

Showdown before the raid: FBI agents and prosecutors argued over Trump

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Months of disputes between Justice Department prosecutors and FBI agents over how best to try to recover classified documents from Donald Trump's Mar-a-Lago Club and residence led to a tense showdown near the end of July last year, according to four people familiar with the discussions.

Prosecutors argued that new evidence suggested Trump was knowingly concealing secret documents at his Palm Beach, Fla., home and urged the FBI to conduct a surprise raid at the property. But two senior FBI officials who would be in charge of leading the search resisted the plan as too combative and proposed instead to seek Trump's permission to search his property, according to the four people, who spoke on the condition of anonymity to describe a sensitive investigation.

Prosecutors ultimately prevailed in that dispute, one of several previously unreported clashes in a tense tug of war between two arms of the Justice Department over how aggressively to pursue a criminal investigation of a former president. The FBI conducted an unprecedented raid on Aug. 8, recovering more than 100 classified items, among them a document describing a foreign government's military defenses, including its nuclear capabilities.

Starting in May, FBI agents in the Washington field office had sought to slow the probe, urging caution given its extraordinary sensitivity, the people said.

Some of those field agents wanted to shutter the criminal investigation altogether in early June, after Trump's legal team asserted a diligent search had been conducted and all classified records had been turned over, according to some people with knowledge of the discussions.

The idea of closing the probe was not something that was discussed or considered by FBI leadership and would not have been approved, a senior law enforcement official said.

This account reveals for the first time the degree of tension among law enforcement officials and behind-the-scenes deliberations as they wrestled with a national security case that has potentially far-reaching political consequences.

The disagreements stemmed in large part from worries among officials that whatever steps they took in investigating a former president would face intense scrutiny and second-guessing by people inside and outside the government. However, the agents, who typically perform the bulk of the investigative work in cases, and the prosecutors, who guide agents' work and decide on criminal charges, ultimately focused on very different pitfalls, according to people familiar with their discussions.

On one side, federal prosecutors in the department's national security division advocated aggressive ways to secure some of the country's most closely guarded secrets, which they feared Trump was intentionally hiding at Mar-a-Lago; on the other, FBI agents in the Washington field office urged more caution with such a high-profile matter, recommending they take a cooperative rather than confrontational approach.

Both sides were mindful of the intense scrutiny the case was drawing and felt they had to be above reproach while investigating a former president then expected to run for reelection. While trying to follow the Justice Department playbook for classified records probes, investigators on both sides braced for Trump to follow his own playbook of publicly attacking the integrity of their investigation, according to people with knowledge of their discussions.

The FBI agents' caution also was rooted in the fact that mistakes in prior probes of Hillary Clinton and Trump had proved damaging to the FBI, and the cases subjected the bureau to sustained public attacks from partisans, the people said.

Prosecutors countered that the FBI failing to treat Trump as it had other government employees who were not truthful about classified records could threaten the nation's security. As evidence surfaced suggesting that Trump or his team was holding back sensitive records, the prosecutors pushed for quick action to recover them, according to the people familiar with the discussions.

While the people who described these sensitive discussions disagreed on some particulars, they agreed on many aspects of the dispute.

Spokespeople for the Justice Department and the FBI declined to comment for this story. Attorney General Merrick Garland, asked about this report at a Senate hearing Wednesday, said he could not describe the investigation but added that in his experience as a prosecutor "there is often a robust discussion and it's encouraged among investigators and prosecutors."

It is not unusual for FBI agents and Justice Department prosecutors to disagree during an investigation about how aggressively to pursue witnesses or other evidence. Often, those disagreements are temporary flare-ups that are debated, decided and resolved in due course.

While the FBI tends to have great discretion in the day-to-day conduct of investigations, it is up to prosecutors to decide whether to file criminal charges — and, like the prosecutors, the director of the FBI ultimately reports to the attorney general. The Mar-a-Lago case was unusual not just for its focus on a former president, but in the way it was closely monitored at every step by senior Justice Department officials. Garland said he "personally approved" the search of Trump's property.

It's unclear how the investigation may have been reshaped if the two sides had settled their disputes differently. Had the criminal investigation been closed in June, as some FBI field agents discussed, legal experts said it's unlikely agents would have yet recovered the items found in the FBI's raid of Trump's residence.

