

HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

HEARING BEFORE THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS FIRST SESSION

THURSDAY, FEBRUARY 9, 2023

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HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

Thursday, February 9, 2023

HOUSE OF REPRESENTATIVES

SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE
FEDERAL GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The subcommittee met, pursuant to notice, at 12:33 p.m., in Room 2141, Rayburn House Office Building, Hon. Jim Jordan Chair of the Subcommittee presiding.

Present: Representatives Jordan, Issa, Massie, Stewart, Stefanik, Gaetz, Johnson, Armstrong, Bishop, Cammack, Hageman, Plaskett, Lynch, Sánchez, Wasserman Schultz, Connolly, Garamendi, Allred, Garcia, and Goldman.

Chair JORDAN. The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to this first hearing of the Select Subcommittee.

The Chair now recognizes the gentleman from Florida, Mr. Gaetz, to lead us in the pledge of allegiance.

ALL. I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. The Chair now recognizes himself for an opening statement.

On November 18, 2021, an FBI whistleblower discloses to Republicans on the House Judiciary that the FBI created a threat tag for parents voicing their concerns at school board meetings.

On April 26, 2022, another FBI whistleblower discloses that the FBI employees are being run out of the Bureau for attending conservative political events.

On May 11, 2022, another FBI whistleblower discloses that dozens of parents with the threat tag designation to their name are investigated by the FBI. This also happens to be the same whistleblower who said the FBI leadership, not the rank-and-file members, the FBI leadership is rotted at its core. His clearance has been revoked and he has been suspended.

On June 7, 2022, another FBI whistleblower is retaliated against after giving feedback on an anonymous survey.

On July 27, 2022, another FBI whistleblower discloses that agents are pressured to reclassify cases as domestic violent extremism cases to hit self-created performance metrics.

On September 14, 2022, an FBI whistleblower discloses that the FBI views the Betsy Ross flag as a terrorist symbol.

On September 19, 2022, another FBI whistleblower discloses that the Washington Field Office is deliberately manipulating January 6th case files to make it appear that domestic violence extremism is on the rise. He has been suspended.

On November 4, 2022, another FBI whistleblower discloses the FBI accepts private user information from Facebook without the user's consent and information is from only the conservative side of the political spectrum.

This is only a sampling. In my time in Congress, I have never seen anything like this. Dozens and dozens of whistleblowers, FBI agents coming to us, talking about what is going on, the political nature at the Justice Department. Not Jim Jordan saying this, not Republicans, not conservatives; good, brave FBI agents who are willing to come forward and give us the truth.

This is just the FBI. Americans have concerns about the double standard at the Department of Justice. Americans have concerns about the disinformation governance board that the Department of Homeland Security tried to form. Americans have concerns about the ATF and what they are doing to the Second Amendment. Of course, they have concerns about the IRS and the thousands of new agents who are coming to that organization.

Finally, there are concerns about what we have learned in the Twitter files, where Big Government and Big Tech colluded to shape and mold the narrative and to suppress information and censor Americans.

Over the course of our work in this committee, we expect to hear from government officials and experts, like we have here today; we expect to hear from Americans who have been targeted by their government; we expect to hear from people in the media; and we expect to hear from the FBI agents who have come forward as whistleblowers. We think many of them will sit for transcribed interviews, as one did on Tuesday, and we believe several of them will come and testify in open hearings. Finally, we expect to bring forward legislation that will help protect the American people.

We hope our Democrat colleagues will work with us. The day the resolution creating this Subcommittee was debated and passed, though, Mr. Jeffries, Mr. Nadler said Democrats would, quote, fight us "tooth and nail."

We hope that attitude changes. We want to work with them. Protecting the First Amendment shouldn't be partisan, protecting the Constitution shouldn't be partisan, and protecting the fundamental principle of equal treatment under the law should not be partisan.

With that, I yield to the Ranking Member for her opening statement.

Ms. PLASKETT. Thank you, Chair Jordan.

Nobody disputes the important role of congressional oversight. I know firsthand how important it is to ask questions and demand answers of the Federal government.

In the ordinary course of business, that work informs the legislative process. In extraordinary times, when misconduct in the Executive Branch threatens to undermine our democratic institutions, congressional oversight can serve to protect the integrity of our republic.

For example, I am proud of the role I played as an impeachment manager in the second impeachment of President Donald Trump in the aftermath of the attack on the Capitol. That bipartisan work was both a measure of accountability and a sign to the American people that Congress had no intention of being bullied into giving up on a peaceful transfer of power.

There is a difference, my colleagues, between legitimate oversight and weaponization of Congress and our processes, particularly our committee work, as a political tool. I am deeply concerned about the use of this select Subcommittee as a place to settle scores, showcase conspiracy theories, and advance an extreme agenda that risks undermining Americans' faith in our democracy.

Some of today's witnesses would have us believe that the Department of Justice and the Federal Bureau of Investigation are part of a deep-state cabal. One even wrote a book describing the FBI itself as a threat to democracy.

The Department of Justice and the FBI do not always get it right. History is full of examples of these agencies getting it very, very wrong. We have colleagues in this Congress who have been subject to politically motivated, hateful, racist investigations by our government. It does not logically follow that every investigation or criminal inquiry by the FBI or the Department of Justice is political or ideologically based.

In our current climate, with domestic terrorism on the rise and hate speech normalized by national politicians, the Department of Justice and the FBI are doing their best to protect us from sliding into chaos.

This past Monday, the FBI captured two individuals, one a neo-Nazi leader and founder of an Atomwaffen group, who were plotting a racially motivated attack on Baltimore's power grid. They said their goal was to, quote, "completely destroy this whole city," unquote.

Last week, the FBI infiltrated and disrupted a major cyber-criminal group extorting schools, hospitals, and critical infrastructure around the world.

Last summer, the FBI engaged in a mass violent crime enforcement effort that took nearly 6,000 violent criminals off of our American streets.

Let's not forget the tremendous work of the FBI and the Department of Justice after the attacks on our homeland on September 11, 2001.

Some of my Republican colleagues love to talk about the threat of violent crime, but they appear oblivious to the fact that their dangerous rhetoric and baseless accusations against the Justice Department and FBI, itself, at times pose a direct threat to those organizations' ability to do the work that they are doing to protect our communities.

Recent threat bulletins have highlighted a shocking increase in threats of violence against law enforcement agencies and a signifi-

cant uptick after the FBI executed a search warrant of President Trump's property at Mar-a-Lago.

The Federal Law Enforcement Officers Association has vehemently denounced what he described as, quote, "politically motivated threats that are unprecedented in recent history and absolutely unacceptable," end quote.

Unfortunately, examples of these threats are not hard to find. Last year, someone threatened to plant a dirty bomb outside the FBI headquarters. Another attempted to storm the Cincinnati FBI Field Office while wearing body armor and carrying an AR-type rifle. A third was arrested after he made a credible threat, stating, quote, "every single piece of [expletive] who works for the FBI in any capacity, from the director on down to the janitor who cleans their [expletive] toilets, deserve to die. You have declared war on us, and now it is open season on you," end quote.

These allegations are deeply troubling, and I hope that the Chair and Members of this Subcommittee will be mindful of the risks that go hand-in-hand with heated rhetoric.

A rush to accusations and subpoenas without a factual basis and without any effort to engage with agencies through the accommodation process flies in the face of due process and demeans the congressional oversight process. It makes a mockery of our institution.

As a former prosecutor, I am even more troubled by the suggestion that this Subcommittee may attempt to investigate ongoing criminal investigations. As the head of the Reagan Justice Department's Office of Legal Counsel wrote years ago, granting Congress access to information about active criminal investigations will, in effect, make Congress a partner in the investigation, creating a, quote, "substantial danger that congressional pressures will influence in the course of the investigation" and potentially, quote, "hamper prosecutorial decisionmaking in future cases."

This would not only damage law enforcement efforts, but it would also shake the public's confidence in the criminal justice system. I hope not. I suspect much of the investigations the majority, my Republican colleagues, want to look into and potentially muck up involve criminal investigations into former President Donald Trump.

I want to be crystal-clear: My Democratic colleagues and I will resist any attempt by this Subcommittee to derail ongoing legitimate investigations into President Trump, any other President, and others within his orbit.

During the course of this Subcommittee's work, I suspect we will hear both Members and witnesses describe the events of January 6, 2021, in ways that simply do not mesh with reality. When this happens, I would encourage everyone watching today to review the impeachment record and report of the January 6th Select Committee, which lays out the true facts in shocking detail.

I recently sent a letter to the Chair noting that, despite our policy and political differences, I am hopeful that there may be matters of investigation within the stated mandate of this Subcommittee under which we may collaborate. I meant this. I mean this. I still hope that we can find common ground and explore it in a bipartisan manner that respects the due process rights and interests of all involved.

The Chair and his colleagues continually use the moniker of protecting free speech. That sounds good. I hope they all recognize that there is speech that is not constitutionally protected—racist, hate, and incitement to violence. I also hope that the protection of free speech extends to all Americans. We will see.

I hope that we can use this Subcommittee to conduct legitimate oversight to help advance policies to address the real challenges that Americans face every day, rather than undermine every agent, officer, and prosecutor on the job.

Government abuses of power do not solely rest with the Executive Branch. It can, and we have seen it, come from the Legislative Branch as well. On our present course, however, this exercise seems little more than a political stunt designed to inject extremist politics into the legislative oversight function and the justice system. The American people deserve better than that.

Thank you, Mr. Chair, and I yield back.

Chair JORDAN. I thank the Ranking Member.

Without objection, all other opening statements will be included in the record.

Chair JORDAN. We will now introduce our first panel of witnesses.

Senator Chuck Grassley has represented Iowa in the U.S. Senate since 1981. He is currently the Ranking Member of the Senate Committee on Budget. He is former Chair and Ranking Member of the Committee on the Judiciary and the Committee on Finance.

Welcome, Senator Grassley.

Senator Ron Johnson has represented the State of Wisconsin in the U.S. Senate since 2011. He has served as the Chair of the Senate Homeland Security and Government Affairs Committee.

We welcome you, Senator Johnson.

Representative Raskin. Congressman Raskin has represented Maryland's Eighth Congressional District since 2017. He currently serves as the Ranking Member on the Committee of Oversight and Accountability.

We have with us former Member Tulsi Gabbard, who represented Hawaii's Second Congressional District for eight years in the House of Representatives. For nearly 20 years, she has served our country in the Hawaii Army National Guard and U.S. Army Reserve, including deployments in Iraq and Kuwait.

We thank all of you for your service.

Our longstanding committee practice is to not ask questions of our colleagues and former colleagues that appear before us. In light of that practice, our first panel will have 10 minutes to deliver their testimony.

Again, we thank you for being here.

The Senator from Iowa is recognized for 10 minutes.

STATEMENT OF THE HON. CHARLES GRASSLEY

Senator GRASSLEY. Thank you, Chair Jordan and Ranking Member Plaskett, for this opportunity to appear. I thank you for inviting me to come here. What I am about to tell you sounds like it is out of some fiction, spy thriller, but it actually happened and it happened in our own government.

Congressional oversight is a constitutional demand. We dedicate our careers to it, I have at least. During the course of my service, I have ran countless investigations. In the past few years, I have never seen so much effort from the FBI, the partisan media and some of my Democratic colleagues to interfere with and undermine very legitimate congressional inquiries. It's become a triad of disinformation and outright falsehoods. As one example, look at Crossfire Hurricane. Bit by bit, piece by piece, it has been deconstructed and shown to be a politically motivated investigation, which it was. We all know now that it was the Democratic National Committee, along with the Clinton campaign who colluded with the Russians. They used a former British spy, Fusion GPS, and a law firm, to create a fake dossier and then tried to cover it up.

Now, the most recent example of this triad at work, our efforts against my and Senator Johnson's ongoing Biden family investigation. That investigation started on August 14, 2019, when I was Chair of the Senate Finance Committee with a letter that I wrote to the Treasury Department. My letter was about a questionable financial transaction subject to the Committee on Foreign Investment that related to a matter involving the Biden family. As our investigation continued and advanced, Democratic leadership and partisan media began their attack on our investigation.

This is where that spy thriller starts to heat up. On July 13, 2020, then Minority Leader Schumer, Senator Warner, then Speaker Pelosi and then Chair Schiff sent a letter with a classified attachment to the FBI. That letter expressed a purported belief that Congress was the subject of a foreign disinformation campaign. The letter was targeted at the Johnson, Grassley investigation.

However, the classified attachment included unclassified elements that attempted and failed to tie our work to a Russian agent named Andrii Derkach. Unsurprisingly, those unclassified elements were leaked to the press to support a false campaign, accusing Senator Johnson and me of relying on material from a Russian agent, and thus advancing Russian disinformation.

Of course, it was pure nonsense that the irresponsible media portrayed this all as the truth. Guess what then? Chair Schiff claimed, without any evidence whatsoever, that our oversight work was rooted in Russian disinformation. Of course, he conveniently left out that our oversight work was actually rooted in official U.S. Government and Obama Administration records. Then guess what? Senator Blumenthal also wrote an op ed in *The Washington Post* accusing our investigation of, quote, "Perpetuating Russian disinformation in the U.S. Senate," end quote. Then, guess what? Minority Leader Schumer and then Ranking Member Wyden tried to offer a resolution in the Senate disparaging our Biden investigation. They, in a sense, were basically calling us Russian stooges. Pretty simple, that violated Senate rules and their efforts, of course, were appropriately shut down.

On July 16, 2020, mere days after the July 13th letter, then Ranking Members Wyden and Peters, wrote a letter to me and Senator Johnson asking for a briefing from the FBI's Foreign Influence Task Force. Our staff and the Ranking Members' staff had already—now, remember we had already received a briefing March

2020 that put the issue to rest. So, why another briefing? The point being there was no real purpose for another briefing, let alone a member-level briefing other than to further undermine our investigation.

Some of our Democratic colleagues weren't interested in anything but using the briefing to try and destroy our investigation. At these Democrats' insistence, the FBI caved. In August 2020, Senator Johnson and I had that infamous briefing from the FBI that was needless. Then as we had feared, the contents of that briefing were later leaked to *The Washington Post*, even though the FBI had promised us confidentiality. That leak outrageously and inaccurately connected that FBI briefing to our investigation in another effort to falsely label our good government oversight work as Russian disinformation.

Now, *The Wall Street Journal* editorial board was on top of it because that board did the right thing and wrote a piece about the briefing titled, quote, "The FBI's Dubious Briefing. Did the bureau set up two GOP Senators at the behest of Democrats?" end of quote.

So, simply put, the briefing was unnecessary and completely irrelevant to the substance of our investigation. It was only done because the Democrats wanted to do so they could try and smear us. The FBI wrongly did their bidding. To this very day Director Wray refuses to provide Senator Johnson and me, as constitutional officers, records relating to that briefing, including the alleged intelligence basis for it. Director Wray has consistently failed to perform duties required of his position.

Now, another example of this Democratic disinformation campaign involved a George Kent, former State Department Deputy Assistant Secretary. Senator Johnson and I ran a transcribed interview with George Kent. Before the interview, Democrats acquired material from that Russian agent, the same one that I mentioned earlier. At the interview, Democrats, not Republicans, Democrats asked Mr. Kent about the same material. Mr. Kent said it was disinformation.

Now, think about that, after all the spears the Democrats were throwing at the two of us, in the end, it was the Democrats who introduced Russian disinformation from a Russian agent into the investigative record as an exhibit. A foreign agent whom our own intelligence community warned was actively seeking to influence U.S. politics. Not me or Senator Johnson. Not our staff. It was the Democrats who inserted disinformation from the Russians into our official record.

The partisan media and Democrat leadership ought to be ashamed of themselves for fake information that they spread about our investigation. So, in the end, they all failed to stop Senator Johnson and me. On September 23, 2020, Senator Johnson and I released our first Biden investigation report. Now, I know there has been a lot of talk in this town about Treasury records and you ought to pursue them. In that 2020 report, we made public the contents of many Treasury records, but we didn't stop there. We issued another report, November 18, 2020. Our report exposed extensive financial relationships between Hunter and James Biden and Chinese nationals connected to the Communist regime.

More precisely, Chinese nationals connected to the Chinese government's military and intelligence services. With the new Congress, of course, Senator Johnson and I transitioned to be Ranking Members. We hadn't forgotten about what the triad of partisan media, the FBI, the Democratic leadership did to us. So, we don't stop. We did what any congressional investigator worth their salt would do, we gathered even more records to prove them all wrong. We acquired authentic bank records that substantiated findings of our previous two reports. They financially linked Hunter Biden and James Biden to entities and individuals connected with the Communist Chinese regime. We also acquired business records with Hunter and James Biden's signatures, alongside those same Chinese nationals. How were they supposed to be paid? According to bank records there were wires from companies linked to the Communist regime.

In three floor speeches, we made those bank records public and asked this question to our partisan detractors, the same ones that I mentioned throughout my remarks and maybe a lot of others: Are these official bank records Russian disinformation?

We also shared hundreds of pages of bank records with U.S. Attorney Weiss. He failed to respond. Now, as our investigation continues, whistleblowers approached my office with allegations that the FBI created an assessment in August 2020, the same month that the FBI briefed me and Senator Johnson. According to these whistleblowers, that assessment was used by FBI headquarters to improperly discredit negative Hunter Biden information as, you might expect, disinformation. As a result, this scheme allegedly caused investigative activity to entirely cease. It has been further alleged to me that in September 2020, the same month Senator Johnson and I released our first report, those FBI headquarters personnel began placing their analysis of the credibility of reporting related to the Biden family in what I have been told is a restricted access subfile.

Further allegations to my office involved FBI personnel at the Washington Field Office, who improperly ordered information to be closed by the FBI related to Hunter Biden's potential criminal conduct in October 2020 just before the election, even though it was verified, or it was verifiable.

Other whistleblower disclosures to my office made clear that the FBI has, within its possession, very significant, impactful, and voluminous evidence with respect to potential criminal conduct by Hunter and James Biden. These disclosures also allege that Joe Biden was aware of Hunter Biden's business arrangements and may have been involved in some of them.

We still aren't sure what has been done with this information. The FBI's track record doesn't create much faith that the information is going to be followed up on. It is clear to me that the Justice Department and the FBI are suffering from a political infection that if it is not defeated, will cause the American people no longer to trust these storied institutions. It will also threaten the American way of life. Unfortunately, what you have heard from me, this story of government abuse and political treachery is scarier than fiction, it really happened.

Mr. Chair, your committee here so assembled has an opportunity to help us write the last chapter in this real-life drama. You must relentlessly pursue the facts and the evidence. Senator Johnson and I will do the same and are willing to work with you. Thank you.

[The prepared statement of Senator Grassley follows:]

Prepared Remarks by U.S. Senator Chuck Grassley (R-Iowa)
House Select Subcommittee Hearing on the Weaponization of the Federal Government
Thursday, February 9, 2022
VIDEO

Thank you, Chairman Jordan and Ranking Member Plaskett. I appreciate the opportunity to speak today before this select subcommittee.

What I'm about to tell you sounds like it's out of some fiction spy thriller, but it actually happened. And it happened in our own government.

Congressional oversight is a constitutional demand. I've dedicated my career to it. And during the course of my career, I've run countless investigations.

In the past few years, I've never seen so much effort from the FBI, partisan media and some of my Democratic colleagues to interfere with and undermine very legitimate congressional inquiries. It's become a triad of disinformation and outright falsehoods.

As one example, look at Crossfire Hurricane.

Bit by bit, piece by piece, it's been deconstructed and shown to be the politically motivated investigation that it was.

We all know now that it was the Democratic National Committee, along with the Clinton Campaign, who colluded with the Russians. They used a former British spy, Fusion GPS and a law firm to create a fake dossier then tried to cover it up.

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As our investigation advanced, Democratic leadership and partisan media began their attack.

This is where that spy thriller starts to heat up.

On July 13, 2020, then-Minority Leader Schumer, Senator Warner, then-Speaker Pelosi and then-Chairman Schiff sent a letter, with a classified attachment, to the FBI. That letter expressed a purported belief that Congress was the subject of a foreign disinformation campaign. The letter was targeted at the Grassley-Johnson investigation.

The classified attachment included *unclassified* elements that attempted – and failed – to tie our work to a Russian agent named Andriy Derkach.

Unsurprisingly, those unclassified elements were leaked to the press to support a false campaign accusing Senator Johnson and me of relying on material from that Russian agent and then advancing Russian disinformation. It was pure nonsense that the irresponsible media portrayed as the truth.

Then-Chairman Schiff claimed without any evidence whatsoever that our oversight work was rooted in Russian disinformation.

Of course, he conveniently left out that our oversight work was actually rooted in official U.S. Government and Obama administration records.

Senator Blumenthal also wrote an op-ed in the *Washington Post* accusing our investigation of “perpetuating Russian disinformation in the U.S. Senate.”

And then-Minority Leader Schumer and then-Ranking Member Wyden tried to offer a resolution in the Senate disparaging our Biden investigation. They were basically calling us Russian stooges. They [violated the Senate rules](#) in their efforts and, of course, were appropriately shut down.

On July 16, 2020, mere days after the July 13 letter, then-Ranking Members Wyden and Peters wrote a letter to me and Senator Johnson asking for a briefing from the FBI’s Foreign Influence Task Force. Our staff, and the ranking members’ staff, had already received a briefing in March 2020 that put the issue to rest. So why another briefing?

The point being: there was no real purpose for another briefing, let alone a member-level one, other than to further undermine our investigation. Some of our Democratic colleagues weren’t interested in anything but using the briefing to try and destroy our investigation.

At these Democrats’ insistence, the FBI caved. In August 2020, Senator Johnson and I had that [infamous briefing from the FBI](#). And then, as we had feared, the contents of that briefing were later leaked to the *Washington Post* even though the FBI had promised us confidentiality.

That leak outrageously and inaccurately connected that FBI briefing to our investigation in another effort to falsely label our good government oversight work as Russian disinformation.

The Wall Street Journal editorial board did the right thing and wrote a piece about that briefing titled, “The FBI’s Dubious Briefing: Did the bureau set up two GOP Senators at the behest of Democrats?”

Simply put, the briefing was unnecessary and completely irrelevant to the substance of our investigation. It was only done because the Democrats wanted it done so they could try and smear us. And the FBI wrongly did their bidding.

To this day, Director Wray refuses to provide Senator Johnson and me – as constitutional officers – records relating to that briefing, including the alleged intelligence basis for it. Director Wray has consistently failed to perform the duties required of his position.

Another example of this Democratic disinformation campaign involved George Kent, a former State Department Deputy Assistant Secretary. Senator Johnson and I ran a transcribed interview with George Kent. Before the interview, Democrats acquired material from that Russian agent that I mentioned earlier. At the interview, Democrats asked Mr. Kent about that material. Mr. Kent said it was *disinformation*.

Now think about that.

After all the spears the Democrats were throwing at us, in the end it was *the Democrats* who introduced Russian disinformation from a Russian agent into the investigative record as an exhibit – a foreign agent whom the Intelligence Community warned was actively seeking to influence U.S. politics.

Not me or Senator Johnson. Not our staff. It was the Democrats who inserted disinformation from a Russian into our official record.

The partisan media and Democratic leadership ought to be ashamed of themselves for the fake information that they spread about our investigation.

In the end, they all failed to stop Senator Johnson and me. On September 23, 2020, Senator Johnson and I released our [first Biden investigation report](#). I know there's been a lot of talk in this town about Treasury records. In that 2020 report, we made public the contents of many Treasury records.

But, we didn't stop there. We issued [another report](#), November the 18, 2020. Our reports exposed extensive financial relationships between Hunter and James Biden and Chinese nationals connected to the communist regime. More precisely, Chinese nationals connected to the Chinese Government's military and intelligence services.

Then, Senator Johnson and I transitioned to ranking members. We hadn't forgotten about what the partisan media, FBI and Democratic leadership did to us. So, we did what any congressional investigator worth their salt would do: We gathered even more records to prove them all wrong.

We acquired authentic bank records that substantiated the findings of our previous two reports. They financially linked Hunter Biden and James Biden to entities and individuals connected with the communist Chinese regime. We also acquired business records with Hunter and James Biden's signatures alongside those same Chinese nationals.

How were they supposed to be paid? According to bank records, there were wires from companies linked to the communist regime. In [three floor speeches](#), we made those bank records public and asked this question to our partisan detractors: Are these official bank records Russian disinformation?

We also [shared hundreds of pages of bank records](#) with U.S. Attorney Weiss. He's failed to respond.

Now, as our investigation continued, whistleblowers approached my office with [allegations](#) that the FBI created an assessment in August 2020 – the same month that the FBI briefed me and Senator Johnson. According to these whistleblowers, that assessment was used by FBI Headquarters to improperly discredit negative Hunter Biden information as disinformation. This scheme allegedly caused investigative activity then to entirely cease.

It's been further alleged to me that in [September 2020](#) – the same month Senator Johnson and I released our first report – those FBI Headquarters personnel began placing their analysis of the credibility of reporting related to the Biden family in a restricted access sub-file.

Further allegations to my office involved FBI personnel at the Washington Field Office who improperly ordered information to be closed by the FBI related to Hunter Biden's potential criminal conduct in October 2020 – just before the election – even though it was [verified or verifiable](#).

Other whistleblower disclosures to my office make clear that the FBI has within its possession very [significant, impactful and voluminous evidence](#) with respect to potential criminal conduct by Hunter and James Biden.

These disclosures also allege that [Joe Biden was aware](#) of Hunter Biden's business arrangements and may have been involved in some of them.

We still aren't sure what's been done with this information. The FBI's track record doesn't create much faith that the information is going to be followed up on.

It's clear to me that the Justice Department and FBI are suffering from a political infection that – if it's not defeated – will cause the American people to no longer trust these storied institutions. It will also threaten our American way of life.

Unfortunately, this story of government abuse and political treachery is scarier than fiction. It really happened. But Mr. Chairman, your committee has an opportunity to help us write the last chapter in this real-life drama.

You must relentlessly pursue the facts and the evidence.

Senator Johnson and I will do the same.

Thank you.

Chair JORDAN. Thank you so much, Senator Grassley.
Senator Johnson.

STATEMENT OF THE HON. RON JOHNSON

Senator JOHNSON. Thank you, Chair Jordan, Ranking Member Plaskett, Members of the Select Committee. Thank you for inviting me to testify about my personal knowledge and experience with Federal agencies being weaponized against U.S. citizens.

Senator Grassley has just described the most egregious examples undertaken by multiple actors and agencies to undermine and sabotage our joint investigations. To begin, let me be clear, throughout my testimony, I am not talking about the men and women in government who conduct themselves with integrity and patriotism.

At the outset, it is important to recognize corrupt individuals within Federal agencies that I am talking about are not acting alone. They operate as vital partners of the left-wing political movement that includes most members of the mainstream media, Big Tech social media giants, global institutions and foundations, Democrat Party operatives and elected officials. As the Twitter files reveal, these actors work in concert to defeat their political opponents and promote left-wing ideology and government control over our lives.

My eyes began opening to this reality with the disclosure of how the Obama Administration weaponized the IRS to harass Tea Party groups by denying them tax-exempt status.

My personal knowledge and experience with agency corruption began in 2015 when I became Chair of the Senate Committee on Homeland Security and Governmental Affairs. My first investigation ultimately revealed the extensive editing of then-FBI Director James Comey of his July 5, 2015, statement that exonerated Secretary Clinton regarding her use of a private email server for official business. The edits were clearly made to downplay the seriousness of her actions.

It is important to note those partisan edits were made by the same cast of characters in the FBI that would initiate and drive the corrupt Russian-Trump collusion investigation. During our investigation of the FBI's involvement in the Russian collusion hoax, Senator Grassley and I uncovered and made public highly partisan text messages between FBI employees Peter Strzok and Lisa Page.

Strzok's December 15, 2016, text:

Think our sisters have begun leaking like mad. Scorned, worried, and political, they are kicking into overdrive. Has never been given the attention it deserves.

In a 2022 interview with Jeff Gerth, Strzok said he now believes, quote,

It is more likely the text came not from the CIA but from senior levels of the U.S. Government or Congress.

Who might those leakers be? Why aren't reporters who received the leaks outraged at being fed false information? Why haven't they blown the whistle on the leakers? Why didn't the mainstream media robustly investigate how they were all duped? The answer is: They weren't duped. They were complicit in creating and fos-

tering the political turmoil our country has been experiencing over the last six years.

Those leaks were a key ingredient in the most destructive political dirty trick in U.S. history, the creation and promotion of the false Russia-Trump collusion narrative. To be most effective, however, that narrative relied on coordination between government actors and the media, and the left had allies in the FBI.

Unable to verify the Steele dossier, the FBI offered Christopher Steele \$1 million to provide verification. By December 2016, the FBI knew—they had investigated Steele’s primary subsources as a Russian spy.

In the main body of the Department of Justice Inspector General’s report on FISA abuse, FBI official Bill Priestap is quoted as saying the FBI, quote, “didn’t have any indication whatsoever,” unquote, of Russian influence on the Steele dossier.

Our investigation uncovered redacted footnotes to that same document that completely contradicted that statement. Why would Priestap’s false statement appear in the report, but the truth be hidden in classified footnotes?

Fourteen months later, in February 2018, the FBI still briefed the Senate Intelligence Committee that the dossier had validity.

When the Mueller report found no evidence of collusion, the left engineered an impeachment of President Trump. The cooperation between the House Intelligence Committee and the impeachment whistleblower remains murky. Then-Chair Adam Schiff originally denied his committee had conduct with the whistleblower prior to the filing of the complaint, a claim Schiff later attempted to walk back. The genesis of the impeachment saga has yet to be fully investigated. It needs to be.

Prior to the impeachment proceedings, Hunter Biden’s obvious conflicts of interest in Ukraine became public, and Senator Grassley and I began investigating. We didn’t target Joe and Hunter Biden. Their actions demanded it.

On December 9, 2019, the FBI issued a grand jury subpoena and took possession of Hunter Biden’s laptop from John Paul Mac Isaac, a computer shop owner in Wilmington, Delaware. As the FBI left his shop with the laptop, Mr. Mac Isaac recalled one agent saying, quote, “It is our experience that nothing ever happens to people that don’t talk about these things,” unquote.

That statement was the opening salvo in a coordinated effort over the next 10 months to sabotage any public revelation of Hunter Biden’s laptop or any wrongdoing connected to the Bidens.

Senator Grassley has provided a number of examples of that sabotage, and we will release a report that goes into far greater detail than we have time for today. When available, I hope everyone will read it.

Perhaps the most egregious and effective act of sabotage against the truth was the public letter signed by 51 former intelligence officials that claim the laptop had, quote, “all the classic earmarks of a Russian information operation,” unquote.

That letter itself was an information operation that interfered with and impacted the 2020 Presidential election to a far greater extent than anything Russia ever could have hoped to achieve.

Each of those intelligence officials needs to be interviewed to determine how that letter was masterminded.

While we all condemn the violence on January 6th—we all condemn the violence on January 6th—the fervor in which the Biden Department of Justice has pursued those protestors and rioters stands in stark contrast to their lack of interest in the summer-of-2020 rioters. Serious questions regarding instances of unequal application of justice and violation of January 6th defendants due process rights remain unanswered. SWAT team arrests and treatment of prisoners are legitimate concerns.

Neither the Senate nor House investigations adequately explained why the Capitol was so woefully unprepared or how many Federal agents and informants were in the crowd.

COVID has exposed the awesome power that can be misused by government officials. The loss of basic freedoms has been nothing less than breathtaking. Our response to the pandemic has been a miserable failure. A miserable failure. Over one million lives lost; the human toll of the economic devastation caused by shutdowns that did not work; and the loss of learning and other psychological harms to our children. Federal health officials denied patients early treatment and, to this day, refuse to acknowledge the extent of significant injuries caused by the COVID vaccines.

Emails between Anthony Fauci and Francis Collins reveal how they intended to use their awesome government authority and power to accomplish a, quote, “devastating published takedown,” unquote, of scientists who offered a different approach to handling the pandemic.

Have the emails also revealed Fauci’s attempt to hide his agency’s role in funding dangerous research that might have led to the creation of the deadly coronavirus? We don’t know, because those agencies won’t provide the unredacted documents.

Federal health agencies have not been honest or transparent. I have written over 50 oversight letters, and the vast majority of the questions I have asked to have either received an inadequate response or no response at all. I have requested information that the public has a right to know.

Doctors who have had the courage and compassion to treatment COVID patients using their off-label prescription rights have been vilified, censored, and their careers destroyed. Other health professionals have noticed, toed the line, and remained silent.

Parents who out of concern for their children questioned school boards and administrators have been labeled potential domestic terrorists and must now fear scrutiny from the Federal law enforcement.

With the release of the Twitter files and the Missouri and Louisiana lawsuits against the Biden Administration, we are getting a clearer picture of how active government officials were in suppressing free speech and controlling the narrative.

It is also becoming obvious that the World Health Organization has been captured by the Chinese Government, that global institutions, in general, have been captured by the left, and that some charitable foundations are exerting far more power over public policy than should be allowed.

Chair Jordan, Members of the Committee, you have important work before you. Although you have been generous in granting me 10 minutes to offer my testimony, I have barely scratched the surface in describing the complexity, power, and destructive nature of the forces that we face.

Our Founders fully understood that government was necessary to avoid anarchy, but they also knew that government power was something to fear. That is why they devised a set of checks and balances to limit government's power and influence over our lives.

Ideally, a free press would hold all government officials equally accountable, but with today's media mostly biased to the left, congressional oversight is needed now more than ever.

Because the administration is not cooperative and transparent, Congress needs whistleblowers from agencies throughout the Federal government. I urge men and women with integrity to come forward and reveal the truth. Senator Grassley and I will do everything we can to encourage bipartisan oversight in the Senate and stand ready to assist your efforts in any way that we can.

Thank you.

[The prepared statement of Senator Johnson follows:]

**Statement of Senator Ron Johnson
Before the Select Subcommittee on the Weaponization of the Federal Government
February 9, 2023**

Chairman Jordan, Ranking Member Plaskett, Members of the Select Subcommittee. Thank you for inviting me to testify about my personal knowledge of, and experience with, federal agencies being weaponized against U.S. citizens. Senator Grassley has just described the most egregious examples undertaken by multiple actors and agencies to undermine and sabotage our joint investigations.

At the outset, it is important to recognize corrupt individuals within federal agencies are not acting alone. They operate as vital partners of the leftwing political movement that includes most members of the mainstream media, big tech social media giants, global institutions and foundations, Democrat Party operatives, and elected officials. As the Twitter files reveal, these actors work in concert to defeat their political opponents and promote leftwing ideology and government control over our lives.

My eyes began opening to this reality with the disclosure of how the Obama administration weaponized the IRS to harass Tea Party groups by denying them tax-exempt status. My personal knowledge and experience with agency corruption began in 2015 when I became Chairman of the Senate Committee on Homeland Security and Governmental Affairs.

My first investigation ultimately revealed the extensive editing of then-FBI Director James Comey's July 5, 2016 statement that exonerated Secretary Clinton regarding her use of a private email server for official business. The edits were clearly made to downplay the seriousness of her actions. It's important to note those partisan edits were made by the same cast of characters in the FBI that would initiate and drive the corrupt Trump-Russia collusion investigation.

During our investigation of the FBI's involvement in the Russia collusion hoax, Senator Grassley and I uncovered and made public highly partisan text messages between FBI employees Peter Strzok and Lisa Page. Strzok's December 15, 2016 text, "Think our sisters have begun leaking like mad. Scorned, worried, and political, they're kicking into overdrive" has never been given the attention it deserves. In a 2022 interview with Jeff Gerth, Strzok said he now believes "that it is more likely [the leaks] came not from the CIA but from senior levels of the US government or Congress."

Who might those leakers be? Why aren't reporters who received the leaks outraged at being fed false information, and why haven't they blown the whistle on the leakers? Why didn't the mainstream media robustly investigate how they were all duped? The answer is: they weren't duped, they are complicit in creating and fostering the political turmoil our country has been experiencing over the last six years. Those leaks were a key ingredient in the most destructive political dirty trick in U.S. history: the creation and promotion of the false Trump-Russia collusion narrative. To be most effective, however, that narrative relied on coordination between government actors and the media, and the left had allies in the FBI.

Unable to verify the Steele dossier, the FBI offered Christopher Steele \$1 million to provide verification. By December 2016, the FBI knew they had investigated Steele's primary sub-source as a Russian spy. In the main body of the DOJ Inspector General's report on FISA abuse, FBI official Bill Priestap is quoted saying the FBI "didn't have any indication whatsoever" of Russian influence on the Steele dossier. Our investigation uncovered redacted footnotes that completely contradicted that statement. Why would Priestap's false statement appear in the report but the truth be hidden in classified footnotes? Fourteen months later, in February 2018, the FBI still briefed the Senate Intelligence Committee that the dossier had validity.

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With the release of the Twitter files and the Missouri and Louisiana lawsuit against the Biden administration, we are getting a clearer picture of how active government officials were in suppressing free speech and controlling the narrative. It is also becoming obvious that the World Health Organization has been captured by the Chinese government, that global institutions in general have been captured by the left, and that some charitable foundations are exerting far more power over public policy than should be allowed.

Chairman Jordan and members of the committee, you have important work before you. Although you have been generous in granting me ten minutes to offer my testimony, I have barely scratched the surface in describing the complexity, power, and destructive nature of the forces we face.

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Senator Grassley and I will do everything we can to encourage bipartisan oversight in the Senate and stand ready to assist your efforts in any way we can. Thank you.

Chair JORDAN. Thank you, Senator Johnson. We look forward to your report. We hope that is coming shortly.

I now recognize Representative Raskin for his testimony.

STATEMENT OF THE HON. JAIME RASKIN

Mr. RASKIN. Chair Jordan, Ranking Member Plaskett, and dear colleagues, our Framers were enlightenment thinkers who wrote us an enlightenment Constitution. They wanted government to operate on the basis of facts, science, and common sense, not ignorance and superstition. They wanted America to usher in an age of reason.

With the separation of powers, the Framers constitutionalized Newton's third law of motion, checking every action with an equal and opposite reaction. Congress, in Article I, was given the central role of legislating and making progress for our people.

The oversight function is not specified in Article I, but the Supreme Court has always said that it is implied—something necessary and proper for the legislative function. As Madison famously said, "Those who mean to be their own Governors must arm themselves with the power that knowledge gives."

