

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, January 28, 2019 7:45 PM
To: Rosenstein, Rod (ODAG); Daly, Mary (ODAG); Moran, John S. (ODAG); Thiemann, Robyn (ODAG); Weinsheimer, Bradley (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG)
Subject: FW: Barr QFRs - time sensitive
Attachments: Responses to Questions for the Record for William P Barr with Appendix.pdf

Team ODAG,

Thanks again for all your help with this. Impressive work.

Edward C. O'Callaghan

(b) (6)

From: Escalona, Prim F. (OLA) (b) (6)
Sent: Monday, January 28, 2019 6:08 PM
To: Gannon, Curtis E. (OLC) (b)(6) per OLC; Michel, Christopher (OSG) (b)(6) per OSG; Heminger, Justin (ENRD) (b) (6); Wiegmann, Brad (NSD) (b) (6); Burnham, James M. (CIV) (b) (6); Assefi, Omeed (CRT) (b)(6) per CRT; Lucas, Daniel (JMD) (b) (6); Fragoso, Michael (OLP) (b) (6); Crowell, James (USAEO) (b) (6); Costigan, Michael (OJP) (b) (6); (b)(6), (b)(7)(C) per BOP (BOP) (b)(6), (b)(7)(C) per BOP; Allen, Joseph J. (b) (6); Daly, Mary (ODAG) (b) (6); Moran, John S. (ODAG) (b) (6); Thiemann, Robyn (ODAG) (b) (6); Wong, Candice (CRM) (b)(6), (b)(7)(C) per CRM; Finch, Andrew (ATR) (b)(6) per ATR; Rabbitt, Brian (OLP) (b) (6); Edlow, Joseph B. (OLP) (b) (6); Long, Shannon (COPS) (b)(6) per COPS; Toulou, Tracy (OTJ) (b) (6); Sullivan, Katie (OVW) (b) (6); Greaves, Travis A. (TAX) (b) (6); Tyson, Jill C. (DO) (OGA) (FBI) (b)(7)(E) per FBI
Cc: Boyd, Stephen E. (OLA) (b) (6); Douglas, Danielle E. (OLA) (b) (6); McKinney, Suzanna R. (OLA) (b) (6); Ellis, Corey F. (ODAG) (b) (6); Peterson, Andrew (ODAG) (b) (6); O'Callaghan, Edward C. (ODAG) (b) (6); Parker-Bissex, Rachel (OASG) (b) (6); Panuccio, Jesse (OASG) (b) (6); Williams, Beth A (OLP) (b) (6); Benczkowski, Brian (CRM) (b) (6); Hunt, Jody (CIV) (b) (6); Delrahim, Makan (ATR) (b)(6) per ATR; Dreiband, Eric (CRT) (b)(6) per CRT; Francisco, Noel (OSG) (b)(6) per OSG; Lofthus, Lee J (JMD) (b) (6); Demers, John C. (NSD) (b) (6); Clark, Jeffrey (ENRD) (b) (6); Engel, Steven A. (OLC) (b)(6) per OLC; Dummermuth, Matt (OJP) (b) (6)
Subject: RE: Barr QFRs - time sensitive

Thank you all so much for your help with AG-nominee Barr's Questions for the Record. You turned them around in record time, and I can't tell you how much we (and General Barr and his team) appreciated all your hard work. I especially appreciate your quick responses to my last-minute requests and questions!

I am attaching the final version of the QFRs that were submitted to the Senate Judiciary Committee for your records.

Again, I know that it wasn't easy to drop everything and turn the answers around in less than 24 hours, especially during a shutdown. Thank you all.

Best,
Prim

From: Escalona, Prim F. (OLA)
Sent: Wednesday, January 23, 2019 1:44 AM
To: Gannon, Curtis E. (OLC) (b)(6) per OLC; Michel, Christopher (OSG) (b)(6) per OSG; Heminger, Justin (ENRD) (b)(6); Wiegmann, Brad (NSD) (b)(6); Burnham, James M. (CIV) (b)(6); Assefi, Omeed (CRT) (b)(6) per CRT; Lucas, Daniel (JMD) (b)(6); Fragoso, Michael (OLP) (b)(6); Crowell, James (USAEO) (b)(6); Costigan, Michael (OJP) (b)(6); (b)(6), (b)(7)(C) per BOP (BOP) (b)(6), (b)(7)(C) per BOP; 'Allen, Joseph J. (b)(6); Daly, Mary (ODAG) (b)(6); Moran, John S. (ODAG) <(b)(6); Thiemann, Robyn (ODAG) (b)(6); Wong, Candice (CRM) <(b)(6), (b)(7)(C) per CRM; Finch, Andrew (ATR) (b)(6) per ATR; Rabbitt, Brian (OLP) (b)(6); Edlow, Joseph B. (OLP) (b)(6)
Cc: 'Stephen E. Boyd (OLA) (b)(6); Douglas, Danielle E. (OLA) (b)(6); McKinney, Suzanna R. (OLA) (b)(6)
Subject: RE: Barr QFRs - time sensitive

All,

Please find attached the following documents:

- Word Document (titled Barr QFRs), which includes all of the QFRs we received coded by component in RED. Please draft your responses in this document.
- Spreadsheet that lists all QFR assignments. You can search or filter by your component.
- A document with previously used common responses for QFRs. Please consult this document first to ensure consistency with standard responses.
- Transcript for the Barr hearing
- Component Contacts (updated)

Please insert your draft answers into the Word document and return it to me, copying Suzanna and Danielle, by Wednesday, January 23rd at 6:00 pm. Please save your document with your component in the file title.

Again, please do a quick triage to make sure that the QFRs assigned to your component are appropriately designated. If a QFR needs to be reassigned to a different component, please email me, Suzanna, and Danielle as soon as possible.

Thank you so much for your help. Please let us know if you have any questions or concerns.

Best,
Prim

From: Escalona, Prim F. (OLA)
Sent: Tuesday, January 22, 2019 3:16 PM
To: Gannon, Curtis E. (OLC) (b)(6) per OLC; Michel, Christopher (OSG) (b)(6) per OSG; Heminger, Justin (ENRD) <(b)(6); Wiegmann, Brad (NSD) (b)(6); Burnham, James M. (CIV) (b)(6); Assefi, Omeed (CRT) (b)(6) per CRT; Lucas, Daniel (JMD) (b)(6); Fragoso, Michael (OLP) (b)(6); Crowell, James (USAEO) (b)(6); Costigan, Michael (OJP) (b)(6); (b)(6), (b)(7)(C) per BOP (BOP) (b)(6), (b)(7)(C) per BOP; 'Allen, Joseph J. (b)(6); Daly, Mary (ODAG) (b)(6); Moran, John S. (ODAG) <(b)(6); Thiemann, Robyn (ODAG) (b)(6); Wong, Candice (CRM) <(b)(6), (b)(7)(C) per CRM; Finch, Andrew (ATR) (b)(6) per ATR; Rabbitt, Brian (OLP) (b)(6); Edlow, Joseph B. (OLP) (b)(6)