Some inside the probe argued the infighting delayed the search by months, ultimately reducing the time prosecutors had to reach a decision on possible charges. Others contend the discussions were necessary to ensure the investigation proceeded on the surest footing, enabling officials to gather more evidence before they executed the search, people familiar with the dynamics said.

In November, before prosecutors had finished their work and decided whether to charge Trump or anyone else, he announced his campaign to retake the White House in 2024, leading Garland to appoint a special counsel, Jack Smith, to complete the investigation.

A collision course

From the moment the FBI and Justice Department received a formal referral on Feb. 7 from the National Archives and Records Administration to investigate missing classified records that could be in Trump's possession, FBI investigators and federal prosecutors knew they were taking on a highly charged and sensitive case.

Archives officials reported that, after they had pleaded with Trump's representatives for months, the former president had in January returned 15 boxes of government records he had stored at Mar-a-Lago since his presidency ended. Sifting through the boxes' contents, archivists were shocked by what they found: 184 classified documents consisting of 700 pages. Archives officials said they had reason to believe Trump still had more sensitive or classified documents he took from the White House.

Prosecutors in the Justice Department's national security division needed to answer two immediate questions: Was national security damaged by classified records being kept at Trump's Florida club, and were any more sensitive records still in Trump's possession?

Prosecutors and FBI agents were set on a collision course in April, when Trump through his lawyers tried to block the FBI from reviewing the classified records the Archives found. That set off alarm bells for prosecutors because it signaled he might be seeking to hide something, according to people familiar with the case. In preliminary interviews with witnesses in April and May, including Trump associates and staff, investigators were told of many more boxes of presidential records at Mar-a-Lago that could contain classified materials — similar in packaging to the boxes shipped there from the White House, and to those returned to the Archives in January, the people said.

The prosecutors and FBI agents began clashing in previously unreported incidents in early May, the people said. Jay Bratt, the prosecutor leading the department's counterespionage work, advocated seeking a judge's warrant for an unannounced search at the property to quickly recover any sensitive documents still there.

The FBI often conducts raids of properties without advance notice when investigators have reason to believe evidence is being withheld or could be destroyed. Some prosecutors saw guideposts in a related case a decade earlier, when Army Gen. David H. Petraeus lied to FBI agents about whether he had given classified information to a book author with whom he was having an affair. Agents executed a search warrant at Petraeus's house and retrieved a cache of notebooks in which the prominent general improperly had stored extensive amounts of classified information.

But FBI agents viewed a Mar-a-Lago search in May as premature and combative, especially given that it involved raiding the home of a former president. That spring, top officials at FBI headquarters met with

prosecutors to review the strength of evidence that could be used to justify a surprise search, according to two people familiar with their work.

Encountering resistance, Bratt agreed for the time being to subpoena Trump. On June 3, Bratt and a small number of FBI agents visited Mar-a-Lago to meet with Trump's lawyer and collect any classified records the Trump team had found to comply with the subpoena. That day, Trump's lawyer, Evan Corcoran, handed over an expandable envelope containing 38 classified records and produced a letter signed by another lawyer, Christina Bobb, asserting that a diligent search had been conducted and all classified records had been turned over.

Some FBI field agents then argued to prosecutors that they were inclined to believe Trump and his team had delivered everything the government sought to protect and said the bureau should close down its criminal investigation, according to some people familiar with the discussions.

But they said national security prosecutors pushed back and instead urged FBI agents to gather more evidence by conducting follow-up interviews with witnesses and obtaining Mar-a-Lago surveillance video from the Trump Organization.

The government sought surveillance video footage by subpoena in late June. It showed someone moving boxes from the area where records had been stored, not long after Trump was put on notice to return all such records, according to people familiar with the probe. That evidence suggested it was likely more classified records remained at Mar-a-Lago, the people said, despite the claim of Trump's lawyers. It also painted for both sides a far more worrisome picture — one that would soon build the legal justification for the August raid.

By mid-July, the prosecutors were eager for the FBI to scour the premises of Mar-a-Lago. They argued that the probable cause for a search warrant was more than solid, and the likelihood of finding classified records and evidence of obstruction was high, according to the four people.