Dear colleagues, your Subcommittee could conceivably become part of a proud history of serious bipartisan oversight stretching from the Teapot Dome investigation, the Boeing investigation, the Watergate hearings, the tobacco hearings, and the Select Committee on the January 6th Attack. Or it could take oversight down a very dark alley filled with conspiracy theories and disinformation, a place where facts are the enemy and partisan destruction is the overriding goal.

Millions of Americans already fear that "weaponization" is the right name for this Special Subcommittee, not because weaponization of the government is its target, but because weaponization of the government is its purpose.

What is in a name? Well, everything is here. The odd name of the Weaponization Subcommittee constitutes a case of pure psychological projection. When former President Donald Trump and his followers accuse you of doing something, they are usually telling you exactly what their own plans are. By establishing a Select Subcommittee on Weaponization, they are telling us that Donald Trump's followers, who obviously control this Subcommittee, will continue weaponizing any part of the government they can get their hands on to attack their enemies, defined as anyone who stands in the way of their quest for power.

To be clear, that is not an exclusively partisan operation. They have proven that they will weaponize the government not just against the other party, but against anyone who refuses to bend to the will and whim of one Donald Trump, whether that is a lifelong Republican State election official, like Georgia Secretary of State Brad Raffensperger; a foreign Head of State, like President Zelenskyy; a political movement, like Black Lives Matter; a once-close personal friend and ally of Trump's, like his personal lawyer Michael Cohen for many years; or even a sycophantic Trump Cabinet appointee and lifelong Republican, like Attorney General William Barr, if these people break from the habits of lying and law-

lessness that define life as a camp follower in the cult of Donald Trump.

If the weaponized MAGA campaign isn't exactly partisan, it is entirely political, because it has an overriding electoral focus, and you know what it is: It is all about restoring Donald Trump, the twice-impeached former President to the office he lost by seven million votes in 2020 and tried to steal back in a political coup and violent insurrection against our constitutional order on January 6, 2021.

You disagree? Well, please, don't take my word for it, as our Chair might say. Just listen to what Chair Jordan himself had to say six months ago at the Conservative Political Action Conference in Dallas, where he was predicting GOP victory in the 2022 elections and promising that oversight of Hunter Biden's laptop and the claim that the Federal government is treating moms and dads, like the ones in this room, like terrorists would be the centerpiece of the GOP's work in the White House when they got back into power.

Relaxing with a friendly interviewer, Chair Jordan gave the game away entirely. Quote, "All those things need to be investigated just so you have the truth," he said. "Plus, that will help frame up the 2024 race, when I hope and I think President Trump is going to run, and we need to make sure that he wins." "We need to make sure that he wins." This call to arms for the 2024 Presidential Election was met with wild applause from the CPAC audience. I urge every Member of this Subcommittee to go and watch the interview.

Now, of course, a serious bipartisan Committee focused on weaponization of the government would zero in quickly on the Trump Administration itself, which brought weaponization to frightening new levels across the board. Consider just a few examples I have time for, illustrative of dozens I can provide the Subcommittee.

First, in a six-week period in 2020, Donald Trump fired or removed five different Departmental Inspectors Generals simply for doing their jobs and not caving into Trump's coercive political demands to cover up different forms of administration wrongdoing and misconduct.

On April 3, 2020, Trump informed Congress he was firing the intelligence community Inspector General, Michael Atkinson, who had received a whistleblower complaint in August 2019 about improper demands made by Trump to Ukrainian President Vladimir Zelenskyy.

In May 2020, Trump fired Steve Linick, IG of the State Department, later claiming he had no idea who he was and saying that he fired him only at Secretary Pompeo's request. That inspector general was investigating Pompeo's decision to bypass Congress in sending billions of dollars in arms to Saudi Arabia.

I don't have time to get into the details of the others, but, May 20, he fired Mitch Behm, the Transportation Deputy IG. He relieved of duty Glenn Fine, Acting IG for the Defense Department. He removed Christi Grimm, the acting Inspector General of HHS.

Second, breaching the traditional separation between the President and Department of Justice criminal prosecutions, Trump and

his obliging sycophantic Attorneys General, like Jeff Sessions and William Barr, repeatedly pressured career prosecutors to go hard or go soft in particular cases, always seeking to reward Trump's friends or to punish his enemies.

If "Weaponization of the Department of Justice" has any meaning, this is it.

Consider the egregious case of Gregory Craig, a White House counsel under Obama who was targeted by the DOJ for alleged FARA violations and finally indicted on a single count of making false statements. He was acquitted unanimously by the jury in less than five hours, and one of his lawyers observed that the Department of Justice had hounded his client without any evidence and without any purpose. Former U.S. Attorney Jeffrey Berman said that Greg Craig never should have been prosecuted.

Consider the case of Michael Cohen, the President's former lawyer and confidant for many years. In August 2018, he pleaded guilty to campaign finance violations over large hush-money payments he arranged before the 2016 election to keep porn stars Stormy Daniels and Karen McDougal from talking about sexual affairs they had with Donald Trump. You guys remember this one. Well, after Barr became Attorney General in February 2019, he worked to kill further investigations related to those payoffs and suggested that Mr. Cohen's conviction on campaign finance charges itself be reversed, even though six months had already passed since Cohen had entered a guilty plea.

Amazingly, after Cohen was in prison for a year and then being transferred out of prison to home confinement during COVID-19, Barr and the DOJ intervened to block his transfer because Cohen would not immediately accept, as a condition of his ankle bracelet home confinement, not to engage in First Amendment activities, specifically writing and publishing a book about Donald Trump or saying anything in public on TV or in the social media about Donald Trump.

Cohen had already been home for two weeks when this unconstitutional demand from DOJ appeared. When he and his attorney dared to ask questions about it, three Federal Marshals showed up with handcuffs and shackles, and he was returned to the Otisville Correctional Institute.

There, he spent 16 days in solitary confinement before they were able to get his case before a Federal District Judge, who immediately found that Barr's purpose, quote,

... in transferring Cohen from release on furlough and home confinement back to custody was retaliatory in response to Cohen desiring to exercise his First Amendment rights to publish a book critical of the President and to discuss the book on social media.

Can you think of a more egregious example of weaponizing the Department of Justice for nakedly political purposes than imprisoning and putting in solitary confinement the President's own former lawyer simply because he wanted to exercise his First Amendment rights?

Consider the John Durham investigation. At the urging of Republicans, including the good Chair, the John Durham special counsel investigation was set up in 2019 by Barr to try to find wrongdoing by intelligence or law enforcement agencies in the ori-

gins of the Mueller investigation. We have heard some of the murmurings about this today.

After four years and millions of dollars spent, the Durham investigation closed as a total flop without unearthing anything like the deep-state conspiracy that Republicans have been denouncing around here for years. It couldn't find anything of substance to it.

Yet, Barr and Durham kept pressing in clearly abusive ways I hope your Subcommittee will investigate. One former DOJ prosecutor, Robert Luskin, a defense lawyer who represented two witnesses before the Durham probe, told *The New York Times* he was shocked. "This stuff had my head spinning," he said. "When did these guys drink the Kool-Aid, and who served it to them?"

Amazingly, when prosecutors participating in this wild goose chase actually came into possession of evidence of a real offense from Italian Government officials, of a potentially major financial crime committed by Donald Trump, Durham was suddenly deputized to investigate it, and the whole investigation mysteriously disappeared without a trace.

Trump's enablers now want this Subcommittee not to examine the Durham debacle as a case study in dangerous weaponization of the justice function but, rather, to pick up the baton from the defeated and demoralized Durham team and to keep the wild goose chase going today.

Third, the former President had no qualms about literally weaponizing our Nation's law enforcement and military against First Amendment activity for his political purposes. I commend to you the debacle that took place on June 1, 2020, in Lafayette Square, where they mobilized an interagency law enforcement troop and then unleashed them on horseback, with pepper spray and batons, billy clubs, rubber bullets, against a totally lawfully present crowd.

Mr. Chair, I want to be clear, I am not suggesting that any of the investigations that have taken place during the last two years have been perfect. I am sure they could have been improved in some ways. That is a legit thing for you to ask.

It is one thing to engage in systematic oversight driven by a commitment to facts and the truth and something radically different to set up a platform for a series of hit-and-run partisan attacks that are just vindictive, vendetta-driven, and meant to frame up a Presidential campaign in 2024.

Some of the new rhetoric we have been hearing can be dangerous, as the Ranking Member was pointing out. After the execution of a perfectly lawful judicial search warrant in Palm Beach in August of last year, politicians and media figures began denouncing the FBI—the whole FBI—and FBI agents in vitriolic terms. Since then, the FBI and DHS have observed an increase in violent threats posted on social media against Federal officials and facilities, including a threat to place a dirty bomb in front of the FBI headquarters and issuing general calls for civil war and armed rebellion. We have heard those calls before in this chamber.

On August 11th last year, a person wearing a tactical vest and armed with an AR-style rifle and nail gun attempted to forcibly enter the FBI Cincinnati Field Office. When officers responded, he fled the scene, and a pursuit followed. During a prolonged standoff

with the FBI, the man fired multiple shots at Ohio State Highway Patrol.

Mr. Chair, the public is skeptical about this strange new venture with this strange new name that is being launched, because so many of the Members involved have done everything they can to block the January 6th Committee's investigation of the worst insurrectionary domestic violent attack on an American election and American Congress in our history. The public wonders whether Members who refuse to comply with congressional subpoenas themselves should be issuing congressional subpoenas to other people.

Oversight must be organized around a comprehensive search for the truth, truth that will lead to progress, and not around revenge, which will lead us as a country to chaos and ruin. I hope the Subcommittee will find a way to embark upon a truly bipartisan agenda, with all members participating and agreeing on a common agenda.

I wish you well and Godspeed on behalf of this difficult venture that you are about to proceed on.

Chair JORDAN. I thank the gentleman.

I can assure the gentleman from Maryland that we will—we respect the FBI agents, particularly the ones who have come to us, the dozens who have come to us, and we will focus on the facts—something I felt was not exactly presented in the proper way in your testimony.

I understand that the Senator from Wisconsin has a number of documents he would like to ask to be entered into the record. So, without objection, those will be entered.

We will get those from you, Senator Johnson.

Chair JORDAN. We now turn to our former colleague, the former Democrat Member from the great State of Hawaii, Congressman Gabbard.

STATEMENT OF THE HON. TULSI GABBARD

Ms. GABBARD. Thank you very much, Chair Jordan, Ranking Member Plaskett, and Members. Aloha. Thank you for the opportunity to be here to speak with you today.

Benjamin Franklin said, "Without freedom of thought, there can be no such thing as wisdom, and no such thing as public liberty without freedom of speech."

I love our country, and I cherish our God-given freedoms that are enshrined in the Constitution. Like every one of you, I took an oath, both as a soldier and as a Member of Congress, to support and defend the Constitution of the United States against all enemies, foreign and domestic.

I have had the privilege of serving alongside many of you in Congress for eight years, representing the people of Hawaii's Second congressional District, serving on the Armed Services and Foreign Affairs Committees.

I am honored to be able to continue to serve as a lieutenant colonel in the U.S. Army Reserves now for almost 20 years, where during that time I deployed to three war zones and participated in multiple overseas training exercises where I had the opportunity to see firsthand what life is like in countries where there is no First Amendment, where there is no free press, where government

deems itself to be the moral arbiter to its people, dictating to them what is right and wrong, what can and cannot be said, who can speak, who cannot, who is free to worship and who is not.

Now, our Founders understood the importance of enshrining our God-given freedoms in the Constitution and Bill of Rights to ensure that, no matter which party or person may be in power at any given time, our founding documents serve as a reminder of these freedoms that are guaranteed to every American.

Thomas Paine said, “He that would make his own liberty secure must guard even his enemy from opposition, for if he violates this duty, he establishes a precedent that will reach to himself.”

We cannot be so shortsighted as to thinking silencing speech that we don’t like today will not result in our own voices being silenced tomorrow.

The work that you have all been charged with in this committee affects all Americans, and it is too important to allow it to fall victim to partisan politics. No matter how deep your differences, we must all agree to stand on the side of liberty.

Unfortunately, right now we live in a country where many Americans are afraid to speak freely, afraid to express themselves, afraid to actually have real, open dialog and debate, afraid of losing their job, being canceled, or being accused of a crime, which could happen if recently introduced legislation criminalizing so-called hate speech is passed into law, speech that, no matter how abhorrent, is still protected under the First Amendment.

Now, this fear and this culture of fear and self-censorship is not unfounded. We have individuals in our government, often working through their arms in the mainstream media and Big Tech, doing exactly what our Founders rejected—trying to control what we, the people, are allowed to see and say, under the guise of protecting us from so-called misinformation or disinformation.

Now, of course, they appoint themselves as the sole authority and voice of truth of information, backed by the most lethal force on Earth with the power to target anyone they deem a threat. They alone are the ones, self-designated, who get to decide what is true and what is false, what is information and what is misinformation or disinformation.

They say they are doing this for us, that they are doing this for our own good, to protect the people. In reality, the truth is, they think that we are too stupid to think for ourselves, too stupid to discern for ourselves and to draw our own conclusions.

Now, idea that we must just blindly accept whatever the government or those in power tell us is true goes against the very essence of our Constitution and Bill of Rights, which were created as a resounding rejection of the reign of kings, churches, and authorities.

They tell us we must blindly trust them or face the consequences, even though our government has a long history of lying to us, the American people.

Just to cite a few examples, we were lied to about the weapons of mass destruction in Iraq, which spurred the war that I and so many served in and so many others sacrificed their lives in.

They lied for almost two decades claiming success in Afghanistan, when, in fact, we saw failure after failure after failure, coming at a great cost to this country.

We saw lies about Vietnam that were revealed in the release of the Pentagon Papers.

We saw lies about our own government illegally surveilling Americans.

These are just a few examples. There are many more.

Ranking Member Plaskett talked in her opening comments about how individuals in the FBI also throughout our country's history have abused their power, weaponizing those agencies to advance their own political interests.

This is not and cannot be reduced to partisan fight. The stakes are too high. We all must recognize our own responsibility to stand against such abuses.

As we sit here today, the danger is that, if we choose to reject or challenge whatever those in power declare is the so-called truth, we are accused of being anti-authority, we are accused of being a danger to society, accused of spreading misinformation, and are then targeted, smeared, and called things like "Russian asset," "White supremacist," "bigot," "racist," "sexist," "extremist," "traitor," and so on.

More dangerous than any baseless smear, our own government institutions, which exist to serve the people, they are being weaponized against us.

The Department of Homeland Security declared a heightened domestic terrorism threat due to three factors, the first of which is, quote, "the proliferation of false or misleading narratives which sow discord or undermine public trust in U.S. Government institutions," end of quote. They are the ones who get to decide what those false or misleading narratives are.

Former CIA Director John Brennan said in 2021 that, quote,

Members of the Biden team are now moving in laser-like fashion to try to uncover as much as they can about what looks very similar to insurgency movements that we have seen overseas—an unholy alliance frequently of religious extremists, authoritarians, fascists, bigots, racists, nativists, and even Libertarians,

Attorney General Garland charged his newly created Domestic Terrorism Unit with targeting those who hold, quote, "anti-authority views." That included parents who dared to protest at board of education meetings, concerned and standing up for the right for themselves to have a say in their children's education.

A draft copy of the Department of Homeland Security Quadrennial Homeland Security Review outlined their intent to target, quote/unquote, "inaccurate information" on a whole host of topics, to include the origins of COVID, vaccines, the U.S. withdrawal from Afghanistan, and U.S. support to Ukraine. Their Misinformation, Disinformation, and Malinformation Team exists to, quote, "counter all types of disinformation." Once again, they get to determine what this disinformation is.

Meta CEO Mark Zuckerberg revealed on the "Joe Rogan Experience" podcast recently that Facebook limited the exposure of the *New York Post's* Hunter Biden laptop story just weeks ahead of the 2020 election, only after talking with the FBI. Twitter took similar action, but they recently apologized for doing so, recognizing that their decision was wrong.

The cozy relationship between White House officials, the Department of Homeland Security, the FBI, and Big Tech is now well-documented and results in private companies, not restricted by the First Amendment, doing the dirty censorship work of those in government who are not legally allowed to do so themselves.

The threat Big Tech monopolies pose to our democracy is real and serious. I have had personal experience with this. After the first Democratic Primary Presidential debate in 2019, I was the most searched candidate of the night. Unfortunately, and suddenly, my Google Ads account was mysteriously suspended without any notice or explanation. There were no responses to our multiple attempts to resolve whatever problem could have caused this. After some time passed, magically, my account was reinstated, again, with no explanation or apology.

Their actions limited my ability to connect with voters who were actively seeking more information about my candidacy and why I was offering to serve them as President and Commander in Chief.

This has not only happened to me, but it is also happened to other candidates running for various offices. Joe Kent running for Congress in Washington State is one I know personally of.

This happens all the time, with these Big Tech monopolies interfering in our democracy by manipulating search results based on whatever it is that they want the American people to know about a particular candidate or issue. This should be concerning to any one of us and all of us.

Now, recently, we have learned that, with the release of the Twitter files detailed by Matt Taibbi and others, high-level former FBI and CIA and other government officials were behind Hamilton 68 and their list of 644 social media accounts supposedly linked to, quote, “Russian influence activities” online.

Now, Hamilton 68’s work was widely cited as fact by institutions like Harvard and Stanford, by mainstream news organizations across the board, by Members of the House of Representatives and Senate from both political parties, including the head of the Intelligence Committee.

The problem is it was false. Twitter, themselves, determined that the vast majority of counts that Hamilton 68 targeted on this list of 644 were, quote, “neither strongly Russian nor strongly bots,” end quote. They were mostly anti-establishment American voices from across the political spectrum. I was one of them.

Former Secretary of State Hillary Clinton accused me, a sitting Member of Congress, a soldier, and a candidate running for President, of being, quote, “groomed by the Russians.” Her baseless smear worked as intended. It was something that was repeated over and over, headline after headline, article after article, pushed online in every way.

This had the harmful impact that was intended. I could give you many examples of interactions that I have had with people throughout that campaign and still today, but I remember one, in particular, that had an impact.

Just weeks after this statement was made, I was in South Carolina at a campaign event when an elderly woman came up to me, and I could tell that she was very disturbed. She came up, and she put her hands on my shoulders, and she looked into my eyes, her

eyes welling up, hands shaking, and she said, "Look me in the eyes. I need to know if you are working for Putin."

She was serious. I couldn't believe it. I looked her straight back in the eyes and expressed to her from my heart how much I love this country, so much that I am willing to die for it.

More recently, U.S. Senator Mitt Romney accused me of treason, a crime that is punishable by death under our laws. I challenged him to back this serious allegation up with evidence. What was this based on? There was no response, no explanation, no evidence, and certainly no apology.

Now, these accusations are often shrugged off as, "Well, hey, it is politics. People say things about each other all the time." That may be easy for some of you to say, but for somebody who wears the uniform, this is serious. It is serious not only to me but to my fellow servicemembers and veterans, every one of us making a decision at some point in our lives to raise our right hand, prepared and volunteering to lay our life down for this country.

What does that mean in reality? It means that, before every deployment, in our own hearts we have to make peace with the possibility that we may not come home. It means writing letters to our loved ones, trying to find the words to express our love and gratitude, knowing that may be our final goodbye. It means, for those of us who do come home, doing our best every single day to honor the great sacrifices of our brothers and sisters who paid that ultimate price.

This is much bigger than me or any one individual. When those who dare to challenge the establishment are targeted by this powerful conglomerate of government, corporate media, and Big Tech, weaponizing all that they have against the people for their own selfish gain, it has a dangerous chilling effect on free speech, and it sends a very powerful message: If you dare to challenge us, we will come after you.

The more we allow this to happen, we start looking less and less like a democratic republic and more and more like a banana republic. Instead of a government ordained to secure these rights, we are now increasingly facing a government determined to take those rights away. George Washington warned,

For if men are to be precluded from offering their sentiments on a matter which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us. The freedom of speech may be taken away, and dumb and silent we may be led like sheep to slaughter.

We have to stop this insanity and protect these sacred freedoms, vanquish the fear and self-censorship that is now pervasive, every one of us taking action to breathe new life into the open marketplace of ideas that is at the heart of a thriving democracy, encouraging vigorous and substantive debate, encouraging people to think for themselves so we can draw our own conclusions, where we can disagree without devolving into hate, where we can respect each other as fellow Americans and treat each other with "aloha."

The work you have before you are critical for all these reasons. The stakes are high. The consequences, for better or worse, will be long-lasting. For the sake of the American people, our freedom, and the future of this country we love, I pray we can set aside our par-

tisan differences and commit to standing together to defend the constitutional right of every American to live free.

Thank you, Mr. Chair.

[The prepared statement of the Hon. Ms. Gabbard follows:]

Select Subcommittee on the Weaponization of the Federal Government

Thursday, February 9, 2023

TULSI GABBARD

“Without Freedom of Thought, there can be no such thing as Wisdom; and no such thing as public liberty, without Freedom of Speech.” - Benjamin Franklin

I love our country. I cherish our God-given freedoms enshrined in the Constitution. Like you, I swore an oath, both as a soldier and as a Member of Congress, to support and defend the Constitution of the United States, against all enemies foreign and domestic.

I had the privilege of serving alongside many of you in Congress for eight years representing the people of Hawaii's 2nd District on the Armed Services and Foreign Affairs committees. I'm honored to continue to serve as a Lieutenant Colonel in the US Army Reserves for almost 20 years. Through that time, I've deployed to three warzones and participated in multiple overseas training exercises where I've seen firsthand what life is like in countries where there is no First Amendment, no free press; where government deems itself to be the moral arbiter, dictating to the people what is right and wrong, what can and cannot be said, who can speak, who cannot, who is free to worship and who is not.

Our founders understood the importance of enshrining our God-given freedoms in the Constitution and Bill of Rights, so that no matter which party or person happens to be in power at any given time, our founding documents serve as a reminder of the freedoms guaranteed to every American.

Thomas Paine, said: “He that would make his own liberty secure must guard even his enemy from opposition; for if he violates this duty, he establishes a precedent that will reach to himself.”—

Dissertations on First Principles of Government, Thomas Paine

We cannot be so short-sighted as to think silencing speech we don't like today, will not result in our own voices being silenced tomorrow.

The work that you have been charged with in this committee affects all Americans and is too important to fall victim to partisan politics. No matter how deep your differences, we must all stand on the side of liberty.

Unfortunately, we live in a culture of fear where many Americans are afraid to speak freely, express themselves, have open dialogue and debate. Afraid of losing their job, being canceled, or accused of a crime – which could happen if recently introduced legislation criminalizing so-called hate speech is passed into law.

This fear is not unfounded. We have individuals in our government, often working through their arms in the mainstream media and big tech, doing exactly what our Founders rejected – trying to control what we are allowed to see and say under the guise of protecting us from so-called “misinformation” or “disinformation.” Of course, they appoint themselves as the sole authority and voice of truth – of information – backed by the most lethal force on earth with the power to target anyone they deem a threat. They alone get to decide what is true and what is false, what is information and what is mis/disinformation. They say they're doing this for us, for our own good, but really, they think we are too stupid to think for ourselves, to discern and draw our own conclusions.

The idea that we must blindly accept whatever the government or those in power tell us as true, goes against the very essence of our Constitution and Bill of Rights, which were created as a resounding rejection of the reign of kings, churches, and authorities.

They want us to blindly trust them or face the consequences, even though our government has a long history of lying to the American people – about WMDs in Iraq, about how we failed in Afghanistan for nearly 2 decades, lies about Vietnam revealed in the Pentagon Papers, lies about our own government illegally surveilling Americans ... just to name a few.

If we choose not to accept whatever those in power declare is the so-called truth, we are accused of being anti-authority, seen as a danger to society, accused of spreading misinformation and are targeted, smeared, called “Russian asset, white supremacist, bigot, racist, sexist, extremist, traitor” canceled, silenced.

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Through the release of the Twitter files detailed by Matt Taibbi, high level former FBI and CIA officials were behind Hamilton 68 and their list of 644 social media accounts supposedly linked to ‘Russian influence activities online.’ Hamilton 68’s work was widely cited as FACT by Harvard and Stanford, mainstream news organizations, Members of the House and Senate from both parties, including the head

of the intelligence committee. The problem is it was false. Twitter determined the vast majority of accounts Hamilton 68 targeted were 'neither strongly Russian, nor strongly bots' -- most were anti-establishment American voices from across the political spectrum. I was one of them.

Former Secretary of State Hillary Clinton accused me -- a sitting Member of Congress, a soldier, and a candidate running for President -- of being 'groomed by the Russians.' Her baseless smear was very harmful to my campaign for the presidency. One day, I was in South Carolina at a campaign event and was approached by an elderly woman who put her hands on my shoulders and looked at me, shaking as she said, "Look me in the eyes and tell me if you are working for Putin." I held her as I looked right back and told her how much I love this country, and that I am willing to give my own life to defend her.

US Senator Mitt Romney recently accused me of treason -- a crime punishable by death. No evidence. No basis. No explanation.

These accusations may be just words to you that are easily shrugged off, but as a soldier, they are serious - not only to me, but to my fellow servicemembers, each of us voluntarily putting our life on the line in service to this country we love. What does that mean? Before every deployment, finding peace in our heart knowing this trip could be our last. Writing letters to our loved ones, trying to find the words to express my love and gratitude, knowing this could be my final goodbye.

This is much bigger than me or any one individual. When those who dare to challenge the establishment are targeted by this powerful conglomerate of government, corporate media and big tech, weaponizing our government against the people for their own selfish gain, it has a chilling effect on free speech and sends a powerful message: if you dare to challenge the power elite, they will come after you. The more this happens, we start looking less and less like a democratic republic and more like a banana republic.

Instead of a government ordained “to secure these rights,” we face a government increasingly determined to take them away.

George Washington warned:

“For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter.”

George Washington, Address to the officers of the army, March 15, 1783

We must stop this insanity and protect these sacred freedoms. Vanquish the fear and self-censorship. Revive the open marketplace of ideas that is at the heart of a thriving democracy with vigorous debate, think for ourselves, draw our own conclusions, disagree without devolving to hate, respect each other as fellow Americans and treat each other with aloha.

For the sake of the American people, our freedom, and the future of this country we love – I pray we can set aside partisan differences and commit to standing together to defend the Constitutional right of every American to live free.

[end]

Chair JORDAN. Thank you, Congresswoman Gabbard. We appreciate those fine remarks.

Congressman Raskin, we thank you for being here.

Senator Johnson, we thank you, as well, for your testimony.

The Committee will stand in recess for five minutes, more or less, to get ready for the second panel.

[Recess.]

Chair JORDAN. The Committee will come to order.

I want to introduce our second panel. We don't have all our second panel.

Mr. Thomas Baker is an international law enforcement consultant. He served for more than 33 years as a special agent with the FBI, including in leadership positions, overseeing terrorism and other criminal investigations.

Mr. Baker, thank you for being with us.

Professor Jonathan Turley is the J.B. and Maurice C. Shapiro Professor of Law at George Washington University Law School. He has written extensively on topics like constitutional law and has served as counsel to whistleblowers, military personnel, judges, Members of Congress, and a variety of other clients.

Mr. Elliot Williams is a principal in the Government Affairs and Policy Counsel practice group at the Raben Group. He has served as Deputy Assistant Attorney General for Legislative Affairs at the Department of Justice and Assistant Director for congressional Relations at U.S. Immigration and Customs Enforcement.

Ms. Nicole Parker is a former special agent with the FBI. During her time at the FBI, she worked on various matters, including securities fraud, violent crime, and the Violent Crime Fugitive Task Force.

Chair JORDAN. We will begin by swearing you in. Would you please raise your right hand—stand and raise your right hand, please.

Do you swear or affirm, under penalty of perjury, that the testimony you are about to give is true and correct, to the best of your knowledge, information, and belief, so help you God?

Let the record show that each witness answered in the affirmative.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask you to summarize your testimony in five minutes. Then we will go through it, and then we will get to questions.

The microphone's in front of you. You all have done this, I think, before, most of you. Green means go. Yellow means get ready to stop. Red means stop. Then we will get to the questions as quickly as we can.

Mr. Baker, you are recognized first. Again, thank you for being here.

STATEMENT OF THOMAS BAKER

Mr. BAKER. Thank you, Mr. Chair.

Americans have lost faith in the Federal Bureau of Investigation, an institution they once regarded as the world's greatest law enforcement agency.

I spent 33 years in the FBI and have continued to be closely engaged with the Bureau since my requirement. I am deeply troubled by this loss of faith, not only because of the challenge and danger it presents to our Nation but, personally, it breaks my heart.

Specific lapses will be looked into by this panel, but the big issue is: Why did they happen? What changed? What should be done?

Culture is where it starts. This widespread deleterious behavior of the past several years describes a culture, not just the work after few bad apples.

Robert Mueller, when he was the FBI Director, set out deliberately to change the culture of the FBI from a law enforcement agency to an intelligence-driven agency. That had bad and unintended consequences.

The difference is this: In law enforcement, you spend every day, consciously or unconsciously, waiting for that day to come when you are going to raise your right hand before a judge or before a jury and swear to tell the truth, the whole truth, and nothing but the truth.

That is quite different than an intelligence agency that operates through deceit and deception and their end product is an estimate. Some would call it a best guess. Guesses aren't allowed in the courtroom.

Past reforms like the Church and Pike Committees were necessary. This present Subcommittee is a step in the right direction. Hopefully its work will be bipartisan, because the abuses of an intelligence-driven FBI threaten the liberty of those on the left as well as those on the right.

In 1978, after the Church Committee revelations, reforms were undertaken. The FBI and the DOJ enacted a series of Attorney General guidelines for conducting investigations, but Congress gave us the Foreign Intelligence Surveillance Act.

Now, however, the use of FISA against U.S. citizens, as seen in the Carter Page case, has presented a threat to American civil liberties. FISA suspends the Constitution.

For its first decades, the Foreign Intelligence Act was used, as its name implies, to surveil foreign agents' resident in this country. FISA needs to be returned to that original purpose. That is something that the Congress can fix.

That the FBI colluded with Twitter to suppress free speech is shocking. What is even more surprising is the FBI's explanation or denial that they did that.

Over the past few years, when shenanigans were discovered in the Bureau by the Bureau, the miscreants were shown door. Director Wray and other FBI leaders, their theme is, "The bad apples are no longer with us." With the Twitter revelations, there is not even that usual half-apology but a boldfaced denial that nothing is wrong.

The First Amendment guarantees free speech. The FBI, by urging Twitter to sensor speech, which it could not itself do, was engaging in a perversion of the First Amendment.

For most of FBI history, agents were trained that part of the FBI's mission was to be a guarantor of the Bill of Rights. That has now been turned on its head. A renewed emphasis on the Constitution as a cornerstone of the Bureau's work is what is called for.

When I was in training as a new agent, we were each given a pocket copy of the Constitution. We were told to keep it in our breast pocket and that, if we did that, you would think about it when interviewing a citizen or when searching someone's home. If you kept it close to your heart, you wouldn't go wrong.

For years, when explaining the FBI to various groups, I would always emphasize that, unlike other countries, the United States was blessed to have as its domestic security service a law enforcement agency, an agency rooted in the rule of law. The United States now may be cursed to have a domestic intelligence agency with police powers.

We may never get the Bureau back to the culture of a tell-the-truth law enforcement agency that I lived and loved in the pre-9/11 era, but the effort of reform is worth it, noble, and direly needed.

I thank you all for your efforts.

[The prepared statement of Mr. Baker follows:]

U.S. House Committee on the Judiciary
Select Subcommittee on the Weaponization of the Federal Government
Thursday, February 9, 2023, Hearing

Prepared Statement for the record by Thomas J. Baker, retired FBI
Special Agent and the author of *The Fall of the FBI; How a Once
Great Agency Became a Threat to Democracy*

Americans have lost faith in the Federal Bureau of Investigation, an institution they once regarded as the world's greatest law enforcement agency. I spent many years with the FBI, and am deeply troubled by this loss of faith. Specific lapses have come to light, many of which will be focused on by this panel. But why did they happen? What changed? The answer begins days after the 9/11 attacks with a cultural change at the Bureau.

Culture is where it starts. The Department of Justice Inspector General's reports a pattern of deliberate omissions, misstatements, and outright falsifications by different investigative teams. This widespread behavior describes a culture—not just the work of a “few bad apples.” In what is certainly an understatement, the Inspector General (IG) concluded the Bureau's actions “fell short of what is rightfully expected from a premier law enforcement agency.” That may be because they were acting and thinking as an intelligence agency, rather than a law enforcement agency.

To understand how far the Bureau has fallen, I ask you to look at the good role played by the FBI and FBI agents in past decades. I hope I can impress upon you - from my firsthand experience - the reverence the Bureau had for the Constitution and the concern agents held for the rights of Americans. It was once the norm.

A Change in Culture

Robert S. Mueller III was at Camp David the Saturday morning after the September 11, 2001 attacks. Just days into his tenure as FBI director, he was humiliated when President George W. Bush dismissed his reporting and said he wanted him to prevent another attack. After his experience at Camp David, Mueller resolved and resolutely set about to change the FBI “culture.” That's the word he used. He was going to make it into an intelligence agency, or in his

repeated terminology, an “intelligence-driven” organization.

That change in culture is at the root of so much of the alarming FBI behavior we have witnessed in recent years. In a law enforcement culture one’s mindset is such that we look towards that day when one has to stand up in court, raise your right hand, and swear to tell the truth, the whole truth, and nothing but the truth. While an intelligence agency uses deceit and deception and has as its end product an estimate – some would say a best guess – guesses aren’t allowed in the courtroom.

Although Mueller as a federal prosecutor had worked with dozens of Special Agents—case agents—in both Boston and San Francisco, he did not know FBI culture nor how the Bureau functioned. He also displayed a hostility to SACs, the Special Agents in Charge of each of the Bureau’s 50-plus field offices.

Mueller did not understand the Bureau’s Office of Origin—“OO”—system, which had been in use for nearly three quarters of a century. One field office ran the case as the office of origin, the OO, sent out leads to other field offices—the Auxiliary Offices (AOs)—who reported back.

In the case of the 9/11 attacks on the Pentagon, the World Trade Towers, and in Pennsylvania, the logical OO would be New York or perhaps the Washington Field Office. Both had experienced international squads. The NYO had two, squads I-45 and I-49, which famously chased Al-Qaeda suspects around the world for years.

But Mueller wanted centralization: Everything at FBI Headquarters, all information and decision making. Headquarters’ compartmentalization is a hallmark of intelligence agencies. Mueller’s predecessor, Louis Freeh, who had been a field agent, strongly believed in empowering the field offices. Not Mueller, he accelerated the centralization; he also believed SACs—the few he had encountered—presided over their territory like dukes. His words.

PENTTBOM, the bureau’s codename for the 9/11 investigation, would thus become the first case in the history of the FBI run from Headquarters. Eliminating layers of supervision, review, and independent judgement; it set a bad precedent. In the future, it would yield poisonous fruit in the Hillary Clinton email investigation and then in the Russian collusion fiasco.

Mueller made numerous other moves to change the culture of the FBI, many of which had negative consequences. Replacing agent executives, he brought in “professionals” to take over key headquarters positions; perhaps enhancing short-term technical proficiency in those positions but losing long-term commitment and

an invaluable knowledge of the institution and its culture.

Mueller's change in culture—from a law enforcement to an intelligence mindset—was greatly exacerbated by Comey's poor leadership, leading the FBI into the ugly morass of the Russian Collusion narrative.

The principal miscreants of Crossfire Hurricane were cast out of the FBI. James Comey, the former FBI Director was the first to go. Next was FBI Deputy Director Andrew McCabe, then the Acting Director. Deputy Assistant Director Peter Strzok, who had initiated the Crossfire Hurricane investigation, was fired on August 10, 2018. Ridding the Bureau of these rotten apples initially gave many hope. But now it's clear their dismissal was not enough. The questions remain, how did it happen and how can it be corrected?

Reform Needed

It is essential to understand what made past reforms possible. Serious congressional inquiries, like the Church and Pike investigations, are necessary. This present Select Subcommittee is a step in the right direction. Hopefully its work will be bipartisan, as the abuses of an intelligence-driven FBI threaten the liberties of those on the left as well as the right. Perhaps establishing a presidential commission, like those that investigated the Iran-Contra Affair and the 9/11 attacks is needed. In 1978, after the Church Committee revealed abuses by the intelligence community, including the FBI's COINTELPRO, significant reforms of America's intelligence community were undertaken. These gave us the Foreign Intelligence Surveillance Act (FISA) and its creation, the Foreign Intelligence Surveillance Court (FISC).

As important as they were, the Church Committee reforms were not the first. In the immediate post World War II years, a new intelligence structure was established. The CIA was created, with a specific—overseas—mission. The “special relationship” with Britain, which was forged in the stress of WWII, was codified. Boundaries were established. The National Security Agency (NSA) and the Central Intelligence Agency (CIA) were to focus overseas, while the FBI was to be the sole entity responsible for domestic efforts against espionage.

The Church Committee reforms—after revelations of these boundaries being overstepped—gave us even more explicit guidelines. Not only those, such as FISA, imposed by Congress. The DOJ and FBI themselves developed the “Attorney General Guidelines” for domestic and international intelligence investigations.

Former federal Judge William H. Webster, who became the FBI director in 1978 the same year that FISA was enacted, set the gold standard for its use and implementation. Later, as CIA director, Judge Webster endeavored throughout his tenure to codify the boundaries of the CIA through a “charter.”

The trauma of the 9/11 attack was a shock to the system of our intelligence agencies. A ricochet was then sent vibrating through the intelligence community with the findings and recommendations of the September 11 commission. The FBI and CIA both received blame and criticism for their lack of information sharing and follow-up on clues. Failure to “connect-the-dots” became a mantra.

The reaction to the scathing September 11 Commission Report and the ensuing “war on terrorism” gave us an FBI and CIA operating in much closer concert. There were unintended consequences. The FBI is now more likely to accept and act on any referral from the CIA.

FISA Abuses

The application, operation, and renewals of the FISA warrant against Carter Page was an abuse. Michael Horowitz, the Department of Justice Inspector General, made that clear in his first report on the Foreign Intelligence Surveillance Act (FISA) warrant targeting Page. Nonetheless, he found it to be legal. But if something is wrong, it being legal does not make it right.

The Inspector General (IG) did identify questionable judgement and several mistakes during the FISA process. Michael Horowitz in his second FISA report documented numerous inaccuracies in the FBI’s warrant applications. As shocking as such sloppiness is, it is not the major problem with these warrants, nor the biggest threat to Americans’ civil liberties.