(NSU) (b) (6) >; Burnham, James M. (CIV) (b) (6) >; Assett, Omeed (CRT) (b)(6) per CRT >; Lucas, Daniel (JMD) (b) (6) >; Fragoso, Michael (OLP) (b) (6) >; Crowell, James (USAEO) (b) (6) >; Costigan, Michael (OJP) (b) (6) >; (b)(6), (b)(7)(C) per BOP (BOP) (b)(6), (b)(7)(C) per BOP >; 'Allen, Joseph J.' (b) (6) >; (b)(6), (b)(7)(C), (b)(7)(F) per USMS (b)(6), (b)(7)(C), (b)(7)(F) per USMS >; Daly, Mary (ODAG) (b) (6) >; Moran, John S. (ODAG) (b) (6) >; Thiemann, Robyn (ODAG) (b) (6) >
Cc: Stephen E. Boyd (OLA) (b) (6) >; Douglas, Danielle E. (OLA) (b) (6) >; McKinney, Suzanna R. (OLA) (b) (6) >
Subject: Barr QFRs - time sensitive

All,

Thank you for agreeing to help with the Questions for the Record for AG-Nominee Barr. [I hope this email does not catch you by surprise.] As you probably have heard, we are on an extremely tight timeframe. We will receive the QFRs tonight and get them to you as soon as we can tonight (it will likely be late). We will need your responses back no later than **tomorrow, Wednesday, Jan. 23 by 6:00 pm**. Please send your responses to me and copy Danielle Douglas and Suzanna McKinney (copied above). We unfortunately do not have time for multiple rounds of review, so please send responses in final form (cleared by anyone in your component that needs to clear them). Note that ODAG and OASG will clear all responses on Friday.

A few notes:

- The transcript for Barr's hearing is attached. You should – to the extent you can – use his responses in the hearing to draft your QFR responses.
- Please remember that you are drafting responses for a nominee who is not currently in the Department. Therefore, please do not include information that would be unknown to him.
- We have heard that there will be over 1000 QFRs. If you need to call in additional folks in your component to assist, please work through your proper channels and with JMD to address that need.
- At some point tonight, you will receive an email with the following items:
 - A Word document containing the QFRs and a space for responses that has the assigned component identified in red.
 - A spreadsheet listing all of your assigned QFRs.
 - The hearing transcript (reattached to that email in case you need to forward the entire package to others in your component)
- **This is critical:** if you are assigned a QFR that does not fall within your component, please email me ASAP so that I can properly reassign. I will do my absolute best to get them to the right people/components at the outset, but I am confident that I won't be batting 1000. I really appreciate your help when that happens!

Below are the contacts that I have for each component. If this is incorrect or if you have not yet provided a phone number where you can be reached tomorrow, please let me know. Additionally, there are likely going to be QFRs that cross a number of components. If that happens, I will list all of the relevant components that I know of in Red in the QFR document. Please coordinate with the folks on this list to ensure that the final answer addresses every component's equities and concerns. If you are aware that a question involves a component that I have not listed, please work with the component to draft a complete response.

Thank you all so much for your help. I know that this is an incredibly heavy lift, and I can't tell you how much we appreciate your help.

Best,
Prim

Barr QFR Component Contacts

Component	Contact Name	Contact Phone Number
OLC	Curtis Gannon	
OSG	Chris Michel	
ENRD	Justin Heminger	(b) (6)
NSD	Brad Wiegmann	
CIV	James Burnham	
CRT	Omeed Assefi	
ATR		
CRM		
JMD	Dan Lucas	
OLP	Mike Fragoso	
EOUSA	Jim Crowell	
OJP	Michael Costigan	
BOP	(b)(6), (b)(7)(C) per BOP	
ATF	Joe Allen	
USMS	(b)(6), (b)(7)(C), (b)(7)(F) per USMS	

Prim Escalona
Principal Deputy Assistant Attorney General
Office of Legislative Affairs
(b) (6)

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Thursday, April 18, 2019 2:12 PM
To: Moran, John (OAG)
Cc: Rabbitt, Brian (OAG)
Subject: RE: OLC Issue

On it!

From: Moran, John (OAG) <(b) (6)>
Sent: Thursday, April 18, 2019 2:10 PM
To: Kupec, Kerri (OPA) <(b) (6)>
Cc: Rabbitt, Brian (OAG) <(b) (6)>
Subject: OLC Issue

Kerri,

To follow up on our discussion, here is the tweet:

Maggie Haberman - @maggieNYT

A really striking contradiction in Mueller report from what Barr said this morning - Barr said Mueller told him that the OLC opinion on not indicting a sitting president wasn't a factor. The report includes it as a factor.

Here is what the Q&A exchange at the press conference this morning:

Reporter: "Mr. Attorney General, we don't have the report in hand. So could you explain for us the special counsel's articulated reason for not reaching a decision on obstruction of justice and if it had anything to do with the department's long-standing guidance on not indicting a sitting president? And you say you disagree with some of his legal theories. What did you disagree with and why?"

Barr: "I would leave it to his description in the report, the special counsel's own articulation of why he did not want to make a determination as to whether or not there was an obstruction offense. But I will say that when we met with him, Deputy Attorney General Rosenstein and I met with him, along with Ed o'Callaghan, who is the principal associate deputy, on March 5th. We specifically asked him about the OLC opinion and whether or not he was taking a position that he would have found a crime but for the existence of the OLC opinion. And he made it very clear several times that that was not his position. He was not saying that but for the OLC opinion, he would have found a crime. He made it clear that he had not made the determination that there was a crime."

The report (pp.1-2 of Volume II) then discusses various facets of the OLC opinion as part of the "considerations that guided our obstruction-of-justice investigation."

The question asked broadly whether the OLC opinion had "anything to do with" the Special Counsel's reasoning, but the AG addressed that by saying that he "would leave it to his description in the report." He then went on to talk about a meeting he had with Mueller, not what was in the report. At that meeting, the

Special Counsel was asked a very specific question: whether the Special Counsel saying that he would have found obstruction of justice if it weren't for the OLC opinion. And as to that question, the Special Counsel repeatedly said no. Nothing in the report conflicts with *that* point (which, at any rate, was the Special Counsel's statement, not Barr's).

In short, the tweet mischaracterizes what the AG said. He didn't say that Mueller told him it wasn't a factor in his decision not to make a prosecutorial judgment on obstruction.

Happy to follow up if helpful.

John

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) (W)

(b) (6) (C)

(b) (6)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, April 25, 2019 12:30 PM
To: Moran, John (OAG)
Subject: AG bullets on Obstruction
Attachments: AG bullets on Obstruction Episodes 4.25.docx

Here's OLC's working draft on the bullets. I have not edited very much. But happy to have you take the pen.

