russian state controlled media behind Trump”; and that the Trump campaign, though otherwise indifferent to the party platform during the Republican convention, had intervened to water down a provision on providing assistance to Ukraine against Russian aggression. (That last claim has been persuasively rebutted, by Byron York, among others.)

Just as Page urges this column on Strzok, there is a redacted passage. Minutes later, after Strzok has read it, there is another redacted message. Then, Strzok says, “This article highlights the thing I mentioned to you earlier, asking if Bill had noted it to the 7th floor. I’m going to send it to him.”

“Bill” is Bill Priestap, at the time the assistant director of the Counterintelligence Division, one of the Bureau’s highest-ranking officials. It was Priestap’s division, in which Strzok was about to become his deputy, that would run the newly opened

Trump-Russia case file. Minutes later, over a period of 50 minutes, Strzok and Page exchange 13 texts, some of them apparently lengthy. All of them have been blacked out by the Justice Department.

Later that day, while they're in the office at around 5 P.M., Strzok texts Page: "Hey if you discussed the new case with Andy would appreciate any input/guidance before we talk to Bill at 3." "Andy," of course, is Andrew McCabe, then the FBI's No. 2 official. Strzok wanted to know what McCabe was thinking before making a plan with Priestap.

After 8 P.M., Strzok tells Page about what appears to be Justice Department officials who will be involved in the Trump-Russia investigation. Again, though, the Justice Department has redacted most of these names — other than an apparent reference to Trisha Anderson, then of the Justice Department's Office of Legal Counsel. (Ms. Anderson is married to Charles Newman, then a lawyer in the Obama White House for the National Security Council). Strzok texts, "Trisha mentioned to [REDACTED] to put [REDACTED] on this new case for seniority until she comes back from al" ("al" is

“annual leave” — vacation time in government-speak).

Strzok’s Sudden Trip to London

By that weekend, as a result of consultations within these government agencies, Strzok was headed to London. While preparing, he teased Page that he’s “partial to any woman sending articles about how nasty the Russians are” — the rest of his text is redacted. After Page’s heavily redacted reply about how the Russians “are probably the worst. Very little I finding redeeming about this. Even in history. Couple of good writers and artists I guess,” Strzok raged in a heavily redacted reply, “f***ing conniving cheating savages. At statecraft, athletics, you name it. I’m glad I’m on Team USA.”

After yet more redacting, Strzok got back to the new case. He’d been “talking with [REDACTED], who’s been great. Going back through acting DCM. All good, and asked him to keep quiet, [there follows some odd coding — ‘bu+H3382t’] I think he will inform main State and they may call over to see what’s going on.” Clearly, Strzok was in communication with a counterpart at the Obama State Department — which, we now

know, was ultimately in communication with the Bureau about both the Steele dossier and reporting from Clinton

confederates Sidney Blumenthal and Corey Shearer.

Page related that she would not be sent on the trip to Britain because McCabe trusts Strzok and the (unidentified) agent who was accompanying him. It is then that Strzok, as noted above, exclaimed how “momentous” this new investigation — the one that “MATTERS” — feels to him. Interestingly though, right before this exclamation, Strzok has something else to say, apparently about the launch of the Trump-Russia probe, but . . . the Justice Department has redacted it.

By Monday afternoon (Eastern Time — evening in the U.K.), Strzok had arrived in London. He texted Page to ask if McCabe had been able to speak with [REDACTED] yet; Page said McCabe had been not reach “him” yet, but would keep trying. Meantime, Page asserted, “Ho boy. Don’t tell Moffa, but andy is cancelling their brief. And he wants it first.”

Moffa is Jonathan Moffa, an intelligence agent who worked closely with Strzok and

Page on the Clinton-emails investigation.
Page's news prompted Strzok to answer, "I think that's smart. Bill may need a little

Page, the lawyer, then counseled Strzok to be careful of what he signs in England so that he can "lawfully protect" the information — meaning, *conceal it*.

saving from himself." Plainly, the FBI's deputy director wanted to receive the first briefing on Strzok's meetings in Britain, even though the normal chain of command called for Priestap to be briefed first by his direct subordinates.