This use of FISA against a US citizen is what presents a fundamental threat to Americans’ civil liberties. It essentially suspends the Constitution. In 1978, reforms in response to the Church Committee’s revelations gave us the Foreign Intelligence Surveillance Act (FISA) and the Foreign Intelligence Surveillance Court (FISC). For more than two decades it was used solely, as its name implies, to gather intelligence on foreign agents resident in this country.

In addition to the arduously detailed preparation of the FISA application by the case agents, Director Webster had a team of law clerks painstakingly review each application before it was presented to him for signature. The original act had mandated that each application be signed by the FBI Director and then by the

Attorney General. That has since changed and the final sign-off authority has been extended to an ever-increasing number of officials.

The original thinking was if an American is suspected of being an agent of a foreign power, the proper way to pursue that individual was by the espionage act, a criminal statute. That would preclude the use of a FISA warrant against the US person. The criminal code (Title III) would then be the basis for any necessary electronic surveillance (*Elsur*). This requires a higher probable cause standard than FISA, as the information gathered would be evidence for use in court.

The number of FISA warrants has greatly expanded over the years. The FISC reports only 200 warrants in 1979, its first full year of operation. By 2000, the number had risen to 1,000. In reaction to the September 11 attacks there was a tremendous increase in the number FISA warrants—to over 2000 a year—and a looser approach to their approval.

The coverage of a FISA warrant has expanded as well. At first, what is commonly understood as “wiretapping” was authorized. In recent years, the coverage includes all sorts of electronic communications beyond voice: texts, emails, and instant messaging are now included in *Elsur*. Additionally, FISA can authorize physical entry and searches. The nature of today’s data communications also means that FISA surveillance can look “backwards” at older data remaining on servers and other storage facilities.

Over the years, and particularly since September 11, FISA has been amended numerous times and now allows for the surveillance of Americans. But there were safeguards. One safeguard is a requirement the government must show the FISC a less intrusive technique cannot produce the desired information. As Page earlier had cooperated with both the FBI and the CIA, clearly this safeguard was fudged. It was also Bureau practice, pre-2016, to use FISA coverage only on Americans who had a security clearance, possessed national security information, and had shown a willingness to share information with a foreign power. Page did not even hold a security clearance. His rights were abused. The IG said that this was legal; it was not right.

The second IG report’s finding of 700 FISAs against US Persons, by just eight FBI offices in the recent five-year period, indicates a now routine use of this intrusive tool against Americans. Its increasing use has led to FISA being handled in a mundane fashion. Further, the FISA process—unlike Title III criminal

warrants—is done in secrecy. The now quotidian FISA has led to promiscuous spying on Americans, as evidenced by the findings of both IG reports.

The fundamental need is to return FISA to its original purpose of surveilling foreign agents for intelligence purposes, thus preventing abuses against Americans as we saw with Carter Page. Using FISA, rather than a criminal statute to target a US citizen, is an indication of the Bureau drifting away from its law enforcement moorings. This is something that Congress specifically can fix.

The First Amendment

The revelations that the FBI colluded with Twitter to suppress political speech by blacklisting and shadow banning is shocking but sadly not surprising. What is surprising is a strange December 22, 2022 statement from the FBI that the collaboration with Twitter is “nothing more than...traditional...private sector engagements...” This response is not supported by even a casual review of the Twitter documents.

Over the past few years, when shenanigans have been discovered at the Bureau, malefactors have been shown the door. The subsequent theme from Director Christopher Wray is the “bad apples are no longer with us.” We saw that with the miscreants of the Russian Collusion myth. We saw it with a misbehaving agent in the Governor Whitmore kidnapping plot. We saw it with two agents in the gymnasts’ abuse case against Dr. Nassar. And, we saw it most recently when an Assistant Agent in Charge (ASAC) at the Washington Field Office (WFO) walked out the door after his role in minimizing the Hunter Biden laptop scandal came to light. The reluctance by Bureau management to look beyond these transgressors to the underlying culture has deeply troubled many of us former agents.

But what’s even worst in the Bureau’s response to the Twitter revelations is that there is not even the usual half apology – pointing out the dismissal of a “rotten apple” – instead there is now a bold-face denial that anything is wrong. It is now just business-as-usual: “...the FBI provides critical information to the private sector in an effort to allow them to protect themselves...”

The First Amendment guarantees free speech, implicitly prohibiting censorship by government agencies. A private company – as part of its own exercise of free speech - is not prohibited from censoring information. The FBI, by urging Twitter to censor speech, which it could not itself do, was engaging in a perversion – a perversion of the First Amendment. For most of FBI history, agents

were trained that part of the FBI's mission was to be a guarantor of the Bill of Rights. That seems to have been turned on its head.

Monitoring speech is dangerous business. Firstly, it is easy to be mistaken, as was seen with the Steel dossier and other missteps in the Russian collusion fiasco. Secondly, it is not the business of the federal government to be regulating – even suggesting – what is or is not disinformation. Our democracy can tolerate some questionable speech. That is the price of free speech.

Emphasis on the Constitution

A renewed emphasis on the US Constitution as a cornerstone of the Bureau's work is needed. Special Agents, in their initial and ongoing training, have always been instructed about our Constitution. After all, it is they who interview suspects, conduct searches, and arrest people. A new category of employee has arisen under the post 9/11 paradigm. Intelligence Analysts (IAs), who don't directly interact with citizens in ways that touch on their constitutional guarantees, now play a major role in the Bureau's mission. These are the employees who deal in estimates and best guesses. Their actions also ultimately affect people's liberty. It is imperative that they, too, receive ongoing training about our Constitution.

When I was in training as a new agent, we were each given a pocket copy of the Constitution by our legal instructor. He told us to keep it in our breast packet. If we did that, we would think about it when interviewing a suspect or conducting a search. If you keep it "close to your heart, you won't go wrong." That may sound corny today, but many of us did hold it close to our hearts. I had learned, for budget reasons some years ago, new agents were no longer being given a copy of the Constitution. Happily, perhaps due to my harping on this point in Op-Eds and in meetings with Bureau executives, I am told that all new FBI employees are now furnished a copy of the Constitution. A little thing perhaps, but little things can result in big changes.

As former FBI Director Webster repeatedly told us: "We must do the work the American people expect of us, in the way the Constitution demands of us." All actions and decisions should again be viewed through that prism.

To change culture, many things must be done consistently, both big and small. The first would be to recognize the problem. Wray has declined to recognize this by taking shelter in the fact that those who were responsible for the various transgressions are no longer employed at the FBI.

Role of Congress

Amending FISA to again prohibit, or stringently limit, targeting US persons is a “foundational reform” Congress can make.

The abuse of “unmasking,” rampant during the 2016 election cycle, must be addressed. Congress should be notified as to the numbers of unmaskings. Criminal penalties should be imposed on those who improperly unmask American citizens.

The pernicious “reverse targeting” practice, acknowledged by Brennan, must be ended. The CIA and the NSA are forbidden to spy on Americans. If they accidentally pick up information on an American, while spying on foreigners, they pass it on to the FBI. If they set out to deliberately do it by focusing on a foreigner close to an American of interest, it is not truly “incidental” collection. Sanctions for this type of abuse should include criminal penalties.

Congress must look at itself as well. Being a political institution, Congress has approached oversight issues in a political manner. Recognizing these political realities does not mean they cannot do better. Congressional oversight procedures should forbid one-on-one briefings/meetings with congressional leaders or staff. To avoid memory lapses, all Gang of Eight meetings should be bipartisan and videotaped.

Conclusion

An unintended consequence of the response to the September 11 attacks was the FBI being directed away from its roots in law enforcement and into the ambiguous world of intelligence. That cultural change begun under Mueller’s leadership set the stage for the disastrous directorship of Comey.

For years, when explaining the FBI to various groups, I and others would emphasize how blessed the United States – unlike other countries - was to have as its domestic security service a law enforcement agency, an organization rooted in the rule of law. This has now been turned on its head, the United States may now be cursed to have a domestic intelligence agency with police powers.

The first step in fixing a problem is recognizing the problem. The “few rotten apples” explanation for “what went wrong at the FBI” is a dodge. The culture must be fixed and to fix it one must acknowledge the problem.

Existing statutes, such as FISA, must be reformed to avoid the abuse of Americans' rights. And, please, no new laws against "domestic terrorism," which would present new perils to Americans' civil liberties.

We may never get the Bureau culture back to what I lived and loved in the pre-9/11 era. But the effort of reform is worth it, noble, and direly needed.

Chair JORDAN. Thank you, Mr. Baker. I appreciate your testimony.

Professor Turley, you are recognized for five minutes.

STATEMENT OF JONATHAN TURLEY

Mr. TURLEY. Thank you, Chair Jordan, Ranking Member Plaskett, Members of the Subcommittee. It is an honor to appear before you to discuss this subject.

It is my sincere hope that there is room for bipartisan agreement, even in these times, when we talk about the government's role in regulating speech. We all are here today because we all have a deep love for this country. We come from different backgrounds, different parts, but we share that common article of faith.

I would like to speak to that today. These are difficult questions that I am going to address, and these are divisive times, but they transcend politics.

Notably, in yesterday's hearing in the Oversight Committee, James Baker said that he also thought there might be need for legislation—this is the former Twitter executive, former FBI General Counsel. He said there might be need for legislation to limit the role of the FBI and other agencies in their relationship with social media companies. I think that this is true.

One of the reasons that this Committee has a difficult task before it is that there is a crisis of faith, and it is not just simply with some of our constitutional values. Polls are showing that people have a distrust for the Federal government but also with the FBI.

Twenty percent in a recent poll said that the FBI was the greatest threat to the country. Only 40 percent of Americans said that they trust the FBI most of the time. Fifty-three percent said they felt the FBI was acting politically.

I am not saying that those results are warranted. What I am saying is, it is a serious problem when the public, large portions of the public, have that level of distrust.

My testimony that I have submitted to the record goes through the constitutional and case law that applies to this issue of when the government goes too far. I say that these are really very heavily contested questions; there are cases on both sides. In some of my discussions, I say that actually I think the social media companies have a better argument, and in some parts I think that there are legitimate issues here that might trigger the First Amendment.

There are two different aspects to that analysis. One is that we do have direct action shown in the Twitter files by government employees. So, we don't have to get into what I spend most of my time on, which is agency theory under the First Amendment. We know that there were dozens of Federal employees who tagged or targeted particular posts and posters for possible elimination and suspension.

Now, we can question whether that was a directive or a partnership or a coordination, but there was direct government conduct. So, the question for this Committee, first and foremost, is: Do you want your government in that business? We can have, I hope, a civil and respectful conversation about that.

What is interesting about the Twitter files is that they establish what could be viewed as agency. Now, as I go through a lot of the

cases in the past, courts have really struggled with this. At what point does a private party become an agent of the government?

Cases like Page and others say that you can have that; even if, by the way, the private agent turns down some requests, you can have that. I go through the various tests that apply.

I also go through three things that are established:

First, this may be the largest censorship system in the history of our country. Twitter alone reaches 450 million people. They are 15th on social media. Companies like Facebook dwarf them in terms of their size. It is a censorship system. The ACLU has made clear that censorship can be both in government or private form, and it certainly can be in a government and private type of coordination.

Second, this is beyond what agencies usually do. This was not the FBI responding to criticism of the FBI. It was generally policing this thing called disinformation and eventually they tagged things like jokes. They tagged just a ridiculous scope of information that they believed could be removed.

Third, what we have here, in terms of what the government's doing, is what we have seen before. Even if you assume that this does not create an agency relationship, it is wrong. It is wrong for the government to be in the business of silencing citizens. It is wrong.

We saw it during the McCarthy period, where the government was behind the blacklisting of individuals. We said it was wrong. It was wrong then; it is wrong now. We have to have that debate. It has to move somewhere beyond our normal partisan divisions.

Adlai Stevenson said that, "when there is a loss of faith in government we lose everything." I hope that Senator Stevenson's words resonate with Members of this Committee. We have everything at stake when you have the government involved in censorship.

So, I thank you again for allowing me to appear, and I look forward to working with Members on both sides to look at this issue.

Thank you.

[The prepared statement of Mr. Turley follows:]

**Written Statement
Jonathan Turley**

**Shapiro Professor of Public Interest Law
The George Washington University Law School**

“Hearing on the Weaponization of the Federal Government”

**Select Subcommittee on the Weaponization of the Federal Government
Committee on the Judiciary
United States House of Representatives**

February 9, 2023

I. INTRODUCTION

Chairman Jordan, ranking member Nadler, members of the Select Subcommittee, my name is Jonathan Turley, and I am a law professor at George Washington University, where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law.¹ It is an honor to appear before you today to discuss the weaponization of the federal government.

For the purposes of background, I come to this subject as someone who has written,² litigated,³ and testified⁴ in the areas of congressional oversight and the First

¹ I appear today on my own behalf, and my views do not reflect those of my law school or the media organizations that feature my legal analysis.

² In addition to a blog with a focus on First Amendment issues (www.jonathanturley.org), I have written on First Amendment issues as an academic for decades. *See, e.g.*, Jonathan Turley, *The Unfinished Masterpiece: Speech Compulsion and the Evolving Jurisprudence of Religious Speech* 82 MD L. REV. (forthcoming 2023); Jonathan Turley, *The Right to Rage in American Political Discourse*, GEO. J.L. & PUB. POL’Y (forthcoming 2023); Jonathan Turley, *Harm and Hegemony: The Decline of Free Speech in the United States*, 45 HARV. J.L. & PUB. POL’Y 571 (2022); Jonathan Turley, *The Loadstone Rock: The Role of Harm In The Criminalization of Plural Unions*, 64 EMORY L.J. 1905 (2015); Jonathan Turley, *Registering Publicus: The Supreme Court and Right to Anonymity*, 2002 SUP. CT. REV. 57-83.

³ *See, e.g.*, Eugene Volokh, *The Sisters Wives Case and the Criminal Prosecution of Polygamy*, WASH. POST, Aug. 28, 2015 (discussing challenge on religious, speech, and associational rights); Jonathan Turley, *Thanks to the Sisters Wives Litigation, We have One Less Morality Law*, WASH. POST, Dec. 12, 2013.

⁴ *See, e.g.*, *Examining the ‘Metastasizing’ Domestic Terrorism Threat After the Buffalo Attack: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School); *Secrecy Orders and Prosecuting Leaks: Potential Legislative Responses to Deter Prosecutorial Abuse of Power: Hearing Before H. Comm. on the Judiciary*, 117th Cong. (2021) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School); *Fanning the Flames: Disinformation and Extremism in the Media: Hearing Before the Subcomm. on Comm’n & Tech. of the H. Comm. on Energy & Com.*, 117th Cong. (2021) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School); *The Right of The People Peacefully to Assemble: Protecting Speech By Stopping Anarchist Violence: Hearing Before the Subcomm. on the Const. of the S. Comm. on the Judiciary*, 116th Cong. (2020) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School); *Respect for Law Enforcement and the Rule of Law: Hearing Before the Commission on Law Enforcement and the Administration of Justice*,

Amendment for decades. I have also represented the United States House of Representatives in litigation.⁵ I am admittedly someone who has been called a free speech absolutist. While I do accept some limits on free speech, it is certainly true that I tend to oppose most criminalization, censorship, and regulation of speech. My testimony today obviously reflects that past work, but I hope to offer a fair understanding of the governing constitutional provisions, case law, and standards that bear on this question. It is my sincere hope that there is room for bipartisan agreement on exposing the past government involvement in censorship systems implemented by social media companies. There are legitimate disagreements on how Congress should address the role of the government in such censorship. The first step, however, is to fully understand the role played in prior years and to address the deep-seated doubts of many Americans concerning the actions of the FBI and other agencies.

In the 1924 English case of *Rex v. Sussex*, a conviction was overturned, not because there was a clear injustice, but because there could be doubt in the minds of some whether justice was done. Lord Chief Justice Gordon Hewart famously wrote: “It is not merely of some importance, but of fundamental importance, that justice should not only be done, but be manifestly and undoubtedly seen to be done.”⁶ The Department of Justice has long recognized the same demand applies to its work. Key standards reflect this same principle. For example, the decision to appoint a special counsel is often made by an Attorney General despite the belief that the department could conduct an investigation fairly. However, these appointments are often made to assure the public that justice will be meted out in an independent and consistent manner. Judges also follow this principle for their own recusal. A judge will choose removal when “impartiality might reasonably be questioned.”⁷ These rules reflect the fact that a justice system can only remain credible and viable if it is generally accepted. No legal system can guarantee total detection and accountability. Society relies on citizens voluntarily complying with rules and accepting the results of the judicial system. That requires fealty to the system, which requires faith in its results. That is why the current environment is so damaging for a country based on the rule of law.

Polls indicate a deepening distrust of the government and the FBI in particular. A fifth of Americans now view the government as the greatest threat facing the nation.⁸ Only 40% of Americans trust the FBI “most of the time.”⁹ Fifty percent of Americans only trust the FBI “some of the time” or “hardly ever.” The latter group accounts for 20%

(2020) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School); *The Media and The Publication of Classified Information: Hearing Before the H. Select Comm. on Intelligence*, 109th Cong. (2006) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School).

⁵ See U.S. House of Representatives v. Burwell, 185 F. Supp. 3d 165 (D.D.C. 2016), <https://casetext.com/case/us-house-of-representatives-v-capacity-1>.

⁶ *Rex v. Sussex Justices*, 1 K.B. 256, 259 (1924).

⁷ 28 U.S. CODE § 455.

⁸ Megan Brennan, *More Cite Gov’t as Top U.S. Problem; Inflation Ranks Second*, GALLUP, Jan. 30, 2023, <https://news.gallup.com/poll/468983/cite-gov-top-problem-inflation-ranks-second.aspx>.

⁹ Craig Helmstetter, *Poll: Trust in the FBI Higher Among Democrats*, APMRESEARCHLAB, Jan. 4, 2023, <https://www.apmresearchlab.org/motn-fbi-trust-jan-2023?rq=fbi>.

of those polled who rarely trust the FBI. There is a sharp difference between Democrats on one side, and both Republicans and Independents on the other. Democrats are more likely today to trust the FBI, a significant change politically from the 1960s. These polls are consistent on roughly half of the country expressing distrust in the FBI.¹⁰ What is truly shocking is that 53% of those asked in one poll agreed with the statement that the FBI was acting like “Biden’s Gestapo.”¹¹ That criticism of the FBI by Roger Stone is deeply offensive to many inside and outside the FBI. Agents of the FBI put themselves in harm’s way every day to protect citizens from harm. However, it is dangerous to ignore these polls and the harm that this distrust in government does to our democratic system. Even if you discount any given poll as skewing left or right, these polls consistently show a widespread lack of faith in the FBI and the work of our government.

The Twitter Files raise serious questions of whether the United States government is now a partner in what may be the largest censorship system in our history. The involvement cuts across the Executive Branch, with confirmed coordination with agencies ranging from the CDC to the CIA. Even based on our limited knowledge, the size of this censorship system is breathtaking, and we only know of a fraction of its operations through the Twitter Files. Twitter has 450 million active users¹² but it is still only ranked 15th in the number of users, after companies such as Facebook, Instagram, TikTok, Snapchat, and Pinterest.¹³ The assumption is that the government censorship program dovetailed with these other companies, which continue to refuse to share past communications or work with the government. Assuming that these efforts extended to these larger platforms, it is a government-supported censorship system that is unparalleled in history.

Regardless of how one comes out on the constitutional ramifications of the government’s role in the censorship system, there should not be debate over the dangers that it presents to our democracy. The United States government may be outsourcing censorship, but the impact is still inimical to free speech values that define our country.

II. EXECUTIVE ABUSE AND CONGRESSIONAL OVERSIGHT

Since my testimony is focused on First Amendment concerns, I will not dwell upon the other matters that should be considered by the select subcommittee. I felt that the question of censorship warranted the close and comprehensive attention of one of the witnesses today. I did want, however, to briefly discuss the myriad of issues that fall within the province of this Committee in relation to the FBI.

The growing distrust of our government is fueled by the concern of some citizens that the Justice Department and the FBI have lost clear separation from the political influence and the agenda of the White House. Similar concerns were raised during the Trump Administration. I supported congressional inquiries previously in the Trump

¹⁰ See, e.g., *‘Biden’s Gestapo’? Trump Raid Hurts Voter Trust in FBI*, RASMUSSEN REPORTS, August 18, 2022, https://www.rasmussenreports.com/public_content/politics/public_surveys/biden_s_gestapo_trump_raid_hurts_voter_trust_in_fbi.

¹¹ *Id.*

¹² *Twitter Revenue and User Statistics*, BUSINESS OF APPS, Jan. 31, 2023, <https://www.businessofapps.com/data/twitter-statistics/>.

¹³ *Most Popular Social Networks*, STATISTA, <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.

Administration and support them now in the Biden Administration. I am not convinced that some controversies establish political bias as opposed to questionable judgment on the part of the FBI. For example, the decision to allow uncleared counsel to conduct searches for classified material related to President Biden was a mistake in my view. Since the President was offering full access and cooperation, those searches should have been carried out (as they were most recently at the Rehoboth Beach residence) by FBI agents. However, as I have stated previously, the FBI showed the same willingness to use private counsel to collect material in the initial stages of Mar-a-Lago. In both cases, the FBI may have not viewed the controversies as likely criminal matters as opposed to collection efforts. Moreover, some controversies may reflect changes in the priorities of this President. Administrations are allowed to prioritize areas for enforcement. That has long been a matter of tension with Congress in past administrations in areas ranging from immigration to environmental regulation to criminal enforcement. While the Justice Department has a long tradition of independence from the White House in carrying out investigations and prosecutions, it is still a part of the Executive Branch, subject to the enforcement priorities set by the President.

In addressing these controversies, the subcommittee will also have to distinguish between problems of personnel and problems of policy or practices. Some questions of bias can be traced to personnel. We have seen FBI agents, like Peter Strzok, removed or fired in recent years for their open political bias. The belated efforts to remove such officials is a concern, but their conduct may not show a systemic bias in the bureau. However, a far more serious concern is why the bureau continued to push the Russian collusion investigation despite ample and early evidence refuting claims by Christopher Steele and others. Recently, the mainstream media has begun to acknowledge that it committed the same failure of objectivity and judgment in pushing these allegations. Famed *Washington Post* journalist Bob Woodward recently criticized the *Washington Post* and other media for ignoring obvious signs that the Russian collusion allegations in the Steele Dossier were unsupported and pushed by the Clinton campaign. He said that reporters would not heed warnings from him and others. They were intent on pushing the collusion story and would not be deterred.¹⁴ The respected *Columbia Journalism Review* issued a recent scathing report on the failures of the media in pushing the Russian collusion allegations without such support. It found that journalists were abandoning core principles of their profession due to the bias against Donald Trump.¹⁵ The responsibility of the media in spreading debunked allegations is a serious matter, particularly given the funding of the dossier by the Clinton campaign.

The belated recognition in the media that it failed in pushing the Russian collusion allegations is serious. However, it is a far more serious problem when FBI agents engage in the same lack of objectivity and judgment. Unlike reporters, these agents have the ability to use government authority against targeted individuals and groups. We now know that the FBI was warned early in this process that the Steele

¹⁴ Emily Crane, *Bob Woodward Says WaPo Reporters Ignored his Steele Dossier Warnings*, NY POST, Feb. 1, 2023.

¹⁵ See generally Jeff Gerth, *The Press Versus the President, Part One*, THE COLUMBIA JOURNALISM REVIEW, January 30, 2023, https://www.cjr.org/special_report/trumped-up-press-versus-president-part-1.php.

Dossier might be Russian disinformation. Intelligence sources also directly contradicted the accounts and the credibility of key sources. Yet, the bureau seemed unwilling to alter its unrelenting pursuit in the matter. That is not simply a personnel matter, but rather, reflects a failure of failsafe measures to catch bias and willful blindness in such cases. It also reflects the lack of effective avenues for rank-and-file agents to raise potential concerns over bias – and policies to reinforce the use of those avenues. The lack of credible evidence of Russian collusion was flagged early both inside and outside the FBI. For example, the FBI Washington Field Office concluded that Flynn “was no longer a viable candidate as part of the larger Crossfire Hurricane umbrella case.”¹⁶ We know now that high ranking officials decided that the absence of any crime would not be allowed to terminate the investigation. FBI special agent Peter Strzok instructed the FBI case manager to keep the investigation open and then sent a celebratory text to FBI lawyer Lisa Page, who responded, “Phew. But yeah that’s amazing that he is still open.”¹⁷ The FBI is a highly hierarchical organization where the chain of command is followed on such questions. It is culturally and professionally difficult for an agent to raise concerns to such orders outside of an investigatory team. There needs to be a better system that not only allows for greater review of these investigations but meaningful avenues for agents to raise concerns that individuals are being targeted without sufficient cause. When the Washington Field Office moved to terminate its investigation, it had already performed a full and unbiased evaluation of the evidence. Yet, a couple of FBI officials were able to keep the investigation going on what now looks like a hope and a prayer rather than a crime and evidence.¹⁸ Again, raising these concerns is not confirming the underlying allegations. Rather, they are concerns that should be taken seriously by this body and the Justice Department. A sizable percentage of our country believes that there was disparate treatment in the handling of these investigations. The Congress is the body constitutionally invested with the oversight authority to address those concerns.

Another area of concern has been the push by many in Congress to get the Justice Department to prioritize certain ideologies in opening investigations. As I stated in recent testimony,¹⁹ such use of ideology as a determinative threshold criteria can have dangerous implications for free speech in the United States.²⁰ The Justice Department

¹⁶ Geoff Earle, *Mike Flynn was Cleared by FBI of Being Russian Asset*, Daily Mail, Apr. 30, 2020.

¹⁷ Jonathan Turley, *New Documents Show Strzok Countermanded Closure of Flynn Case*, Res Ipsa Blog, May 1, 2020.

¹⁸ There is also concern over the alleged different treatment given to cases like the Biden influence peddling allegations and the Hunter Biden computer controversy. Where the FBI showed an unrelenting commitment to proving Russian collusion, many see a comparative disinterest in pursuing allegations related to the Biden family, including allegations of foreign influence (including foreign intelligence figures) in deals worth millions. Likewise, there have been leaks in critical investigations that seemed calculated for political impact. The Mar-a-Lago raid was followed by a torrent of leaks associated with the government.

¹⁹ *Examining the ‘Metastasizing’ Domestic Terrorism Threat After the Buffalo Attack: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School).

²⁰ See also Jonathan Turley, *The Right to Rage in American Political Discourse*, GEO. J.L. & PUB. POL’Y (forthcoming 2023).

and related agencies already have a robust investigative system that targets violent extremists in the United States, and that system has been significantly expanded in recent years.²¹ The underlying cases all pertain to extremist violence and have been prioritized by the government based on the severity and immediacy of the risk to the public. However, the use of ideology can become a slippery slope toward criminalization of speech if used as a threshold determinative factor. It can also invite political influence over such cases if certain groups, like pro-life organizations or parental groups for educational reform, are given a priority for investigation.

I have not seen conclusive evidence on these questions that establishes systemic bias in some of these areas. Indeed, I will continue to assume that the Justice Department and FBI acted without a political agenda, even when I disagree with their actual decisions. However, there is nothing more corrosive and destructive to a legal system than a belief that law enforcement is compromised. The only hope in restoring public faith in the department is to assure the public that these questions have been fully explored.

III. THE TWITTER FILES AND CENSORSHIP BY SURROGATE

It is a common refrain among many supporters of corporate censorship that the barring, suspension, or shadow banning of individuals on social media is not a free speech problem. The reason is that the First Amendment applies to the government, not private parties. As a threshold matter, it is important to stress that free speech values are neither synonymous with, nor contained exclusively within, the First Amendment. The First Amendment addressed the most prevalent danger of the time in the form of direct government regulation and censorship of free speech and the free press. Yet, free speech in society is impacted by both public and private conduct. Indeed, the massive censorship system employed by social media companies presents the greatest loss of free speech in our history. These companies, not the government, now control access to the “marketplace of ideas.” That is also a free speech threat that needs to be taken seriously by Congress. While the *Washington Post* has shown that the Russian trolling operations had virtually zero impact on our elections,²² the corporate censorship of companies like Twitter and Facebook clearly had an impact by suppressing certain stories and viewpoints in our public discourse. It was the response to alleged disinformation, not the disinformation itself, that manipulated the debate and issues for voters.

The opposition to the government’s involvement in a censorship system should be condemned regardless of whether it can be enjoined as a violation of the First Amendment. I will discuss that below. I would first like to address whether a constitutional violation could be established on these facts. I believe that it is possible but the value of this select subcommittee is that it can supply critical information to

²¹ See Luke Barr & Alexander Mallin, *FBI More Than Doubles Domestic Terrorism Investigations: Christopher Wray*, ABC NEWS, Sept. 21, 2021, <https://abcnews.go.com/Politics/fbi-doubles-domestic-terrorism-investigations-christopher-wray/story?id=80145125>.

²² Tim Starks, *Russian Trolls on Twitter Had Little Influence on 2016 Election*, WASH. POST, Jan. 9, 2023, <https://www.washingtonpost.com/politics/2023/01/09/russian-trolls-twitter-had-little-influence-2016-voters/>.

determine whether unconstitutional actions have been taken by a variety of federal agencies.

The First Amendment addresses actions by the government and there are certainly actions taken by these agencies to censor the views of citizens. While one can debate whether social media executives became effective government agents, public employees are government agents. Their actions must not seek to abridge the freedom of speech. It is possible that a systemic government program supporting a privately-run censorship system is sufficient to justify injunctive relief based on the actions of dozens of federal employees to target and seek the suspension of citizens due to their viewpoints. However, this program can also run afoul of the First Amendment if the corporate counterparts in the system are considered effective government agents themselves. The most common example occurs under the Fourth Amendment where the government is sometimes viewed as acting through private security guards or snitches performing tasks at its request.

The same agency relationship can occur under the First Amendment, particularly on social media. The “marketplace of ideas” is now largely digital. The question is whether the private bodies engaging in censorship are acting truly independently of the government. With the Twitter Files, there is now ample reason to question that separation. Social media companies operate under statutory conditions and agency review. That relationship can allow or encourage private parties to act as willing or coerced agents in the denial of free speech. Notably, in 1946, the Court dealt with a town run by a private corporation in *Marsh v. Alabama*.²³ It was that corporation, rather than a government unit, that prevented citizens from distributing religious literature on a sidewalk. However, the Court still found that the First Amendment was violated because the corporation was acting as a governing body. The Court held that, while the denial of free speech rights “took place, [in a location] held by others than the public, [it] is not sufficient to justify the State’s permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties.”²⁴

The Congress has created a curious status for social media companies in granting immunity protections in Section 230. That status and immunity have been repeatedly threatened by members of Congress unless social media companies expanded censorship programs in a variety of different areas. The demands for censorship have been reinforced by letters threatening congressional action. Many of those threats have centered around removing Section 230 immunity, pursuing antitrust measures, or other vague regulatory responses. Many of these threats have focused on conservative sites or speakers. The language of the Section itself is problematic in giving these companies immunity “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”²⁵ As Columbia Law professor Phil Hamburger has noted, the statute appears to permit what is

²³ *Marsh v. Alabama*, 326 U.S. 501 (1946).

²⁴ *Id.* at 509.

²⁵ 47 U.S.C. § 230(c).

made impermissible under the First Amendment:²⁶ “Congress makes explicit that it is immunizing companies from liability for speech restrictions that would be unconstitutional if lawmakers themselves imposed them.”²⁷ As Hamburger notes, that does not mean that the statute is unconstitutional, particularly given the judicial rule favoring narrow constructions to avoid unconstitutional meanings.²⁸ However, there is another lingering issue raised by the use of this power to carry out the clear preference on “content moderation” of one party.

The Court has recognized that private actors can be treated as agents of the government under a variety of theories. Courts have found such agency exists when the government exercises “coercive power” or “provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.”²⁹ The Court has also held that the actions of a private party can be “fairly treated as that of the State itself” where there exists a “close nexus between the State and the challenged action.”³⁰ I will return to the case law below, but first it is useful to consider what is currently known about the government-corporate coordination revealed by the Twitter Files.

A. The Twitter Files and the Government-Corporate Coordination

I will not lay out the full array of communications revealed by Twitter, but some are worth noting as illustrative of a systemic and close coordination between the company and federal officials, including dozens reportedly working within the FBI. The level of back-channel communications at one point became so overwhelming that a Twitter executive complained that the FBI was “probing & pushing everywhere.” Another official referred to managing the government censorship referrals as a “monumental undertaking.” At the same time, dozens of ex-FBI employees were hired, including former FBI General Counsel James Baker. There were so many FBI employees that they set up a private Slack channel and a crib sheet to allow them to translate FBI terms into Twitter terms more easily. The Twitter Files have led groups from the right and the left of our political spectrum to raise alarms over a censorship system maintained by a joint government-corporate effort.³¹ Journalist Matt Taibbi was enlisted by Elon Musk to present some of these files and reduced his findings to a simple header: “Twitter, the FBI Subsidiary.”

²⁶ Philip Hamburger, *The Constitution Can Crack Section 230*, WALL STREET JOURNAL (Jan. 30, 2021).

²⁷ Congress makes explicit that it is immunizing companies from liability for speech restrictions that would be unconstitutional if lawmakers themselves imposed them.

²⁸ *Id. See, e.g., Republican Party of Hawaii v. Mink*, 474 U.S. 1301, 1302 (1985) (narrowly interpreting the recall provisions of the Honolulu City Charter).

²⁹ *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

³⁰ *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974).

³¹ *Compare Yes, You Should be Worried About the Relationship with Twitter*, THE FIRE, Dec. 23, 2022, <https://www.thefire.org/news/yes-you-should-be-worried-about-fbis-relationship-twitter> with Branco Marcetic, *Why the Twitter Files Are In Fact a Big Deal*, JACOBIN, Dec. 29, 2022, <https://jacobin.com/2022/12/twitter-files-censorship-content-moderation-intelligence-agencies-surveillance>.

It is important to note that the FBI was not alone among the federal agencies in systemically targeting posters for censorship. Emails reveal FBI figures, like San Francisco Assistant Special Agent in Charge Elvis Chan, asking Twitter executives to “invite an OGA” (or “Other Government Organization”) to an upcoming meeting. A week later, Stacia Cardille, a senior Twitter legal executive, indicated the OGA was the CIA, an agency under strict limits regarding domestic activities. Much of this work apparently was done through the multi-agency Foreign Influence Task Force (FITF), which operated secretly to censor citizens. Cardille referenced her “monthly (soon to be weekly) 90-minute meeting with FBI, DOJ, DHS, ODNI [Office of the Director of National Intelligence], and industry peers on election threats.” She detailed long lists of tasks sent to Twitter by government officials.

Chan and Twitter’s head of trust and safety Yoel Roth reportedly set up an encrypted network to allow the FBI and intelligence officials to correspond more easily and regularly. This system appears to have included other companies beyond the social media companies, including but not limited to Yahoo!, Twitch, Cloudflare, LinkedIn, and Wikimedia. It worked. The FBI was soon tagging “hundreds of problem accounts” and sharing Excel spreadsheets with Twitter. These flags included news articles deemed suspicious, including *Washington Post* articles.

The government flags show how insatiable censorship can become as FBI staff sought the removal of an ever-widening array of posts on an expanding scope of subjects. One email in August 2022 sent “long lists of newspapers, tweets or YouTube videos” deemed to be voicing “anti-Ukraine narratives.” Even satirical and comedy sites reportedly were pegged by the social media police, as clear jokes were deemed worthy of censorship. One such posting jokingly urged, before the midterm elections, for Americans to “vote today, Democrats you vote Wednesday 9th.” Another FBI tagged post stated “if you’re not wearing a mask, I’m not counting your vote,” and “for every negative comment on this post, I’m adding another vote for the democrats.” The expectations of the government are evident in what Twitter officials described as calls that were “very angry in nature.”

The censorship efforts reportedly included reported “regular meetings” with intelligence officials. This included an effort to warn Twitter about a “hack-and-leak operation” by state actors targeting the 2020 presidential election. That occurred just before the *New York Post* story on Hunter Biden’s laptop was published and then blocked by Twitter. It was also blocked by other social media platforms like Facebook.³²

The integrated system got to the point that the FBI was doing clear key word searches to flag large numbers of postings. On November 3, 2020, Cardille told Baker that “[t]he FBI has ‘some folks in the Baltimore field office and at HQ that are just doing keyword searches for violations. This is probably the 10th request I have dealt with in the last 5 days.’” Baker responded that it was “odd that they are searching for violations of our policies.” But it was not odd at all. Twitter had integrated both current and former FBI officials into its network and the FBI was using the company’s broadly defined terms of service to target a wide array of postings and posters for suspensions and deletions.

³² Mark Zuckerberg has also stated that the FBI clearly warned about the Hunter Biden laptop as Russian disinformation. David Molloy, *Zuckerberg Tells Rogan that FBI Warning Prompted Biden Laptop Story Censorship*, BBC, August 26, 2022, <https://www.bbc.com/news/world-us-canada-62688532>.

At one point, the coordination became so tight that, in July 2020, Chan offered to grant temporary top-secret clearance to Twitter executives to allow for easier communications and incorporation into the government network.³³ This close working relationship also allowed the government use of accounts covertly, reportedly with the knowledge of Twitter. One 2017 email sent by an official from United States Central Command (CENTCOM) requested that Twitter “whitelist” Arabic-language Twitter accounts that the government was using to “amplify certain messages.” The government also asked that these accounts be granted the “verified” blue checkmark.

The range of available evidence on government coordination with censorship extends beyond the Twitter Files and involves other agencies. For example, recent litigation brought by various states over social media censorship revealed a back-channel exchange between defendant Carol Crawford, the CDC’s Chief of digital media and a Twitter executive.³⁴ The timing of the request for the meeting was made on March 18, 2021. Twitter senior manager for public policy Todd O’Boyle asked Crawford to help identify tweets to be censored and emphasized that the company was “looking forward to setting up regular chats.” However, Crawford said that the timing that week was “tricky.” Notably, that week, Dorsey and other CEOs were to appear at a House hearing to discuss “misinformation” on social media and their “content moderation” policies. I had just testified on private censorship in circumventing the First Amendment as a type of censorship by surrogate.³⁵ Dorsey and the other CEOs were asked at the March 25, 2021, hearing about my warning of a “little brother problem, a problem which private entities do for the government which it cannot legally do for itself.”³⁶ Dorsey insisted that there was no such censorship office or program.