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6) per OLC
[REDACTED]

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, April 25, 2019 7:05 PM
To: Rosenstein, Rod (ODAG)
Subject: FW: Hearing Talking Points re Obstruction Issues
Attachments: 20160501 Hearing Talking Points re Obstruction.docx

Draft of TPs to deal with 10 alleged obstruction episodes.

Edward C. O'Callaghan

(b) (6)

From: Moran, John (OAG) (b) (6)
Sent: Thursday, April 25, 2019 5:34 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC; Gannon, Curtis E. (OLC) (b)(6) per OLC
O'Callaghan, Edward C. (ODAG) (b) (6) Burnham, James (OAG)
(b) (6); Boyd, Stephen E. (OLA) (b) (6) Escalona, Prim F. (OLA)
(b) (6)
Subject: Hearing Talking Points re Obstruction Issues

All:

Attached is an updated outline of talking points on the obstruction issues that reflects today's discussion.

Regards,

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) (W)

(b) (6) (C)

(b) (6)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, April 26, 2019 12:14 PM
To: Rosenstein, Rod (ODAG); Weinsheimer, Bradley (ODAG)
Subject: FW: Hearing Prep Materials
Attachments: AG talking points.docx

Edward C. O'Callaghan

(b) (6)

From: Engel, Steven A. (OLC) <(b)(6) per OLC >
Sent: Friday, April 26, 2019 11:03 AM
To: Moran, John (OAG) (b) (6) >; Gannon, Curtis E. (OLC) (b)(6) per OLC >
Boyd, Stephen E. (OLA) (b) (6) >; Burnham, James (OAG) (b) (6) >
O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: RE: Hearing Prep Materials

Attached are draft talking points on obstruction.

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office (b)(6) per OLC

-----Original Message-----

From: Moran, John (OAG) (b) (6) >
Sent: Friday, April 26, 2019 10:01 AM
To: Engel, Steven A. (OLC) (b)(6) per OLC >; Gannon, Curtis E. (OLC) <(b)(6) per OLC >;
Boyd, Stephen E. (OLA) (b) (6) >; Burnham, James (OAG) (b) (6) >;
O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: Hearing Prep Materials

I would like to get the AG copies of any additional prep materials by noon or 1 PM today. I am close to a draft opening statement that I will give him and will try to circulate to you first, time permitting. (If time does not permit, I will circulate contemporaneously.) He also has the updated version of the "10 Episode" talking points.

If anyone else has materials to get him. I just wanted to give you a sense of timing. We can always get him

more later if more time is needed.

John

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, April 26, 2019 12:35 PM
To: Engel, Steven A. (OLC); Moran, John (OAG); Gannon, Curtis E. (OLC); Boyd, Stephen E. (OLA); Burnham, James (OAG)
Subject: RE: Hearing Prep Materials
Attachments: AG talking pointseoc.docx

Some edits and thoughts on these.

Edward C. O'Callaghan

(b) (6)

From: Engel, Steven A. (OLC (b)(6) per OLC
Sent: Friday, April 26, 2019 11:03 AM
To: Moran, John (OAG) (b) (6) >; Gannon, Curtis E. (OLC)
(b)(6) per OLC >; Boyd, Stephen E. (OLA) (b) (6) >; Burnham, James (OAG)
(b) (6) >; O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: RE: Hearing Prep Materials

Duplicatie Material

Weinsheimer, Bradley (ODAG)

From: Weinsheimer, Bradley (ODAG)
Sent: Friday, April 26, 2019 6:25 PM
To: O'Callaghan, Edward C. (ODAG); Rosenstein, Rod (ODAG)
Subject: RE: Hearing Prep Materials
Attachments: AG talking points +gbw.docx

A few suggested edits and comments. Thanks, Brad.

From: O'Callaghan, Edward C. (ODAG (b) (6))
Sent: Friday, April 26, 2019 12:14 PM
To: Rosenstein, Rod (ODA (b) (6)) >; Weinsheimer, Bradley (ODAG (b) (6))
Subject: FW: Hearing Prep Materials

Duplicatie Material

Moran, John (OAG)

From: Moran, John (OAG)
Sent: Saturday, April 27, 2019 2:03 PM
To: Ahern, Bill (OAG)
Cc: Rabbitt, Brian (OAG)
Subject: Fwd: Hearing Talking Points re Obstruction Issues
Attachments: 20160501 Hearing Talking Points re Obstruction.docx; ATT00001.htm

Here is the most recent version that reflects Thursday's discussion.

John

Begin forwarded message:

From: "Moran, John (OAG)" (b) (6)
Date: April 25, 2019 at 5:33:54 PM EDT
To: "Engel, Steven A. (OLC)" (b)(6) per OLC "Gannon, Curtis E. (OLC)"
(b)(6) per OLC, "O'Callaghan, Edward C. (ODAG)"
(b) (6) >, "Burnham, James (OAG)"
(b) (6), "Boyd, Stephen E. (OLA)" (b) (6)
(b) (6), "Escalona, Prim F. (OLA)" (b) (6)
Subject: Hearing Talking Points re Obstruction Issues

Duplicate Material

Rosenstein, Rod (ODAG)

Subject: Sensitive Briefing
Location: JCC

Start: Friday, April 28, 2017 10:00 AM
End: Friday, April 28, 2017 11:00 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: JCC (JMD); Land, Hunter (ODAG (b) (6))
Gauhar, Tashina (ODAG (b) (6))
Crowell, James (ODAG); McCord, Mary (NSD); Toscas, George (NSD); Evans, Stuart (NSD); Van Grack, Brandon (NSD); Laufman, David (NSD (b)(6) per NSD (NSD); Rybicki, James E. (DO) (FBI); Comey, James B. (DO) (FBI)

POC: Tashina Gauhar

Attendees:

ODAG: DAG Rosenstein, Jim Crowell and Tashina Gauhar

FBI: Director Comey and James Rybicki (others to be determined by FBI)

NSD: Mary McCord, George Toscas, Stu Evans, Brandon VanGrack, David Laughman and (b)(6) per NSD

Marcia Murphy and Nathaniel Gamble (b) (6)

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation. If you believe other individuals should be included, please contact the ODAG Front Office.

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Thursday, April 27, 2017 10:32 AM
To: Comey, James B. (DO) (FBI); Rybicki, James E. (DO) (FBI); Crowell, James (ODAG); Land, Hunter (ODAG)
Subject: Meeting

POC: Jim Crowell

Attendees;

ODAG: DAG Rosenstein and Jim Crowell

FBI: Director Comey and Jim Rybicki

POC: Marcia Murphy and Nathaniel Gamble (b) (6)

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation without prior permission of the ODAG scheduling office. If you believe that the invitation was received in error or that other individuals should be included, please contact the ODAG scheduling office.