By noon (Eastern Time) on Tuesday, August 2, Strzok had had his first meeting. Page asked whether it went well, but the Justice Department has deleted Strzok's

response — all we get is his next text, "With the [REDACTED], yes, good meeting." Most of Page's response is deleted, except for "Whoa."

Page, the lawyer, then counseled Strzok to

be careful of what he signs in England so that he can “lawfully protect” the information — meaning, *conceal it*. As she put it, “Just thinking about Congress, foia [the Freedom of Information Act], etc.” Strzok replied that he had just sent a document to Page by FBI net email; she instructed him to forward it to two people: “[REDACTED] and Trisha too” (another apparent reference to the Justice Department’s Trisha Anderson). Page elaborated that Trisha “is acting Jim” — which seems to mean she was acting temporarily in the stead of James Baker, then the Bureau’s general counsel.

About two hours later, Strzok was pleading with Page to get into the office to prevent “ogc” (the Bureau’s Office of General Counsel) from making “not legally necessary” changes to the document — he was worried that delay to deal with nitpicking edits “will derail this thing” that he was in Britain to do. Page replied that she was already in the office.

While she was reviewing the document, Strzok decided to tell her some background: “Interesting fact. Guy we’re about to interview was —” But we learn nothing more

about who Strzok was about to interview because the Justice Department has redacted it.

Page proceeds to relate that she had been questioned sharply by an official whose identity is redacted, in the nature of “what are you doing on this case” that is such a closely held secret. But she elaborates that David Laufman, a Justice Department counterintelligence lawyer (who was very involved in the Clinton-emails probe) leapt to her defense.

By the early morning hours (Eastern Time) of August 3, Strzok prepared to head home, having conducted multiple interviews the previous afternoon. As he thanked Page and, derivatively, McCabe, for waiting until he returned to hold a formal meeting with the Justice Department regarding the new case, Page observed, “Jesus. There’s a lot to read here. Let me call [REDACTED] check in with andy, and I will call you.” Later, as it came time to leave for the airport, Strzok agreed emphatically with Page’s stress on “New case. Information flow. Control.” We learn, despite more redactions, that Strzok planned to tell Priestap anything he wanted to know, but would “reinforce” the need to control the information flow when he

briefed Page, Priestap and McCabe.”

‘The White House Is Running This’

Strzok was back in Washington by 7 P.M., in a cab headed to FBI headquarters. His texts with Page, then and the next afternoon, discussed the various other high-ranking officials who had to be briefed — including Bill Rybicki, chief of staff to Director Comey, and George Toscas, the deputy attorney general in charge of the Justice Department’s National Security Division.

On the afternoon of August 5, Strzok and Page engaged in a tense conversation which involved an imminent meeting with “agency people — an apparent reference to the CIA. Strzok suggested that, for the new case, they should conduct Monday, Wednesday, and Friday morning meetings “with [REDACTED]” just “like we did with mye” — Mid Year Exam, the Clinton probe.

Finally, after some back-and-forth over who should be invited to a major meeting about the new case, a meeting was held. In the aftermath, at about 4:30 P.M., Strzok and Page had the following exchange:

STRZOK: And hi. Went well, best we could have expected. Other than

could have expected. Other than [REDACTED] quote: "the White House is running this." My answer, "well, maybe for you they are." And of course, I was planning on telling this guy, thanks for coming, we've got an hour, but with Bill [Rybicki, Director Comey's chief of staff] there, I've got no control....

PAGE: Yeah, whatever (re the WH comment). We've got the emails that say otherwise.

It would be interesting to know what is in the emails that apparently clarify how the Obama administration divided responsibility for running the Trump-Russia investigation. Just like it would be interesting to know what is behind all the many redactions in these texts about how and why the Trump-Russia investigation got started.

On what basis has the Justice Department concealed passages and references to government officials from these significant conversations? Are Justice and the Bureau claiming that the redactions are necessary because the information is classified — even though we're talking about communications

between highly trained intelligence officials?

And if that is the claim, are they telling us

that Hillary Clinton was
investigated — and given a pass —
for the unauthorized
transmission of classified
information by FBI officials who were
themselves actively engaged in the
unauthorized transmission of classified
information?

