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Manafort wiretaps raise questions about political motives, evidence presented to FISA court

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Former Trump campaign chairman Paul Manafort's spokesman said Thursday that federal investigators' moves to wiretap him in 2014 and again in 2016, around the time he was involved with the campaign, were politically motivated.

After CNN revealed the secret wiretaps this week, saying they were obtained under a foreign intelligence surveillance law, Manafort spokesman Jason Maloni said on NPR's "1A" program that no matter how one feels about Mr. Manafort, they should be "disgusted at the treatment of Paul Manafort and the fact that he was surveilled by political opponents."

He also questioned the evidence investigators used to substantiate the wiretaps.

"It's not clear what went into the petition. It's not clear how strong the case was," Mr. Maloni told The Washington Times. "What's clear is nothing came of it, so there was nothing worth pursuing."

CNN reported that investigators won approval from the secretive Foreign Intelligence Surveillance Court for a wiretap on Mr. Manafort in 2014 while probing his consulting work for a pro-Russia Ukrainian political party. That surveillance lapsed sometime last year, but investigators later got approval for a second wiretap.

It's not clear whether the second wiretap came during the months Mr. Manafort managed then-candidate Donald Trump's campaign or whether it was after his August 2016 separation from the campaign. It's also unclear whether any conversations between him and Mr. Trump were intercepted, according to the CNN report.

To obtain a Foreign Intelligence Surveillance Act order to monitor a U.S. citizen, investigators must convince a judge they have probable cause to believe the person is acting as an agent of a foreign power, such as by conducting espionage against the U.S.

Analysts said the FISA court would have taken Mr. Manafort's political role into account when weighing the second wiretap request and that investigators must have made a good enough case to persuade a judge to grant a wiretap on a person known to be in the close orbit of a presidential candidate.

“Judges are going to have questions about the tricky nature of issuing an order for someone who is part of a political campaign,” said Alan Butler, senior counsel at the Electronic Privacy Information Center. “It’s not going to get treated the same way as a normal routine application.”

Robert Deitz, who previously served as senior counselor to the director of the CIA and general counsel at the National Security Agency, said an application to surveil a politically connected person would have been subject to the same standard as any other application. He said it’s unlikely that politics would have played into the FISA court’s decision to grant an order.

“Serious government officials, the Department of Justice, Department of Defense and so on, they are always reluctant to do something that is going to have an influence on an election,” Mr. Deitz said. “I suspect federal judges are going to have that same reluctance, and I suspect that this application got very close scrutiny.”

The FISA court was established to provide judicial oversight of the U.S. government’s activities in a classified setting. It is able to approve applications for electronic surveillance and other searches as part of foreign intelligence investigations.

Mr. Manafort has called for the release of transcripts of his intercepted conversations, saying it would prove “there is nothing there.”

“He’s that confident there’s nothing there and certainly the FBI agreed because no charges were ever brought as a result of these FISA intercepts,” Mr. Maloni told 1A.

Late Thursday, Senate Judiciary Committee Chairman Chuck Grassley, Iowa Republican, released a letter he sent to the FBI asking if it ever bothered to warn the Trump campaign of the Russia probe.

He said wiretaps on Mr. Manafort make the question all the more pressing.

“If the FBI did provide a defensive briefing or similar warning to the campaign, then that would raise important questions about how the Trump campaign responded,” Mr. Grassley wrote. “On the other hand, if the FBI did not alert the campaign, then that would raise serious questions about what factors contributed to its decision and why it appears to have been handled differently in a very similar circumstance involving a previous campaign.”

CNN reported that the first wiretap ran from 2014 to 2016 but was discontinued “for lack of evidence.”

Julian Sanchez, a senior fellow at the Cato Institute, cautioned that the point of FISA surveillance is to collect foreign intelligence, not necessarily to produce evidence for prosecution.

“Is it worth it to burn a FISA intercept over a tax evasion charge?” Mr. Sanchez said. “I would not be at all surprised if they had come up with some indictable stuff, but that wasn’t the point to the investigation, so they just sat on it.”

The court has a track record of approving a high percentage of FISA applications, leading some critics to accuse it of rubber-stamping orders. In 2016, the court received 1,752 applications and granted 1,378 orders. Another 339 orders were modified, 26 were denied in part and nine were fully denied.

But the makeup of the FISA court skews conservative, said Elizabeth Goitein, co-director of the Brennan Center for Justice's Liberty and National Security Program. Seven out of the 11 judges on the court were appointed to the federal bench by Republican presidents.

"It's not as if the FISA court was out to scuttle the candidacy of the Republican candidate," Ms. Goitein said. "There is absolutely no reason to think the FISA court would have been in on some improper surveillance."

Still, she said, listening in on someone involved in a presidential campaign "raises very tricky issues."

"You don't want it to be easy for one administration to be conducting surveillance of the opposing candidate in an election year," she said. "On the other hand, you can't tell the FBI that it's off limits to investigate spies if those spies have an affiliation with a campaign. Frankly, it's all the more reason why you would be concerned about espionage in that situation."

Because FISA orders are valid for only 90 days at a time, it appears the original order on Mr. Manafort was renewed multiple times, giving the court several opportunities to check in.

Applications to extend FISA orders require officials to report to the court whether they received any substantive information as a result of the underlying order, but renewal is not contingent on proving that any new intelligence or evidence was obtained, said Laura Donahue, director of Georgetown Law School's Center on National Security and the Law and one of six lawyers designated as outside public advocates to the FISA court.

"The kind of information they are looking for is anything related to foreign affairs of the United States. It's a really broad brush. A lot of things could fall within that," Ms. Donahue said.