Crowell, James (ODAG)

From: Crowell, James (ODAG)
Sent: Monday, May 15, 2017 8:18 PM
To: Rosenstein, Rod (ODAG)
Subject: Fwd: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts)
Attachments: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Gauhar, Tashina (ODAG) (b) (6)"
Date: May 15, 2017 at 8:16:57 PM EDT
To: "Crowell, James (ODAG) (b) (6)" "Schools, Scott (ODAG)"
(b) (6), "Terwilliger, Zachary (ODAG) (b) (6)" >
Subject: FW: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts)

FYI -- A letter from Sen. Grassley to the DAG re Acting Director McCabe.

From: Lan, Iris (ODAG)
Sent: Monday, May 15, 2017 8:03 PM
To: Gauhar, Tashina (ODAG (b) (6))
Subject: FW: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts)

FYSA.

From: Burton, Faith (OLA)
Sent: Tuesday, May 02, 2017 11:36 AM
To: McKay, Shirley A (OL (b) (6))
Cc: Ramer, Sam (OL (b) (6)) Barnett, Gary (ODAG (b) (6)) >;
Lan, Iris (ODAG (b) (6)); Beers, Elizabeth R. (DO) (FB (b)(7)(E) per FBI) >;
Kellner, Kenneth E. (OLA (b) (6)) >; Tyson, Jill C. (OLA (b) (6)) >
Subject: FW: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts)

Shirley, please log this in and assign it to FBI to prepare a response for OLA sig. Beth, just tried to reach you on the phone; we can adjust this assignment if necessary, but think that the FBI should have the pen for now.

I will confirm receipt. Thanks. FB

From: Flynn-Brown, Josh (Judiciary-Re (b) (6))
Sent: Tuesday, May 02, 2017 11:09 AM
To: 'Burton, Faith (OLA)' (b) (6)

Cc: CEG (Judiciary-Rep (b) (6) >; Foster, Jason (Judiciary-Rep (b) (6) >; Davis, Patrick (Judiciary-Rep (b) (6) > Brower, Gregory (OGC) (FB (b)(7)(E) per FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI). (DO) (FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI]; Sawyer, Heather (Judiciary-Dem (b) (6) >

Subject: 2017-05-02 CEG to DOJ (McCabe Continuing Conflicts)

Faith,

Attached is a letter to Deputy Attorney General Rosenstein from Chairman Grassley. Please confirm receipt, and please send all formal follow-up correspondence electronically in PDF format to (b) (6) >, and me.

Very Respectfully,

Josh Flynn-Brown
Investigative Counsel
Chairman Charles E. Grassley
U.S. Senate Committee on the Judiciary
(b) (6) >

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

May 2, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Rosenstein,

Now that you have been confirmed as Deputy Attorney General, it is vital that you begin to closely supervise and oversee the FBI's handling of politically charged, high-profile and controversial investigations. In the past several months, the Committee has sought greater transparency regarding Deputy Director Andrew McCabe's role in those investigations and the appearance of political bias that his involvement creates. Public reports of his meeting with a longtime Clinton and Democrat party fundraiser, Governor Terry McAuliffe, and his wife's subsequent campaign for public office being substantially funded by McAuliffe's organization raise serious questions about his ability to appear impartial. The FBI provided unsatisfactory answers to those questions.

On October 28, 2016, I wrote to the FBI about Deputy Director McCabe's conflicts in the Clinton investigation and the reported FBI investigation into Gov. Terry McAuliffe's potential violation of federal campaign laws. On December 14, 2016, the FBI responded but failed to provide the requested records of communications among FBI officials or answer important questions relating to the Clinton and McAuliffe investigations. Further, on March 28, 2017, I wrote to the FBI inquiring about Mr. McCabe's level of involvement in the investigation into alleged collusion between Mr. Trump's associates and Russia prior to the election. Recently, reports have indicated that the FBI may be setting up a special unit, overseen by Mr. McCabe, to investigate these allegations.¹

Mr. McCabe is already under investigation by the Department of Justice Office of Inspector General for failing to recuse himself from the Clinton investigation due to his meeting with McAuliffe. After that meeting, McAuliffe-aligned political groups donated about \$700,000 to Mr. McCabe's wife, Dr. McCabe, for her campaign to become a Democrat state Senator in Virginia. The Wall Street Journal has reported that 98% of the Gov. McAuliffe related donations to Dr. McCabe came after the FBI launched the investigation into Secretary Clinton.² As you are aware, Gov. McAuliffe has been a close associate of Secretary Clinton and former President Bill

¹ David J. Lynch, "FBI plans to create special unit to coordinate Russia probe," Financial Times (April 2, 2017). Available at <https://www.ft.com/content/40498d94-155b-11e7-80f4-13e067d5072c>

² Wall Street Journal Editorial, "The FBI's Clinton Probe Gets Curiouser," (October 24, 2016). Available at <http://www.wsj.com/articles/the-fbi-clinton-probe-gets-curiouser-1477352522>

Clinton for many decades. Naturally, the financial and political links between Mr. McCabe and Gov. McAuliffe raise concerns about the appearance of impartiality in the course of not only the Clinton investigation, but the reported McAuliffe investigation, and the ongoing investigation of alleged ties between associates of Mr. Trump and Russia.

In February 2016, three months after Dr. McCabe lost her election bid, Mr. McCabe became the FBI's second in command and, according to the FBI, "assumed responsibility for the Clinton email investigation." The FBI merely asserted that with respect to the Clinton investigation, "[b]ased on these facts, it did not appear that there was a conflict of interest actual or apparent that required recusal or waiver."

However, according to the FBI ethics memorandum applicable to Mr. McCabe and provided in its December 14 response, there were other matters the FBI identified where Mr. McCabe's "disassociation would be appropriate." Notably, Mr. McCabe was the approval authority for his own memorandum, so it is unclear who provided oversight of the recusal process outside the FBI itself, if anyone. The memo says:

"[s]pecifically, all public corruption investigations arising out of or otherwise connected to the Commonwealth of Virginia present potential conflicts, as Dr. McCabe is running for state office and is supported by the Governor of Virginia. Therefore, out of an abundance of caution, the ADIC will be excluded from any involvement in all such cases."

The scope of that recusal would include the reported investigation into Gov. McAuliffe. The memo also says, "[t]his protocol will be reassessed and adjusted as necessary and at the conclusion of Dr. McCabe's campaign in November 2015."

The FBI did not explain whether the protocol was reassessed when Dr. McCabe lost her election bid in November 2015 or what the scope of any remaining recusal was, if any, after the end of her campaign. Thus, it is unclear whether Mr. McCabe is still recused from the reported McAuliffe investigation. However, the FBI's December 14 response made clear that Mr. McCabe's "disassociation" from Virginia-related cases would merely be followed "for the remainder of [Dr. McCabe's] campaign." This implies that once the campaign ended, Mr. McCabe was free again to oversee any investigation related to the man who recruited his wife to run for office and the organizations that provided her approximately \$700,000 to do so.