But the prosecutors learned FBI agents were still loath to conduct a surprise search. They also heard from top FBI officials that some agents were simply afraid: They worried taking aggressive steps investigating Trump could blemish or even end their careers, according to some people with knowledge of the discussions. One official dubbed it "the hangover of Crossfire Hurricane," a reference to the FBI investigation of Russia's interference in the 2016 presidential election and possible connections to the Trump campaign, the people said. As president, Trump repeatedly targeted some FBI officials involved in the Russia case.

A rift within the FBI

Against that backdrop, Bratt and other senior national security prosecutors, including Assistant Attorney General Matt Olsen and George Toscas, a top counterintelligence official, met about a week before the Aug. 8 raid with FBI agents on their turf, inside an FBI conference room.

The prosecutors brought with them a draft search warrant and argued that the FBI had no other choice but to search Mar-a-Lago as soon as practically possible, according to people with knowledge of the meeting. Prosecutors said the search was the only safe way to recover an untold number of sensitive government records that witnesses had said were still on the property.

Steven M. D'Antuono, then the head of the FBI Washington field office, which was running the investigation, was adamant the FBI should not do a surprise search, according to the people.

D'Antuono said he would agree to lead such a raid only if he were ordered to, according to two of the people. The two other people said D'Antuono did not refuse to do the search but argued that it should be a consensual search agreed to by Trump's legal team. He repeatedly urged that the FBI instead seek to persuade Corcoran to agree to a consensual search of the property, said all four of the people.

Tempers ran high in the meeting. Bratt raised his voice at times and stressed to the FBI agents that the time for trusting Trump and his lawyer was over, some of the people said. He reminded them of the new footage suggesting Trump or his aides could be concealing classified records at the Florida club.

D'Antuono and some fellow FBI officials complained how bad it would look for agents with "FBI" emblazoned on their jackets to invade a former president's home, according to some people with knowledge of the meeting. The FBI's top counterintelligence official, Alan E. Kohler Jr., then asked the senior FBI agents to consider how bad it would look if the FBI chose not to act and government secrets were hidden at Mar-a-Lago, the people said.

D'Antuono also questioned why the search would target presidential records as well as classified records, particularly because the May subpoena had only sought the latter.

"We are not the presidential records police," D'Antuono said, according to people familiar with the exchange.

Later, D'Antuono asked if Trump was officially the subject of the criminal investigation.

"What does that matter?" Bratt replied, according to the people. Bratt said the most important fact was that highly sensitive government records probably remained at Mar-a-Lago and could be destroyed or spirited away if the FBI did not recover them soon.

FBI agents on the case worried the prosecutors were being overly aggressive. They found it worrisome, too, that Bratt did not seem to think it mattered whether Trump was the official subject of the probe. They feared any of these features might not stand up to scrutiny if an inspector general or congressional committee chose to retrace the investigators' steps, according to the people.

Jason Jones, the FBI's general counsel who is considered a confidant of FBI Director Christopher A. Wray, agreed the team had sufficient probable cause to justify a search warrant. D'Antuono agreed, too, but said they should still try to persuade Corcoran to let them search without a warrant, the people said.

The disagreement over seeking Corcoran's consent centered partly on how each side viewed Trump's lawyer. The prosecutors — as well as some officials at FBI headquarters — were highly suspicious of him and feared that appealing to Corcoran risked that word would spread through Trump's circle, giving the former president or his associates time to hide or destroy evidence, according to people familiar with the internal debate.

Some FBI agents, on the other hand, had more trust in Corcoran — a former federal prosecutor who had recently returned to practicing law and represented Stephen K. Bannon, a former Trump adviser, against criminal contempt charges. The agents drafted a possible script they could use to pitch to Trump's lawyer on a consensual search. D'Antuono's team said they could keep surveillance on Mar-a-Lago and act quickly if they saw any scramble to move evidence. The prosecutors refused, saying it was too risky, the people said.

In the meeting, some attendees viewed Toscas, a Justice Department veteran who had worked with the FBI through the Crossfire Hurricane and Clinton email investigations, as a prosecutor whose words would carry special weight with the FBI agents. He told D'Antuono he had shared the agents' skepticism, but was now "swayed" that the evidence was too strong not to get a search warrant, according to people familiar with the discussion.