The pressure to censor Covid-related views was also coming from the White House, as they targeted Alex Berenson, a former *New York Times* reporter, who had contested officials positions on vaccines and underlying research. Rather than push information to counter Berenson’s views, the White House wanted him banned. Berenson was eventually suspended.

³³ Gadde and Roth have both testified that they do not know if anyone took up this offer for clearances.

³⁴ The lawsuit addresses how experts, including Drs. Jayanta Bhattacharya (Stanford University) and Martin Kullendorff (Harvard University), have faced censorship on these platforms. Those doctors were the co-authors of the Great Barrington Declaration, which advocated for a more focused Covid response that targeted the most vulnerable population rather than widespread lockdowns and mandates. Many are now questioning the efficacy and cost of the massive lockdown as well as the real value of masks or the rejection of natural immunities as an alternative to vaccination. Yet, these experts and others were attacked for such views just a year ago. Some found themselves censored on social media for challenging claims of the CDC and figures like Dr. Anthony Fauci. None of these views are inviolate or beyond question – any more than the official accounts were at the time. Rather, they were systemically removed from social media – pushed to the far extremes of public and academic discourse. There is every reason for the CDC to combat what it considers false information through its own postings and outreach programs. However, the involvement in censoring dissenting views is deeply troubling.

³⁵ *Fanning the Flames: Disinformation and Extremism in the Media: Hearing Before the Subcomm. on Comm’n & Tech. of the H. Comm. on Energy & Com.*, 117th Cong. (2021) (statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School)

³⁶ *Misinformation and Disinformation on Online Platforms: Hearing Before the Subcomm. on Comm’n & Tech. and Subcomm. on Consumer Protection of the H. Comm. on Energy & Com.*, 117th Cong. (2021).

These files show not just a massive censorship system but a coordination and integration of the government to a degree that few imagined before the release of the Twitter Files. Again, it is important to emphasize what we do not know. We still do not know the full extent of this coordination, even at Twitter. It is also important to address one added allegation that emerged from these files: the FBI paid Twitter millions for censorship. That allegation is not supported by the facts that are currently known. Twitter did confirm that millions of dollars were paid to Twitter by the FBI. Some have suggested that this constituted direct payment for censorship. This is based on an email to the former Deputy General Counsel (and former FBI General Counsel) Jim Baker revealing that Twitter collected \$3,415,323 from the FBI:

Jim, FYI, in 2019 SCALE instituted a reimbursement program for our legal process response from the FBI. Prior to the start of the program, Twitter chose not to collect under this statutory right of reimbursement for the time spent processing requests from the FBI. I am happy to report we have collected \$3,415,323 since October 2019! This money is used by LP for things like the TTR and other LE-related projects (LE training, tooling, etc.).

That email led some to say that it establishes a “cash for censorship” arrangement. However, that email appears to refer to a reimbursement program for actions and disclosures under the Stored Communications Act, 18 U.S.C. §2706. This investigation may shed more light on those payments but the assumption is that they were not compensation for removed or banned users. However, it does show that the overall working relationship with the FBI had a financial component.

Twitter’s owner and associates now says that its staff worked as agents of the government and largely carried out the censorship requested by the FBI and other agencies. So, the company itself has admitted that there was a problematic agency relationship that existed with the government. The question is whether such a relationship also existed with companies like Facebook, which have resisted the same level of transparency as Twitter.

B. Coercion or Consent: The Line Between Allies and Agents Under the First Amendment

The line between consent and coercion can admittedly be a difficult one to discern in many cases. There is an argument that this is a violation of the First Amendment. Where the earlier debate over the status of these companies under Section 230 remained mired in speculation, the recent disclosures of government involvement in the Twitter censorship program presents a more compelling and concrete case for arguing agency theories. These emails refer to multiple agencies with dozens of employees actively coordinating the blacklisting and blocking of citizens due to their public statements. There is no question that the United States government is actively involved in a massive censorship system. The only question is whether it is in violation of the First Amendment.

Once again, the Twitter Files show direct action from federal employees to censor viewpoints and individual speakers on social media. The government conduct is direct and clear. That may alone be sufficient to satisfy courts that a program or policy abridges free

speech under the First Amendment. Even if a company like Twitter declined occasionally, the federal government was actively seeking to silence citizens. Any declinations only show that that effort was not always successful.

In addition to that direct action, the government may also be responsible for the actions of third parties who are partnering with the government on censorship. The government has long attempted to use private parties to evade direct limits imposed by the Constitution. Indeed, this tactic has been part of some of the worst chapters in our history. For example, in *Lombard v. Louisiana*,³⁷ the Supreme Court dealt with the denial of a restaurant to serve three black students and one white student at a lunch counter in New Orleans reserved for white people. The Court acknowledged that there was no state statute or city ordinance requiring racial segregation in restaurants. However, both the Mayor and the Superintendent of Police had made public statements that “sit-in demonstrations” would not be permitted. The Court held that the government cannot do indirectly what it cannot do directly. In other words, it “cannot achieve the same result by an official command which has at least as much coercive effect as an ordinance.”³⁸

As the Court said in *Blum v. Yaretsky* (where state action was not found), “a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.”³⁹ Past cases (often dealing with state action under the Fourteenth Amendment) have produced different tests for establishing an agency relationship, including (1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus.⁴⁰ Courts have noted that these cases “overlap” in critical respects.⁴¹ I will not go into each of these tests but will show the highly contextual analysis performed by courts in finding private conduct taken at the behest or direction of the government. The Twitter Files show a multilayered incorporation of government information, access, and personnel in the censorship program. One question is “whether the state has so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity.”⁴² Nevertheless, the Supreme Court noted in *Blum* that “[m]ere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives.”⁴³

Courts have previously rejected claims of agency by private parties over social media.⁴⁴ However, these cases often cited that lack of evidence of coordination and occurred before the release of the Twitter Files. For example, in *Rogalinski v. Meta*

³⁷ 373 U.S. 267 (1963).

³⁸ *Id.* at 273.

³⁹ *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982).

⁴⁰ *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021); *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). Some courts reduce this to three tests.

⁴¹ *Rogalinski v. Meta Platforms, Inc.*, 2022 U.S. Dist. LEXIS 142721 (August 9, 2022).

⁴² *Gorenc v. Salt River Project Agr. Imp. & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989).

⁴³ *Blum*, 457 U.S. at 1004-05.

⁴⁴ *O’Handley v. Padilla*, 579 F. Supp.3d 1163 1192-93 (N.D. Cal. 2022).

Platforms, Inc.,⁴⁵ the court rejected a claim that Meta Platforms, Inc. violated the First Amendment when it censored posts about COVID-19. However, the claim was based entirely on a statement by the White House Press Secretary and “all of the alleged censorship against Rogalinski occurred before any government statement.” It noted that there was no evidence that there was any input of the government to challenge the assertion that Meta’s message was “entirely its own.”⁴⁶

There is an interesting comparison to the decision of the United States Court of Appeals for the Sixth Circuit in *Paige v. Coyner*, where the Court dealt with the termination of an employee after a county official called her employer to complain about comments made in a public hearing.⁴⁷ The court recognized that “[i]his so-called state-actor requirement becomes particularly complicated in cases such as the present one where a private party is involved in inflicting the alleged injury on the plaintiff.”⁴⁸ However, in reversing the lower court, it still found state action due to the fact that a government official made the call to the employer, which prompted the termination.

Likewise, in *Dossett v. First State Bank*, the United States Court of Appeals for the Eighth Circuit ruled that the termination of a bank employee was the result of state action after school board members contacted her employer about comments made at a public-school board meeting.⁴⁹ The Eighth Circuit ruled that the district court erred by instructing a jury that it had to find that the school board members had “actual authority” to make these calls. In this free speech case, the court held that you could have state action under the color of law when the “school official who was purporting to act in the performance of official duties but was acting outside what a reasonable person would believe the school official was authorized to do.”⁵⁰ In this case, federal officials are clearly acting in their official capacity. Indeed, that official capacity is part of the concern raised by the Twitter Files: the assignment of dozens of federal employees to support a massive censorship system.

Courts have also ruled that there is state action where government officials use their positions to intimidate or pressure private parties to limit free speech. In *National Rifle Association v. Vullo*, the United States Court of Appeals for the Second Circuit ruled that a free speech claim could be made on the basis of a state official’s pressuring companies not to do business with the NRA.⁵¹ The Second Circuit held “although government officials are free to advocate for (or against) certain viewpoints, they may not encourage suppression of protected speech in a manner that ‘can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official’s request.’”⁵² It is also important to note that pressure is not required to establish an agency relationship under three of the prior tests. It can be based on consent rather than coercion.

⁴⁵ 2022 U.S. Dist. LEXIS 142721 (August 9, 2022).

⁴⁶ *Id.*

⁴⁷ *Paige v. Coyner*, 614 F.3d 273, 276 (6th Cir. 2010).

⁴⁸ *Id.*

⁴⁹ 399 F.3d 940 (8th Cir. 2005).

⁵⁰ *Id.* at 948.

⁵¹ *National Rifle Association of America v. Vullo*, 49 F.4th 700, 715 (2d Cir. 2022).

⁵² *Id.* (quoting *Hammerhead Enters., Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983)).

The Twitter Files show FBI officials warning Twitter executives that their platform was being targeted by foreign powers, including a warning that an executive cited as a basis for blocking postings related to the Hunter Biden laptop. At the same time, various members of Congress have warned social media companies that they could face legislative action if they did not continue to censor social media. Indeed, after Twitter began to reinstate free speech protections and dismantle its censorship program, Rep. Schiff (joined by Reps. André Carson (D-Ind.), Kathy Castor (D-Fla.) and Sen. Sheldon Whitehouse (D-R.I.)) sent a letter to Facebook, warning it not to relax its censorship efforts. The letter reminded Facebook that some lawmakers are watching the company “as part of our ongoing oversight efforts” — and suggested they may be forced to exercise that oversight into any move by Facebook to “alter or rollback certain misinformation policies.” This is only the latest such warning. In prior hearings, social media executives were repeatedly told that a failure to remove viewpoints were considered “disinformation.” For example, in a November 2020 Senate hearing, then-Twitter CEO Jack Dorsey apologized for censoring the Hunter Biden laptop story. But Sen. Richard Blumenthal, D-Conn., warned that he and his Senate colleagues would not tolerate any “backsliding or retrenching” by “failing to take action against dangerous disinformation.”⁵³ Senators demands increased censorship in areas ranging from the pandemic to elections to climate change.

These warnings do not necessarily mean that a court would find that executives were carrying out government priorities. An investigation is needed to fully understand the coordination and the communications between the government and these companies. In *Brentwood Academy v. Tennessee Secondary School Athletic Assn.*,⁵⁴ the Supreme Court noted that state action decisions involving such private actors are highly case specific:

What is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity. From the range of circumstances that could point toward the State behind an individual face, no one fact can function as a necessary condition across the board for finding state action; nor is any set of circumstances absolutely sufficient, for there may be some countervailing reason against attributing activity to the government...

Our cases have identified a host of facts that can bear on the fairness of such an attribution. We have, for example, held that a challenged activity may be state action when it results from the State’s exercise of “coercive power,” ... when the State provides “significant encouragement, either overt or covert,” ... or when a private actor operates as a “willful participant in joint activity with the State or its agents,” ... We have treated a nominally private entity as a state actor when it is controlled by an “agency of the State,” ... when it has been delegated a public

⁵³ *Misinformation and Disinformation on Online Platforms: Hearing Before the Subcomm. on Comm’n & Tech. and Subcomm. on Consumer Protection of the H. Comm. on Energy & Com.*, 117th Cong. (2021).

⁵⁴ 531 U.S. 288 (2001).

function by the State, ... when it is “entwined with governmental policies,” or when government is “entwined in [its] management or control.”⁵⁵

Obviously, many of these elements appear present. However, the Twitter Files also show executives occasionally declining to ban posters targeted by the government. It also shows such pressure coming from the legislative branch. For example, the Twitter Files reveal that Twitter refused to carry out censorship requests from at least one member of this Committee targeting a columnist and critic. Twitter declined and one of its employees simply wrote, “no, this isn’t feasible/we don’t do this.”⁵⁶ There were also requests from Republicans to Twitter for action against posters, including allegedly one from the Trump White House to take down content.⁵⁷

We simply do not know the extent to what Twitter “did do” and for whom. We do not know how demands were declined when flagged by the FBI. The report from Twitter reviewers selected by Elon Musk suggests that most requests coming from the Executive Branch were granted. That is one of the areas that could be illuminated by this select subcommittee. The investigation may be able to supply the first comprehensive record of the government efforts to use these companies to censor speech. It can pull back the curtain on America’s censorship system so that both Congress and the public can judge the conduct of our government.

C. Outsourcing Censorship: Why Congressional Action is Warranted

Whether the surrogate censorship conducted by social media companies is a form of government action may be addressed by the courts in the coming years. However, certain facts are well-established and warrant congressional action. First, while these companies and government officials prefer to call it “content moderation,” these companies have carried out the largest censorship system in history, effectively governing the speech of billions of people. The American Civil Liberties Union, for example, maintains that censorship applies to both government and private actions. It is defined as “the suppression of words, images, or ideas that are ‘offensive,’ [and] happens whenever some people succeed in imposing their personal political or moral values on

⁵⁵ *Id.* at 296.

⁵⁶ Jonathan Turley, “*We Don’t Do This*”: Twitter Censors Rejected Adam Schiff’s Censorship Request, THE HILL, Jan. 5, 2023, <https://thehill.com/opinion/judiciary/3800380-we-dont-do-this-even-twitters-censors-rejected-adam-schiffs-censorship-request/>.

⁵⁷ This included the Trump White House allegedly asking to take down derogatory tweets from the wife of John Legend after the former president attacked the couple. This allegation was raised at the hearing held yesterday. Moreover, some Trump officials supported efforts to combat foreign interference and false information on social media. Finally, it was reported this week that Twitter has a “database” of Republican demands. Adam Rawnsley and Asawin Suebaeny, *Twitter Kept Entire “Database” of Republican Requests to Censor Posts*, ROLLING STONE, Feb. 8, 2023, <https://www.rollingstone.com/politics/politics-news/elon-trump-twitter-files-collusion-biden-censorship-1234675969/>.

others.”⁵⁸ Adopting Orwellian alternative terminology does not alter the fact that these companies are engaging in the systemic censoring of viewpoints on social media.

Second, the government admits that it has supported this massive censorship system. Even if the censorship is not deemed government action for the purposes of the First Amendment, it is now clear that the United States government has actively supported and assisted in the censorship of citizens. Objecting that the conduct of government officials may not qualify under the First Amendment does not answer the question of whether members believe that the government should be working for the censorship of opposing or dissenting viewpoints. During the McCarthy period, the government pushed blacklists for suspected communists and the term “fellow travelers” was rightfully denounced regardless of whether it qualified as a violation of the First Amendment. Even before Joe McCarthy launched his un-American activities hearings, the Justice Department created an effective blacklist of organizations called “Attorney General’s List of Subversive Organizations” (AGLOSO) that was then widely distributed to the media and the public. It became the foundation for individual blacklists.⁵⁹ The maintenance of the list fell to the FBI. Ultimately, blacklisting became the norm with both legislative and executive officials tagging artists, writers, and others. As Professor Geoffrey Stone observed, “Government at all levels hunted down ‘disloyal’ individuals and denounced them. Anyone so stigmatized became a liability to his friends and an outcast to society.”⁶⁰ At the time, those who raised the same free speech objections were also attacked as “fellow travelers” or “apologists” for communists. It was wrong then and remains wrong now. It was an affront to free speech values that have long been at the core of our country. It is not enough to say that the government is merely seeking the censorship of posters like any other user. There are many things that are more menacing when done by the government rather than individuals. Moreover, the government is seeking to silence certain speakers in our collective name and using tax dollars to do so. The FBI and other agencies have massive powers and resources to amplify censorship efforts. The question is whether Congress and its individual members support censorship whether carried out by corporate or government officials on social media platforms.⁶¹

Third, the government is engaged in targeting users under the ambiguous mandates of combating disinformation or misinformation. These are not areas traditionally addressed by public affairs offices to correct false or misleading statements made about an agency’s work. The courts have repeatedly said that agencies are allowed

⁵⁸ American Civil Liberties Union, *What is Censorship?*, <https://www.aclu.org/other/what-censorship>.

⁵⁹ Robert Justin Goldstein, *Prelude to McCarthyism*, PROLOGUE MAGAZINE, Fall 2006, <https://www.archives.gov/publications/prologue/2006/fall/agloso.html>. Courts pushed back on the listing to require some due process for those listed.

⁶⁰ Geoffrey R. Stone, *Free Speech in the Age of McCarthy: A Cautionary Tale*, 93 CALIF. L. REV. 1387, 1400 (2005).

⁶¹ The distinction between these companies from other corporate entities like the NFL or Starbucks is important. There is no question that businesses can limit speech on their premises and by their own employees. However, these companies constitute the most popular communication platforms in the country. They are closer to AT&T than Starbucks in offering a system of communication.

to speak in their voices without viewpoint neutrality.⁶² As the Second Circuit stated, “[w]hen it acts as a speaker, the government is entitled to favor certain views over others.”⁶³ This was an effort to secretly silence others. Courts have emphasized that “[i]t is well-established that First Amendment rights may be violated by the chilling effect of governmental action that falls short of a direct prohibition against speech.”⁶⁴ These public employees were deployed to monitor and target user spreading “disinformation” on a variety of subjects, from election fraud to government corruption. The Twitter Files show how this mandate led to an array of abuses from targeting jokes to barring opposing scientific views.

These facts already warrant bipartisan action from Congress. Free speech advocates have long opposed disinformation mandates as an excuse or invitation for public or private censorship. I admittedly subscribe to the view that the solution to bad speech is better speech, not speech regulation.⁶⁵ Justice Brandeis embraced the view of the Framers that free speech was its own protection against false statements: “If there be time to discover through discussion the falsehood and the fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech not enforced silence.”⁶⁶ We have already seen how disinformation was used to silence dissenting views of subjects like mask efficacy and Covid policies like school closures that are now being recognized as legitimate.

We have also seen how claims of Russian trolling operations may have been overblown in their size or their impact. Indeed, even some Twitter officials ultimately concluded that the FBI was pushing exaggerated claims of foreign influence on social media.⁶⁷ The Twitter Files refer to sharp messages from the FBI when Twitter failed to find evidence supporting the widely reported foreign trolling operations. One Twitter official referred to finding “no links to Russia.” This was not for want of trying. Spurred on by the FBI, another official promised “I can brainstorm with [redacted] and see if we can dig even deeper and try to find a stronger connection.” The pressure from the FBI led Roth to tell his colleagues that he was “not comfortable” with the agenda of the FBI and said that it reminded him of something “more like something we’d get from a congressional committee than the Bureau.” They did not succeed in confirming the evidence demanded by the FBI, though the results of these searches were not made public until the release of the Twitter Files.

The Twitter Files tragically reaffirm why the last agency that you want to combat disinformation generally is a law enforcement body like the FBI. This is an agency with

⁶² *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009); *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005).

⁶³ *Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 34 (2d Cir. 2018).

⁶⁴ *Zieper v. Metzinger*, 474 F.3d 60, 65 (2d Cir. 2007).

⁶⁵ See generally Jonathan Turley, *Harm and Hegemony: The Decline of Free Speech in the United States*, 45 HARV. J.L. & PUB. POL’Y 571 (2022).

⁶⁶ *Whitney*, 274 U.S. at 375, 377.

⁶⁷ In his testimony yesterday, Roth stated that they found substantial Russian interference impacting the election. *Protecting Speech from Government Interference and Social Media Bias, Part 1: Twitter’s Role in Suppressing the Biden Laptop Story: Hearing Before the H. Comm. on Oversight & Accountability*, 118th Cong. (2023) (statement of Yael Roth, Former Head of Trust and Safety, Twitter). That claim stands in conflict with other studies and reports, but it can also be addressed as part of the investigation into these communications.

overwhelming powers used to combat terrorists and criminal actors. One area of inquiry is how these dozens of government monitors were rated or rewarded for their work. Twitter Files reveal the government targeting thousands of postings in what appeared key work searches. The measure of a program to combat disinformation is likely the number of postings that you succeeded in having removed. That can create a dangerous type of piece work evaluations for free speech curtailment.

The use of an agency with subpoena powers and national security powers obviously adds a chilling effect for companies asked to carry out censorship. That is magnified with the addition of foreign intelligence agencies like the CIA. The Twitter Files refer to Cybersecurity and Infrastructure Security Agency's (CISA) participation in these coordination meetings. CISA shows the mission of agencies creeping into speech regulation. Given a mandate to help protect election integrity, CISA plunged into the monitoring and targeting of those accused of disinformation. Infrastructure was interpreted to include speech. As its director, Jen Easterly, declared "the most critical infrastructure is our cognitive infrastructure" and thus included "building that resilience to misinformation and disinformation, I think, is incredibly important."⁶⁸ She pledged to continue that work with the private sector, including social media companies, on that effort. We do not need the government in the business of building our "cognitive infrastructure." Like content moderation, the use of this euphemism does not disguise the government's effort to direct and control what citizens may read or say on public platforms.

The danger of censorship is not solely a concern of one party. To his great credit, Rep. Ro Khanna (D., Cal.) in October 2020, said that he was appalled by the censorship and was alarmed by the apparent "violation of the 1st Amendment principles."⁶⁹ Congress can bar the use of federal funds for such disinformation offices. Such legislation can require detailed reporting on agency efforts to ban or block public comments or speech by citizens. Even James Baker told the House Oversight Committee yesterday that there may be a need to pass legislation to limit the role of government officials in their dealings with social media companies.⁷⁰ Legislation can protect the legitimate role of agencies in responding and disproving statements made out of its own programs or policies. It is censorship, not disinformation, that has damaged our nation in recent years. Free speech, like sunshine, can be its own disinfectant. In *Terminiello v. City of Chicago*, the Supreme Court declared that:

The right to speak freely and to promote diversity of ideas . . . is . . . one of the chief distinctions that sets us apart from totalitarian regimes . . . [A] function of free speech under our system of government is to invite dispute. . . . Speech is

⁶⁸ Maggie Miller, *Cyber Agency Beefing Up Disinformation, Misinformation Team*, THE HILL, Nov. 10, 2022, <https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformation-misinformation-team/>.

⁶⁹ *Democratic Rep. Ro Khanna Expressed Concerns Over Twitter's Censorship of Hunter Biden Laptop*, FOX NEWS, Dec. 2, 2022, <https://www.foxnews.com/politics/democratic-rep-ro-khanna-expressed-concerns-twitters-censorship-hunter-biden-laptop-story>.

⁷⁰ *Protecting Speech from Government Interference and Social Media Bias, Part 1: Twitter's Role in Suppressing the Biden Laptop Story: Hearing Before the H. Comm. on Oversight & Accountability*, 118th Cong. (2023) (statement of James Baker, Former General Counsel, FBI).

often provocative and challenging. . . [F]reedom of speech, though not absolute, is nevertheless protected against censorship.⁷¹

Disinformation does cause divisions, but the solution is not to embrace government-corporate censorship. The government effort to reduce speech does not solve the problem of disinformation. It does not change minds but simply silences voices in national debates.

IV. CONCLUSION

The recent disclosures of the extensive coordination between Twitter and the federal government on censorship show how the desire to control speech in society rests like a dormant virus in our system. It takes little accommodation or access for the government to pour into the breach. The Twitter Files show how quickly the government used its access to target a wider and wider range of subjects and posters. However, if that disclosure had a chilling impact on many of us, the impact of the FBI's response to the criticism was perfectly glacial. When some critics denounced it as raw censorship, the FBI accused them of being "conspiracy theorists . . . feeding the American public misinformation."⁷² So, criticism of the FBI's work to censor citizens resulted in an official statement denouncing those citizens. Having an agency both push for censorship and denounce critics is a particularly dangerous combination, particularly when that agency is our largest law enforcement body.

None of these denials or attacks succeed, however. The public understands the threat and strongly supports an investigation into the FBI's role in censoring social media. Despite the push for censorship by some politicians and pundits, most Americans still want free-speech protections. It is in our DNA. This country was founded on deep commitments to free speech and limited government – and that constitutional tradition is no conspiracy theory. Polls show that 73% of Americans believe that these companies censored material for political purposes.⁷³ Another poll showed that 63% want an investigation into FBI censorship allegations.⁷⁴

Adlai Stevenson famously warned of this danger: "Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight . . . for." Senator Stevenson's words should resonate on both sides of our political divide and that we might, even now, find a common ground and common purpose. The loss of faith in our government and the independence of the FBI creates political instabilities and vulnerabilities in our system. Moreover, regardless of party affiliation, we should all want answers to come of these questions. We can differ on our conclusions, but the first step

⁷¹ *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (citations omitted).

⁷² Victor Nava, *FBI Blasts "Conspiracy Theorists Over Twitter Files*, NY Post, Dec. 21, 2022.

⁷³ Sean Burch, *Nearly 75% of Americans Believe Twitter, Facebook Censor Posts Based on Viewpoints, Pew Finds*, THE WRAP, Aug. 19, 2020, <https://www.thewrap.com/nearly-75-percent-twitter-facebook-censor/>.

⁷⁴ *63% Want FBI's Social Media Activity Investigated*, RASMUSSEN REPORTS, Dec. 26, 2022, https://www.rasmussenreports.com/public_content/politics/partner_surveys/twittergate_63_want_fbi_social_media_activity_investigated.

for Congress is to force greater transparency on controversies involving bias to censorship. One of the greatest values of oversight is to allow greater public understanding of the facts behind government actions. Greater transparency is the only course that can help resolve the doubts that many have over the motivations and actions of their government. I remain an optimist that it is still possible to have a civil and constructive discussion of these issues. Regardless of our political affiliations and differences, everyone in this room is here because of a deep love and commitment to this country. It was what brought us from vastly different backgrounds and areas in our country. We share a single article of faith in our Constitution and the values that it represents. We are witnessing a crisis of faith today that must be healed for the good of our entire nation. The first step toward that healing is an open and civil discussion of the concerns that the public has with our government. We can debate what measures are warranted in light of any censorship conducted with government assistance. However, we first need to get a full and complete understanding of the relationship between federal agencies and these companies in the removal or suspension of individuals from social media. At a minimum, that should be a position that both parties can support in the full disclosure of past government conduct and communications with these companies.

Once again, thank you for the honor of appearing before you to discuss these important issues, and I would be happy to answer any questions from the Committee.

Jonathan Turley
J.B. & Maurice C. Shapiro Chair of Public Interest Law
George Washington University

Chair JORDAN. Professor, thank you. Thank you for stating the gravity of the situation and the question before us.

Mr. Williams, you are recognized for five minutes.

STATEMENT OF ELLIOT WILLIAMS

Mr. WILLIAMS. Thank you, Mr. Chair, Ranking Member Plaskett, and Members of the Subcommittee. Thank you very much for inviting me to testify today.

My name is Elliot Williams, and over the course of 15 years I have the honor of serving in all three branches of our government. Across that time, I worked as both a career prosecutor and a senior appointee, as both a rank-and-file employee and in senior management, and in both Republican and Democratic administrations.

For a major portion of my time in government, I served in roles tied directly to the relationship between the Executive and Legislative Branches of government. I served as counsel to the Senate Judiciary Committee across the building—or across the courtyard, and helped run legislative affairs at both the United States Department of Justice and the United States Customs and Immigration Enforcement, or ICE.

I note that I am here today speaking in my personal capacity and not on behalf of any employer.

Now, having sat in the seats of the very staff behind you, alongside some of the very people who are still here today, as well as in the role of the Executive Branch employee or official responding to your requests, I can say that each institution's interests are critically important to creating a healthy, functioning democracy.

When they collide, it is crucial to recognize that our institutions are best served by reaching compromises or accommodations—we are going hear that word again in a moment—that protect the core interests of each branch of government. congressional oversight, the reviewing or monitoring or supervision of Federal agencies and activities, is essential to good government. It helps ensure that officials who hold the public trust apply laws fairly and spend their funds wisely—our funds wisely. It uncovers abuse and uproots waste. It encourages efficiency and fosters transparency.

Now, this is a two-way street, where Congress ends up better informed when making its Legislative decisions and the Executive Branch is in a better position to carry out its enforcement of our laws.

Now, there is a natural and perfectly reasonable push and pull of constitutional and legal interests when two branches of government interact. Too much pushing or pulling from either side poorly serves the American people and does not serve the work of the American people.

Now, each branch of government—and I mean the Legislative and Executive—have a tremendous amount to lose and a lot to gain in the process. It is in the interest of people at both ends of Pennsylvania Avenue and across the country that our institutions and our democracy function properly.

Now, Congress and the Justice Department, both where I worked for a long time, have recognized this principle. The Justice Department has attempted throughout the years to balance satisfying le-

gitimate legislative interests with protecting the Executive Branch's confidentiality interests.

An obvious example arises when disclosure of case materials from an open criminal case or a civil case might be disclosed to the public or to Congress. There might be a significant public interest in the Justice Department's efforts to protect those materials.

Likewise, Congress has a very long history of engaging in responsible oversight—and bipartisan oversight, for that matter—of the Executive Branch. This means reaching accommodations that have regularly included narrowing requests for information, limiting access to information that is provided by the Executive Branch, or even at times delaying a congressional investigation until the work of the Justice Department and the former prosecutions or declinations are completed.

For instance, here is an example. In the early 2000's, the House Oversight Committee wanted to obtain documents from Special Counsel Patrick Fitzgerald's investigation into the leak of the covert identity of CIA Officer Valerie Plame. They consulted—this is the Committee, the Oversight Committee—consulted with the special counsel and agreed to delay receiving information until after the end of the litigation, or after the investigation and litigation.

Even then, the Chair of the Committee worked closely with the special counsel to narrow his requests that the special counsel agreed would not infringe on his prosecutorial independence or intrude upon grand jury secrecy, which, as many of you know, is protected by law under the law.

Both sides here, Congress and the Executive Branch, or the Justice Department, had interests. They both balanced them for the good of democracy, the health of our institutions, and transparency for the American people.

Now, as with any process of negotiation, not every party will always receive what they seek to recover, nor will they be able to protect every bit of information they wish to shield. That is not a bad thing. We will talk about that over the course of the day.

Needless to say, thank you again for inviting me to testify, and I look forward to answering any questions you might have.

[The prepared statement of Mr. Williams follows:]

STATEMENT OF
ELLIOT WILLIAMS
FORMER DEPUTY ASSISTANT ATTORNEY GENERAL

HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SELECT SUBCOMMITTEE ON THE WEAPONIZATION
OF THE FEDERAL GOVERNMENT

FEBRUARY 9, 2023

Chairman Jordan, Ranking Member Plaskett, and members of the Subcommittee:

Thank you for inviting me to testify today. My name is Elliot Williams, and over the course of fifteen years, I had the honor of serving in all three branches of our government. Across that time, I worked as both a career prosecutor and a political appointee; as both a rank-and-file employee and a senior manager; for elected politicians and appointed officials; and in both Republican and Democratic administrations.

In each of those positions, and in each branch of government, I was proud to work alongside public servants who were devoted to the missions of their institutions and whose ultimate goal was to serve and protect the American people.

For a major portion of my time in government, I served in roles directly tied to the relationship between the executive and legislative branches of government: I served as counsel to the United States Senate Committee on the Judiciary; Assistant Director for Congressional Relations at U.S. Immigration and Customs Enforcement; and in my final role, as a Deputy Assistant Attorney General for legislative affairs at the U.S. Department of Justice.

Having sat in the seats of the staff behind you, as well as in the role of the executive branch official responding to your requests, I can say that each institution's interests are critically important to the functioning of our government, and so when they conflict, it is crucial to recognize that our government is best served by reaching a compromise or accommodation that protects the core interests of each branch.

Oversight generally

Congressional oversight -- the reviewing, monitoring, and supervision of federal agencies, programs, and activities -- is essential to good government. It helps to ensure that officials who hold the public trust apply laws fairly and spend funds wisely. It uncovers abuse and uproots waste; it encourages efficiency and fosters transparency.¹ When working properly, oversight creates a symbiotic relationship between the executive and legislative branches: Congress is better informed when making legislative decisions that touch the executive branch, and the executive branch is in a better position to carry out its role in the implementation of future laws and its participation in the legislative process. There is a natural, and perfectly reasonable, push and pull of constitutional and legal interests when two branches of government interact. But too much pushing, or pulling, from either party, poorly serves the American people.

¹ See CRS Report 97-936, *Congressional Oversight* by L. Elaine Halchin and Frederick M. Kaiser (2012).

The accommodations process

Many in the public may not be aware that the oversight process consists of more than just contentious public hearings. Many, if not most, requests between the branches are voluntary. And more often than not, the branches of government comply with one another's requests, in part or in full, after negotiation and compromise.

As the D.C. Circuit Court of Appeals has written, "[t]he coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation."²

Both Congress and the Justice Department have long recognized this principle.³ The Justice Department has attempted throughout the years to balance satisfying legitimate legislative interests with protecting the executive branch's confidentiality interests. In the context of the Justice Department, those confidentiality interests may apply to national security information; materials protected by law (such as grand jury materials protected by Rule 6(e) of the Federal Rules of Criminal Procedure and taxpayer information subject to the protections of 28 U.S.C. § 6103); information or materials the disclosure of which might compromise open criminal or civil cases or inappropriately invade individuals' personal privacy; and predecisional communications within the Justice Department (such as internal memoranda).

Similarly, Congress has a long history of engaging in responsible oversight of the executive branch, reaching accommodations with the executive branch that have regularly included narrowing investigative requests, agreeing to limit access to information, agreeing to accept information in a different format, such as a briefing, and even at times delaying a congressional investigation until the work of the Justice Department is completed.

Open matters

Congressional inquiries into open, ongoing criminal prosecutions or investigations reach the height of this institutional conflict and require the most significant need for accommodations. Since at least the turn of the 20th century, the Justice Department has resisted any attempts to obtain its investigatory files during an ongoing investigation. This is due to the Justice Department's fundamental concern that providing information

² *United States v. American Tel. and Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977).

³ See, e.g., Letter from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to Rep. John Linder, Chairman, Subcommittee on Rules and Organization, House Committee on Rules (Jan. 27, 2000).

related to an ongoing investigation would pose an inherent threat to the integrity of the Justice Department's law enforcement and litigation functions, and thus to the impartial administration of justice in the United States.

For instance, more than 80 years ago, Attorney General Robert H. Jackson notified Congress that "all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to 'take care that the Laws be faithfully executed,' and that congressional or public access to them would not be in the public interest."⁴

Recognizing Congress's undeniable interest in oversight, there are several reasons why a healthy, functioning Justice Department must exercise extreme caution in disclosing information about ongoing matters to Congress. First, the Justice Department's disclosure of case files and other materials could enable Congress to pressure or attempt to influence the prosecution of criminal cases. As Charles Cooper, former Assistant Attorney General for the Office of Legal Counsel during the Reagan administration once wrote, such disclosures could in effect make Congress a "partner" in criminal investigations, opening the door to second-guessing tactical decisions and influencing the outcomes of criminal investigations.⁵ Nearly forty years later, the concerns he voiced about faith in the justice system might be even more acute, with public trust in government currently at near-historic lows.⁶

Second, prosecutors must be cautious about providing Congress or the public with a template for how non-public investigations are proceeding. As Attorney General Jackson said, "[c]ounsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon."⁷ Having served as a prosecutor, I would add to Attorney General Jackson's observation that his concern shouldn't be limited to defendants and potential defendants alone. Ongoing investigations could be significantly impaired if prospective *witnesses* are tipped off about the existence or nature of open investigations of another party.

Finally, two principles enshrined in the Constitution and decades of jurisprudence are that everyone in the United States (1) is entitled to a presumption of innocence in criminal matters to which they are a party, and (2) retains significant individual privacy interests.

⁴ 40 Op. Att'y. Gen. 45, 46 (1941).

⁵ *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. OLC 68, 76-77 (1986), quoting *Memorandum for Edward L. Morgan, Deputy Counsel to the President*, from Thomas Kauper, Deputy Assistant Attorney General, Office of Legal Counsel (Dec. 16, 1969).

⁶ See, e.g., *Public Trust in Government: 1958-2022*, Pew Research Center, found at <https://www.pewresearch.org/politics/2022/06/06/public-trust-in-government-1958-2022/> (captured February 7, 2023).

⁷ 40 Op. Att'y. Gen. at 46.

The revelation that an individual is or might be the target or subject of an open investigation -- or perhaps was the subject of a now-closed investigation -- could have profound and devastating impacts on that person. The Justice Department's longstanding practice has been to keep this in mind when working with Congress to respond to its oversight requests.

And even as Congress maintains that it has the authority to investigate any matter within its jurisdiction, members of Congress often have deep concerns about negatively affecting the outcome of a prosecution or having even the appearance of a partisan influence on the criminal justice system. In my experience, these concerns have led to Congress proceeding carefully with its work, in close consultation with the Justice Department, in order to avoid compromising criminal cases. Some accommodations made by Congress have included deferring Congressional investigation until a criminal investigation is closed, securing information against public release, or withholding sensitive documents that would reveal sources or investigative methods.

For example, when the House Oversight Committee wanted to obtain documents from Special Counsel Patrick Fitzgerald's investigation into the leak of the covert identity of CIA officer Valerie Plame Wilson, they consulted with the Special Counsel and ultimately agreed to delay receiving information until after the investigation and litigation had completed. Even then, the Chair worked closely with the Special Counsel to narrow his requests to documents that the Special Counsel agreed would not infringe on his prosecutorial independence or intrude upon grand jury secrecy.⁸

In another example, when the Senate established a select committee to study the operations of the Federal Bureau of Investigation following the Department of Justice's undercover sting operation against members of Congress known as "ABSCAM," that committee established an agreement with the Justice Department whereby the Department was permitted "to withhold from the committee documents that might compromise ongoing investigations or reveal sensitive sources or investigative techniques, though the Department was required to describe each such document withheld, explain the basis of the denial, and give the committee an opportunity to propose conditions under which the documents might be provided."⁹

Conclusion

From the failed St. Clair expedition in 1792 through Watergate and the Iran-Contra hearings in the contemporary era, and any number of others today, Congress has never

⁸ Letter from Henry A. Waxman, Chairman, Committee on Oversight and Government Reform, to Michael B. Mukasey, Attorney General (Dec. 3, 2007).