With respect to the Russia investigation, during the week of March 20, 2017, Director Comey publicly testified that in late July of 2016, the FBI began investigating the Russian government's attempts to interfere in the 2016 presidential election, including alleged collusion between individuals associated with the Trump campaign and the Russian government. The inquiry appears to have arisen during the same time that there was intense public controversy over the FBI's handling of the Clinton email investigation. On April 17, 2017, the FBI responded to my March 28, 2017, letter regarding Mr. McCabe's involvement in the investigation into the Russian Government's efforts to interfere in the 2016 election. In that response, the FBI said, "the FBI has assessed that there is no basis in law or in fact for such a recusal," without providing any reasoning, rationale, or documentation to support this conclusory statement.

Further, according to public reports, the FBI agreed to pay Christopher Steele, the author of the unsubstantiated dossier alleging a conspiracy between Trump associates and the Russians. Clinton associates also reportedly paid Mr. Steele to create the dossier against Mr. Trump. The FBI has failed to publicly reply to my March 6, 2017, letter asking about those reports. That leaves serious questions about the FBI's independence from politics unanswered.

Mr. McCabe's appearance of a partisan conflict of interest relating to Clinton associates only magnifies the importance of the Committee's unanswered questions. This is particularly true if Mr. McCabe was involved in approving or establishing the FBI's reported arrangement with Mr. Steele, or if Mr. McCabe vouched for or otherwise relied on the politically-funded dossier in the course of the investigation. Simply put, the American people should know if the FBI's second-in-command relied on Democrat-funded opposition research to justify an investigation of the Republican presidential campaign. Full disclosure is especially important since he is already under investigation by the Department of Justice Office of Inspector General for failing to recuse himself from the Clinton matter due to his partisan Democrat ties.

These same conflict of interest concerns exist with Mr. McCabe's involvement in any potential investigation into what appear to be multiple politically motivated leaks of classified information related to the Russia controversy.

As a general matter, all government employees must avoid situations that create even the appearance of impropriety and impartiality so as to not affect the public perception of the integrity of an investigation.³ Importantly, the FBI Ethics and Integrity Program Guide cites 28 C.F.R. § 45.2 which states that,

no employee shall participate in a criminal investigation if he has a personal or *political* relationship with [...] [a]ny person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or [a]ny person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.⁴

As applied to Mr. McCabe's role in the Clinton, McAuliffe, Trump associates investigation, and leak investigation, these rules demand that he and the FBI take steps to ensure that no appearance of a loss of impartiality undermines public confidence in the work of the Bureau. The FBI has failed to show the Committee that it has taken those necessary steps.

³ Specifically, 5 C.F.R. § 2635.502, advises that a government employee should seek clearance before participating in any matter that could cause his or her impartiality to be questioned. Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," makes clear that "[e]mployees shall not hold financial interests that conflict with the conscientious performance of duty," "[e]mployees shall act impartially and not give preferential treatment to any private organization or individual," and "[e]mployees shall endeavor to avoid any actions creating the *appearance* that they are violating the law or the ethical standards promulgated pursuant to this order." FBI Ethics and Integrity Program Policy Guide, p. 29 and 30, citing Executive Order 12674. Emphasis added. If the employee's supervisor determines that a personal or political relationship exists the employee shall be relieved unless the supervisor determines, in writing, the relationship "*would not* create an appearance of a conflict of interest likely to affect the *public perception* of the integrity of the investigation or prosecution." FBI Ethics and Integrity Program Policy Guide, p. 30. Emphasis added.

⁴ *Id.* at 30. Emphasis added.

Accordingly, a significant cloud of doubt has been cast over the FBI's work. Due to the FBI's continued failure to adequately respond to the Committee, please answer the following questions:

1. What steps do you plan to take to ensure that the publicly acknowledged investigation into alleged collusion with Russian efforts to influence the elections is not tainted with the appearance of political bias due to the information outlined above?
2. What steps do you plan to take to ensure that the apparent leaks of classified information related to contacts between Trump associates and Russians are fully and impartially investigated, given that several senior FBI officials, including Mr. McCabe, are potential suspects with access to the leaked information?
3. What steps do you plan to take to ensure that the reported investigation related to Gov. McAuliffe was or is being fully and impartially investigated given that Deputy Director McCabe's recusal appears to have ended at the time that his wife was no longer a candidate for elected office?

In addition, due to the FBI's failure to answer any McAuliffe related questions, I am attaching the Committee's October 28, 2016, letter for your reference with a request that the Justice Department answer questions 11 and 12(a)-(g). In addition, I am attaching the March 6, 2017, and March 28, 2017, letters to the FBI for your review.

I anticipate that your written reply and any responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. Please respond no later than May 16, 2017 and number your answers according to their corresponding questions. If you have questions, contact Josh Flynn-Brown or Patrick Davis of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

October 28, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Comey,

On October 23, 2016, the Wall Street Journal reported a set of troubling facts about potential conflicts of interest in the criminal investigation into Secretary of State Hillary Clinton. That news article noted that Virginia Governor Terry McAuliffe's political action committee donated \$467,500 to Dr. Jill McCabe's state Senate campaign in 2015.¹ In addition, the Wall Street Journal reported that the Virginia Democrat Party, "over which Mr. McAuliffe exerts considerable control," also donated \$207,788 to her campaign.² Dr. McCabe is married to Andrew McCabe who is currently deputy director of the FBI, and became part of the leadership that oversaw the Clinton email investigation in 2016. Gov. McAuliffe is long-time confidant of Bill and Hillary Clinton and served as President Clinton's chief fundraiser in the 1990s. It is well reported and known that Gov. McAuliffe and the Clintons have been close associates for decades and it begs the question why Mr. McCabe was allowed to be in a position to exert oversight upon the Clinton investigation knowing that his wife was provided over half a million dollars by entities tied so closely to Gov. McAuliffe and the Clintons.

The Wall Street Journal has reported that the FBI did not see Mr. McCabe's position as a conflict of interest concerning the Clinton email investigation because his wife's campaign had ended by the time he stepped into a supervisory position in the investigation, which seems to concede any involvement during her campaign could have been a conflict.³ Notably, even before his supervisory position as deputy director, Mr. McCabe was in charge of the FBI's Washington, D.C. field office which, according to the Wall Street Journal, "provided personnel and resources

¹ Devlin Barret, "Clinton Ally Aided Campaign of FBI Official's Wife," Wall Street Journal (October 23, 2016). Available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>

² *Id.*

³ *Id.*

to the Clinton email probe.”⁴ In July 2015, around the time the FBI’s Clinton investigation began, Mr. McCabe was promoted to associate deputy director at FBI headquarters – the number three in the chain of command.⁵ The FBI asserts that Mr. McCabe did not have an “oversight role” in the Clinton investigation until he became the number two in command in 2016.⁶ However, the FBI’s statement does not foreclose the possibility that Mr. McCabe had a non-oversight role while associate deputy director. Thus, even during the time period in which his wife’s political campaign received approximately half a million dollars from Gov. McAuliffe’s political action committee, and over \$200,000 from the Virginia Democrat Party, he may have had a role in the investigation and did not recuse himself.