The Strzok-Page texts rate a lot more
attention, and a lot more transparency.



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POLITICS

The New York Times

Code Name Crossfire Hurricane: The Secret Origins of the Trump Investigation

By Matt Apuzzo, Adam Goldman and Nicholas Fandos

May 16, 2018

WASHINGTON — Within hours of opening an investigation into the Trump campaign's ties to Russia in the summer of 2016, the F.B.I. dispatched a pair of agents to London on a mission so secretive that all but a handful of officials were kept in the dark.

Their assignment, which has not been previously reported, was to meet the Australian ambassador, who had evidence that one of Donald J. Trump's advisers knew in advance about Russian election meddling. After tense deliberations between Washington and Canberra, top Australian officials broke with diplomatic protocol and allowed the ambassador, Alexander Downer, to sit for an F.B.I. interview to describe his meeting with the campaign adviser, George Papadopoulos.

The agents summarized their highly unusual interview and sent word to Washington on Aug. 2, 2016, two days after the investigation was opened. Their report helped provide the foundation for a case that, a year ago Thursday, became the special counsel investigation. But at the time, a small group of F.B.I. officials knew it by its code name: Crossfire Hurricane.

The name, a reference to the Rolling Stones lyric "I was born in a crossfire hurricane," was an apt prediction of a political storm that continues to tear shingles off the bureau. Days after they closed their investigation into Hillary Clinton's use of a private email server, agents began scrutinizing the campaign of her Republican rival. The two cases have become inextricably linked in one of the most consequential periods in the history of the F.B.I.

[Read our briefing on secret government code names]

This month, the Justice Department inspector general is expected to release the findings of its lengthy review of the F.B.I.'s conduct in the Clinton case. The results are certain to renew debate over decisions by the F.B.I. director at the time, James B. Comey, to publicly chastise Mrs. Clinton in a news conference, and then announce the reopening of the investigation days before Election Day. Mrs. Clinton has said those actions buried her presidential hopes.

Those decisions stand in contrast to the F.B.I.'s handling of Crossfire Hurricane. Not only did agents in that case fall back to their typical policy of silence, but interviews with a dozen current and former government officials and a review of documents show that the F.B.I. was even more circumspect in that case than has been previously known. Many of the officials spoke on condition of anonymity because they were not authorized to discuss the investigation publicly.

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Agents considered, then rejected, interviewing key Trump associates, which might have sped up the investigation but risked revealing the existence of the case. Top officials quickly became convinced that they would not solve the case before Election Day, which made them only more hesitant to act. When agents did take bold investigative steps, like interviewing the ambassador, they were shrouded in secrecy.

Fearful of leaks, they kept details from political appointees across the street at the Justice Department. Peter Strzok, a senior F.B.I. agent, explained in a text that Justice Department officials would find it too "tasty" to resist sharing. "I'm not worried about our side," he wrote.

Only about five Justice Department officials knew the full scope of the case, officials said, not the dozen or more who might normally be briefed on a major national security case.

The facts, had they surfaced, might have devastated the Trump campaign: Mr. Trump's future national security adviser was under investigation, as was his campaign chairman. One adviser appeared to have Russian intelligence contacts. Another was suspected of being a Russian agent himself.

In the Clinton case, Mr. Comey has said he erred on the side of transparency. But in the face of questions from Congress about the Trump campaign, the F.B.I. declined to tip its hand. And when The New York Times tried to assess the state of the investigation in October 2016, law enforcement officials cautioned against drawing any conclusions, resulting in a story that significantly played down the case.

Mr. Comey has said it is unfair to compare the Clinton case, which was winding down in the summer of 2016, with the Russia case, which was in its earliest stages. He said he did not make political considerations about who would benefit from each decision.

But underpinning both cases was one political calculation: that Mrs. Clinton would win and Mr. Trump would lose. Agents feared being seen as withholding information or going too easy on her. And they worried that any overt actions against Mr. Trump's campaign would only reinforce his claims that the election was being rigged against him.

The F.B.I. now faces those very criticisms and more. Mr. Trump says he is the victim of a politicized F.B.I. He says senior agents tried to rig the election by declining to prosecute Mrs. Clinton, then drummed up the Russia investigation to undermine his presidency. He has declared that a deeply rooted cabal — including his own appointees — is working against him.