⁹ See, e.g., Congressional Research Service, *Congressional Investigations of the Department of Justice, 1920-2007: History Law and Practice* (Aug. 20, 2008) at 45.

shied away from scrutinizing executive activity. This is a good thing. The public deserves to know about the workings of the executive branch: where it has succeeded and where it can be improved.

While the legislative and executive branches may not always have interests that align, their relationship is rooted in their roles as set by the Constitution and need not be hostile.

As with any process of negotiation or accommodation, not every party will always receive the materials or information they seek to recover, nor will they be able to protect every bit of information they wish to shield. In the give-and-take of the separation of powers, to paraphrase the Rolling Stones, you can't always get what you want, but if you try sometimes, you get what the Constitution and other precedent allow to be shared between coordinate branches of government, each of which has legitimate and serious interests to protect.

Thank you again for inviting me to testify, and I look forward to answering your questions.

Chair JORDAN. Thank you, Mr. Williams.
 Ms. Parker, you are recognized for five minutes.
 Ms. Parker, hit that button. There you go. Thank you.

STATEMENT OF NICOLE PARKER

Ms. PARKER. Chair Jordan, Ranking Member Plaskett, and Members of the Subcommittee, I would like to thank you for inviting me to come and respectfully speak to you today.

The people of this country deserve the right to have faith in those sworn to protect. Faith is the foundation of hope, and hope can be restored through honest reflection of who we have become and who we could and should be.

On September 11, 2001, I was working for Merrill Lynch at the World Financial Center in New York City. I witnessed up close the horrific deadly terrorist attacks on the adjacent World Trade Center. My colleagues and I evacuated our building and were led to safety, thanks to the heroic efforts of NYPD officers; 2,977 souls were not as fortunate that day.

As I watched the mayhem unfold, to include people jumping to their deaths, I was shocked, heartbroken. I vowed to God that I would give back and serve this great Nation. This vow led me to leave a multibillion-dollar hedge fund in 2009 and apply to become an FBI special agent.

According to *The Wall Street Journal*, around 45,000 people applied to be special agents that fiscal year. About 900 made the cut, and I was one of them.

After five months of arduous training at the academy in Quantico, I was a sworn-in special agent, assigned to the Miami Division. I considered it a very sacred responsibility and was honored to be entrusted to protect and serve the American people.

My entire career was spent in the field, where I believed I could make the strongest impact in rescuing victims and putting criminals behind bars.

It was my privilege to work alongside the finest and brightest in the FBI, local law enforcement, and our Federal partners, participating in the investigations of myriad criminal cases—the Marjory Stoneman Douglas High School shooting in Parkland, Florida; the 2017 Fort Lauderdale Airport shooting; the Cesar Sayoc pipe bomb case; multimillion-dollar Ponzi schemes; crimes on the high seas; bank robberies; murders for hire; sexual assaults; extortions, and more.

Yes, it was physically taxing and emotionally jarring, but I believed I was making an impactful difference. Every day, I woke up and I embraced being an FBI special agent—until things changed.

Over the course of my 12-plus years, the FBI's trajectory has transformed. On paper, the Bureau's mission remained the same, but its priorities and governing principles shifted dramatically. The FBI became politically weaponized, starting from the top in Washington and trickling down to the field offices.

Although FBI employees have their First Amendment rights, they are not at the liberty to allow their personal political views or preferences to determine their course of action or inaction in any investigation. Lady Justice must remain blind. Those that do not

uphold these responsibilities cause a negative ripple effect throughout the agency and the field.

It is as if there became two FBIs. Americans see this, and it is destroying the Bureau's credibility, causing Americans to lose faith in the agency and, therefore, the hardworking and highly ethical agents who still do the heavy lifting and pursue noble cases. It makes it very difficult for agents to do their job when the FBI loses the respect of the American people.

There has also been a shift in recruiting practices—a lowering of the eligibility requirements, which is negatively impacting the agency's performance.

All of this adds up to a loss of trust in the FBI by many Americans and low morale among many FBI employees. For many, becoming a special agent was their calling in life, but now it is merely a very dangerous and high-risk job with minimal contentment.

Wary of consequences that come with voicing their displeasure, these agents keep their heads low. They work hard, and they stay off the radar, and they count down the days until they can collect their well-deserved pensions.

For me, distancing myself from egregious mistakes, immoral behavior, politically charged actions taken by a small but destructive few FBI employees became exhausting.

Although I was always treated with the highest level of respect in the Miami Division, I no longer felt that I was the type of agent that the FBI valued. I began to lose passion for the career I loved, and peace came as I reflected on the victims I assisted, the criminals I took off the streets, and I remembered positive performance reviews, awards, and accolades I had been given, as I left nothing on the line in my work as a special agent.

I held out as long as I could, hoping things would improve, but finally I knew it was time to go. So, less than four months ago, of my own volition, I made the difficult decision and quietly walked away from the FBI with an exemplary and spotless record.

I love the FBI I joined, and I have treasured memories working alongside remarkable people. I am proud to have served with honor as a special agent. While I sincerely pray for the FBI's future success, the FBI's troubles of late were bigger than anything I could change.

Going forward, I will continue to serve others in our beloved country while honoring and celebrating the true heroes, both past and present, of the FBI.

When I was invited to participate in this hearing, my initial reaction was to decline the request, as there may be others more capable who would do a much better job than me. Why would I want to subject myself to the stress of testifying, putting a target on my back and likely facing public scrutiny?

As I prayed about this invitation—sorry—the thought came to me: To whom much is given, much is required. I realized that this is not about me. I have been given the opportunity to speak up on behalf of numerous current and former Bureau employees who feel similarly but they do not have a voice.

I am not here today to show favor to any political party. I am here to stand for the truth based on my experience at the FBI. In

all humility, I hope to make an impact in creating a stronger agency, which is what Americans deserve.

[The prepared statement of Ms. Parker follows:]

Change in FBI's Trajectory

Over the course of my 12-plus years of service between August 2010 through October 2022, the FBI's trajectory transformed. On paper, the Bureau's mission remained the same but its priorities and governing principles shifted dramatically. The FBI I signed up for was focused on fighting crime, upholding the Constitution and protecting the American people but now there is excessive outside noise drowning out the true mission.

Political Slant

The FBI became politically weaponized, starting from the top in Washington trickling down to the field offices. Lately there is one politicization issue after another at the FBI. In the last several years, many matters at the FBI seemed to have a political slant. When I first joined the Bureau, that was unheard of to me. There was never widespread discussion about politics or conducting investigations that were politically driven but then it appeared to be the focal point. When I initially noticed politicization seeping into the agency in 2016, I kept my head low and focused on my violent crime work. I told myself it did not affect me as I was in the field and not involved with anything related to Washington, D.C. I kept working on my cases but the politicization issues continued to arise over and over. It became a distraction and we felt it overshadowed the work myself and my colleagues were doing on the ground level on matters such as violent crime and crimes against children, etc. The optics of the politicization were bad. It started destroying the trust of the FBI employees and the citizens we served.

The politicization turning point for many FBI agents and employees was on July 5, 2016 when then Director Comey came out and spoke about the investigation into Hillary Clinton's use of a private server to send and store classified information. He stated something to the effect that no reasonable prosecutor would charge the case. Many employees were confused by this statement since the FBI does not make prosecutorial decisions. The FBI's role is to gather evidence and turn it over to the Department of Justice (DOJ) for prosecution. It appeared to be a political statement that he was in essence declining prosecution on behalf of the DOJ.

When the execution of a search warrant at Mar-a-Lago occurred in August 2022, many FBI employees and Americans across the board on the political spectrum were stunned. The FBI had never executed a search warrant at a former president's home. That was a big deal. Surely those making the decision to conduct this search warrant at the highest levels had to have known the optics this would create in appearing to be a political move yet it occurred anyway.

If a crime is committed, regardless of the political persuasion or status of the individual, then the crime should be investigated. But the issue comes in when similar alleged crimes may have been committed and they are handled in completely different manners

with different approaches, techniques, vigor and resources. Civilians I knew who stood on polar ends of the political spectrum agreed that the FBI appeared to be political.

If the same set of principles were applied to Mar-a-Lago, one would think they would say that no reasonable prosecutor would charge this case but not so in this circumstance. So why the difference between the two investigations? Leadership says they are very different, which they are, on various levels. One distinctive difference, among many, is that in one circumstance it was unsecure electronic servers being used to transmit and store classified material while the other was boxes of paper documents in a location at a former president's home with multiple layers of tight security to include the United States Secret Service's protective detail.

And then subsequently, there have been classified documents found at the current president's residences. Yet there were no unexpected, attention-drawing searches conducted at any of his residences. There has been discussion that because of differing levels of cooperation thus the matters were handled differently. To the American people it looks like a massive disparity in how the FBI treats politically charged matters.

This is just one example of several. It is irrelevant what side of the political spectrum one stands on. Take the names and political affiliations of those involved off the table and look solely at the alleged mishandling of classified materials and the treatment is vastly different. It needs to be fair and equal across the board. When it is not – it ruins the trust and confidence of the American people and employees within the FBI.

Americans deserve a politically unbiased FBI. It is at the foundation of our American democracy. FBI leaders, agents and support staff must remain politically neutral when working investigations – follow the facts and the evidence – take the names off the table and only follow the facts. How the FBI has handled certain investigations is politicized. Investigations of similar crimes must be handled with the equal vigor, resources and effort. It appears that more attention, enthusiasm, priority, effort and resources are being used towards investigating people of conservative or right leaning political persuasions than ever before and certainly more than those of a more left leaning posture. The Director says this is not the case but the reality appears to say something else.

Lady Justice must be blind. It appears to many FBI employees and Americans that there is unequal application of the law based on political persuasions. The FBI cannot continue to cherry pick politically charged cases. What side of the political fence someone is on should be entirely irrelevant and should not factor into investigative decisions.

A few other examples frequently discussed among FBI employees and American citizens of note where the disparity in how the cases were investigated or not investigated based on what appeared to be political biases included the following:

- Hunter Biden Laptop – FBI investigations typically remain entirely confidential but this laptop matter became public when the store owner who reported the information to the FBI saw no action taken. Then certain media outlets tried to suppress the information and later determined that the FBI played a role in these matters. It appeared to be politically driven and motivated to withhold information prior to an election.

- Operation Crossfire Hurricane – Political leanings of agents and employees overseeing the investigation clearly determined how the case would be handled to the detriment of following the actual facts and operating with highest level of integrity. This destroyed the trust of many Americans and I do not believe the FBI has ever recovered from it. Obtaining a warrant from the FISA courts based on false information and an FBI employee putting in writing that it was like an insurance policy to prevent a certain individual from winning an election is clearly unacceptable.

- Instruction to Investigate Parents at School Board Meetings - Around October 2021, in a memo that came down from DOJ, the FBI was instructed to investigate threatening parents at school board meetings. Typically, the FBI does not take the lead on local investigative matters unless it is a wide scale matter or the local law enforcement requests FBI resources or assistance. It appeared that the FBI was instructed to get involved to intimidate parents' right to free speech although the FBI did not agree and said they only looked into violence at school board meetings. Violence is inexcusable and should never be tolerated, but parents passionately speaking up at school board meetings is not a threat of violence. Actual threats of violence should be handled swiftly and appropriately but it did not appear to be a wide scale matter that would require a focus of FBI resources. It came across as political in nature that a widespread memo was even put out regarding a very small group of people it may be describing.

- Twitter Files – The release of the Twitter Files revealed what appeared to be the FBI coordinating with social media companies prior to an election to suppress potentially derogatory information regarding one political party and its affiliates around an election. Many Americans see and interpret this as election interference. Foreign influence task force – a government formed entity was telling a media source what they should be keeping an eye out for as potential misinformation. The FBI said they did not tell the social media company to suppress anything. Many would disagree with this. The optics did not look good. It certainly appeared to be political in favor of protecting the image of one side.

- Protest outside SCOTUS Brett Kavanaugh's Home - After a draft of a Supreme Court opinion regarding overturning of Roe vs Wade was leaked, SCOTUS Brett Kavanaugh's home was targeted by protesters yet the FBI took no apparent action. This is a federal crime. The early morning of June 8, 2022 an individual showed up in his neighborhood in an attempt to assassinate him after protesters swarmed his

home for days.

- **Mark Houck Pro-life Activist Arrested** – Mark Houck was a pro-life activist who was accused of pushing a Planned Parenthood escort outside an abortion clinic on October 13, 2021. The locals had declined the case yet the FBI went in and worked the case afterwards. I have never known the FBI to work cases declined by the local authorities. Houck was charged with FACE (Freedom of Access to Clinic Entrances) Act violation in Pennsylvania. He was arrested by a large group of FBI personnel in September 2022. I have been on arrests for those alleged to have committed much more serious and violent crimes than he was with much fewer resources. He was not known to have a criminal history. He was subsequently acquitted at trial at the end of January 2023.

- **Catholic Intelligence Product** - The recent intelligence product produced out of the Richmond FBI Field Office indicates a bias towards those of the Catholic faith. Thankfully the FBI denounced this report and said they were further looking into it. But how did it ever get approved in the first place?

Over the last couple of years some agents were concerned that they were being asked to go out and investigate individuals on a certain end of the political spectrum who did not appear to have violated any laws while exercising their first amendment rights. The agents were not comfortable with what they were being tasked to do and were concerned that they could be liable in civil lawsuits because of these actions.

Other colleagues have spoken of intelligence analysts generating reports into those that appear to hold certain political views that tend to be more right leaning or conservative. And looking at lists of people attending school board meetings, town hall meetings, etc. as potential threats when there was no indication of any violent behavior.

January 6 vs. Summer 2020 – Investigative Focus & Resources

Bureau-wide employees were told over and over that investigations into January 6, 2021 (J6) were of pre-eminent importance for the FBI. Prominently displayed on the homepage of the FBI's website under "Featured Content" is the "Capitol Violence" section. No one wants to see violence anywhere. The Attorney General hosted a call on the 1-year anniversary of J6 and discussed at length that it was the top priority of the DOJ. All agree that no one should interfere with an election. There is no tolerance for violence. Ever. And those that assaulted police officers, bashed windows, vandalized the Capitol, etc. should be aggressively prosecuted to the highest degree. All agree on this effort.

At the FBI, we all received multiple emails that we refer to as the "FBI-ALL" distribution that went out to all employees requesting assistance in serving TDY's (temporary assignments) to Washington, D.C. for approximately 90 days. There would be a per

diem rate paid to you for food, all travel expenses, hotel accommodations, etc. would be fully covered by the FBI. And it would be necessary to stay the full timeframe to keep the fluidity of the investigations going. It would be interesting to see the amount of money the FBI has spent on the TDY's for all those that have reported to D.C. for these J6 investigations in the last two plus years.

The issue for many employees was that an exorbitant number of resources were and continue to be funneled towards this investigation at the expense of other investigations being worked. I knew someone who was at WFO and personally managed hundreds of leads from the J6 events. They stated that all WFO squads were tasked with thousands of leads, evaluating whether first amendment activities were evident in photographs or videos sent in by the public or collected from body cameras and other law enforcement sources. Any suspected criminal activity was to be forwarded to the appropriate division for further investigation. They stated that no one ever encountered that kind of operational tempo regarding the Antifa protests over the summer of 2020 when cities were under siege night after night after night.

I was told that WFO (Washington Field Office) directed almost all if not all investigative resources towards investigating J6 for a substantial period of time, around a year. When it was learned that the majority of those charges and investigations were for misdemeanors it stunned many long-time agents who had never seen such a focus on charging misdemeanors. What continued to befuddle many employees was the lack of resources channeled towards investigating the violent protests from the summer of 2020. If there is no tolerance for violence then it must be across the board. It appeared that the political affiliation of those involved in the events of J6 were the driving force behind the dedication of voluminous FBI resources. This is not about politics; this is about public safety. Communities deserve to be peaceful – there must be truth and operating a fair, equal and unbiased justice system. It should be entirely irrelevant what side of the political spectrum one stands on.

United States cities being destroyed by violence night after night, police precincts and innocent hard-working civilians' businesses burning to the ground, assault on numerous law enforcement officers nationwide, destruction of over \$2 billion in private businesses insurance claims (based on open-source media outlets) as well as assault on federal structures to include the courthouse in Portland would seem to have merited a large-scale FBI response. But there was never a widespread call out to employees requesting assistance in order to conduct investigations. Why not? This violent behavior is unacceptable - a threat to our democracy. Those communities that were destroyed and those that lost their businesses did not deserve that. The FBI must protect all people. Enforcing the laws must be seen as equal and fair regardless of who is causing the destruction and violence.

No one seems to have been charged when protesters entered the Capitol Building during the Brett Kavanaugh SCOTUS hearing. Yet hundreds were charged for "parading, demonstrating or picketing at Capitol Building" on J6. There seems to be a wide disparity in investigation into or the lack of investigation into matters based on

political leanings. Again no one is arguing that violent J6 offenders should not be prosecuted to the highest degree but aggressively prosecuting those that were peacefully parading appeared to be political.

In the latter end of 2021, employees were in an FBI field office meeting where an executive was discussing the leads emanating from D.C. for the J6 investigation and stated - "If you do not agree with the direction that the FBI is taking with the January 6 investigations then maybe we need to look into your suitability". That was chilling to those present because they did have concerns about the vigor for the J6 investigations versus other cases and by no means did it mean they were not suitable for their job.

I have never known the FBI to use its valuable resources to investigate widespread misdemeanors. Over 1000 individuals have been charged predominantly with misdemeanors. The strong statement has been clearly made to the American public that storming the Capitol will not be tolerated. We assume the violent most serious offenders from that day have been charged. Rightfully so. But the ongoing efforts over two years later appear to be political or possibly because it generates terrorism statistical accomplishments for multiple field offices. We understand that terrorism is a priority and Congress allocates certain amounts of money for terrorism so showing the high volume of work being done in terrorism likely equates to more funding.

I think if Congress further investigated this distinction between summer 2020 and J6 matters, it would be illustrative and confirm the focus and priority of the FBI. To look into the number of preliminary investigations, full investigations, interviews, search warrants, source reports, arrests, convictions, the number of agents assigned to investigate each, the use of resources used in each such as SWAT, surveillance, etc., and the amount of money spent towards the investigation of each, it would show a clear differentiation in priorities. Many believe the disparity is completely political in nature.

Resources being utilized for J6 versus other Grotesque Crimes

In the meantime - violent crime is at an all-time high in many U.S. cities. Children are being hurt and sex trafficked at record rates. The fentanyl crisis is killing Americans. COVID-19 killed over a million and destroyed the U.S. economy. There are serious felonious federal crimes occurring everywhere that seem to be under addressed. We never received the volume of emails regarding any of those matters so it appeared they were not as much of a priority. Many agents felt the FBI's resources were being used to address manufactured threats based on political or social leanings rather than actual threats in communities nationwide.

For example, a few months before I resigned from the FBI, I had received credible and actionable information regarding a potential sex trafficking of minors case from a retired agent who had spoken to the alleged victim's relative. The relative had reported it to the FBI but never heard anything back. Then the retired agent spoke to me and I reached

out to the relative to follow up. I spoke to the appropriate office to ask them about the matter. They said something to the effect that they had done an initial look into it. They frustratingly explained that they did not have the resources to further look into it so they made the effort they could and closed it out as a federal matter. I was startled by this response. I strongly suggested that they open the matter back up and further look into it and follow up with the relative accordingly as I think sex crimes against children should be of the highest priority – the most vulnerable population we serve and the most heinous crime. But that is just my opinion. I could not help but think in the back of my mind that had it been a J6 lead or tip that was called in that it may have been handled more swiftly. I will never know but the thought of it perturbed me.

We have a very limited number of resources with only approximately 13,000 agents worldwide so they must be used wisely and where we can make the most impact in protecting our communities and saving the most vulnerable. Many FBI employees just aren't sure that spending voluminous FBI resources to charge misdemeanors from one isolated incident is the best use of precious federal resources.

Politicization Actions of Employees Internally

Although agents have their first amendment rights, they are not at the liberty to publicly express any potentially political support while on duty wearing official FBI gear. Consider an example: on June 4, 2020 images and videos surfaced on-line of Special Agents in their FBI marked ballistic vests kneeling to protesters in Washington, D.C. while on official duty protecting our nation's institutions. Some claimed they knelt for de-escalation purposes but images revealed some agents clapping and smiling. They hardly seemed to be in danger. In fact, the agents posted at another building nearby remained standing during the entire protest and were perfectly safe. On top of that, there was no reprimand for any of the agents who knelt that day. In fact, many ended up getting highly sought-after promotions and offered \$100 gift cards by the FBI Agents Association. For many agents nationwide, it was upsetting to see the lack of judgment by the kneelers and that they were treated like heroes by some FBI managers. An FBI Special Agent affirming a political position, by kneeling in solidarity would have been met with disciplinary action in the past.

As a small example of internal politicization which was pointed out to me, in the FBI Miami office after President Trump won the election and took office, the previous President and Vice President's framed photos at the front entrance of the office remained up for months until President Trump and Vice President Pence's frame photos arrived to replace them with. The day President Trump left office, his and Vice President Pence's photos were immediately taken down from the wall with no pictures left in place. Some employees in the office were reported to be heard celebrating, cheering and clapping at the television screen as they watched President Trump flying away from the White House for the last time. An employee is allowed to dislike a president or even disdain them but that sort of outward demonstration regardless of

your political preference is entirely inappropriate and unacceptable behavior in the FBI office.

It was widely known that some who were willingly volunteering to go to Washington D.C. to investigate those involved with J6 were heard to say they would gladly go after those Trump supporters. Again, unprofessional and inappropriate. Attaching your desire to conduct an investigation based on someone's political preference is inexcusable.

I have been advised of conservative employees expressing their views on a matter while at work and they were immediately addressed with being told they were violating the Hatch Act. Yet they stated those on the other side of the spectrum can speak openly with no consequence. Many employees seemed to think there was a double standard and it was hypocritical. There was an employee at work inside their FBI office wearing a t-shirt for a well-known current Democratic political figure. There was no reprimand or discipline for the employee. This seems to be an actual Hatch Act violation. Frankly, no one really cares but they care when one side is permitted to violate the Hatch Act but the other side is not.

I was advised by an agent who was told by another colleague on their squad that their Supervisory Special Agent (SSA) told the colleague that they (SSA) were contemplating giving an assignment to the agent. But the SSA expressed their concern that the agent was a conservative and did not know if it would work for the circumstance. The colleague told the agent who was deeply offended as they have never shown their political preference in the course of any investigation and should not be discriminated against receiving a certain assignment because they are a conservative. And why would the supervisor be speaking to another subordinate about an agent? And why should the supervisor even know or care which way an unbiased employee leans in their political persuasion as it does not and should not have any impact on their work?

These are minute illustrations but this pattern of behavior occurred over and over. It appeared that there was a political bias at times even on the field office level but to a minimal degree compared to what was reported to be happening up in Washington, D.C.

It is as if there Became 2 FBI's

It's as if there became two FBI's. The vast majority of agents in the field are outstanding. They sacrifice every day to protect Americans. They work hard and have nothing to do with the scandals or politics but they are dragged down by the negativity of those ruining it for everyone. There is FBI 1 and FBI 2. FBI 1 tends to include the rank-and-file agents. They are typically field agents who came to the FBI with pure motives to serve their country and fight crime. Many times, they have no interest in promoting or moving far up the FBI management chain. They work hard charging cases and focus on doing their job. They do their best to ignore all the political upheaval in the

agency going on around them. They work hard and do not buy into the "culture". The Bureau always said, "Needs of the Bureau" but FBI 1 folks think more along the lines of, "Needs of the victims and needs of the people the FBI serves." FBI 1 puts the needs of the communities in which they serve first.

FBI 2 employees on the other hand, seem to sometimes be less focused on serving the country and more focused on serving themselves. FBI 2 tends to be found more in Washington, D.C., upper-level management, etc. They are referred to as "company men". Some appear to be more about pushing their personal or political agendas using their law enforcement power. FBI 2 is where a lot of the scandal occurs – dishonesty and arrogance. Some are in positions of authority and hold a lot of power. FBI 2 seems to have a different set of rules with less accountability than FBI 1 yet FBI 1 is where the folks are in the trenches doing most of the heavy lifting.

It should also be noted that FBI Headquarters has a massive number of employees. Many agree that it would be best to eliminate many units and the size of the workforce at headquarters and return the employees back to the field where they can perform investigations that protect the American people. Employees comment there is too much Headquarters FBI 2 overreach into what those in the field FBI 1 are doing. Sometimes FBI 2 pushes politically charged cases down to FBI 1 and FBI 1 is not in alignment with that focus.

FBI Losing Respect and Credibility Among the American People

Many Americans, regardless of their political persuasion, see the glaring disparity in how the FBI handles certain matters or investigations. This disparity is destroying the Bureau's credibility, causing Americans to lose faith in the agency and therefore the hardworking and highly ethical agents who still do the heavy-lifting and pursue noble cases. The majority of agents uphold their oath to support and defend the Constitution with fairness and integrity. The FBI must have the buy-in, trust and respect of the American people in order to be successful in solving cases and doing their jobs. When Americans lack trust, it is difficult to succeed in the mission. Many Americans have lost trust in the FBI. That is not good. Executive management refuses to acknowledge this problem and says it is misinformation or conspiracy.

For example, I would be out trying to conduct interviews and having to explain to the interviewee that I was trustworthy regardless of what they saw in the news and I was not one of the dishonest agents, etc. I encountered civilians who did not want to assist with or cooperate with the FBI because they said they no longer trusted the agency. Solid honest hard-working agents are being brought down by those that have ruined the reputation of the FBI.

I knew of several TFOs (task force officers) and local law enforcement that no longer wanted to support the FBI's efforts or work with the FBI because they said it was too

political and did not want to be involved. They said they did not like what they were seeing in the FBI up in Washington, D.C.

FBI leadership dismisses Americans' concerns and says the media is wrong and it is disinformation. Many Americans do not feel like the FBI listens to them and so they do not want anything to do with the agency. Civilians do not know who to trust or who to turn to for assistance on federal matters. Many conservatives or politically right leaning individuals feel the FBI is no longer there to protect them but instead to come after them. That is not good for this nation. The FBI must remain neutral, fair and unbiased regardless of political persuasions.

Priority of Social-type Movements at the FBI

I came to fight crime but it seems much of the focus now tends to be less on the mission of the FBI and more on social type movements. I have heard the FBI referred to as the Federal Bureau of Inclusion and Diversity. I have zero issue with and strongly support diversity but it should never be a higher priority than mission. Myself and others think the overwhelming focus on diversity and what makes us different is actually creating more division than unity in the FBI mission. It should be one FBI focusing on what unites us all and that consists of employees trying to uphold the Constitution and protect all Americans.

In the last couple years in particular, we received voluminous "FBI All" emails regarding social justice type issues but rarely saw emails about the mission of the FBI or cases being worked on. I took an oath to uphold the Constitution and that oath tasked me to treat everyone with respect and to enforce the laws impartially. Based on my experience, it appeared that some FBI employees had more of an issue of being biased regarding one's political position rather than social issues such as race, sexual preference, religion or gender.

Another example is the FBI's focus on fighting the effects of climate change. I do not see the need for such a focus when it comes to protecting Americans from violence, terrorists, etc. A few months back the FBI hosted a panel for employees regarding how climate change affects the FBI's operations and mission. There is an initiative to move to electric cars by around 2030. It seems they are spending an exorbitant amount of money on this effort.

Additionally, I responded to the Marjory Stoneman Douglas High School shooting in Parkland, Florida on February 14, 2018. I was working on FBI Miami's Violent Crime squad. I conducted death notifications the early morning of February 15, 2018. It was horrifying to me to learn just hours later that the FBI had previously received tips into the shooter but they were not properly documented or fully investigated. We will never know

if those tips had been fully investigated if the shooting may have been prevented. It crushed me. I felt a substantial amount of guilt knowing the agency I worked for had not performed its duties as they should have and now 17 innocent souls with bright futures were dead.

As I reflected on the week before the shooting – FBI Miami held a large-scale Diversity Agent Recruitment Event (DAR). The FBI rented out a hotel ballroom in Fort Lauderdale. FBI Director Wray attended the event. He rarely came to the Miami Field Office. Potential FBI agent candidates were invited to attend. It required a huge amount of time and effort to put on the event. It was a big deal! Assignments were given well in advance. Although I had no interest in attending because of my other important case tasks I was working on, I was told I must attend the event. I knew it was because I was a female. I never wanted to appear that I got into the FBI because I was a token female. I got into the FBI because I was qualified – regardless of my gender. And that is how it should be. Quality. Not quantity to fill a female recruitment quota.

I was amazed how much time, resources and effort were being put into the diversity recruiting event. I could not help but think after the Marjory Stoneman Douglas High School shooting that if the FBI had put as much effort into following up on those credible and actionable tips as they did into the diversity recruiting event in Fort Lauderdale the week before – maybe that tragic school shooting would not have occurred and I would not have had to tell those families their loved one had been murdered. I guarantee those parents would not have cared what the gender, sexual preference, skin color or ethnicity was of the agents stopping that killer. They would have cared that the FBI did all in the power and prevented the shooting from occurring and that their child was still alive. But they are not. And we will never know if it could have been stopped. What I do know is I came to the FBI to stop crime and save lives and protect Americans and their communities and anything other than that is a distraction. The priorities shifted dramatically.

It was also disheartening to me that FBI Director Wray did not show up and attend a meeting with the victims' families of the Parkland school shooting that took place on Saturday, December 8, 2018 (at the FBI Miami office) to explain what happened with the FBI's mistakes in mishandling the tips that may have prevented that deadly massacre of their loved ones. Instead, he sent the FBI's Deputy Director on his behalf. It stunned me that Director Wray had time to attend the large-scale Diversity Agent Recruitment Event on February 5, 2018 – the week before the Parkland tragedy – but not the meeting with the Parkland school shooting victims' families. I would have hoped the Director could have arranged the meeting for any other Saturday that would have worked for his calendar. Yet the Director was not there. But he was there for the recruiting event.

It is disconcerting to see how the FBI has dropped the ball on certain matters that have had consequences of death in some instances as they prioritize other social and political-appearing matters over mission.

One colleague advised of a mandatory Critical Race Theory training in their division that all employees were invited to attend but all supervisors were required to attend. The speaker started by denouncing the Declaration of Independence. This same individual commented that in their large field office – everyone knows who the conservatives are. Why should it even matter? Back in the day you did not know where someone stood on political issues.

FBI Miami Line of Duty Deaths – February 2, 2021

I strongly believe it is important to address this matter. I share this with delicacy and the highest level of respect and would expect the same in return from all parties involved. I share this in hopes of making a positive difference and seeing changes going forward. Many have experienced survivor's guilt when that is not healthy and they are not to blame. That is most definitely not the purpose of this matter being addressed.

As an FBI Special Agent, myself and my colleagues understood that law enforcement could be a deadly job. I knew I could be killed in the line of duty. It was a sobering thought, but it was the reality. At Quantico we were informed of the potential dangers we could face. As FBI Special Agents with the gun, badge and credentials, we all took an oath and agreed to take on the risk of fighting crime. But were also highly trained to mitigate that risk as much as possible.

This hit home for us at the FBI on the morning of February 2, 2021 when we lost two of our own FBI Special Agents in the FBI Miami division. Daniel Alfin and Laura Schwarzenberger were shot and killed in the line of duty by a child pornography subject while executing a search warrant at 6:00 AM in Sunrise, Florida. Four other agents were seriously injured that morning, as well.

The FBI family was crushed. The FBI had not experienced an adversarial death in 13 years when the tragedy occurred. To say it was a big deal is an understatement. It was the worst-case scenario in law enforcement. This is not about politics. This is about human lives.

I was not on the operation nor did I ever review the operations plan. I never saw the location of the crime. I was not privy to those details. I do not want to point the finger or second guess any one individual's decisions after a tragedy as I clearly know that ultimately, it was the shooter's fault that they were killed that morning. Laura and Dan are true heroes and were defending and protecting the most innocent. Children.

I would like to address this as an overarching issue FBI-wide regarding the sentiment and posture of the FBI and how they choose to prioritize and utilize resources. It appears that politically charged cases are of a higher priority or emphasis than anything else. And now two agents are dead.

I was never given an official understanding or briefing on what transpired the morning of February 2, 2021. But I was advised by many that Dan and Laura's operation should have been a SWAT operation. Dan and Laura did not have the proper equipment – no shields – no helmets - and were in front of a window with a subject with a Ring camera doorbell on a fatal funnel type hallway. Hindsight is always 20/20.

The use of SWAT depends on certain criteria. I understand the killer did not have a prior criminal history. It was later learned that the neighbor had been threatened by the killer with a gun. Why was SWAT not sent out for a child pornographer but has been sent out numerous times nationwide for J6 misdemeanors? Because those J6 Capitol misdemeanor committers had violent histories and were known to have guns? But the child pornography hater of law enforcement did not have a criminal history. Based on my experience and training, I think I know the answer but I am not certain.

Regardless, over and over and over, we have seen and heard on the news and from a whistleblower and other colleagues that the FBI has liberally sent out large groups of FBI agents and/or SWAT teams for offenses much less serious than a child pornography predator. For example, it occurred in FBI Miami for the highly publicized arrest of Roger Stone when a massive number of agents were sent to his home. And for the Mar-a-Lago search warrant at a highly secure location. It appeared to myself, many colleagues and by many Americans that the use of SWAT or large number of agents on what appeared to be politically motivated arrests was somewhat for intimidation tactics.

Those with experience in law enforcement know those committing crimes against children often have a track record of being the most dangerous and violent regardless of their prior criminal history because they know if they are caught, they will be going away for a long time and so they have nothing to lose. It is not uncommon for them to fight back. In FBI Miami's own area of responsibility, it is well known that Broward County Sheriff's Office Deputy Todd Fatta was killed in the line of duty in August 2004 while he was executing a warrant in a child pornography raid in Broward County. The same county where Dan and Laura were killed.

The most chilling part is that Special Agent Laura Schwarzenberger was my dearest friend in the FBI. She and I spoke on the phone in great detail about many topics for close to an hour and a half on Sunday evening (January 31, 2021) before she was killed early Tuesday morning (February 2, 2021). In fact, it was around 36 hours before she was murdered. Laura herself had been on the FBI Albuquerque SWAT team prior to transferring to FBI Miami around 2011. She was tactical and she understood the utilization of SWAT resources since she had been on SWAT herself. She specifically spoke about the J6 investigations and arrests that had been going on for only about a month at that point.

Laura and I spoke about an older man who was arrested in California for a J6 matter – a civilian friend had sent a video of the FBI SWAT team there cruising through the neighborhood to arrest what seemed to be a harmless older man. Of course, we did not

know the exact details of the arrest so it is impossible to perfectly assess. She discussed how this appeared to be so out of the norm for FBI SWAT resources. She was dismayed to hear that SWAT was being used nationwide for J6 misdemeanor take-downs not because it was J6 but that it appeared to be intimidation and the overall optics looked bad. In her opinion, it appeared political. At an outside glance she thought it seemed to be an excessive use of SWAT resources yet two days later, there was no SWAT there for her or her squad mates who were executing a search warrant on the vilest, a child pornography predator. She also commented that she was disturbed that the FBI never took widespread investigative or law enforcement action during the violent summer of 2020 Antifa protests but was already going full throttle on J6 arrests.

Laura was the epitome of what the FBI Director constantly refers to as "by the book". She operated with the highest level of integrity of anyone I knew at the FBI. Her political preferences never influenced her work. She made a vow to me the day before she was killed - in our last conversation ever - that she would never do anything, even if asked to, that was not in full alignment with the truth and her morals. She unequivocally stated to me, "If they are going to take me down, they're going to have to take me down for my morals." That was the last thing she ever told me while she was still alive on this earth and then she was killed the next morning. She is a true hero. This is something I believe I must speak up on because she no longer has a voice.

I am not trying to point the finger at anyone in FBI Miami but I am highly disturbed by the FBI's overall posture regarding the use of SWAT for J6 misdemeanors but not for my friend who was attempting to stop a child predator. It appeared that the vigor of investigating J6 misdemeanors and other politically charged matters was taking priority over the field agents doing the heavy lifting such as crimes against children and that is disheartening to me.

I believe anytime there is loss of life in an adversarial manner in the FBI, it should be the highest priority to review what happened, learn from it, acknowledge any possible mistakes and make every effort to change any policies and procedures that may have led to the loss of life. And then clearly communicate that effort to all agents and employees with full transparency to mitigate as much risk as possible in hopes that it will never happen again. We cannot reverse the hands of time but we would like to know that every measure has been taken, that policies and procedures have been fully re-evaluated and that resources are being given where they are merited.

FBI Director Wray never once offered an "After Action Review" to the FBI in the aftermath of this tragedy. He never sent an "FBI ALL" email to the entire Bureau explaining what transpired that morning and what happened to our two fallen agents and the four others injured. We never got an email from the Director or Headquarters regarding lessons learned or solutions going forward. That to me is failed leadership. We would like to have known, and expected to learn from the top-level executives what happened and what the FBI was doing to change operations nationwide going forward to ensure our safety. But it never happened.

FBI Miami never offered any employee-wide review of the incident for our own office. I was surprised by this yet others in the FBI were briefed on what occurred – such as the SWAT leaders. I understand it was a difficult time and people respond differently to trauma and those involved needed time to heal. I respect that and pass no judgment. Myself and others in FBI Miami believe that within a reasonable amount of time we should have been fully briefed on what occurred and what lessons were learned. It never happened.

But the “FBI All” or “MM (Miami) All” emails requesting volunteers for J6 TDY’s (temporary duty assignments) to Washington, D.C. as well as emails regarding various social issues such as ethnicity, race, gender, sexual preference, etc. continued to flood into our email inboxes on a regular basis-monthly, sometimes weekly or even daily it seemed.

I no longer felt my safety was the top priority to the FBI.

In my opinion and to others, it appeared that the social and political issues were a higher priority than the fallen agents and agent safety going forward. If that was the future of the FBI and the new priority, then I was not interested in continuing to work there. It was not in alignment with the original purpose and reason I joined. It was time to go. I signed up to fight crime. I know the job can be dangerous and I signed up for that and agreed to the risk that comes with the work. I conducted voluminous violent crime operations. But I did not agree for my safety to be secondary to political or social issues and that is certainly how it felt because of FBI Headquarters lack of response.