In October 2015, several months after his promotion, Gov. McAuliffe’s political action committee made three donations of more than \$100,000 to his wife’s campaign.⁷ Prior to October, and prior to his promotion, the largest donation was \$7,500.⁸ The Wall Street Journal has reported that 98% of the Gov. McAuliffe related donations to his wife came after the FBI launched the investigation into Secretary Clinton.⁹ Given these facts, the FBI must provide a more detailed explanation as to why it determined that it was appropriate for Mr. McCabe to participate in that investigation in any way.

Also, separate and distinct from the Clinton investigation, it has been reported that the FBI’s Washington field office, the same one which Mr. McCabe led, started an investigation into Gov. McAuliffe for allegedly receiving over \$100,000 in campaign contributions from foreign entities.¹⁰ The FBI has stated that Mr. McCabe was recused from the McAuliffe investigation when his wife chose to run for office.¹¹ It is unclear as to whether Mr. McCabe returned to the investigation when the campaign ended.¹²

As a general matter, all government employees must avoid situations that create even the appearance of impropriety. Specifically, 5 C.F.R. § 2635.502, advises that a government employee should seek clearance before participating in any matter that could cause his or her

⁴ Devlin Barret, “Clinton Ally Aided Campaign of FBI Official’s Wife,” Wall Street Journal (October 23, 2016). Available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>.

⁵ *Id.*

⁶ *Id.* The FBI released a statement saying, “[m]onths after the completion of her campaign, then Associate Deputy Director McCabe was promoted to Deputy, where, in that position, he assumed for the first time, an oversight role in the investigation into Secretary Clinton’s emails.” See Devlin Barret, “Clinton Ally Aided Campaign of FBI Official’s Wife,” Wall Street Journal (October 23, 2016). Available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>

⁷ October 1, 2015 \$150,000; October 27, 2015 \$125,000; October 29, 2015 \$175,000. See VPAP.org, <http://www.vpap.org/donors/248345/recipient/257117/?start-year=2015&end-year=2015&recip-type=all>

⁸ *Id.*

⁹ Wall Street Journal Editorial, “The FBI’s Clinton Probe Gets Curiouser,” (October 24, 2016). Available at <http://www.wsj.com/articles/the-fbi-clinton-probe-gets-curiouser-1477352522>

¹⁰ Devlin Barret, “FBI Investigating Donations to Virginia Gov. Terry McAuliffe,” Wall Street Journal (May 23, 2016). Available at <http://www.wsj.com/articles/fbi-investigating-donations-to-virginia-gov-terry-mcauliffe-1464046899>

¹¹ Gregory S. Schneider, “Why the latest Hillary Clinton conspiracy might not be what it seems,” The Washington Post (October 24, 2016.) Available at <https://www.washingtonpost.com/news/post-politics/wp/2016/10/24/why-the-latest-clinton-conspiracy-might-not-be-what-it-seems/>

¹² *Id.* The article notes the FBI said, “[w]hen she chose to run . . . McCabe and FBI lawyers implemented a system of recusal from all FBI investigative matters involving Virginia politics, a process followed for the remainder of her campaign.” The implication is that he returned to the investigation when the campaign ended.

impartiality to be questioned. In addition, when impartiality is at issue, the employee should obtain a formal determination from the component superior that participation outweighs the concern that the FBI's integrity would be questioned.¹³ The Wall Street Journal reports that Mr. McCabe did seek ethics advice in March 2015 after he and his wife met with Gov. McAuliffe. However, it is not clear from which officials he sought advice, what guidance he received from the FBI, and whether he sought additional guidance after he was twice promoted to a position that had an apparent increased role in the Clinton investigation.¹⁴ In addition, with respect to the McAuliffe investigation, it is unclear whether he returned to the investigation after recusal and, if so, what ethics guidance he received.

Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," makes clear that "[e]mployees shall not hold financial interests that conflict with the conscientious performance of duty," "[e]mployees shall act impartially and not give preferential treatment to any private organization or individual," and "[e]mployees shall endeavor to avoid any actions creating the *appearance* that they are violating the law or the ethical standards promulgated pursuant to this order."¹⁵ Importantly, the FBI Ethics and Integrity Program Guide cites 28 C.F.R. § 45.2 which states that,

no employee shall participate in a criminal investigation if he has a personal or *political* relationship with [...] [a]ny person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or [a]ny person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.¹⁶

In complying with this rule, the employee must report the matter to his supervisor. If the supervisor determines that a personal or political relationship exists the employee shall be relieved unless the supervisor determines, in writing, the relationship will not "render the employee's service less than fully impartial and professional" and the employee's participation "*would not* create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution."¹⁷ As applied to Mr. McCabe's role in the Clinton email investigation and McAuliffe investigation, these rules demand that he and the FBI take steps to ensure that not even the appearance of a loss of impartiality is present. Further, given Mr. McCabe's potential role in both investigations, which has not been fully explained by the FBI, his wife's substantial campaign donations from Gov. McAuliffe's political action

¹³ 5 C.F.R. § 2635.502(d).

¹⁴ For example, it is not clear whether or not Mr. McCabe sought guidance from you or the Designated Agency Ethics Official regarding his potential conflict of interest or whether he sought a waiver to continue in his role in the Clinton investigation. The FBI Ethics and Integrity Policy Guide Section 4.6.1.2 notes that an employee who is concerned that circumstances would cause questions as to his impartiality should speak with ethics officials.

¹⁵ FBI Ethics and Integrity Program Policy Guide, p. 29 and 30, citing Executive Order 12674. Emphasis added.

¹⁶ *Id.* at 30. Emphasis added.

¹⁷ *Id.* Emphasis added.

committee and the Democrat party potentially create the appearance of a conflict of interest that has affected the public perception of the integrity of both investigations. This is problematic and the rules are designed to prevent these types of issues from occurring.

The FBI has repeatedly stated that the Clinton investigation was apolitical and you have said that FBI personnel “don’t give a rip about politics.”¹⁸ Further, you have stated, “I want the American people to know we really did this the right way. You can disagree with us, but you cannot fairly say we did it in any kind of political way.”¹⁹ The FBI’s Ethics and Integrity Policy Guide specifically notes that “[w]hether particular circumstances created an appearance that the law or [FBI ethical standards] have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”²⁰

Since the Clinton investigation ended, the public’s knowledge of the relevant facts has rightfully increased substantially. The public now knows that the investigation’s scope was arbitrarily limited to classifications issues, with little or no effort to make a case against anyone for intentionally alienating federal records and subverting the Freedom of Information Act process. Moreover, the Justice Department apparently failed to authorize any compulsory process through search warrants or grand jury subpoenas.²¹ This resulted in generous grants of immunity to Secretary Clinton’s associates because of their refusal to cooperate voluntarily except under the terms and limitations most favorable to them – including an inexplicable agreement for the FBI to destroy laptops that contained records subject to congressional subpoenas and preservation letters. On top of these circumstances, now the public learns that the wife of the FBI’s second in command accepted more than half a million dollars from a close associate of Secretary Clinton, with 98% of the donations received after the FBI began its investigation. And, separate from the Clinton investigation, it is not clear whether Mr. McCabe has rejoined the investigation into Mr. McAuliffe after his wife’s campaign received substantial donations. Accordingly, it is reasonable for the public to question the impartiality of the process.