That argument is the heart of Mr. Trump's grievances with the federal investigation. In the face of bipartisan support for the special counsel, Robert S. Mueller III, Mr. Trump and his allies have made a priority of questioning how the investigation was conducted in

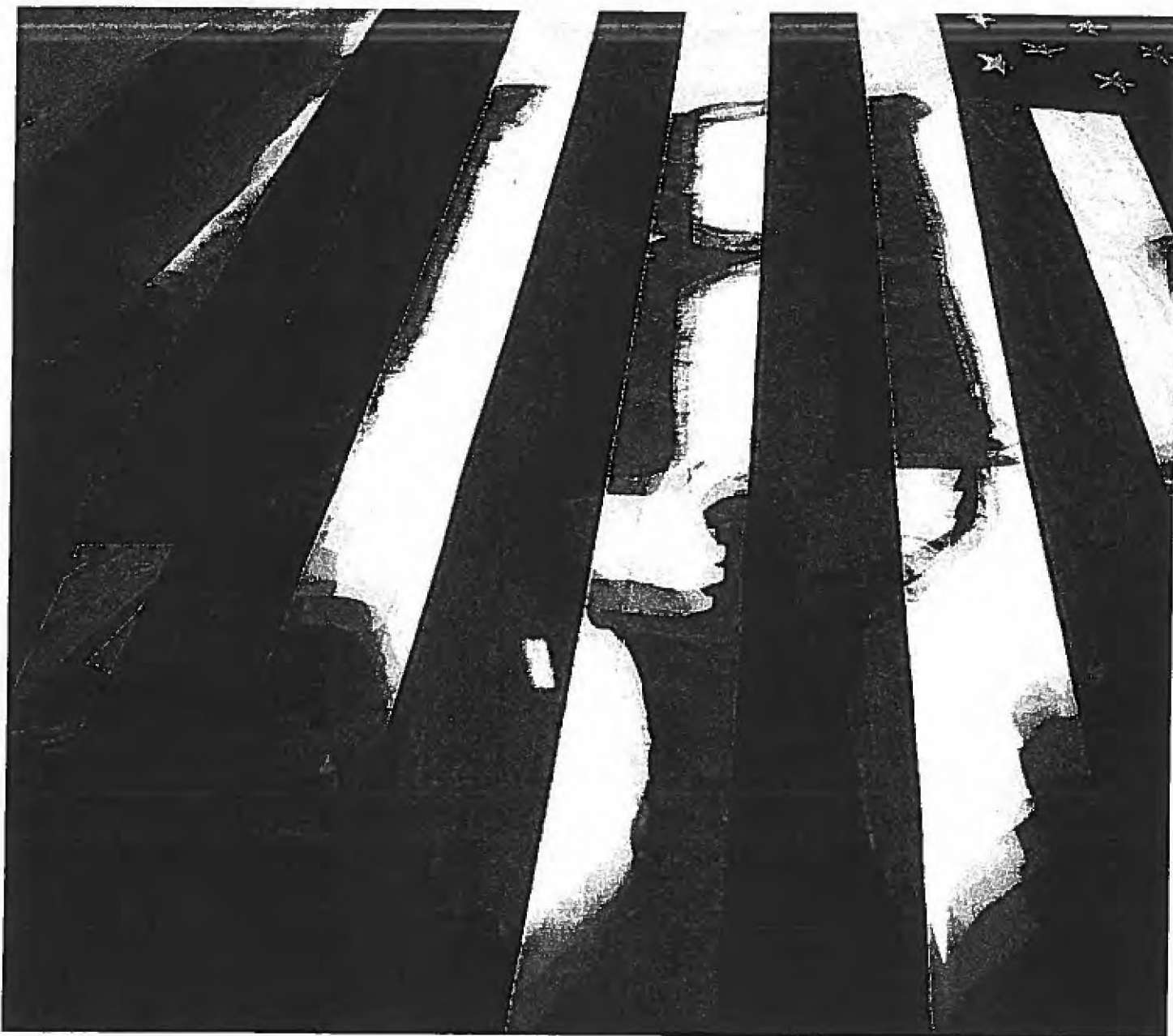
late 2016 and trying to discredit it.