The mission of the FBI is too important to be focused on anything other than upholding the Constitution and protecting Americans and agent safety. The irony is that the FBI is all about creating a “safe” environment to discuss social type matters but yet many employees do not feel safe to speak up about their legitimate concerns regarding the direction the FBI is taking. And I certainly did not feel safe when I was never officially advised as to what transpired on February 2, 2021 and what protocol changes or actions would be taken going forward.

What I also found insulting and heartbreaking is that the FBI did not pay \$25,000 for private memorial services at Hard Rock Stadium for Dan and Laura. A private civilian was asked if they could pay for it. I know because I am close to the private civilian and he told me. Two agents who paid the ultimate sacrifice in the line of duty protecting children from a pornography predator and the FBI could not pay for the memorial services. Yet they have spent an exorbitant amount of money conducting investigations into J6 and the “going green” initiative.

I am not aware if there is a federal law that prohibits the FBI from paying for line of duty death memorial services but if there is, that needs to change. And if there is not, then this is completely inexcusable. Honoring fallen heroes certainly did not appear to be the priority. The military and likely any other law enforcement agency would pay the full

expenses for a fallen officer's or service member's memorial service. I hope their deaths were not in vain and that the FBI will make any necessary operational changes bureau-wide. I pray the FBI will continue to honor Dan and Laura through the annual memorial event at FBI Miami's office but more importantly be the agency that would make their legacies proud.

Dangerous Work – Change of DOJ Deadly Force Policy

As described through the line of duty deaths in FBI Miami, being an FBI Special Agent can be a dangerous job. In the course of my service, I had guns pulled on me by violent and dangerous criminals. I have been on operations where the subject we went to arrest ends up dead. Thankfully I was never shot at but I did sustain a serious back injury when arresting a violent fugitive who was wanted for murder. The fugitive crashed into my side of the vehicle during the operation. I am grateful to be alive. I was involved in dangerous work.

Many found it alarming that the DOJ changed its deadly force policy in July 2022 on the heels of 2 FBI agents in FBI Miami being killed by the adversary, especially because the FBI has no history of excessive force. The policy had not been changed since 2004. This concerned many FBI Agents because the new policy gave a feeling of providing less coverage or legal protection for an agent in a shooting or deadly force situation. There were some changes and additions to the policy. The de-escalation section was one of concern among FBI agents I have spoken to nationwide. Although the legal department said the deadly force policy did not substantially change, employees were concerned that it would cause themselves to further question if deadly force was justified in a split-second decision when the difference between potential life or death comes down to action versus reaction.

Law enforcement officers never ever want to have to use deadly force unless they absolutely have to. Many agents were concerned that if they were in a shooting today, they would not be scoped in by the current DOJ. Many agents took note of the FBI Special Agent in Baltimore who was in a shooting in December 2020 on a metro train outside of Washington, D.C. on his way to work. He was not scoped in and was charged by the state of Maryland for second-degree murder and other counts. The FBI agent was acquitted at a jury trial. This concerned many agents greatly that the hate for law enforcement was so strong and that if we were in a shooting, the DOJ may not scope us in and we could go to jail. Working violent crime and crimes against children we were fully aware that being in a potential shooting was not outside the realm of possibility.

There is a general hate for law enforcement right now in America. It is dangerous and FBI Special Agents need to know that no political or social issues will ever get in the way of their safety or their ability to defend themselves when necessary.

I was given brand new body armor several months before my resignation. I was never

even measured for it. The body armor did not fit me. I did not feel safe that it would have saved my life if it had been to the test in an actual shooting. Eventually I did get refitted and new armor was ordered but it was not received prior to my resignation. Another FBI agent in Miami has soft body armor that expired over a year ago. There seemed to be a pattern of agent safety taking a back seat to other less important matters that the FBI seemed to prioritize.

Agents Stay Off the Radar

Wary of consequences that come with voicing their displeasure, many agents keep their heads low, work hard, stay off the radar, and count down the days until they collect their well-deserved pension. There was an overall frustration among employees nationwide that the FBI Director and management continue to tell employees there is nothing wrong and that any rumblings of low morale, politicization, etc. is simply a perception in the media and flat-out misinformation. Until executive management at the top can humbly acknowledge that there are some issues at the FBI, then nothing will change.

Employees do not feel like they have a voice. Historically, employee surveys were the alleged means for employees to speak up but they most felt the surveys made no difference. In the last couple years, the surveys have been changed so you no longer rate the Director - only your immediate chain of command. Many employees will not even complete the surveys because they do not believe the claim that the results are anonymous. Employees do not want targets on their back for speaking up regarding their true feelings. Some stated that they were retaliated against, demoted or moved to different squads after they spoke up. It is insulting to tell employees that everything is all good when they do not believe it is good.

Many FBI Agents feel the same way I do but they cannot leave the FBI because they need their pensions so they stay quiet and off the radar.

Most that do have direct contact with the FBI Director and executive management are telling management what they want to hear – not what is actually happening on the ground level. How many cases are the executives investigating? None. They are not in the field where the work is happening. They are receiving information from someone else. There are multiple layers between rank-and-file employees and executives at the top. They are out of touch. It would help drastically if the executives would listen to the line employees working in the trenches, admit there are issues and fix them. No organization is going to be perfect. That would be unrealistic to expect the FBI to be perfect. But to dismiss employees' concerns or dissatisfaction with the current environment is disrespectful and lacking true leadership and accountability.

The Morale at the FBI is Low

There is frequent discussion among both current and retired FBI employees that they used to be proud to tell people they worked for the FBI but for many, that is no longer the case. Some are not only not proud but embarrassed or ashamed because of the current status of the FBI and recent actions taken by a small but destructive few. This sentiment is shared by so many at the FBI.

More FBI Agents appear to be leaving prior to receiving their pensions than ever in the past. When I first joined it was pretty much unheard of that agents would resign prior to receiving their full pension after 20 years of service. That is not the case now. Many are not happy with the direction the agency is going and the politicization and shift in priorities and lack of leadership. An agent in Miami resigned the week before I did. One of my Quantico classmates resigned ten days after I did. I had heard of agents around the country that I did not know but others did that also left prior to their full pensions. Some employees are extremely frustrated and they do not feel like anything will change so they leave for better options outside the FBI. I had 7.5 years to go before collecting my full pension – I have learned that life is short and that it was too long to make it worth it to stay. The decline of the FBI was happening at such a rapid rate, I feared what it would look like if I held out much longer. I loved being an FBI Special Agent and gave it all I had but it changed so drastically it was unrecognizable to me. I figured it was best to cut my losses sooner rather than later and move onto doing something new where I could still make a positive impact.

Many FBI Agents used to stay until the mandatory retirement age of 57 years old. It was an honor to ask for extensions past 57 years old. Now most agents I know nationwide are retiring the moment they are eligible for their pensions. Most have a calendar with a countdown with the number of days they have left, even a few years out. This is not an exaggeration. I have seen them several times. Starting three years out from their full pension – they count down. They have lost the passion for the work and they keep their heads low and stay off the radar until they are able to collect their well-deserved pensions.

Congress should request the number of agents resigning from the FBI prior to receiving their full pensions now compared to the past ten years. It will show the increase in departures of early resignation employees and agents retiring at first chance of eligibility now versus in the past. That is due to the low morale. That is not misinformation - that is a fact.

Additionally, all departing employees should have an exit interview. The FBI should send out a survey to former FBI agents who have left without a full pension in the last five years. Resigned employees are freer to speak about their true thoughts and experiences since they no longer have to fear retaliation. For those that genuinely care about making a stronger FBI, this would be an important part of making substantial improvements.

The FBI cannot afford to lose quality employees. But until employees' concerns about the direction of the FBI are acknowledged then employees will continue to

leave. Executive management should listen to the rank and file and acknowledge their concerns and make necessary changes accordingly. These are not disgruntled employees who have concerns. These are highly decorated, seasoned and respected agents who do not feel they can voice their concerns in fear of having a target on their back. They also do not believe that any changes will actually occur and that their concerns will fall on deaf ears, so why bother? These are crucial steps to take in order to fix and reform and save the FBI.

FBI Leadership

Lack of solid leadership starting at the top and working down is of great concern at the FBI. Many believe the Director is more of a figurehead and is being guided by his immediate reports to include Deputy Director. The Leadership should genuinely listen to the rank and file and take to heart and make changes based on what they are saying. No employee should be in fear of retaliation when respectfully voicing a legitimate concern.

Additionally, the promotion process has serious flaws. Many were promoted to management roles at the FBI when they had no experience or expertise in that field. Currently, the promotion process consists of going back to headquarters for an 18-month TDY then returning to the field as an SSA. Many would go to Headquarters for a "break". Doing a TDY to Headquarters does not necessarily equate to being a strong leader. In fact, most of the best agents never go to Headquarters at all. Many of the greatest leaders I knew at the FBI were those working as rank-and-file agents in the field.

After becoming an SSA those interested in promoting continue moving up the chain. The FBI has been known to promote agents who sometimes have never worked real cases. In the past, one could promote to SSA after only three years in the FBI so there are people now in leadership roles who have never done substantial investigations. It is now required to be a Special Agent for six years but the leadership skills are still lacking many times. It is a running joke that they promote those who have the biggest issues such as disciplinary actions, etc. It is not at all funny but it is true and does not work out well for the agency.

FBI Must Operate Independent of DOJ

The FBI must investigate independently and cannot be beholden to the requests or position of the DOJ. The FBI Director needs to operate separately from the DOJ and not appear to be politically biased regardless of who is in office. It seems that in many instances the recent appearance of politicization is coming at the instruction of the DOJ – telling the FBI what to investigate. The FBI and DOJ work hand in hand – as the FBI gathers the evidence and the DOJ prosecutes the cases but the DOJ cannot be instructing the FBI what to prioritize. The priorities should come from the needs of the

individual field offices and the needs of their communities they protect.

There was a concerning matter that transpired when agents were asked to conduct interviews in regards to potential criminal allegations of a prominent Republican figure. The agents conducted the interviews and provided their findings to the United States Attorney's Office (USAO) - Assistant United States Attorney (AUSA). Nothing was discovered to substantiate the allegations. The AUSA asked the agents to go back and ask additional questions of the interviewee and advised that they were not asking the questions properly and to ask them in a different way. Seasoned agents were assigned to the task and they pushed back and said they asked the questions perfectly and they would not be going back to ask more questions in an attempt to solicit a different response. They believed it was a political move. Had they been less seasoned agents not knowing any better, they may have followed their instruction in order to be in compliance and obey their requests. Many seasoned agents will push back on the USAO and refuse but this should not even be an issue as it was.

I have been fortunate to have worked with the best solid, fair, unbiased, brilliant AUSA's in the Southern District of Florida. I never had this issue. But several agents nationwide have expressed their concerns of potential political bias while working with their AUSA's.

FBI Transforms into More Intelligence Driven

Another important point which is of concern to many at the FBI is that the focus of the FBI is very highly intelligence driven now. Intelligence has its vital role in important instances. But intel loses respect and credibility when it is inaccurate, politically charged and does not reflect true threats. The FBI needs to get back to stopping actual crimes and not targeting Americans that are not a true threat. It has become so heavily weighted as an intelligence agency rather than on what it was formed to be – a federal crime fighting agency.

The FBI should not define certain groups as a threat in order to fit a narrative or to fulfill alleged threat metrics. The push for statistical accomplishments sometimes seems to be fueling the formation of inappropriate intel reports. The FBI needs to follow actual threats and crimes or in other words, do not create the cases and priorities based on threat priorities being pushed down from Headquarters or management – follow the actual crimes. Intel reports cannot be generated and disseminated based on an Intel Analyst's personal views or opinions on a subject matter.

It appears to have recently occurred in the Richmond office when an intel report was discovered warning against "radical traditionalist Catholic ideology." The source of information was derived from the Southern Poverty Law Center which is known to be far left leaning. That is entirely inappropriate. Thankfully, the FBI did come out after the fact and denounce the report. Intel should not be based on a left leaning organization

or a right leaning organization. It should be based on actual hard facts.

This is a prime example of why Americans have lost trust and confidence in the FBI. Some analysts are pushing their own personal agenda in the form of intel reports. How did this intel report regarding the Catholics even get approved? This is alarming.

Many of the politically charged issues and concerns at the Bureau arise on the intelligence side of the house. There are intelligence analysts who do outstanding work every day. Intel analysts are given a tremendous amount of power and authority but they do not have any law enforcement authorities or training. In my opinion, the priority of the FBI should be on law enforcement operations instead of intelligence collection. Perhaps a new U.S. based intelligence agency could be formed but the overlap of the two has proven to cause issues for the FBI of late. I understand the shift towards intelligence occurred in the wake of September 11, 2001 but I have noticed a substantial shift and prioritization towards intelligence since I joined in 2010.

One of my supervisors on the criminal side of the house at the FBI once described the push for intel as trying to fit a square peg in a round hole. Sometimes intelligence gathering does not fit for certain criminal violations that tend to be entirely reactive. Because intelligence gathering is required on almost all squads, many feel that they are simply checking a box but the information may not even be useful. There seems to be a lot of box-checking lately at the FBI.

Statistical Accomplishment Based Work

"Success" at the FBI has shifted to being very statistical accomplishment driven when statistical accomplishments do not necessarily equate to a safer America. I understand the need to measure success and set goals at the FBI but not when the metrics used to measure success do not necessarily equate to fulfilling the mission of keeping America safer and stopping crime. Many have observed that the longer, more complex cases are sometimes being overlooked or passed to the wayside in exchange for the quicker low- hanging fruit. Long complex cases need to be worked even if they do not generate the high-volume of statistical accomplishments. As of late many have discussed cases that are quick and easy hits that generate many statistical accomplishments but should not necessarily warrant the energy that could be put into solving more detrimental crimes.

When I first joined, cases were worked regardless of how complex or lengthy they were if there was a crime committed and the United States Attorneys' Office was willing to prosecute. There was not as much of an emphasis on statistical accomplishments. For example, cases like J6 generate many statistical accomplishments yet most of them are for misdemeanors with probation. It is run out of Washington, D.C. and then they push assignments down to the field offices where they will open cases but in reality – it is one case from one incident on one date yet it appears to be much more which generates

more statistical accomplishments.

Shift in Recruiting Practices/Lowering of Eligibility Requirements

There has been a shift in recruiting practices and a lowering of the eligibility requirements – which is negatively impacting the agency's performance. The FBI has lowered the number of years of work experience from three years of work experience down to two years. The maturity in work experience does make a difference. In the past, the FBI was a second career to most FBI Agents. They had gone out and had a career and then brought their expertise to the Bureau.

The FBI has lowered the physical fitness test (PFT) requirement. A candidate applying used to have to get a 12 on the PFT before they could head off to Quantico for New Agent Training but now, they must only attain a score of 9. Candidates have an unlimited number of attempts to pass the PFT for up to one year after passing the Background Investigation. That was not the case before.

The FBI has made the drug use requirement more lenient. Seasoned agents reminisce on the days when it was a zero-drug ever use standard. Over the years it has eased up substantially. Candidates cannot have used marijuana or cannabis in any form within one year prior to the date of their employment application. Marijuana use prior to your 18th birthday is not a disqualifier. Candidates could not have used any other illegal drug within 10 years prior to applying. They could not have misused a prescription drug within one year of applying.

When I started at the FBI Academy in 2010 the training was about 20 weeks or even a little longer total for agents. It has been reduced to only 16 weeks. The training was rigorous and several classmates never graduated.

New Agent Training no longer includes the "Bull in the Ring" training which was a boxing type requirement which would prepare an agent to defend their life when deadly force may not be justified or when you are in a close quarters combat situation. Passing "Bull in the Ring" exemplified mental toughness and physical strength and endurance. It was not easy but it was important and now it has been eliminated from the Quantico training.

The PQC (Pistol Qualification Course) changed drastically from the time I entered Quantico in 2010 until I resigned in 2022. The PQC was simplified which makes it substantially easier for candidates to pass. For example, there is no longer any prone shooting at the 25-yard line behind a barricade. They say studies show that most law enforcement shootings are within close range therefore it is more beneficial to have more up-close shooting for the qualification, but many agents believed it was made easier so everyone could pass.

FBI Agents need to be hired based on their credentials and qualifications. I never wanted to feel like a token female agent that was hired to fill a quota. I was hired because I was qualified – not to check a box and that is how it should be for all FBI Special Agent hires. The work of an agent is too important to not feel confident that the person going through a door with you is there because they are of the highest character, qualified and they passed the rigorous training at Quantico. You have to be willing to die for your colleagues and it is vital to feel confident that everyone there is there because they are qualified.

When the FBI drops the quality of the candidates they hire, it has a damaging effect on everyone in the agency. I was told of an incident where the behaviors of a couple agents in FBI Miami caused civilians to wonder if the individuals were actually FBI agents because they would have expected a different caliber and behavior.

There was discussion and concern in FBI Miami over the high number of internal investigations known as OPR's. The FBI cannot afford to lower the quality of the employees they hire just to fill quotas and hit hiring numbers. The standards must remain high to maintain a high level of quality for the workforce. I think quality not quantity is better.

Many quality individuals who may have wanted to apply for the FBI in the past may not have an interest now because of the tainted reputation of the FBI as well as the general disrespect for law enforcement nationwide over the last several years.

Egregious Mistakes, Immoral Behavior and Politicization of the FBI

For me, distancing myself from egregious mistakes, immoral behavior, politically charged actions taken by a small but destructive few FBI employees became exhausting. In my opinion a couple of the most egregious mistakes in recent years by the FBI are the handling of the tips for the Parkland School Shooter and the handling of the Larry Nasser – U.S.A. Women's Gymnastics team doctor.

Two tips regarding the Stoneman Douglas School shooter were not appropriately handled. The DOJ paid out approximately \$128 million to the victims' families. I conducted death notifications to families the early morning of February 15, 2018. We will never know if those tips were handled properly if this shooter may have been stopped. It was a terrible mistake and sadly these families will be left picking up the pieces from their loss for the rest of their lives.

Larry Nasser – Team USA Women's Team Doctor – sexually assaulted over 265 minor females. And when the information was initially provided to the FBI – no actions were taken which allowed the sexual assaults to continue and the victims felt that no one cared. There are serious consequences and harm done when the FBI drops the ball. And unfortunately, the reputation of all is tarnished because of the mistakes of a few.

Immoral behavior has been far too prevalent. One example is when certain FBI employees made errors and omissions in the FISA warrant application for surveillance on a Trump aid. This led to surveillance collected on the aid which lacked legal basis. More recently a former SAC from the New York Field Office was arrested after it was discovered he was being paid by Russian oligarchs. It was one embarrassment after another at the FBI.

Because of past politicizations such as the Operation Crossfire Hurricane, Americans and even FBI employees do not trust the FBI. The bar has now been set by many to mistrust the FBI. The FBI had never gained the trust of the American people after past egregious behaviors. The FBI needs to own their mistakes, be transparent and admit them in order to gain back public trust. Civilians always asked me – “WHAT IS GOING ON AT THE FBI?” – I had no reasonable explanation – but I continued to say – I am not involved in any of that. I kept my head low and continued working the violent crime and explaining that I cannot justify nor do I agree with what others are doing.

I held out as long as I could hoping things would improve. But finally, I knew. It was time to leave as there were no improvements being made or even acknowledgements by the Director or executive management of the employees' concerns. Many employees have lost hope that anything will improve so they continue to keep their heads low or they walk away.

And while I sincerely pray for the FBI's future success, the FBI's troubles of late are bigger than anything I could change. I was never a whistleblower at the FBI – I never spoke up or caused issues. I worked tirelessly day and night. And although I was never motivated by accolades, I received several awards to include the honorable Medal of Excellence Award and three “Outstanding Law Enforcement Officer of the Year” awards issued by the U.S. Attorney's Office in the Southern District of Florida and many others. I gave it all I had as an FBI Special Agent, but myself and many others did not agree with things we were seeing. The FBI wants agents who will go with the flow and not make waves. I never wanted to make waves or cause problems. If I felt that speaking up would have actually changed things then maybe I would have.

I genuinely loved being an FBI Special Agent until things changed so drastically that it was no longer what I had signed up for. The FBI's mistakes started costing peoples' lives. I pray the FBI can be strengthened and regain the trust and respect and admiration of its employees and most importantly the American people.

Chair JORDAN. Thank you, Ms. Parker. Thank you for your service.

We will now proceed under the five-minute rule with questions. The Chair recognizes the gentlelady from New York, Ms. Stefanik.

Ms. STEFANIK. I want to echo the Chair. Thank you, Ms. Parker, for your extraordinary service and your courage for being here today.

Mr. Turley, I want to start with you.

The Twitter files laid bare for the American people what you correctly call unconstitutional, quote, “censorship by surrogate.”

Matt Taibbi writes, quote, “Twitter’s contact with the FBI was constant and pervasive, as if it were a subsidiary.”

Do you agree with that assessment?

Mr. TURLEY. I do. What we know on the record so far shows a relationship that goes beyond this sort of informal exchange of ideas—

Ms. STEFANIK. You are correct.

In fact, isn’t it true that, leading up to the 2020 election, Twitter had weekly meetings with not just the FBI, with DOJ, DHS, and DNI, to conduct this unconstitutional censorship by surrogate? We know that because of the Twitter files, correct?

Mr. TURLEY. Correct.

Ms. STEFANIK. It was not just meetings, not just censorship of stories like the Hunter Biden laptop story. We also now know that the FBI paid Twitter over \$3.4 million of taxpayer funds to censor these stories before the 2020 election. Is that correct?

Mr. TURLEY. That money was paid. Twitter confirmed that.

Ms. STEFANIK. The Twitter files are just the tip of the iceberg, because there is so much more. There was a corrupt revolving door at the highest levels between the FBI and Twitter.

Look no further than Jim Baker, former General Counsel at the FBI, who helped unlawfully investigate Donald Trump in the 2016 election. Or look at Jim Comey’s Deputy Chief of Staff, who became the Director of Strategy at Twitter.

Isn’t it true, according to the Twitter files, that there were so many FBI officials who then went to work at Twitter that they created their own Slack channel and crib sheet for onboarding? The Twitter files confirmed that, correct?

Mr. TURLEY. Correct.

Ms. STEFANIK. Are you aware, as the American people are aware, that, according to polling of the people that were made aware of the Hunter Biden laptop story, 53 percent would have changed their vote, including 61 percent of Democrats?

This is the definition of election meddling. It is the definition of election meddling by the FBI, on behalf of Democrats, paid for by the U.S. taxpayers. It is collusion, it is corruption, and it is unconstitutional.

Ms. Parker, I want to go to you next, about your experience at the FBI. Because this is not just about the Twitter files, which folks are focused on because of the news it made. It is about systemic rot in the culture and the politicization of the leadership of the FBI, and it needs to be rooted out.

Let's take a step back. Let's look at the targeting, illegally, of parents who wanted to stand up for their kids at school board meetings.

On September 29, 2021, the National School Boards Association sent a letter to Joe Biden equating parents at school board meetings to domestic terrorists.

On October 4th, Attorney General Merrick Garland issued a memorandum to the FBI and U.S. attorneys that the Department would use Federal enforcement tools to target and prosecute these parents.

Do you consider parents as domestic terrorists?

Ms. PARKER. I do not consider parents as domestic terrorists. No, I do not.

Ms. STEFANIK. No. Neither do the American people.

There is more to this story. It goes back further than that initial letter on September 29th, because the letter didn't happen organically. It was solicited. It was solicited by the White House and by the Secretary of Education. Essentially, the Biden Administration laid the predicate for which it used to justify illegally targeting the American people, targeting these parents.

Is it proper protocol, as a former FBI officer, to set that predicate, to manufacture the reasoning to justify opening an investigation?

Ms. PARKER. I believe that no one should be targeted for free speech and that violence should never be tolerated under any circumstance, but it should definitely not—no one should be targeted because they want to speak up at a school board meeting.

Ms. STEFANIK. This was a setup. It was this setup—and it is the real definition of weaponization of the government against the American people.

It is not just this example of targeting parents at School Boards Association. It goes back to the opening of Crossfire Hurricane. It goes back to the faulty FISA application. It goes back to what we heard on that first panel from Senators Grassley and Johnson. It goes back to the suppression, illegally, of the Hunter Biden laptop story, paid for by the U.S. taxpayers. This corruption needs to be rooted out.

It is not just about protecting the U.S. Constitution. It is, most importantly, about protecting the American people from the weaponization of the Federal government against them.

Yield back.

Chair JORDAN. The gentlelady yields back.

The Chair now recognizes the Ranking Member for five minutes.

Ms. PLASKETT. Thank you, Mr. Chair.

Huh. Very interesting.

As a parent of five children, I think having my rights as a parent is a very sacred trust—a very sacred trust.

Mr. Williams, would you say that, having worked as a prosecutor, threats of violence against individuals is something that supersedes an individual simply being a parent?

Mr. WILLIAMS. Of course, Madam Ranking Member, threats of violence are actionable under the law.

Ms. PLASKETT. Right.

Mr. WILLIAMS. When they come, prosecutors can investigate—or the FBI or any other investigative agency can investigate them and prosecute as appropriate.

Ms. PLASKETT. Sure.

This one-page DOJ memo that we have made much ado about says, in its first instance, that the First Amendment-protected activity should never be subject to prosecution and issues a concern to legal violence and threats of violence that are made to school board officials, most of whom are—surprise, surprise—parents, volunteers who do the unenviable job of trying to direct their children in their communities' activities with regard to education—a job most of us, thankfully, have not had to do.

I am also troubled, I am deeply troubled, by all the events as well as the increase in violence and threats of violence against civil servants and Federal law enforcement as we attempt to weaponize these individuals doing their job. In fact, we have seen the consequences of this rhetoric over and over again.

I am also deeply troubled by the idea of Congress, as I said in my opening statement, using oversight as a weapon to air a list of political grievances. We seemed to hear much of that from the first panel especially.

I have been a Member of the House Oversight Committee, where I saw firsthand how good oversight can help Congress make better public policy.

Mr. Williams, you have worked in both Congress and the Executive Branch. Do you agree with me that oversight of the Federal government is an important legislative process?

Mr. WILLIAMS. Absolutely. As Representative Raskin said at the first panel, the Constitution doesn't explicitly lay out an oversight mandate, but the legislative mandate of Congress provides Congress with its ability to engage in oversight. Oversight is good when it helps the government work better.

Ms. PLASKETT. Thank you.

Do you agree that congressional oversight is at its best when it is focused on addressing the real problems that Americans face every day?

Mr. WILLIAMS. The real problems Americans face every day and making government work better, absolutely, Congresswoman.

Ms. PLASKETT. I believe in congressional oversight, and committee Democrats would be willing to work together to conduct oversight of matters such as the disproportionate audits by the IRS of African-American families, recent reports about former Attorney General Bill Barr and Special Counsel John Durham.

Mr. Williams, do you agree that congressional oversight works best when it is bipartisan in nature?

Mr. WILLIAMS. Absolutely.

Ms. PLASKETT. Have you seen examples of that in bipartisan investigations?

Mr. WILLIAMS. Oh, absolute—

Ms. PLASKETT. I know it is so infrequent now. Have you ever seen any?

Mr. WILLIAMS. Absolutely. A great example is in 2016 when the House Committee on Oversight, led by Republican Chair Jason Chaffetz and Ranking Member Elijah Cummings, worked together

on an investigation, a bipartisan investigation, of the U.S. Secret Service and the mismanagement and misbehavior there.

It led to bipartisan legislation that made, as I said, the government work better and Secret Service a more functioning and more functional organization.

Ms. PLASKETT. What about cooperation between the branches of government? Is it necessary for Congress to be willing to work with the Executive Branch in investigations?

Mr. WILLIAMS. Yes. Vice versa, absolutely, the Executive Branch should be willing to work with Congress as well.

Ms. PLASKETT. Would that first instance be trying to come to agreement as to when and how documents and information could be given?

Mr. WILLIAMS. Absolutely. The public sees hearings but does not see the—when the process works properly, there is a back-and-forth and a give-and-take between the two parties at both ends of Pennsylvania Avenue, as I said before. Yes, both sides.

Ms. PLASKETT. Would you say two weeks into the Congress issuing subpoenas might be a bit premature for the investigation and cooperation between those branches of government?

Mr. WILLIAMS. Certainly, Congresswoman, Congress has the authority to issue subpoenas quickly if they wish. I guess you get more flies with honey than with vinegar, to be cute, and working with the other side collaboratively is always going to be a better approach.

Ms. PLASKETT. Vinegar seems to work better on social media, though, than the honey.

I yield back.

Chair JORDAN. I thank the gentlelady.

I would just point out; we tried the honey. A hundred letters we sent in the last Congress. We tried the honey.

Ms. PLASKETT. The last Congress.

Chair JORDAN. The honey—

Ms. PLASKETT. You are now the Chair.

Chair JORDAN. The honey didn't work. That is why we sent the subpoenas.

Ms. PLASKETT. You are now in the majority. You should've tried that first as the Chair of this Committee, not as the Ranking Member.

Chair JORDAN. We tried—we tried that—

Ms. PLASKETT. You didn't do that as Chair.

Chair JORDAN. —with 100-and-some letters.

Ms. PLASKETT. You didn't do that as Chair.

Chair JORDAN. The Chair now recognizes the gentlelady from the State of Wyoming, Ms. Hageman.

Ms. HAGEMAN. Thank you, Chair Jordan. It is a privilege to serve on this Select Subcommittee, and I look forward to the work we have ahead of us.

After over 30 years as a water, natural resource, and constitutional attorney, I have seen firsthand and fought against the weaponization of the Federal government against my fellow Wyoming citizens and the country at large.

Through the testimony of our witnesses today and the points made by my colleagues, it is clear that the culture and mission of

the FBI and DOJ has changed in a manner which runs counter to the rights and liberties of the American people.

The purpose of government is to secure our natural rights. Yet, the testimony we have heard and the information received from the whistleblowers and other investigative findings has shown that the FBI's mission has moved from securing those rights to using them as a predicate for investigating and surveilling the American people and weaponizing their government structure against them.

Mr. Baker, in a *Wall Street Journal* piece you wrote titled, "The FBI Needs a Wray of Courage," you stated that, in response to Attorney General Garland's memoranda directing the targeting of American parents, Director Wray should respond by highlighting that the FBI won't undertake any investigation based on speech alone.

It is troubling that this statement would even need to be made. Mr. Baker, do you think your advice was heeded by Director Wray?

Mr. BAKER. In fact, I remember that episode quite clearly. I wrote that article in October, just days after the announcement became public. I was in touch with high executives at the FBI a day or two after that.

They assured me that the FBI would maintain the standard of only investigating those situations where there was violence and not investigating free speech. I have to accept the Ranking Members of the FBI who told me that.

However, my article in *The Wall Street Journal* still stands. We needed—the FBI needed, the American people needed—to hear Director Wray say that publicly, as other FBI Directors have spoken up to previous Attorney Generals and previous Presidents. He never did publicly.

The American people need to hear—we wouldn't be having this discussion today if he clearly stated that we will not investigate speech, we will only investigate violence. We are still waiting for that statement.

Ms. HAGEMAN. Okay.

Mr. Turley, from what Mr. Baker just said, we have seen two issues stemming from this abuse and change of priorities within the FBI and DOJ. They are either investigating Americans based upon their constitutionally protected rights or they are flagging lawful action to which they have political objection.

In some of your recent writings, you have identified two very important points from the revelation of the FBI-Twitter relationship: First, that this relationship is a First Amendment violation, as it constitutes censorship by surrogate or proxy; and, second, you also are concerned that you don't know what is more menacing, the role the FBI played in Twitter's censorship program or its response to the disclosure of that role.

The Constitution is a limited-governance document. The First Amendment identified our God-given right to speak freely and imposes the restraint that the government shall make no law abridging the freedom of speech.

Mr. Turley, can you explain the implications of the government relying on private industry to circumvent the First Amendment?

Mr. TURLEY. Thank you for that question.

The Supreme Court and lower courts have spent a great deal of time trying to define when our relationship with a private party can cross over to a type of agency relationship. That also applies on the State level through the Fourteenth Amendment.

In cases like Paige, for example, you have situations where you have a government official who called an employer to say, “I don’t like what this person said in a public meeting,” and that employee was fired. The court said that is government action, that is a violation of the First Amendment.

One of the things that this Subcommittee has to deal with is that difficult line, and I admit it is difficult. In these Twitter files, there is a very disturbing picture that emerges. You have regular meetings between the FBI and Twitter. They even offered to give clearances to Twitter officials. You have complaints among Twitter employees that this is overwhelming in terms of the number.

What you really see is how insatiable censorship becomes, that eventually they were doing what appeared to be word searches and just sending all these postings in for possible action by Twitter. That included things like jokes and other things that anyone looking at it would realize that this is not a nefarious Russian operation.

So, when we talk about surrogate censorship, we are talking about one of the most serious threats against free speech.

People always say, “Well, you know, the First Amendment only applies to the government.” The First Amendment is not synonymous with free speech. It deals with one problem of free speech. What we are talking about with surrogate censorship is a much greater problem for those of us who value free speech as a defining right of this country.

Ms. HAGEMAN. I appreciate that.

Mr. MASSIE. [Presiding.] The gentlelady’s time has expired.

Ms. HAGEMAN. I will yield back.

Mr. MASSIE. I thank the gentlelady from Wyoming.

Now, I recognize my friend on the other side of the aisle, Mr. Lynch, who worked successfully and diligently with our late friend, Walter Jones, to secure the release of 28 pages of the 9–11 document.

Now, I recognize Mr. Lynch for five minutes.

Mr. LYNCH. Thank you, Mr. Chair.

Mr. Williams, on August 12, 2022, the FBI and DHS released a joint intelligence bulletin warning of an increase in domestic terrorist threats against Federal law enforcement officials following the search of Donald Trump’s offices at Mar-a-Lago, including, quote, “a threat to place a so-called dirty bomb in front of the FBI headquarters and issuing general calls for civilian war and rebellion.”

On August 9, *@judiciaryGOP* tweeted:

The IRS is coming for you. The Department of Justice is coming for you.
The FBI is coming for you. No one is safe from the political punishment
in Joe Biden’s America.

On that same day, my colleague, Representative Gosar, my Republican colleague, called the FBI, quote, “the enemy of the people” and tweeted: “We must destroy the FBI,” close quote.

Do you share my concerns, as a former FBI employee, about this type of rhetoric inflaming those who might already be inclined to do harm to our Federal officers?

Mr. WILLIAMS. Mr. Lynch, above all else, I should take a moment to praise the work of the FBI and the many law enforcement agencies and individuals that I worked with throughout my time, 15 years, in government, much of it in law enforcement. They do work on behalf of the American people and, frankly, don't sign up for threats or abuse.

So, to answer your question, no, absolutely the threats hurt and are toxic and corrosive to our democracy.

Mr. LYNCH. Is it ever appropriate for American leaders to encourage violence against another branch of government?

Mr. WILLIAMS. The encouragement of violence is never appropriate, either as a moral matter or under the law, sir.

Mr. LYNCH. Thank you.

Now, the FBI has to respond to facts on the ground, and as recently reported by the Bipartisan Center for Strategic and International Studies, 28 of the 30 domestic terrorism fatalities that occurred in 2021 were the result of far-right terrorist attacks perpetrated by individuals who were—and I am quoting,

motivated by ideas of racial or ethnic supremacy; opposition to government authority, including procedural overreach related to protocols following the COVID-19 policies; misogyny, a hatred based on sexuality or gender identity; and belief in QAnon conspiracy theory, or opposition to certain policies such as abortion.

Mr. Williams, could a congressional investigation designed to spread misinformation suggesting that the government is a threat actually compromise the safety of American citizens?

Mr. WILLIAMS. The important words there were “designed to.” So, of course, a congressional investigation that were designed to do that would be improper, sir.

Mr. LYNCH. As you have raised as well—I was on the Committee when Mr. Chaffetz, and our dear friend, Elijah Cummings, conducted those negotiations around investigations of the Secret Service. I also agree with the former Chair's instructions around our joining investigations with Walter Jones.

Could congressional investigations predicated on anti-law enforcement rhetoric contribute to misinformation that could lead extremists to target government actors?

Mr. WILLIAMS. Yes, sir.

Mr. LYNCH. How? Explain that. Go into that a little bit into this. Rather than yes or no, since you sat in that seat, explain to the audience.

Mr. WILLIAMS. Sure. I think a lot of it is the climate we are in today. There is a significant risk of harm to an individual when people are whipped up by what they read and see. So, certainly, these aren't mere statements. In addition to being legally actionable, they come at a significant cost, sir.

Mr. LYNCH. At the same time, a unilateral—this Committee is based on the premise that the American people are under attack by the Federal government, by the Department of Justice, by the FBI, by the Department of Homeland Security. That is the premise on which this Committee was based.

I just regret the impact that this is going to have on people who might otherwise consider serving in those agencies, and I just wonder if you have a perspective on that as well.

Mr. WILLIAMS. Again, as I said briefly before, people come to government—in my experience, the vast majority of people I work with, and frankly, if not all of them, came to serve, came to treat the rule of law as their guide and serve the American people.

The fear of threats will chill people's ability, (1) to do their jobs, but also (2) in terms of recruiting, people will not want to sign on for a job that will come necessarily with being threatened or doxed online, sir. So, I absolutely agree with that statement.

Mr. LYNCH. Thank you. My time has expired.

I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Louisiana, Mr. Johnson, is recognized.

Mr. JOHNSON. Thank you, Mr. Chair.

A lot has been said here about the fear of threats, but what we are concerned about, and the scope of this Committee is the fear of threats to the American citizens. The reason we use the term “weaponization” is because it is appropriate.

We have so many examples of that across so many Federal agencies that were designed to serve and protect the American people and have been used in recent years against them, and it will take us probably two years to lay that out.

I just want to focus on one that has been mentioned this morning because the timeline is important, the school board issue.

On June 22, 2021, Loudoun County parent Scott Smith spoke out at his local school board meeting, and he was arrested.

On September 29, citing Mr. Smith's arrest as an example, the National School Boards Association sent a letter to the Biden Administration requesting Federal law enforcement involvement in local school board disputes.

Now, here is what is really important. We learned later that the White House helped the NSBA draft that letter to itself.

On October 4, Attorney Garland Merrick Garland issued the now infamous memo directing Federal law enforcement to mobilize against the parents of school children who protest at their local school board meetings. He turned the FBI, the U.S. Attorney's offices, the full weight of the Federal Department of Justice against the very citizens they were sworn to defend and protect.