In order to better understand the context of the facts reported in the press about Mr. McCabe, please answer and provide the following:

1. Please describe Mr. McCabe’s role in the Clinton investigation as assistant director in charge of the FBI’s Washington, D.C. field office, associate deputy director, and as deputy director of the FBI.

¹⁸ Evan Perez, “FBI chief on Clinton investigation: My people ‘don’t give a rip about politics,’” CNN (October 1, 2015). Available at http://www.cnn.com/2015/10/01/politics/james_comey_fbi_hillary_clinton/

¹⁹ Everett Rosenfeld, “FBI Director Comey says ‘nobody would’ bring a case against Clinton,” CNBC (July 7, 2016). Available at http://www.cnbc.com/2016/07/07/fbi_director_comey_our_recommendation_was_apolitical.html

²⁰ FBI Ethics and Integrity Program Policy Guide, p. 35.

²¹ Malia Zimmerman and Adam Housley, “FBI, DOJ roiled by Comey, Lynch decision to let Clinton slide by on emails, says insider,” FoxNews (October 13, 2016). Available at http://www.foxnews.com/politics/2016/10/13/fbi_doj_roiled_by_comey_lynch_decision_to_let_clinton_slide_by_on_emails_says_insider.html

2. Please provide all records relating to communications between and among FBI officials relating to the conflict of interest issues pertaining to the candidacy of Mr. McCabe's wife for public office or his involvement in the Clinton email investigation.
3. The Wall Street Journal reported that Mr. McCabe met with Gov. McAuliffe and then sought ethics advice from the FBI. When did he meet with Gov. McAuliffe, where, and under what circumstances? What ethics components did he contact? What was the FBI's advice to Mr. McCabe? Did he follow that advice? Please explain.
4. After Mr. McCabe was promoted twice, did he seek further ethics advice after each promotion? If so, please detail each instance in which he sought advice from the FBI and which FBI component and employees provided the ethics guidance.
5. Were you aware of Mr. McCabe's potential conflicts? If so, when and how did you become aware? If not, why not?
6. Did the FBI perform a conflicts analysis under 28 C.F.R. § 45.2? If so, when and what was the conclusion? If not, why not?
7. Was a waiver analysis under 5 C.F.R. § 2635.502(d) performed? If so, when? In addition, please provide all records relating to the analysis and issuance of the waiver(s), including copies of the written waivers. If no analysis was performed, why not?
8. Did Mr. McCabe have a political or personal relationship with Gov. McAuliffe or his political action committee as defined in 28 C.F.R. § 45.2? If not, why not?
9. Did Mr. McCabe's involvement in the Clinton investigation as the assistant director in charge of the Washington, D.C. field office, as associate deputy director, and as the deputy director of the FBI create the appearance of a loss of impartiality? Please explain.
10. Did Mr. McCabe's involvement in the Clinton investigation as the assistant director in charge of the Washington, D.C. field office, as associate deputy director, and as the deputy director of the FBI affect the public perception of the investigation? Please explain.
11. What steps are you taking to mitigate the appearance of a conflict of interest in the Clinton email investigation and to reassure Congress and the American people that the investigation was not subject to political bias?
12. It is not clear when the investigation into Gov. McAuliffe's foreign campaign donations started, and which FBI officials have been involved. However, given Mr. McCabe's position at the FBI in the last two years, it is imperative that the FBI inform Congress about his potential role in this investigation. Please answer the following:

- a. Please describe Mr. McCabe's role in the Gov. McAuliffe investigation.
- b. When was Mr. McCabe recused from the McAuliffe investigation? Please provide exact dates and provide all records relating to the recusal.
- c. When Mr. McCabe and his wife met with Mr. McAuliffe in March 2015, did Mr. McCabe have a role in the McAuliffe investigation at that time? If so, what was his role and at what point thereafter did Mr. McCabe recuse himself?
- d. Did Mr. McCabe return to the McAuliffe investigation after his wife's campaign ended? If so, please explain why his participation does not cause the appearance of a loss of impartiality or a conflict of interest. In addition, please note exactly when Mr. McCabe returned to the investigation.
- e. Did Mr. McCabe report any ethical issues to FBI officials relating to the McAuliffe investigation? If so, provide all records relating to his reports and the FBI's final determination, to include all waivers.
- f. Was a waiver analysis under 5 C.F.R. § 2635.502(d) performed? If so, when? In addition, please provide all records relating to the analysis and issuance of the waiver(s), including copies of the written waivers. If no analysis was performed, why not?
- g. Did the FBI perform a conflicts analysis under 28 C.F.R. § 45.2? If so, when and what was the conclusion? If not, why not?

Please answer the questions according to their corresponding questions. I anticipate that your written reply and any responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. Please respond no later than November 14, 2016. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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KOLAN L. DAVIS, Chief Counsel and Staff Director
JENNIFER DUICK, Democratic Staff Director

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 6, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Comey:

On February 28, 2017, the *Washington Post* reported that the FBI reached an agreement a few weeks before the Presidential election to pay the author of the unsubstantiated dossier alleging a conspiracy between President Trump and the Russians, Christopher Steele, to continue investigating Mr. Trump.¹ The article claimed that the FBI was aware Mr. Steele was creating these memos as part of work for an opposition research firm connected to Hillary Clinton. The idea that the FBI and associates of the Clinton campaign would pay Mr. Steele to investigate the Republican nominee for President in the run-up to the election raises further questions about the FBI's independence from politics, as well as the Obama administration's use of law enforcement and intelligence agencies for political ends. It is additionally troubling that the FBI reportedly agreed to such an arrangement given that, in January of 2017, then-Director Clapper issued a statement stating that "the IC has not made any judgment that the information in this document is reliable, and we did not rely upon it in any way for our conclusions." According to the *Washington Post*, the FBI's arrangement with Mr. Steele fell through when the media published his dossier and revealed his identity.

The Committee requires additional information to evaluate this situation. Please provide the following information and respond to these questions by March 20, 2017. Please also schedule a briefing by that date by FBI personnel with knowledge of these issues.

1. All FBI records relating to the agreement with Mr. Steele regarding his investigation of President Trump and his associates, including the agreement itself, all drafts, all internal FBI

¹ Tom Hamburger and Rosalind Helderman, *FBI Once Planned to Pay Former British Spy Who Authored Controversial Trump Dossier*, THE WASHINGTON POST (Feb. 28, 2017).

communications about the agreement, all FBI communications with Mr. Steele about the agreement, all FBI requests for authorization for the agreement, and all records documenting the approval of the agreement.