“It’s a witch hunt,” Mr. Trump said last month on Fox News. “And they know that, and I’ve been able to message it.”

Congressional Republicans, led by Representative Devin Nunes of California, have begun to dig into F.B.I. files, looking for evidence that could undermine the investigation. Much remains unknown and classified. But those who saw the investigation up close, and many of those who have reviewed case files in the past year, say that far from gunning for Mr. Trump, the F.B.I. could actually have done more in the final months of 2016 to scrutinize his campaign’s Russia ties.

“I never saw anything that resembled a witch hunt or suggested that the bureau’s approach to the investigation was politically driven,” said Mary McCord, a 20-year Justice Department veteran and the top national security prosecutor during much of the investigation’s first nine months.

Crossfire Hurricane spawned a case that has brought charges against former Trump campaign officials and more than a dozen Russians. But in the final months of 2016, agents faced great uncertainty — about the facts, and how to respond.



A Trump campaign rally in August 2016 in Texas. Crossfire Hurricane began exactly 100 days before the presidential election. Damon Winter/The New York Times

Anxiety at the Bureau

Crossfire Hurricane began exactly 100 days before the presidential election, but if agents were eager to investigate Mr. Trump's campaign, as the president has suggested, the messages do not reveal it. "I cannot believe we are seriously looking at these allegations and the pervasive connections," Mr. Strzok wrote soon after returning from London.

The mood in early meetings was anxious, former officials recalled. Agents had just closed the Clinton investigation, and they braced for months of Republican-led hearings over why she was not charged. Crossfire Hurricane was built around the same core of agents and analysts who had investigated Mrs. Clinton. None was eager to re-enter presidential politics, former officials said, especially when agents did not know what would come of the Australian information.

The question they confronted still persists: Was anyone in the Trump campaign tied to Russian efforts to undermine the election?

The F.B.I. investigated four unidentified Trump campaign aides in those early months, congressional investigators revealed in February. The four men were Michael T. Flynn, Paul Manafort, Carter Page and Mr. Papadopoulos, current and former officials said. Each was scrutinized because of his obvious or suspected Russian ties.

[Here are the key themes, dates and characters in the Russia investigation]

Mr. Flynn, a top adviser, was paid \$45,000 by the Russian government's media arm for a 2015 speech and dined at the arm of the Russian president, Vladimir V. Putin. Mr. Manafort, the campaign chairman, had lobbied for pro-Russia interests in Ukraine and worked with an associate who has been identified as having connections to Russian intelligence.

Mr. Page, a foreign policy adviser, was well known to the F.B.I. He had previously been recruited by Russian spies and was suspected of meeting one in Moscow during the campaign.

Lastly, there was Mr. Papadopoulos, the young and inexperienced campaign aide whose wine-fueled conversation with the Australian ambassador set off the investigation. Before hacked Democratic emails appeared online, he had seemed to know that Russia had political dirt on Mrs. Clinton. But even if the F.B.I. had wanted to read his emails or intercept his calls, that evidence was not enough to allow it. Many months passed, former officials said, before the F.B.I. uncovered emails linking Mr. Papadopoulos to a Russian intelligence operation.

Mr. Trump was not under investigation, but his actions perplexed the agents. Days after the stolen Democratic emails became public, he called on Russia to uncover more. Then news broke that Mr. Trump's campaign had pushed to change the Republican platform's stance on Ukraine in ways favorable to Russia.

The F.B.I.'s thinking crystallized by mid-August, after the C.I.A. director at the time, John O. Brennan, shared intelligence with Mr. Comey showing that the Russian government was behind an attack on the 2016 presidential election. Intelligence agencies began collaborating to investigate that operation. The Crossfire Hurricane team was part of that group but largely operated independently, three officials said.

Senator Marco Rubio, Republican of Florida, said that after studying the investigation as a member of the Senate Intelligence Committee, he saw no evidence of political motivation in the opening of the investigation.

"There was a growing body of evidence that a foreign government was attempting to interfere in both the process and the debate surrounding our elections, and their job is to investigate counterintelligence," he said in an interview. "That's what they did."