On October 12, we learned that the Loudoun County parent Scott Smith's daughter was actually sexually assaulted at her school, and that the school board covered it up, and that was the reason why that dad showed up to protest.

Nine days later, October 21, happened to be the day previously scheduled for Attorney General Merrick Garland himself to appear before our House Judiciary Committee. In that hearing, as my colleagues will remember, he was forced to acknowledge before our Committee that the NSBA letter was the basis of his memo targeting concerned parents, but he refused to acknowledge the obvious chilling effect that memo involving the full weight of the Federal law enforcement apparatus would have on parents' protected First Amendment protected speech.

He also, by the way, refused to commit to a mandatory under Federal law, mandatory ethics review of his own family's financial ties to advancing critical race theory in schools, and its relation to his school board memo and the obvious appearance of the conflict of interest therein.

I encourage all interested citizens to watch the video of that hearing. It was pretty contentious.

The very next day, on October 22, after much public outcry, the NSBA retracted and publicly apologized for its letter labeling concerned parents like Scott Smith as, quote, "domestic terrorists."

In the following weeks, over 20 different State school board associations severed their ties with the National School Boards Association.

Our Democrat colleagues have tried to downplay the importance of this select Committee, and they even criticized its name as hyperbolic. As this example and so many others clearly show, key agencies have indeed been weaponized. We are informed even still today that this memo has not been retracted by the Attorney General.

Here is the question, Mr. Baker. You were an FBI agent for 33 years and were involved in a lot of the important and noble work there. You have also said clearly and been vocal about some of the egregious overreaches you have seen from the FBI and the DOJ.

In recent years, you have described what has devolved into a culture of, quote, "deceit and deception" involving, quote, "alarming FBI behavior," and you have written that those abuses threaten the liberties of those on the left as well as the right.

Professor Turley just cited statistics here today that there are large numbers of Americans who now distrust the FBI. Our task here is to determine exactly how that has happened and how to correct that framework.

Mr. Baker, here is the question. In your testimony you noted that FBI Director Mueller a couple of decades ago worked to centralize the FBI, meaning that he centralized all information and decisionmaking, making that at the FBI headquarters as opposed to his predecessor's decentralized model which empowered the field offices instead.

Do you believe the elimination of all those layers of supervision, review, and independent judgment is a key reason for all this corruption that we see today and that it is something that must be reformed and reversed?

Mr. BAKER. Yes, in fact I do, Congressman. I don't use the term "corruption." The term I think is more appropriate that your colleague, Congresswoman Stefanik, used, the rotten culture, the culture rot.

Specifically, as regards to centralization, there is no question about it. Traditionally, the FBI field agent headed an investigation. He had a field supervisor above him. Above him was the agent in charge of that office. Only then did the information and the decisionmaking go to FBI headquarters.

What happened on the Mueller centralized—all that was eliminated. They ran these key investigations, Hillary Clinton email investigation, and then the Trump collusion investigation, out of

headquarters, eliminated all these layers of independent judgment, supervision, gone.

So, you had someone like—somebody mentioned his name already here—Strzok who not only writes the communication opening the case, but he also goes the next day to London and conducts the first interview in the case.

You have McCabe, a Deputy Director, No. 2 in the whole Bureau, directs the investigation and sends two agents to the White House to interview General Flynn. No levels of review. It was bound to end badly.

Mr. JOHNSON. Thank you. I am out of time.

I yield back.

Chair JORDAN. I thank the gentleman.

Yes, they had a name for it. It was called a headquarter special, and the point is it wasn't special so much. It became the norm.

With that, the Chair now recognizes—

Mr. GOLDMAN. Mr. Chair, could I have a point of order?

There has been a lot of mention of information and testimony that you have received from whistleblowers. When are you planning on providing that to the minority?

Chair JORDAN. You could have been for the very first deposition—or excuse me—transcribed interview of whistleblower. I was there when he testified on Tuesday.

Mr. GOLDMAN. Okay. That is fine. I assume you will turn those over. You talk about dozens of whistleblowers. When are we going to get that information?

Chair JORDAN. When they testify, when we work with—I will work with the Ranking Member on that issue.

Mr. GOLDMAN. You don't have any transcriptions of their interviews?

Chair JORDAN. We have the first one, and we have the dozens who've come and talked to our office.

Mr. GOLDMAN. They talked to your office privately?

Chair JORDAN. They talked to Republican staff, right.

Mr. GOLDMAN. They are not transcribed, no notes, no nothing?

Chair JORDAN. The first one happened Tuesday.

Mr. GOLDMAN. No, no. I am not talking about the first one. I am talking about—

Chair JORDAN. The first one happened Tuesday. The next one happens tomorrow. The third one happens next Wednesday, and we will continue to do that.

Mr. GOLDMAN. You just said dozens. Do you have notes from those, or are they just talking to your staff?

Mr. BISHOP. Mr. Chair, isn't that how whistleblowers typically work?

Chair JORDAN. Well, it is how they are supposed to work. It is not how they worked in the impeachment that Mr. Goldman was a part of when Mr. Schiff said he didn't have contact with that whistleblower but, in fact, he did.

Mr. GOLDMAN. Actually, it worked exactly appropriately until Mr. Trump did not allow—

Chair JORDAN. We are doing it the way we are supposed to do it, Mr. Goldman.

Mr. GOLDMAN. No. You are supposed to turn it over to the minority.

Chair JORDAN. When they come and testify, you will have access to the transcript, like everyone on the Committee will.

Mr. GOLDMAN. You mean your staff is not going to turn it over to our staff; we are year just in the dark?

Chair JORDAN. No. When the transcript is done, you will get the transcript.

Mr. GOLDMAN. I mean of the dozens of whistleblowers you have already talked to that came to talk to your staff.

Chair JORDAN. Yes. What do you want me to turn over there?

Ms. PLASKETT. Their names.

Mr. GOLDMAN. Notes. Did anyone take notes?

Chair JORDAN. I will be happy to talk with the Ranking Member on how we handle that information.

Mr. GOLDMAN. Thank you.

Chair JORDAN. All I am telling you is we will schedule each for a deposition, and we are doing that. You didn't show up for the first one. You could have been there.

With that—

Mr. GOLDMAN. I didn't know about it.

Chair JORDAN. The Chair now recognizes—

Ms. GARCIA. We didn't have notice.

Mr. BISHOP. Cicilline was there.

Chair JORDAN. There were Democrat Members at the—

Ms. WASSERMAN SCHULTZ. I think you need to work on your schedule.

Chair JORDAN. The Chair now recognizes, I think, Ms. Sánchez, the gentlelady from California is recognized.

Ms. SÁNCHEZ. Thank you, Mr. Chair.

I know from experience how good investigations can really improve public policy.

In 2009, my investigation shed light on the traumatic brain injury risk that accompanies professional football, and I am proud to say that this work changed how football teams, and more importantly, youth sports leagues address concussions.

I have also seen congressional oversight at its worst. I served on the Select Committee on Benghazi, and I saw how politicized and expensive that investigation was. I want to note, again, that the final report found no new evidence of wrongdoing.

Mr. Williams, you have handled oversight for both Congress and the Executive Branch. Based on your experience, what are the hallmarks of fair and effective congressional oversight?

Mr. WILLIAMS. Again, fair and effective oversight is, (1) does it serve to make government work and function better on behalf of the American people? Then I would say, (2) is there a process of accommodation between the branches of government that are seeking to have information? In my case, that was the Justice Department and the Department of Homeland Security, but any government entity, are they working productively together, those two things.

Ms. SÁNCHEZ. I am glad you raised the issue of accommodation process.

Can you explain why that is necessary and why the government can't simply comply with every congressional oversight request the moment that it is made?

Mr. WILLIAMS. Sure. Here is an example, Congresswoman Sánchez.

It is actually more efficient in many circumstances for the parties to attempt to come to an agreement prior to, whether it is issuing subpoenas or going straight to hearings, and so on, because of the fact that things that are more contentious are far more likely to end up in litigation and tied up in the courts for whether it is months or years thereafter. Where, if the parties had just at the beginning tried to resolve it, like the judge I clerked for used to say,

Can't you all work this out, would try to work it out up front and come to some agreement, where not everybody gets what they were initially asking for, but somehow the process moves forward.

Ms. SÁNCHEZ. Last week, just two weeks after being named Chair, Mr. Jordan served multiple subpoenas seeking internal information from the Executive Branch.

In your experience, can it sometimes take time for the accommodations process to play out?

Mr. WILLIAMS. Exactly. As I said, it can take time, but it is far more productive to end up with a more time-consuming process up front where everybody ends up getting what they want.

Ms. SÁNCHEZ. Thank you.

Now, I am not a prosecutor, but you have been a prosecutor, correct?

Mr. WILLIAMS. Yes.

Ms. SÁNCHEZ. The Chair of this Select Committee held a press conference earlier this week to talk about various interviews that his staff is conducting.

Mr. WILLIAMS. Yes.

Ms. SÁNCHEZ. Now, I haven't been able to be in those interviews, but I want to ask you some things that the Committee should keep in mind as it moves forward with our work on this Select Committee.

Could the fact that someone has no firsthand knowledge of the matters they are discussing impact the credibility of what they say?

Mr. WILLIAMS. Yes.

Ms. SÁNCHEZ. What if they vocally advocated conspiracy theories that have no basis in fact? Should that impact how the Committee views their testimony?

Mr. WILLIAMS. Yes. Openly advocating conspiracy theories that have no basis, in fact, would have a negative impact on an open investigation.

Ms. SÁNCHEZ. Thank you.

Now, I just want to clarify some of the discussion that we have heard about parents protesting at school board meetings.

People have the right to free speech in this country, but is that an absolute right?

Mr. WILLIAMS. Absolutely. The best example is threats against other people are not—it is just not protected speech.

Ms. SÁNCHEZ. In fact, many of these people who have shown up at school board meetings have threatened school board officials with violence or even with death. Isn't that the reason why they were placed on this—

Mr. WILLIAMS. Sure.

Ms. SÁNCHEZ. —special sort of monitoring thing, to make sure that they were not going to carry out those threats of violence?

Mr. WILLIAMS. To be clear, Congresswoman, I am not familiar with the particulars of each individual case. I can say, however, based on my experience as a prosecutor, if somebody threatens somebody else or violated the law in another way in a manner that could either lead to—the term is “probable cause.” If there is probable cause to believe that an offense was committed, then certainly law enforcement can take action.

Frankly, if law enforcement oversteps its bounds, there is a process through the civil rights process or any other way of dealing with that and addressing it.

Ms. SÁNCHEZ. So, again, we have the right to free speech in this country, but it is not absolute if it includes threats against other people. It is not just violence that we should be looking out for, but it is also threats of violence that law enforcement should be looking out for.

Mr. WILLIAMS. Absolutely. It is the threats of violence, because, to be quite straightforward, threats of violence lead to violence or can.

Ms. SÁNCHEZ. Right. Thank you. I appreciate your testimony.

I yield back.

Chair JORDAN. The gentlelady yields back.

The Chair now recognizes the gentleman from Florida, Mr. Gaetz.

Mr. GAETZ. Mr. Williams, wouldn't the American people feel like this government wasn't so weaponized against them if there wasn't such a revolving door between Department of Justice senior officials and lobbying?

Mr. WILLIAMS. I don't quite follow the premise of your question, sir.

Mr. GAETZ. It is pretty easy. There is a revolving door between senior officials at the DOJ and the lobbying profession. Do you think that this gives the public more or less trust?

Mr. WILLIAMS. There are rules governing what employment—and this is based on my understanding after being in government for 15 years—governing what post-government employment can be. One, what individual's actions can be once they are employed elsewhere, but also what they are allowed to—

Mr. GAETZ. Lobbying is influence peddling, and you are the principal at the Raben Group, which is a lobbying firm. I would observe the reporting of Project Veritas where Jordan Tristan Walker, who is a director of research and development, said on a recording:

One of the things we are exploring is, like, why don't we just manipulate COVID ourselves, mutate COVID via directed evolution. Pfizer serves as a revolving door for all government officials. It is pretty good for industry, to be honest. It is bad for everyone else in America.

Mr. GAETZ. Pfizer is one of the clients of the lobbying firm that you are a principal of, isn't it?

Mr. WILLIAMS. I do not represent Pfizer. I do not know, sir—

Mr. GAETZ. You are a principal of the Raben Group, right?

Mr. WILLIAMS. No. That is correct. I mean, I—

Mr. GAETZ. Mr. Chair, I seek unanimous consent to enter into the record the clients of the Raben Group, which include Pfizer.

Chair JORDAN. Without objection.

Mr. GAETZ. Not just Pfizer, but Google as well.

In response to the Twitter files, we saw a statement come from the FBI where they said:

Correspondence between the FBI and Twitter show nothing more than examples of our traditional, longstanding, and ongoing Federal government and private sector engagements.

Mr. GAETZ. Are there such engagements between the FBI and Google?

Mr. WILLIAMS. When you say, “such engagements,” sir, I don’t quite—

Mr. GAETZ. Does Google engage with the FBI, Mr. Williams?

Mr. WILLIAMS. I don’t work for either Google or the FBI, sir, so I can’t—

Mr. GAETZ. No. Gosh, I would have to again point you to your own client list that you advertise on your own website, which includes Google.

Does it surprise you that on the Raben Group’s website, Pfizer and Google are clients?

Mr. WILLIAMS. It does not surprise me, sir, no.

Mr. GAETZ. The Soros-funded Open Society is one of the clients as well.

Does that surprise you?

Mr. WILLIAMS. Sir, I don’t have our client list in front of me right now. I will—assuming that is what it says, I will take your word for it.

Mr. GAETZ. I would think that maybe one of the legislative initiatives we could pursue would be to tighten this revolving door that folks at Pfizer and folks at big tech seem to freely acknowledge and which you seem to be the incarnant of the revolving door.

Mr. Baker and Ms. Parker—

Mr. WILLIAMS. Could I respond to that?

Chair JORDAN. It is the gentleman’s time.

Mr. GAETZ. I want to ensure you both that we have come not to trash the FBI, but to rescue the FBI from political capture. It seems as though that political capture was really enhanced when Robert Mueller took a lot of the authority and power away from the field offices all over our country and centralized that power.

Mr. Baker, do you believe that through legislation we might be able to restore the system of office origin where events occur, people are able to conduct investigations in the absence of the influences of Washington, DC?

Mr. BAKER. There is no doubt Congress can be an advocate doing a lot of good by having these hearings, this panel. A lot of these things, though, have to be done internally by the DOJ and the FBI. There is absolutely a role for Congress looking at the abuses of Pfizer for one, the abuses of the unmasking for another, the abuses of the indirect targeting, which actually the CIA and the NSA do

rather than the FBI; but these are all things Congress can legislate solutions to.

Mr. GAETZ. It seems as though those abuses become more acute the greater they have a geographic proximity to Washington, DC. Seems we don't see these abuses with the brave FBI agents, like Ms. Parker, who I am very grateful served my fellow Floridians in the Miami Field Office.

Ms. Parker, if we got the decisionmaking more out of Washington, DC, and into the hands of our field offices where we have so many patriotic and brave FBI officials, do you think we would be able to escape this political capture that, quite literally, drove you out of the bureau?

Ms. PARKER. I think that is absolutely critical at this point in our American history.

When I mentioned in the opening statement, if there are two FBIs, we in the FBI see it as the field offices, the standard rank and file. We are typically the agents who just came to the FBI to serve the country, protect American citizens, and fight crime. We have no interest in politics. We really have no interest in promoting many times. Then FBI 2 is kind of more individuals that are at the headquarters level. Sometimes—

Mr. GAETZ. It seems as though that politics isn't out in the field office, it is here in Washington, DC. That is precise what we ought to deconstruct legislatively.

I thank the witnesses. I yield back.

Chair JORDAN. The gentleman yields back.

The Chair now recognizes the gentlelady from the State of Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chair.

Mr. Williams, do you want to take about 30 seconds to respond?

Mr. WILLIAMS. It won't even take 30 seconds, Congresswoman.

What I would say is, if we are talking today about what is within Congress' powers and duties under Articles I of the Constitution, one such thing is legislation. If Congress wishes to pass bipartisan legislation either about the Federal Elections Commission or lobbying requirements, have at it—that is Congress' role—and work together and do it.

I would support it, and I am sure many people in this room would.

Mr. GAETZ. Alas, our first bipartisan agreement.

Mr. WILLIAMS. I—

Mr. GAETZ. We are in agreement then.

Ms. WASSERMAN SCHULTZ. Reclaiming my time.

Mr. WILLIAMS. I am sorry.

Ms. WASSERMAN SCHULTZ. That is Okay. Not from you. Thank you.

First, I want to thank you, Ms. Parker, as a victim of the Cesar Sayoc bomb package case, along with my staff. I appreciate your service and the work that you did in the Miami Bureau.

Mr. Williams, you worked in oversight for a long time, as you noted, in Congress, for the Executive Branch. You have seen it at its best and worst. Although the Judiciary Committee has issued subpoenas over unfounded accusations just two weeks into this Congress, I know I have serious concerns over their rush to judg-

ment, like many other Committee actions that are employed by Republicans for purely political reasons. Their move also clearly shows that when Republicans are in charge, they use the levers of power to weaponize government.

So, can you tell us some examples of congressional oversight that has been abused in that way?

Mr. WILLIAMS. Well, what I will say, Congresswoman, is that when congressional oversight is abused, history doesn't treat it well. None of us today are the judge or the guide, but history will be. If, for instance, individuals are targeted, history will not be the judge of that if Congress is using its authorities to do so and overstep its bounds beyond its scope of its Article I authority.

Ms. WASSERMAN SCHULTZ. Thank you.

What can Members of Congress learn from past examples of the politicization of oversight?

Mr. WILLIAMS. I think the past is prologue. By recognizing that with a large platform as Congress has, it has the trendability to harm people as much as it does to do good. Congress ought to perhaps have that in mind when thinking about how to make government work better.

Ms. WASSERMAN SCHULTZ. Thank you.

In 2015, a Member of Congress, who happens to currently hold the gavel now in the House, boasted that the Benghazi Select Committee was effective all because it hurt Hillary Clinton politically, saying, quote,

Everybody thought Hillary Clinton was unbeatable, right. We put together a Benghazi Special Committee, a Select Committee. What are her numbers today?

He even bragged in the same statement that because of it, her, quote, "numbers are dropping," unquote.

During Hillary Clinton's 2016 campaign, Republicans held nine investigative hearings focusing on her, including one where they called her to testify for over 11 hours. That was clearly politicized and weaponized oversight. Frankly, this Weaponization Committee itself epitomizes the weaponization of government.

So, Mr. Williams, is it ever appropriate to turn congressional oversight authority into a weapon to harm a political opponent?

Mr. WILLIAMS. No.

Ms. WASSERMAN SCHULTZ. How can the politicization of congressional oversight harm the credibility of future congressional investigations?

Mr. WILLIAMS. That is exactly the point I was going to get to, Congresswoman.

If the public loses its faith in Congress' ability to be a fair arbiter of oversight disputes, then what does Congress have ultimately?

So, yes, this is about the integrity of Congress, I think.

Ms. WASSERMAN SCHULTZ. Thank you so much.

Mr. Turley, turning to you, have you ever worked for Twitter?

Mr. TURLEY. No.

Ms. WASSERMAN SCHULTZ. Do you have any formal relationship with the company?

Mr. TURLEY. No. I just have an account.

Ms. WASSERMAN SCHULTZ. Do you have any specific or special or unique knowledge about the inner workings of Twitter?

Mr. TURLEY. Nothing beyond the Twitter files and what I read in the media.

Ms. WASSERMAN SCHULTZ. So, essentially, your responses to the questions here today were your own opinion and pure conjecture?

Mr. TURLEY. No, I wouldn't say that. They are based—I try to base them on what we know from the Twitter files.

Ms. WASSERMAN SCHULTZ. Well, but you said that you don't have any specific or unique knowledge of Twitter, but you spoke as if you did. You were asked very specific questions about Twitter's—the way Twitter functions and the decisionmaking that they make. Yet, you don't have any unique or special knowledge about Twitter and have never worked for them.

So, this is only just your opinion, would you say, as a Twitter account user?

Mr. TURLEY. No. I have come to give legal analysis based on facts that are in the public domain.

I was really referring to what the—I was asked about the—

Ms. WASSERMAN SCHULTZ. Reclaiming my time.

Legal analysis is another word for opinion?

Mr. TURLEY. Well, I would think there is some distinction, but, yes, it ultimately is an opinion. I believe the question to me was based on what the Twitter files show, and that was my reading of the Twitter files.

Ms. WASSERMAN SCHULTZ. Right. Again, that is another way of describing your opinion being offered, which was represented as unique and special facts which you don't possess.

Thank you.

I yield back the balance of my time.

Chair JORDAN. The gentlelady yields back.

The Chair now recognizes the gentleman from California, Mr. Issa.

Mr. GAETZ. Mr. Chair, before he goes, may I be recognized for a unanimous consent request?

Chair JORDAN. My apologies. Yes, the gentleman is recognized for a unanimous consent.

Mr. GAETZ. Thank you, Mr. Chair.

I seek unanimous consent to enter into the record a Republican staff report from the Committee on the Judiciary dated November 4, 2022, entitled, "FBI Whistleblowers: What Their Disclosures Indicate," and ask that the Committee also provide a copy to Mr. Goldman, so that he might be able to review all the staff notes compiled in the report.

Chair JORDAN. Without objection, so ordered.

Chair JORDAN. The Chair now recognizes the gentleman from California.

Mr. ISSA. I thank the Chair.

Dr. Turley, let me just go back—or Mr. Turley, let me just go back.

How many times have you testified before Congress on behalf of all of us; dozens and dozens and dozens over my 22 years?

Mr. TURLEY. I have testified both as a Republican and Democrat witness over 50 times, approaching 60.

Mr. ISSA. So, to use a term of art, you are an expert witness when it comes to evaluating the Constitution and a great many laws and their interpretation?

Mr. TURLEY. That is how I have been called—that is why I have been called.

Mr. ISSA. You teach in that role?

Mr. TURLEY. I do.

Mr. ISSA. Okay. I want to thank you because in my 22 years, I have seen you representing both sides many times, and normally treated with the respect that your opinions, based on your readings or your scholarly work, are generally respected by both sides of the aisle. I thank you for that.

This Committee is rightfully being talked about—Subcommittee about weaponization of government, but I just want to clear up a couple of points.

The previous operation known as Operation Choke Point where government limited people's ability, actually, to have bank accounts, that would be weaponization by government, a decision by government to affect commerce, correct?

Mr. TURLEY. Well, it certainly affects commerce. There is no question about that.

Mr. ISSA. Okay. It is outside what one would think the Administrative State has a right to do in any sense? Our right—our liberties include that right to have commerce not impinged by based on our political views by our government.

So, in a sense, the weaponization of DOJ isn't new, is it? It predates this Administration and even the previous one.

Mr. TURLEY. No, that is true. Some of the darkest chapters in our history have come from the Department of Justice losing that independence and objective element that they pride themselves on. That goes back to the Palmer Raids and even before then.

Whenever the DOJ and the FBI has lost its way in that sense, it has come at a great cost to the country, as well as the Department.

Mr. ISSA. Speaking of lost their way, back in 2010, 2012, with the IRS's targeting of conservative groups headed by Lois Lerner, that certainly limited the free speech of those organizations when they were denied their ability to hold themselves as a not for profits, correct?

Mr. TURLEY. That had serious free speech implications.

Mr. ISSA. So, when we look at the weaponization of government, we should not limit it to three-letter words over at DOJ. In fact, we need to look at government broadly and how it might impinge free speech or our rights to simply have our liberties.

To that extent, we have covered a lot of the FBI, and that is important, and I am mentioning the IRS. Behind there, I have a concern about the FBI.

Ms. Parker, I have got to go to you. Is that something that you think represents the neutralism of simply being law enforcement, for the FBI basically being able to kneel in support of Black Lives Matter?

Ms. PARKER. That would not be deemed appropriate. They are wearing their official FBI ballistic vests. Although, like we have mentioned, FBI agents have the right to my First Amendment

thoughts, but I am not at the liberty to express any of my political or social opinions while on the job.

I know that in that instance, they were guarding our national institutions and that we heard they were saying that they were trying to deescalate the situation. In those pictures, it appears that there are people smiling, clapping. It looked very far from deescalation to me. It is not appropriate to make any sort of potentially political or social statement while wearing your FBI ballistic vests on official duty. No, it is not appropriate.

Mr. ISSA. In the decades when I served in the Army, we were warned about, when in uniform, being involved in anything that appeared to be picking a side. Certainly, they picked a side there.

I just want to close my questioning, because we are going to be doing this probably for two years, and ask a question again, Mr. Turley. We have this question of government and what it is doing. A lot of people are talking about how Twitter is a private company, Facebook is a private company. They are all private companies.

Isn't it fair to say that from a standpoint of statutory and constitutional history, our government has clearly looked at entities which convey free speech, newspapers, radio, television, and has limited the concentration of power and the concentration of ownership to maintain, although private, an ability for all, or at least most, free speech to find an avenue?

Isn't that the history that we are also going to have to look at when it is concentrated in just a few companies?

Mr. TURLEY. It is. The fact is that much of our political dialog now takes place on social media, which has replaced even telephones as a common form of communication. That is why it is true that private companies can limit speech. You have to keep in mind these are communicative companies. These are closer to the AT&T than they are Starbucks, and that raises a serious question in terms of not just looking at the government aspect of coordinating and targeting citizens for possible censorship, but the control of these companies over speech.

I think that the people that sort of dismiss that are really losing the fact that this is now much of what is the marketplace of ideas. The marketplace of ideas is now a digital marketplace, and it is controlled by these companies.

Mr. ISSA. Thank you.

Thank you, Mr. Chair. I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Virginia, Mr. Connolly, is recognized.

Mr. CONNOLLY. Thank you, Mr. Chair.

I am so glad my friend from California just brought up Lois Lerner and the IRS and your comment, Professor Turley, that this was troubling in terms of targeting a particular point of view, because, of course, that is not true.

As we learned, the Inspector General, the TIGDA, deliberately focused only on conservative filters, even though he was presented with clear evidence that the filters were nonpartisan. There were liberal filters, lefty filters, conservative filters, Republican filters, and Democratic filters. They chose, because they wanted to make a case, that this was deliberate censorship and targeting by the IRS. Wasn't true, never was true, false premise.

That is what I worry about right here on this Committee. The premise is the FBI is tainted; the FBI is doing dirty work. It is got the hobnail boot of government on the necks of the American people who are simply trying to express themselves.

Mr. WILLIAMS, do you think the insurrectionists, thousands of them, who came here, many of them armed, that led to five deaths in the storming of the Capitol, who tried to prevent the constitutional certification of the counting of the ballots for the President of the United States on January 6, 2021, do you think that was nothing more than patriots that got a little carried away, and they were just expressing their First Amendment rights, and the FBI shouldn't have been looking at it and certainly shouldn't be prosecuting people for it?

Mr. WILLIAMS. Well, certainly, sir. I believe almost 1,000, if not over 1,000 people have been charged with crimes in connection with that day. Several people have now been convicted by juries, and also with findings that were affirmed by Federal judges, of seditious conspiracy. That is using force or threats to impede or delay the execution of the laws of the United States.

Mr. CONNOLLY. Right. So, I guess I hear you saying we need to make a distinction between the expression of views, which is absolutely protected under the Constitution of the United States, First Amendment, and the use of violence to propound and propagate those views?

Mr. WILLIAMS. That is correct. So, the First Amendment does not protect the use of violence.

Mr. CONNOLLY. Right. In fact, that is illegal.

Mr. WILLIAMS. Correct.

Mr. CONNOLLY. So, when we talk about parents just going to school boards trying to express their concerns, that is true. Many parents go. I was a parent with a kid in a school system. I was a card-carrying PTA member. I, certainly, testified now and then about the school budget or school issues. I didn't threaten the lives or families of school board members. I didn't anonymously threaten violence or let it be known I knew where they lived and that there would be trouble.

That is a different form of speech, isn't it?

Mr. WILLIAMS. Yes.

Mr. CONNOLLY. Would it be wrong for the FBI, under some circumstances, to be called in to look into that for the protection of elected school board members, and for that matter, active parents?

Mr. WILLIAMS. Both the FBI, or State and local authorities who, also, have the ability to investigate violent crime, both do.

Mr. CONNOLLY. So, do you think the FBI is the enemy of the American people?

Mr. WILLIAMS. I do not, in my experience. Look, again, I was in government for 15 years. I do not.

Mr. CONNOLLY. Do you think that the FBI ought to be defunded?

Mr. WILLIAMS. I do not believe the FBI should be defunded.

Mr. CONNOLLY. So, for example, if they were, the Tampa Field Office that infiltrated and spent six months embedded in a network of ransomware gang, Hive, and took it down, Hive is no longer functioning, is that a good thing or a bad thing?

Mr. WILLIAMS. It is a very good thing. Look, I was a prosecutor and a Senior Executive with the Justice Department. Fighting crime is a good thing, and I think we should all agree on that.

Mr. CONNOLLY. I see. So, they are not just censoring free speech; they are actually doing some good things that protect the American people?

Mr. WILLIAMS. Yes.

Mr. CONNOLLY. Would you say that characterizes largely their mission and their function?

Mr. WILLIAMS. In my experience of working with the FBI and other Federal law enforcement for years, absolutely, sir, that was my experience.

Mr. CONNOLLY. So, we have to put everything in context here. We can't allow somebody who asserts they are up to no good because a particular agent, or a couple of agents may be doing X, Y, and Z, not to taint the entire function and mission or personnel of the FBI. Is that a fair statement?

Mr. WILLIAMS. That is a fair statement, correct.

Mr. CONNOLLY. That goes to their other missions, cybersecurity protection, human sex trafficking, breaking up those rings, and, for that matter, protecting us from domestic extremists who are propounding and using violence as a weapon to further their cause.

Mr. WILLIAMS. What is special about the FBI, sir, very quickly, is that, unlike many other law enforcement agencies, it has both a counterterrorism element and a law enforcement element. Now, many people may think those are all one and the same, but those are actually two different functions.

So, yes, both of those help keep the American people safe.

Mr. CONNOLLY. I thank you.

I yield back.

Chair JORDAN. I thank the gentleman.

The gentleman from Utah, Mr. Stewart, is recognized.

Mr. STEWART. Thank you, Mr. Chair and to the witnesses, thank you.

Mr. Turley, my condolences that you have had to sit through 60 of these, but thank you for doing that.

I look forward to hearing from all of you. Mr. Chair, I also look forward to hearing from others who are key to this investigation, Christopher Wray, the Attorney General, former FBI Director Comey, former CIA Director Brennan. I hope we have a chance to hear from them as well.

I want to share with you my first experience in this area. In 2017, as a Member of the House Intelligence Committee, after months and months of stonewalling, we were finally allowed to go to the FBI Building and to read the FISA application on Carter Page.

After reading that application, it was very, very clear to me the FBI has lied to the FISA courts. The FBI has lied to Congress, and the FBI has lied to the American people. After that, I had a similar experience with some CIA documents and then other agencies.

The result of this is when—Mr. Turley, you talked about losing the faith of the American people. If an FBI agent called me today and said they wanted to speak with me, I would never speak to them, regardless of the topic, without my attorney present.

By the way, Congress has to reauthorize 702 this year, and we are a long way away from getting the trust and confidence because of the subject we are talking about today. We will lose a valuable tool if many people are simply going to say: We won't give them that authority. They abuse it.

I would like to focus on the FBI abuse if I could. I would remind you, Carter Page was an innocent American citizen. The FBI said he was a Russian spy. It turned out that was not true. In fact, it turned out that there was zero evidence that he was a Russian spy. Yet, the FBI IG went and looked at the FISA application, and this is what they found. Mr. Williams, I hope you will pay attention to this because I am going to ask you a question about this. They found 17 significant errors and omissions. They found 51 wrong or unsupported factual assertions, including the FBI lawyers who simply made-up evidence and included it in the FISA application.

Disgusted by this, I would suppose, the IG went and looked at a random 25 other FISA applications and found significant inconsistencies and omissions in every one of them.

Mr. Baker, you are a former FBI agent. Do you think that 17 omissions, 51 wrong assertions in a FISA application that, by the way, if you are going to get one right, don't you think the one that has targeting the President of the United States would be one you would be particularly careful of? Yet, they found that many omissions.

Do you find that a standard acceptable?

Mr. BAKER. Of course not, Congressman. In fact, it is actually even worse than you described. There was exculpatory information available that was not considered. Some of the information that was considered we now know from the Steele dossier was false.

Mr. STEWART. That is right. The list goes on.

Mr. BAKER. Even beyond that, the fact is that individual American, that U.S. person, Carter Page, should not have been subject to that FISA surveillance because he was an individual who—this is all in the public record now. He cooperated with the CIA and the FBI—

Mr. STEWART. That is right.

Mr. BAKER. —in its previous investigations.

So, by the guidelines that existed then, he should have been excluded from FISA. He could have been directly interviewed.

Mr. STEWART. That is right.

Mr. Baker, I am going to cut you off because you have made your point.

Mr. BAKER. Okay.

Mr. STEWART. Mr. Williams, do you think that, as I have described to you, 17 omissions, 51 wrong assertions in one FISA application is professionally done?

Mr. WILLIAMS. Sir, I would say that this is a matter that continues to be of interest to the Justice Department and I—

Mr. STEWART. Just a simple question. Do you find that acceptable? I would be—I think it is hilarious that you won't say, no, I don't.

Mr. WILLIAMS. What I am saying, sir, is that this is a matter before Justice Department and Congress that has been ongoing for years and—

Mr. STEWART. So, you won't answer the question?

Mr. WILLIAMS. What I will say is that it makes sense for you to direct the question to the Justice Department.

Mr. STEWART. I am asking your opinion. I am not asking you for any insight into their investigation. I am asking for a simple opinion.

Do you find that acceptable?

Mr. WILLIAMS. What I will say as a—

Mr. STEWART. Never mind. You won't answer the question.

VOICE. Think he answered.

Mr. STEWART. Because of this, the FBI initiated reforms. You know what they were? Trainings.

Here are some trainings for Senior FBI officials:

Training No. 1, don't lie to FISA courts.

Training No. 2, don't make things up.

How about training No. 3: Don't hide evidence.

That is what senior officials in the FBI did.

I wish I had more time—I am almost out of time, because I would come to you and ask—first, Mr. Williams, I would come back one more time and ask you if you find that acceptable or not, but we won't waste time with it.

I would ask, how do we restore faith in the FBI? Because we want to trust the FBI. People say, "You are going after the FBI." What nonsense. We are trying to protect the FBI. I know FBI agents who are deeply offended by what they see. They want us to hold them accountable, and that is what the Committee is going to do.

Thank you. I yield back.

Chair JORDAN. I thank the gentleman.

The Chair now recognizes the gentleman from California, Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chair.

It pays to do a lot of listening, and what I have heard is a lot of discussion about this memo. We really ought to take a look at it. In fact, it is on the FBI website right now. You can pull it up as I talk.

Mr. Chair, I would like to enter that memo into the record.

Chair JORDAN. Without objection.

Mr. GARBARINO. Thank you.

So, what do we really have here? I have read the memo. I recommend we all do. It starts off in the first paragraph making it perfectly clear that:

- (1) The lawful First Amendment protection activity should never be subject to prosecution. That is the free speech piece right there in the very first paragraph of the memo.
- (2) The actual issue of concern in this memo is the illegal violence, which has been discussed by several of you, as totally illegal, or threats of violence.

So, let me be very, very clear here. We have myriad examples of extraordinary, serious violent threats targeting school board officials that should be of concern to everyone in this room and all my colleagues.

Behind me are just three of the written examples that were of concern to the FBI.

First, quote, "it is too bad that your mama is an ugly communist whore. If she doesn't quit or resign before the end of the year, we will kill her. But first, we will kill you."

That would seem to me that is a rather clear example of a violent expression of free speech which is illegal.

Second, behind me is another written: "This is why Hitler threw you [expletive] into the gas chamber."

Third, "We are coming after you, stinking traitors of America."

This is what was out there in public school board meetings. I would love to show you the videos of those meetings, but we are not allowed to under the rules apparently.

If we were to do that, we would have a rather clear and numerous examples of violent threats to school board members, teachers, and administrators across this Nation.

This memo by the Attorney General, however it came to be, and that has been discussed here, that maybe somebody suggested that he take action on this, which is rather common. There are not one of us on this dais that hasn't been asked by one or more of our constituents to do something. So, the Attorney General does. He sends out a memo to the FBI agents across the country saying, bad things are going on.

Maybe I should just read it.

Threats against public servants are not only illegal, they run counter to our Nation's core values. Those who dedicate their time and energy to ensuring that our children receive a proper education in a safe environment deserve to be able to do their work without fear for their safety.

That is the memo. That is what happened here, is the Director noting—and I am sure he had more than one source than the School Board Association—that there were things going on in our society that were dangerous.

Ms. Parker, you spoke to the difference here between free speech and violent speech, which is what the FBI Director did. He said to the agents, "Pay attention to this and keep track of it." Why? Why did he want them to do that? Because there were threats, very real threats.

Did any of them materialize? There is evidence that they did, if you take a look across this country at the number of public servants that simply decided to not serve because of the violent threats.

So, as we go about our work here, as we go about looking at the weaponization of the Federal government, we must be careful that we don't become a weapon to be used for political purposes. There clearly, absolutely, is a need to monitor all Federal agencies, law enforcement, military, on and on. Let's be very careful that we don't use this Committee as a weapon for political purposes.

Chair JORDAN. The gentleman's time has expired. The gentleman yields back.

The gentleman from Kentucky is recognized.

Mr. MASSIE. I thank the gentleman from Ohio.

It occurs to me that we are sitting here in a Committee that has a fancy name, a different name. There are people watching our very first hearing and wondering, are these folks serious? There are people who have spent their careers dedicated to the service of

people in this country working at the FBI wondering are these folks serious enough that I could be a whistleblower, that I could come forward and share information with them and they would actually do something with it, and that something good could come from it.

I want to let those people who are watching—Ms. Parker and Mr. Baker, you are an excellent example of people who will come forward and make a difference. I want to let those people know that I have come to this city for 10 years with one basic premise, which is, this is the best country on the planet, best country that has ever been. It is deeply flawed, but we owe it to our children to fix it, and that is why I sought to be on this Committee.

That is why I thank you, Mr. Baker, and you, Ms. Parker, for being here, and why I invite others who are watching to please come to us. Find somebody on this dais that you trust and tell us your story so we can fix it.