"George, that's great, but you haven't swayed me," D'Antuono replied.

Jones, the FBI's general counsel, said he planned to recommend to Deputy FBI Director Paul Abbate that the FBI seek a warrant for the search, the people said. D'Antuono replied that he would recommend that they not.

The raid

But prosecutors appeared unwilling to wait and debate further, according to people familiar with the discussions. Olsen, the assistant attorney general for national security, appealed to senior officials in FBI headquarters to push their agents to conduct the raid. Abbate handed down his instructions a day later: The Washington field office led by D'Antuono would execute the surprise search.

On Aug. 5, FBI agents quietly sought and received approval from a federal magistrate judge in Florida to search Mar-a-Lago for documents. The search was planned for the following Monday, Aug. 8.

Prosecutors remained somewhat on guard until the day of the raid, as they continued to hear rumblings of dissent from the Washington field office, according to three people familiar with the case. Some of the people said prosecutors heard some FBI agents wanted to call Corcoran once they arrived at Mar-a-Lago and wait for him to fly down to join them in the search; prosecutors said that would not work.

Just days before the scheduled search, prosecutors got a request from FBI headquarters to put off the search for another day, according to people familiar with the matter. The FBI told prosecutors the bureau planned to announce big news that week — charges against an Iranian for plotting to assassinate former national security adviser John Bolton — and did not want the impact of that case to be overshadowed or

complicated by media coverage of the Mar-a-Lago raid. It is common for the Justice Department and FBI to fine-tune the timing of certain actions or announcements to avoid one law enforcement priority competing with another. But prosecutors, fatigued by months of fighting with agents in the FBI's field office, wanted no delay, no matter the reason, the people said. The search would proceed as scheduled.

FBI agents found ways to make the search less confrontational than it otherwise could have been, according to people familiar with the investigation: The search would take place when Trump was in New York and not in Palm Beach; the Secret Service would receive a heads-up a few hours before FBI agents arrived to avoid any law enforcement conflict; and agents would wear white polo shirts and khakis to cut a lower profile than if they wore their traditional blue jackets with FBI insignia.

On Aug. 8, FBI agents scoured Trump's residence, office and storage areas, and left with more than 100 classified records, 18 of them top-secret. Prosecutors claimed vindication in the trove of bright color-coded folders that agents recovered.

Some documents were classified at such a restricted level that seasoned national security investigators lacked the proper authorization to look at them, leading to consternation on the prosecution team. They involved highly restricted "special access programs" that require Cabinet-level sign-off even for officials with top-secret clearances to review. The documents described Iran's missile program and records related to highly sensitive intelligence aimed at China, The Washington Post previously has reported.

In late fall, Bratt and his team began sketching out the evidence that potentially pointed to Trump's obstruction, with an expectation that the prosecutors together would soon make a recommendation on whether to charge the former president, according to people familiar with the case. Bratt's team began to button up witness accounts and stress-test factual evidence against the law.

Meanwhile, in late October, amid news reports that Trump was looking to soon announce another bid for the presidency, Garland told aides he was seriously contemplating appointing a special counsel to take over the investigation, as well as a separate criminal probe looking at Trump and his allies' effort to overturn the results of the 2020 election — a rare procedure designed to ensure public faith in fair investigations.

On Nov. 15, Trump took the stage in the Mar-a-Lago ballroom — at the same property where FBI agents had searched three months earlier — and announced that he would run for president again in 2024. The Justice Department's national security division leaders who had pushed the FBI to be more aggressive pursuing Trump did not finish the investigation or reach a charging decision before a new chief took over.

On Nov. 18, Garland sent word to the prosecutors working on both of the probes to come to Justice Department headquarters for a meeting that morning. He wanted to privately inform them that he planned later that day to appoint a special counsel. Garland told them they could choose their next steps, but he hoped they would join the special counsel's team for the good of the two investigations, people familiar with the conversation said.

Just after 2 p.m., Garland stood before cameras to announce he had appointed Smith to take over the investigations. Flanked by three of his top deputies, Garland said the Justice Department had the integrity to continue the investigations fairly but that turning them over to an outside prosecutor was “the right thing to do.”

“The extraordinary circumstances presented here demand it,” he added.