Speaking of fixing things, I want to talk about the FISA program which, Mr. Baker, you have talked about in your testimony, particularly, the 702 part of it, parts of it that we are going to reexamine and reauthorize potentially.

On the surface of it, it sounds like a practical legal concept that you would collect information on foreign targets who don't have constitutional rights, and you might incidentally collect information that pertains to U.S. citizens who do have constitutional rights. Because it was collected incidentally and not in pursuit of that U.S. person; we will go look at this data, you know. We will put some policies and procedures, but the Constitution does not apply here because it was incidentally collected.

Well, if the incidental collection were small enough, that might be a valid concept. The problem is, we have collected millions of exabytes of data. When what you are collecting incidentally becomes the entire universe, I think you might need a warrant to go look at that information.

When the number of searches that is done on U.S. persons by the FBI—I am not talking about CIA, NSA—we know in 2020, it was over a million searches into this phishing, into this data base where you don't need a warrant. Then in 2021, it went from a million to over three million searches. This is problematic, and I hope we look at this going forward.

Mr. Baker, you mentioned something in your written testimony I don't think you got a chance to speak about here today.

Can you tell us what reverse targeting is and why we might want to be concerned about that?

Mr. BAKER. Yes. It is not well-understood, but in a nutshell, here it is. The CIA and the NSA are forbidden to target Americans, as you know. They often—and as you have said, “the numbers are in the vast numbers where they pick up Americans most of the time just by incidental collection and the Americans are not really doing anything wrong.”

If they pick up information that an American is breaking the law or is somehow a threat to national security, those other agencies, the CIA and the NSA, are supposed to provide that information to the FBI for appropriate action. Action can be taken on it.

In reverse targeting, which John Brennan, during the Russian collusion thing, acknowledged they were doing, they would target a foreign person who was close to an American they were really interested in. Then when they picked up that information on the American, ah-ha, we got it in incidental collection, which it was all phony and false. It wasn't incidental collection at all.

That is another thing that you in the Congress, on both sides of the aisle, can address and correct. You can make—you can institute penalties for them pulling this monkey business like that.

Mr. MASSIE. Mr. Turley, Professor Turley, I know we don't have a lot of time, but do you think—and, obviously, private companies don't infringe the First Amendment until the government tells them to do it. Do you think that Section 230 gave them some comfort that if they did that, these private companies, if they sort of—when the government suggested to do something, that they did it, that they would have a safe harbor?

Mr. TURLEY. Well, I do think that Section 230 is becoming increasingly untenable. It was really designed on the premise that the social media companies and other platforms were not in an editing function, that they were simply a forum, a publisher.

That is clearly not the case. We, obviously, have an extensive censorship system here that is in place. So, the premise of 230 I think has largely been discarded.

The implications of what has been created cannot be really overstated. We are talking about a censorship system that affects billions of people, and we also have a confirmation in the Twitter files of the U.S. Government pinpointing people who should be censored or suspended. That should trouble people, regardless of your party affiliation, whether you want the government in that business. I think that is worthy of a debate.

Mr. MASSIE. I thank you.

I yield back.

Chair JORDAN. I thank the gentleman.

The Chair now recognizes the gentleman from Texas, Mr. Allred.

Mr. ALLRED. Thank you, Mr. Chair.

I have worked hard now in my five years—going into my fifth year in this body to develop a reputation and a record of bipartisanship, of working on issues like veterans' healthcare and benefits, on infrastructure, on paid leave, trying to improve folks' lives.

To me this Subcommittee and this hearing is a disgrace. It has nothing to do with helping the Americans struggling. It has nothing to do helping with families like mine growing up. I was raised by a single mother. It has just been an airing of grievances, of debunked claims and conspiracy theories.

I think most folks watching back home are having a hard time following some of what you are saying because it goes so far down the rabbit hole.

Now, before I was elected to Congress, I was a civil rights lawyer. I served as an appointed lawyer in the Obama Administration. I believe in Congress' Article I duties to conduct oversight, and the Executive Branch's responsibilities to enforce the law and work with us.

That nexus is governed by the accommodation process which ensures that there is trust and prevents politicians from meddling in the Department of Justice and into its investigations.

On January 20, the Justice Department sent a letter to the Chair saying that,

We share your belief that congressional oversight is vital to our function of democracy, and we are committed to cooperating with legitimate efforts to seek information, consistent with our obligation to protect Executive Branch confidentiality interests.

It says:

The Department's mission is to independently and impartially uphold the rule of law, requires us to maintain the integrity of our investigations, prosecutions, and civil actions and to avoid even a perception that our efforts are being influenced by anything but the law and the facts.

Despite that, the Chair of this Committee has sought to seek numerous documents related to the FBI's ongoing investigations into the January 6th Capitol insurrection cases and other domestic terrorist cases, many of which are open investigations that are ongoing.

Mr. Baker, just to set a tone here, do you agree that the attack on the Capitol on January 6th was an act of domestic terrorism?

Mr. BAKER. I am sorry. Could you repeat the question?

Mr. ALLRED. Do you agree the attack on the Capitol on January 6th was an act of domestic terrorism?

Mr. BAKER. I don't think I am in a position to judge that. It was an act of lawlessness. There was a lot of property destroyed—

Mr. ALLRED. You are here as an expert, sir.

Mr. BAKER. —and there were crimes committed by trespassing.

Mr. ALLRED. You are here based on your experience.

Mr. BAKER. I don't know if that rises to the level of terrorism, quite frankly. It might, but I don't know that.

Mr. ALLRED. Well, what would constitute domestic terrorism to you, sir?

Mr. BAKER. Domestic terrorism is acts of violence to influence political decisions. That is the—

Mr. ALLRED. Do you know what we do on January 6th every four years?

Mr. BAKER. January 6th, to me, looked like a riot.

Mr. ALLRED. It was a seditious conspiracy—

Mr. BAKER. It was lawless. It was lawless. There was property destroyed. There was trespassing. There were people injured. Those are all crimes.

Mr. ALLRED. Thankfully, numerous courts and juries have disagreed with you and have found many of those insurrectionists guilty. It was an act of domestic terrorism. I thank you for clarifying for all of us here that you can't decide whether it was or not.

I want to go to you, Mr. Williams, because I think that we need to be very careful here. Nobody really wants Members of Congress or politicians jumping into ongoing criminal investigations, for many good reasons that I think you lay out in your testimony.

Can you give us just a few reasons of why it would be a major problem for criminal investigations to suddenly be subject to the whim of a politician?

Mr. WILLIAMS. I would say three reasons, Congressman Allred. Thank you for that question.

- (1) As articulated in the letter by the Deputy Attorney General that was quoted by I believe it was Congressman Raskin earlier, you do not want the public to get a roadmap for how investigations are going to play out. That involves tipping off witnesses or defendants who might be brought into the system.

So, that is point one. You just don't want to give the roadmap. That is the word used by the Justice Department.

- (2) This is a big one—the fear of influence or the appearance of influence. If a prosecution continues right after a Member of Congress or someone speaks out, the public is left with the perception that Congress, in effect, had its thumb on the scale of a Federal prosecution. That is problematic.
- (3) Finally, everyone is entitled to a presumption of innocence. The Justice Department takes very seriously the idea that naming or outing people who are not themselves yet criminal defendants are incredibly problematic, dangerous in a profound manner.

Mr. ALLRED. Thank you, Mr. Williams.

I yield back.

Chair JORDAN. I thank the gentleman.

The gentleman yields back.

The Chair now recognizes the gentleman from North Carolina, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chair.

Mr. Turley, I saw the effort to discredit you by a Member on the other side sort of go down in flames. I don't think much else needs to be said about that.

I think what is interesting about what you have written and then in your testimony about the Twitter files and your tentative conclusion about what they may indicate is a product that, first, it bears repeating. You said there that it, quote, "could well constitute the largest censorship program ever run by the government" of the United States.

I think what attracts you is, there is a body of evidence—it is not accusations; it is evidence—that we would not have but for the voluntary—maybe extraordinarily unlikely voluntary act of a very wealthy American who had the will and interest to purchase that company and then disclose what its files hold.

Here is what has been notable. We didn't get any information about what the FBI and the CIA and the ODNI and GEC and all the other agencies are engaged in from those agencies. The American people wouldn't know but for Elon Musk's disclosures and the independent journalists who have been using them.

You have talked a little bit in response to earlier questions about how there might be enough evidence there, or in other evidence we might be able to get of it's kind, to suggest an agency relationship between the United States Government—the agencies, the FBI—and these social media platforms that would cross the First

Amendment line and violate the rights of Americans whose content was flagged for taking down.

That may well be, but it seems to me there is another angle to this. Everybody knows, in the debate over Big Tech, that these social media platforms have content moderation policies that are narrower than the First Amendment. They take down speech as a matter of practice that the First Amendment would protect if it were a government. In fact, a lot of people say, “Well, they can do that. They are private businesses.”

The question that gets at me is this: How could the FBI, which is sworn to protect the Constitution, ever justify using intense application of its resources, agents, et cetera, to urge social media platforms to use those standards to take down speech that the Constitution protects?

Mr. TURLEY. Yes. This goes to the sort of bifurcated issue here, legally, that is: You have on one hand the question of the agency relationship—which, actually, some courts, like the Eighth Circuit in *Dossett*, the Sixth Circuit in *Paige*, have had analogous cases where they said that there was an agency when a government official made a call and negative actions were taken. There is also the direct action. Obviously, Federal agents are government actors. In these cases, you have the agency identifying American citizens and others for their viewpoints and saying, “We think these people should be suspended or removed.”

As I say in my testimony, it is a particularly ominous thing to have the chief law enforcement agency performing this role, an agency with incredible powers.

This wasn’t the normal situation of a public affairs office where someone says, “Look, the FBI did this,” and the public affairs office say, “You know what? That was a State raid. We weren’t even in that issue.”

Mr. BISHOP. Right. They did it in private.

Mr. TURLEY. Right. Here, you had the government itself looking for citizens who should be silenced and targeted. That is a problem in and of itself, whether it also triggers an agency relationship. Do we want to go back to the day when governments created those types of lists?

Mr. BISHOP. Let me get you to comment on something else that I believe is ominous. It is on the charts behind me.

One of the Twitter files disclosures is that Elvis Chan, at the FBI San Francisco, wrote to a Twitter executive and said, “My colleagues at the Fort had a query for you.” Turns out, they had to tell me, that means Fort Meade, the National Security Agency, NSA, probably.

A few years ago, Twitter said they would no longer provide their data feed to members of the IC.

That means intelligence community. He goes on to ask whether they would—

colleagues at the NSA want to know if they would reconsider that. Because the NSA would like to vacuum up every word mentioned on Twitter by American citizens to be analyzed by computers to figure out what they would make of it.

What about that? You don’t comment on that in your column, but I am curious what your impression is of that.

Mr. TURLEY. Well, that is another troubling aspect of this interstitial relationship between the government and social media companies. Now, on some occasions, the social media companies said, “we are not going to do that.” All these different layers of interaction that the Twitter files refer to make it harder and harder to discern where the government ends and the social media company begins.

I want to emphasize that when I talk about the largest censorship system in history, that is really unquestionable, right? Even Twitter alone is a massive censorship system. When you combine the other companies—now, it is privately run. Now we are looking at how much of that was being directed or influenced by the U.S. Government.

We are, without question, talking about the world’s largest censorship system. When you add elements like the one that you talked about, of this sort of interstitial relationship or cross-pollination between agencies at social media, it becomes a very menacing prospect. These companies are enormously powerful. They control much of our political speech.

As we talk about the dangers to democracy—and I agree with many of the Democratic Members and the Republican Members about the need to protect our democracy—that is a threat to democracy, when you have the ability of people to speak and control of companies that are using standards that are really indiscernible.

Yesterday, when we heard the testimony of one of the Twitter executives, she gave a standard for which they would decide what could be censored. I wrote about it today on the blog. That standard defies definition.

I will simply say that the greatest danger to the First Amendment is the chilling effect, the unknown of when you will be targeted.

Mr. BISHOP. I regret my time has expired, Mr. Chair.

Chair JORDAN. I thank the gentleman.

The gentleman yields back.

We now recognize the gentlelady from Texas, Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Speaker—Chair. I just promoted you this afternoon.

Chair JORDAN. I have been called worse.

Ms. GARCIA. It did not take 15 rounds of voting to do it.

Thank you, Mr. Chair.

Thank you to our Ranking Member for her steadfast leadership in pursuing truth and protecting our democracy.

The Federal government has a long history of weaponizing its power against minorities, like communities of color, religious minorities, and immigrant communities. Women, Latinos, people of color, and religious minorities are the actual victims of a weaponized government, not billionaires or politicians with frail egos.

House Democrats spent four years fighting to enhance civil rights and liberties and stop the weaponization of government against our most vulnerable communities.

Now, my colleagues on the other side of the aisle have assembled this misnamed and misguided Committee to grandstand and to try to lecture us all on the weaponization of government. The American people know that this Committee and MAGA Republicans are

all about “all show and no substance,” or, as we say in Texas, “all hat and no cattle.”

This Committee is designed to inject extremist politics into the justice system and to shield the MAGA movement from the legal consequences of their actions. These political stunts undermine every agent, officer, prosecutor, law enforcement, and the entire justice system.

We should instead dedicate some time to oversee direct interference in prosecutions and investigations. We should instead dedicate our efforts to investigating the abuse of the President’s pardon power by the former, twice-impeached President. We should instead dedicate time and effort to investigate the weaponization of the Federal government to undermine and overturn the 2020 Presidential election.

I hope, Mr. Chair, that we will have followup hearings to do some of that.

Now, I ask for unanimous consent to enter a letter from the Citizens for Responsibility and Ethics in Washington outlining these and other recommendations for this Committee into the record.

Chair JORDAN. Without objection.

Ms. GARCIA. Thank you, Mr. Chair.

During the assault on the Capitol, which we have already discussed, many of us, including myself, were removed from the floor and evacuated. A lot of things happened. I, for one, consider it more than just a riot.

Some have suggested that this Committee may try to erase the truth about the horrible days of that event. The idea of denying the truth about January 6th is horribly offensive to me, and I am sure that it is even more offensive to the law enforcement officers who were on duty that day.

Mr. Williams, I know you are familiar with that day, and you are familiar with the halls of Congress. You worked on the Hill, correct?

Mr. WILLIAMS. I did, Congresswoman. Thanks.

Ms. GARCIA. Were you there on the Hill on January 6th?

Mr. WILLIAMS. I was not present on the Hill on January 6th.

Ms. GARCIA. Do you know others who were?

Mr. WILLIAMS. I certainly do.

Ms. GARCIA. Can you understand why it would be offensive to the people who were there, many, like me, who were on the floor and got pulled out and had to put—trying to put on a gas mask and told to hit the floor, and, of course, the many law enforcement officers who had to rise to the duty?

Can you figure any way that we can defend this if anyone tries to rewrite what happened that day?

Mr. WILLIAMS. It is the second part of your sentence that I want to pick up on, Congresswoman, because it is not just former colleagues and friends of mine that were here; it is law enforcement officers that I know. There simply is no place for threats against law enforcement in a civil society.

So, yes, I will echo everything you said. It was real. A thousand people have been charged with crimes. Several have been convicted of very serious crimes. It was a real event.

Ms. GARCIA. So, what is your reaction to the politicization of January the 6th?

Mr. WILLIAMS. I think, as a general matter, Congress works at its best when working in a bipartisan manner. I think that becomes even more acute when talking about violent crime or threats or terrorism, as the word was used here, or even acts of insurrection.

Ms. GARCIA. Right. So, you do agree that it is domestic terrorism?

Mr. WILLIAMS. My former-Federal-prosecutor friend at the end would share this: There is no domestic Federal terrorism statute. I want to be careful in how I talk about that.

Now, certainly, there are acts that comprise what would constitute terrorism—violent crimes and so on—that might fit under that definition.

Another thing for Congress to consider, if it wishes to, is to pass a domestic terrorism statute.

Ms. GARCIA. All right.

Are any of the investigations contemplated by this Subcommittee comparable to the scale to the investigation of the attack on the Capitol?

Mr. WILLIAMS. I am sorry. I didn't quite catch the question, Congresswoman.

Ms. GARCIA. Are any of the investigations contemplated by this Subcommittee comparable in scale to the investigation into the attack on the Capitol?

Mr. WILLIAMS. I am not certain as to what the Committee's full mandate is. To be clear, what happened on the day of the Capitol was a historic event that ought never happen again, and perhaps it is in Congress's interest to work toward that.

Ms. GARCIA. All right.

Thank you, Mr. Chair. I yield back.

Chair JORDAN. The gentlelady yields back.

The Chair now recognizes the gentlelady from Florida, Ms. Cammack.

Ms. CAMMACK. Thank you, Mr. Chair.

I can actually answer that question. This Committee is different in the sense that we allowed our minority party to appoint their representatives to the panel. So, we will start there.

Examining the ways that the Federal government abuses its power when dealing with everyday citizens it sees as threatening is some of the most powerful and consequential work that a Member of Congress can do.

During this Federal government's very first Congress, the Representatives in the House began granting authorities to Federal agencies. These Members were well-experienced in the growth and abuses of a tyrannical government.

The inherent quality of all governments is to collect more power and authority. There is an inverse relationship to the power of government and the freedom of the individual.

That is why James Madison, along with other like-minded Members of the House, as well as President Washington, encouraged the passage of a Bill of Rights—defined, enumerated rights that

citizens of our new Nation could point to when governments begin to trifle with their lives, their businesses, or their faith.

They passed the Bill of Rights in the first session of the first Congress—arguably the most important action ever done by this body for the American people.

Their actions were revolutionary. No government on Earth has a founding document that has aged as well as ours. It is the oldest and least amended constitution in the world.

What we are charged to do on this Committee is defend it against all enemies, foreign and domestic, to ensure that our citizens' life, liberty, and property are protected from the warrantless abuses of Federal bureaus and their agents.

Today, we are answering the call to investigate and ultimately stop the litany of dangerous and unconstitutional actions. Truthfully, the list is exhausting, and I am sure that there is far more than we can address here today or even in the two-years that we have.

So, while Washington, Madison, and Jefferson are no longer here to help guide us in this body, their spirit lives on. It is absolutely crucial that we, today, take up this mantle. It is the work that will be done by this Committee, not as Republicans, not as Democrats, but as Americans, that is important and will live on.

Mr. Williams, you just told this Committee, "to be cute," quote, "you get more flies with honey than vinegar."

On your Twitter feed, you called on the January 6th Select Committee to publicly hammer and shame former Deputy Attorney General Jeff Clark on everything that he attempted to plead the Fifth about.

Is that your version of honey or vinegar?

Mr. WILLIAMS. That is my version of stating, when an individual has provided—

Ms. CAMMACK. No, no, no.

Mr. WILLIAMS. Well—

Ms. CAMMACK. Just honey or vinegar.

Mr. WILLIAMS. —I don't think it is a binary.

Ms. CAMMACK. Okay.

Mr. WILLIAMS. If you look at the context of all my tweets—

Ms. CAMMACK. All right. You also just told Representative Sánchez a few minutes ago that one of hallmarks of good oversight is bipartisan and it is designed to, quote, "improve government process," end quote. You went on to say that threats are not protected speech.

You yourself were extraordinarily critical of Justice Brett Kavanaugh, going so far as to say publicly on your Twitter feed—and you were not shadow banned, however, when you said this—that the FBI dropped the ball when vetting him.

When there was an assassination attempt on his life, you were unusually quiet. Up to that point, you had tweeted about him 17 times.

I hope you, along with our Democratic colleagues, would agree that violence in political discourse is unacceptable. I would encourage you to do better.

That is a statement, not a question. Moving on.

Professor Turley, the Constitution was written to limit the power of the Federal government and to protect the rights of citizens, yes or no?

Mr. TURLEY. Yes.

Ms. CAMMACK. You have written extensively about the abuses of the Federal government. Would you say that these abuses occur within a variety of different agencies, yes or no?

Mr. TURLEY. Yes.

Ms. CAMMACK. Are there not massive national security implications as a result of the extensive amount of warrantless data collection by the Federal government agencies, coupled with the disastrous track record that they have of leaks and breaches, that Americans are not only being targeted domestically by the agencies, but also by bad actors and foreign actors?

Mr. TURLEY. Well, there are massive constitutional concerns there with the collection of data. There are no question about that.

Ms. CAMMACK. With all the breaches and leaks—

Mr. TURLEY. Yes. That is a problem.

Ms. CAMMACK. —here is a national security implication, is there not?

Mr. TURLEY. There can be.

Ms. CAMMACK. Thank you.

It is publicly documented, the reference of use-of-force capabilities, within a litany of different agencies, including the Department of Education, the IRS, HHS, even the EPA.

Can you detail why the capability, coupled with extensive warrantless data collection efforts of these agencies, should concern everyday Americans and why agencies like the Department of Education and the EPA are purchasing millions of dollars' worth of ammunition and tactical ballistic gear?

Mr. WILLIAMS. Well, I testified earlier on the use of national security letters and other means to get information below the warrant level, and that covers a huge amount of information that the government has gathered. I thought there was actually fairly bipartisan support on that, that Democratic and Republican Members were equally concerned about the circumvention of warrants in that sense.

I think it is a very serious problem. To the credit of social media companies, they actually have pushed back on this. I mean, one of the things in the Twitter files that I noted was that some of that dealt with these types of efforts to get access to social media companies.

Most of the time, these companies are really hamstrung when they get these letters—and there is a lot of them—to turn over this information, and citizens are unaware of that.

A lot of what we have that we could hold most dearly in terms of private information is now on our cell phones, it is now on the cloud. The government has really targeted the cloud. They are going after the cloud with non-warrants.

In the previous hearing, I was really gladdened, because Democrats and Republicans joined together and said, "This is a problem." I think it still is a problem.

Ms. CAMMACK. I appreciate it.

My time has expired. I yield.

Chair JORDAN. The gentlelady yields back.

The gentleman from New York is recognized.

Mr. GOLDMAN. Thank you, Mr. Chair.

This is a Committee menacingly called the “Weaponization of the Federal Government.”

Mr. Turley, have you ever worked for the Federal government?

Mr. TURLEY. Yes.

Mr. GOLDMAN. What did you do?

Mr. TURLEY. I did a couple years, off and on, with the NSA as a lowly intern. I also worked in the Legislative Branch in various capacities. I represented Congress in court. I was—

Mr. GOLDMAN. That is not working for the Federal government. You were an intern. Okay.

Mr. TURLEY. Well, no, I wasn’t an intern. I was representing them in—

Mr. GOLDMAN. I understand. You were an intern at NSA. That is the extent of your Federal government experience.

Mr. TURLEY. No. I think Congress is part of the Federal government, and—

Mr. GOLDMAN. You represented Congress. You didn’t work for Congress.

Mr. TURLEY. Well, they paid me. That is my standard.

Mr. GOLDMAN. Okay.

Mr. TURLEY. I also worked for—

Mr. GOLDMAN. All right.

Mr. TURLEY. I also worked in the—

Mr. GOLDMAN. I am going to reclaim my time. Let’s move on, because I have a lot to cover.

You have commented a lot on the First Amendment today. Do you think that Special Counsel Mueller’s indictment of members of Russian intelligence for interfering with the 2016 election through social media was improperly charged?

Mr. TURLEY. Well, it depends—I have to look at which case you are talking about. I supported Mueller’s appointment as special counsel, and I—

Mr. GOLDMAN. I am talking about the indictment.

Mr. TURLEY. Yes, I wouldn’t say—I don’t remember being upset with those indictments.

Mr. GOLDMAN. Okay.

Mr. TURLEY. I—

Mr. GOLDMAN. Well, what they did and what they alleged is that Russia interfered in our election through using speech via social media.

Mr. TURLEY. Right.

Mr. GOLDMAN. Now, do you think that the First Amendment protects people from making death threats against Federal officials across State lines?

Mr. TURLEY. No. If it is—

Mr. GOLDMAN. Does the First Amendment protect someone from yelling “fire” in a movie theater?

Mr. TURLEY. Well, unfortunately, that one is not yes or no, because that is become a mantra for people. It is the Holmes-Schenck line. Holmes himself walked back on—

Mr. GOLDMAN. All right. All right.

Mr. TURLEY. Holmes and—

Mr. GOLDMAN. We don't need a law class here.

You do agree, though, don't you, that the First Amendment does not protect all speech?

Mr. TURLEY. No, there are limits to speech. All Constitutional rights have limits.

Mr. GOLDMAN. Right.

Mr. Baker, I want to turn to you. When did you retire from the FBI?

Mr. BAKER. I retired from FBI employment in—about 20 years ago. I—

Mr. GOLDMAN. 1999, right? That is the year.

Mr. BAKER. Yes. I have continued to be engaged with the FBI on a number of levels since then.

Mr. GOLDMAN. Okay. So, you retired two years before 9/11, right?

Mr. BAKER. That is correct.

Mr. GOLDMAN. All right. Are you aware that one of the reasons that 9/11 occurred was that the FBI and the intelligence community did not coordinate sufficiently? Would you agree with that?

Mr. BAKER. That was the conclusion of the September 11th Commission, and it is very valid, I think.

Mr. GOLDMAN. So, you read that, like I did, and that has all the information that you had—

Mr. TURLEY. Yes.

Mr. GOLDMAN. —because you were not at the FBI.

Mr. BAKER. What has happened—

Mr. GOLDMAN. It is as a result 9/11 that the Department of Homeland Security was created, right?

Mr. BAKER. A year or two after that, yes.

Mr. GOLDMAN. Yes. So, you never worked in conjunction with the Department of Homeland Security when you worked for the FBI, right?

Mr. BAKER. I was working as a consultant during most of those years—

Mr. GOLDMAN. When you worked for the FBI, when you were paid by the FBI as a special agent, did you work with Homeland Security?

Mr. TURLEY. No. It didn't exist.

Mr. GOLDMAN. Okay.

You never investigated foreign interference in our elections, did you?

Mr. BAKER. No, I personally did not.

Mr. GOLDMAN. You have no experience investigating Russia's efforts to interfere in our elections through cyber-attacks and social media, do you?

Mr. BAKER. Other than what I have studied and researched.

Mr. GOLDMAN. Okay. In 1999 when you left, did smartphones exist?

Mr. BAKER. Of a sort.

Mr. GOLDMAN. Really?

Mr. BAKER. Yes.

Mr. GOLDMAN. What?

Mr. BAKER. Well, we had phones. We had phones with—

Mr. GOLDMAN. Smartphones. Do you know what a smartphone is?

Mr. BAKER. We had—

Mr. GOLDMAN. Okay.

Mr. BAKER. Well, I—

Mr. GOLDMAN. Did you ever do any search warrants for emails?

Mr. BAKER. Search warrants for?

Mr. GOLDMAN. Emails.

Mr. BAKER. No, I did not.

Mr. GOLDMAN. Yes.

Mr. BAKER. I have done—

Mr. GOLDMAN. Did you ever investigate domestic extremism?

Mr. BAKER. Actually, yes. I investigated the Ku Klux Klan on many occasions.

Mr. GOLDMAN. Good.

Mr. BAKER. I was—

Mr. GOLDMAN. Did you ever investigate any insurrections on the Capitol?

Mr. BAKER. No. There was none.

Mr. GOLDMAN. Okay.

I appreciate your service, sir. You would agree that a lot of has changed in the FBI in the 23 years since you left, correct?

Mr. BAKER. Good and bad. I have stayed engaged on a number of levels—

Mr. GOLDMAN. One last question, sir, for you. I read that your opening statement is actually an excerpt from your book. Is that right?

Mr. BAKER. Well, it covers some of the same territory, yes.

Mr. GOLDMAN. All right. Well, next time, make sure you give us a heads-up, and we can set up a table for you to have a book signing after this.

Ms. Parker, really quick, do you think that you speak for—you said that Americans are concerned about the FBI. Do you think you speak for every American?

Ms. PARKER. I do not speak for every American. As a special agent who is been out in the field trying to conduct my job, it is very difficult when we don't have the buy-in of the American people. A lot of Americans do not trust the FBI anymore because of recent—

Mr. GOLDMAN. Right.

Well, unfortunately, my time is about up, but I will also say to you that I worked in the Department of Justice for 10 years alongside a lot of FBI special agents, and their biggest concern and the most damage to the morale of the FBI occurred after Donald Trump started attacking the FBI because he was being investigated by the FBI.

That is what this Subcommittee is all about.

I yield back.

Chair JORDAN. I thank the gentleman for yielding back. I disagree with his conclusion.

I will now recognize the gentleman from North Dakota, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chair.

Shouting “fire” in a crowded theater was dicta in a 1919 case by Schenck. It was overruled in 1969 by *Brandenburg* and put in an imminence requirement. So, if we are going to continue to use it in this setting, whether it is the Twitter yesterday or the hearing here yesterday, let’s at least get the law right.

Second, as somebody who spent the first 10 years of my life defending criminal cases in both State and Federal court, I think the genesis of the Garland memo is incredibly important. The point of the coordination between the DOJ, the Department of Education, and the National School Boards Association was designed to create a Federal nexus.

Local school board incidents are prosecuted locally. We elect local sheriffs, we elect local prosecutors, we elect local judges. Only by fabricating a domestic terrorism nexus do you create a position where you can prosecute those cases in Federal court.

I don’t want to talk about that, because I think we do have to talk about things more than the First Amendment.

The timestamp data provides an intimate window into a person’s life, revealing familial, political, professional, religious, and sexual associations. Only the few without cell phones could escape this tireless and absolute surveillance.

Those are quotes from the Supreme Court’s majority opinion in *U.S. v. Carpenter*. While *Carpenter* is a limited ruling addressing warrantless monitoring of cell site locations under the Fourth Amendment, the Court began considering whether the law needs to adjust to a digital world with extensive data collection and the analytical tools to operationalize that data.

The Federal government has realized the value of the massive amounts of commercial consumer data that is freely available on the open market. The data is produced to inform on aggregate population levels, but it also generates leads that produce investigations into individuals.

In 2020, the CDC purchased cell phone location data from a data broker to monitor whether or not people went to church during quarantine.

In 2020, the DOD obtained consumer data from a Muslim prayer app.

In 2020, the Department of Homeland Security purchased cell phone location data to make enforcement decisions on the U.S.-Mexican border.

In the summer of 2020 and the turn of the year in 2021, DOJ obtained cell phone location data on Black Lives Matter protests and every cell phone in and around the Capitol on January 6th.

In 2022, several law enforcement associations publicly opposed a bipartisan data privacy bill because it would disrupt the ability to easily obtain certain consumer data.

In 2023, just this week, the IRS proposed comparing a waiter’s reported income from tips to the tip data that is submitted by their employing restaurant.

You may agree with some of these, you may disagree with some of these, but here is the thing: None of these third-party data acquisitions required a warrant.

The amount of data available, either directly or through third parties, is both astounding and terrifying. Combine that with the

advance in technology like AI, facial recognition, and more that will allow aggregation, analysis, and an identification, and we are fast approaching a surveillance State, with no assurances, other than the promises of our government, that it will not abuse this tremendous responsibility.

Pegasus spyware, FISA abuses, alleged COVID vaccine data bases, and even home temperature controls have already shown that the trust alone is not enough.

Orin Kerr, a law professor and Fourth Amendment expert, has suggested that when technological change or societal practice significantly alters the balance of power in favor of the government, the law must change.

Kerr calls it an “equilibrium adjustment.” The Carpenter opinion referred to it as “not mechanically applying to the third-party doctrine.” I would call it “ensuring the Fourth Amendment can survive the 21st century.” Mr. Turley, do you think we need legislative reforms in Congress suggesting this aggregate collection of data?

Mr. TURLEY. I do.

Congress has struggled with this in the past. The courts have struggled with it. In *Carpenter*, the Court said that you couldn’t get just cell phone locational data without a warrant. It kept alive the *Smith v. Maryland* third-party standard with that exception. Roberts, in that opinion, said, look, this is a serious—this is a serious amount of data that is highly personal for individuals and it triggers the warrant requirement.

You also had the Court, in *Jones*, with the GPS decision in 2012, where that was actually observable movement of a car, and the Court still said, you know what, this needs to have a warrant.

So, the courts have been trying to get their hands around this thing, but it hasn’t really materialized in protection. So, that falls to Congress, as to what you can do about it. I think there is a lot you can do about it. You can restrict these Federal agencies. You can force them to satisfy a higher standard.

I honestly think that there would be general agreement in both parties that it is—right now, it is sort of—the cloud is the wild, wild West. People are grabbing stuff from the cloud.

These companies have complained to you over and over again. I testified with a couple of these executives, and I was really sort of shocked by the desperation in their voices. They were saying, “We need your help. We need you to come in and give us something here so that we can say no.”

Mr. ARMSTRONG. Thank you.

I yield back.

Chair JORDAN. I thank the gentleman.

Professor, censorship isn’t just done willy nilly. There are always a purpose, an objective, some kind of motive for why some people want other people to not be able to speak. Is that fair?

Mr. TURLEY. Yes. The government often says that it is neutral in targeting people, but it is still a content-based decision, and—

Chair JORDAN. It might—

Mr. TURLEY. Yes.

Chair JORDAN. I would just say, and might sometimes that motive be political?

Mr. TURLEY. It can be, yes.

Chair JORDAN. Yes. It seems to me that is what happened.

I want to go to—I mean, we saw this 10 years ago, 12 years ago, when the IRS was targeting people of one political persuasion, limiting their free speech rights. I think we have seen it now with what the Twitter files have exposed.

I really liked the term you used in your op-ed, and I think you may have said it today or someone said it earlier, when you were talking about this agency principle, this “censorship by surrogate,” and how dangerous that can be.

I think you said it—maybe I got this from your op-ed earlier, but you said, it is one thing if Mr. Smith calls up Twitter and says, I don’t like what Mr. Jones is saying about me or whatever. It is an entirely different matter when it is the U.S. Government telling Twitter, we have got concerns about these specific accounts—which we know is what happened, again, based on the Twitter files.

Mr. TURLEY. Yes. It does irk me to see people say, “Well, the U.S. Government was just acting like any citizen.” The U.S. Government isn’t any citizen. The FBI isn’t your neighbor. The FBI has subpoena authority. They have search authority. They have weapons. They are the largest law enforcement agency in the United States. So, when they perform this task, it is different.

There are lots of things that are more menacing when done by the government. That is one of the reasons the Court has allowed for this type of agency relationship to trigger things like the First Amendment or the Fourth Amendment.

This is not a new problem. In the Fourth Amendment area, it was an old technique for officers to get private security or to get campus police or others to conduct a search. The courts said, look, if they are doing that at your direction or your behest, those are agents as well.

Chair JORDAN. Yes. It is menacing when it is done by the government; it is even more menacing when it is done by the Federal government.

Mr. TURLEY. Uh-huh.

Chair JORDAN. That is what we have here. We have the FBI—I think Mr. Armstrong made a great point when he said, okay, if parents are doing some things wrong at the local level, then local law enforcement will handle that. It is an entirely different matter when you set up a Federal apparatus where neighbors can report their neighbor or people can report someone in their community to the Federal government.

Again, from whistleblowers, over two dozen parents had an FBI agent visit them, come see them, call them on the phone, investigate them, based on that process that was put in place.

I want to go to the fundamental question. Why is the government—in the case of the Twitter files, why is the FBI sending a list of accounts and names to Twitter, telling Twitter, “We think these accounts violate your terms of service”? That is sort of the fundamental question here. Why in the world are they doing that?

That, to me, you used the term “wrong” in your opening statement. You have used the term “menacing” a number of times in today’s questioning. That, to me, is as scary as it kind of gets.

Mr. TURLEY. Well, it is interesting. In the Twitter files, that was the same question that a Twitter executive said.

Chair JORDAN. Yep.

Mr. TURLEY. At one point, he said, “What gives? I mean, basically, the FBI is telling us that our terms of service are violated by all these people. What is their role, essentially, and what is our role?” It was an honest moment.

That same question is reflected where even Jim Baker yesterday—

Chair JORDAN. Yep.

Mr. TURLEY. —has said, I think we might need legislation, that I think that there is a need, given what has happened, to limit the FBI and other agencies.

Chair JORDAN. So, when even someone at Twitter who worked for the FBI says that, would you describe that as—would you use the term “targeting,” would you use the term “weaponization,” of that process we just talked about?

Mr. TURLEY. Well, there are no question that they are targeting posters. They are sending the names and accounts for Twitter to take action on.

By the way, this idea that, “Well, Twitter could say no,” that is not the standard under these tests. I gave you the four tests that the courts use.

Chair JORDAN. Yep.

Mr. TURLEY. You can say no and still be an agent overall in that relationship.

Chair JORDAN. Yes.

As you point out in your testimony, your written testimony, this targeting is not just limited to what we have learned in the Twitter files, not just this direct attack on the First Amendment. We have seen it in different—we saw it with the dossier. We have seen it with the treatment of classified documents. You have referenced that, the different standards. You have referenced that in your statement. Of course, we have seen it with the school boards situation.

I have got just 20 seconds. I will maybe pose a quick question to Mr. Williams.

Mr. Williams, the opening statement—there have been a lot of talk about the memorandum from Attorney General Garland on October 21, 2021. The opening statement, he said, the very first sentence: “In recent months, there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators.”

When he testified on October 21, 2021, we asked him what was the basis, what was the evidence for that statement. Do you remember what the Attorney General said?

Mr. WILLIAMS. Sir, I don’t. I don’t work for the Justice Department anymore, didn’t advise him on it, and I—

Chair JORDAN. Well, I will remind you. He said it was the letter from the National School Boards Association.

Now, do you happen to know what the National School Boards Association did with their letter, what they said about their letter after the Attorney General testified?

Mr. WILLIAMS. Sir, I do not.

Chair JORDAN. They rescinded it. They said, “We regret and apologize for the letter.”

So, the basis for the targeting action involving the Federal government and local school board matters and local law enforcement matters, the basis was the letter—that is what the Attorney General cited—and that letter has been pulled back, and the association who sent that letter said, “We apologize and regret that we sent it.”

It seems to me the Attorney General should rescind his memorandum, which we have called for now for a year and a half.

I want to thank our witnesses for being here. I know it was a long day, and I appreciate you staying the whole time. I was tempted to give you a—I was looking to give you a restroom break, but I thought we could get through it. So, I appreciate your patience and your great testimony.

With that, the first Subcommittee hearing is adjourned.

[Whereupon, at 4:08 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Select Subcommittee on the Weaponization of the Federal Government can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=115442>.