2. All records, including 302s, of any FBI meetings or interviews with Mr. Steele.
3. All FBI policies, procedures, and guidelines applicable when the FBI seeks to fund an investigator associated with a political opposition research firm connected to a political candidate, or with any outside entity.
4. All FBI records relating to agreements and payments made to Mr. Steele in connection with any other investigations, including the reported agreements relating to his investigation of FIFA.
5. Were any other government officials outside of the FBI involved in discussing or authorizing the agreement with Mr. Steele, including anyone from the Department of Justice or the Obama White House? If so, please explain who was involved and provide all related records.
6. How did the FBI first obtain Mr. Steele's Trump investigation memos? Has the FBI obtained additional memos from this same source that were not published by *Buzzfeed*? If so, please provide copies.
7. Has the FBI created, or contributed to the creation of, any documents based on or otherwise referencing these memos or the information in the memos? If so, please provide copies of all such documents and, where necessary, clarify which portions are based on or related to the memos.
8. Has the FBI verified or corroborated any of the allegations made in the memos? Were any allegations or other information from the memo included in any documents created by the FBI, or which the FBI helped to create, without having been independently verified or corroborated by the FBI beforehand? If so, why?
9. Has the FBI relied on or otherwise referenced the memos or any information in the memos in seeking a FISA warrant, other search warrant, or any other judicial process? Did the FBI rely on or otherwise reference the memos in relation to any National Security Letters? If so, please include copies of all relevant applications and other documents.
10. Who decided to include the memos in the briefings received by Presidents Obama and Trump? What was the basis for that decision?
11. Did the agreement with Mr. Steele ever enter into force? If so, for how long? If it did not, why not?
12. You have previously stated that you will not comment on pending investigations, including confirming or denying whether they exist. You have also acknowledged that statements about closed investigations are a separate matter, sometimes warranting disclosures or public

comment. Given the inflammatory nature of the allegations in Mr. Steele's dossier, if the FBI is undertaking or has undertaken any investigation of the claims, will you please inform the Committee at the conclusion of any such investigations as to what information the investigations discovered and what conclusions the FBI reached? Simply put, when allegations like these are put into the public domain prior to any FBI assessment of their reliability, then if subsequent FBI investigation of the allegations finds them false, unsupported, or unreliable, the FBI should make those rebuttals public.

I anticipate that your responses to these questions may contain both classified and unclassified information. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you for your prompt attention to this important matter. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Diane Feinstein
Ranking Member
Senate Committee on the Judiciary

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH	DIANNE FEINSTEIN, CALIFORNIA
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JOHN KENNEDY, LOUISIANA	

KOLAN L. DAVIS, Chief Counsel and Staff Director
JENNIFER DUICK, Democratic Staff Director

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 28, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Comey:

At your speech last Thursday at the University of Texas, you referenced former FBI Director J. Edgar Hoover's short letter to Attorney General Robert Kennedy, which sought authorization for FBI surveillance of Dr. Martin Luther King Jr. without any proper basis for doing so. You mentioned that you keep this letter on your desk, and place FISA applications awaiting your review on top of it, as a reminder. You cited this to emphasize the importance of oversight over the FBI, even over well-meaning FBI officials, to ensure the propriety of the FBI's actions. You are right to call attention to the importance of such oversight. As Chairman of the Senate Judiciary Committee, it is my constitutional duty to conduct that oversight over the FBI and the Department of Justice.

Pursuant to its authority under the Constitution and the Rules of the Senate, the Committee requires information to determine: (1) the extent to which FBI Deputy Director Andrew McCabe has been involved in the FBI's investigation of President Trump's associates and Russia; (2) whether that involvement raises the appearance a conflict of interest in light of his wife's ties with Clinton associates; and (3) whether Mr. McCabe has been or should be recused from the investigation.

As you know, Mr. McCabe is under investigation by the Department of Justice Office of the Inspector General. That investigation is examining whether the political and financial connections between his wife's Democratic political campaign and Clinton associates warranted his recusal in the FBI's Clinton email investigation. On March 7, 2015, just five days after the *New York Times* broke the story about Secretary Clinton's use of private email for official business, Mr. McCabe met with Virginia Governor Terry McAuliffe, a longtime, close associate of the Clintons along with his wife, Dr. McCabe. Mr. McAuliffe recruited Dr. McCabe, who had not previously run for any political office, to be the Democratic candidate for a Virginia state senate seat. Dr. McCabe agreed, and

Governor McAuliffe's political action committee subsequently gave nearly \$500,000 to her campaign while the FBI's investigation of Secretary Clinton was ongoing. The Virginia Democratic Party, over which Mr. McAuliffe exerts considerable control, also donated over \$200,000 to Dr. McCabe's campaign. While Mr. McCabe recused himself from public corruption cases in Virginia—presumably including the reportedly ongoing investigation of Mr. McAuliffe regarding illegal campaign contributions—he failed to recuse himself from the Clinton email investigation, despite the appearance of a conflict created by his wife's campaign accepting \$700,000 from a close Clinton associate during the investigation.

You have publicly stated that the people at the FBI “don't give a rip about politics.”¹ However, the fact is that the Deputy Director met with Mr. McAuliffe about his wife's run for elected office and she subsequently accepted campaign funding from him. The fact is that the Deputy Director participated in the controversial, high-profile Clinton email investigation even though his wife took money from Mr. McAuliffe. These circumstances undermine public confidence in the FBI's impartiality, and this is one of the reasons that many believe the FBI pulled its punches in the Clinton matter. FBI's senior leadership should never have allowed that appearance of a conflict to undermine the Bureau's important work. The Department of Justice Office of the Inspector General is now investigating that matter, as part of the work it announced on January 12, 2017.

Last week, you publicly testified that in late July of 2016, the FBI began investigating the Russian government's attempts to interfere in the 2016 presidential election, including investigating whether there was any collusion between individuals associated with the Trump campaign and the Russian government. Given the timing of the investigation and his position, it is likely that Mr. McCabe has been involved in that high-profile, politically charged inquiry as well. If Mr. McCabe failed to avoid the appearance of a partisan conflict of interest in favor of Mrs. Clinton during the presidential election, then any participation in this inquiry creates the exact same appearance of a partisan conflict of interest against Mr. Trump. As you testified last week, you believe that if someone had a bias for or against one of them, he would have the opposite bias toward the other: “they're inseparable, right; it's a two person event.”

According to public reports, the FBI agreed to pay the author of the unsubstantiated dossier alleging a conspiracy between Trump associates and the Russians. It reportedly agreed to pay the author, Christopher Steele, to continue investigating Mr. Trump. Clinton associates reportedly paid Mr. Steele to create this political opposition research dossier against Mr. Trump. The FBI has failed to publicly reply to my March 6 letter asking about those reports. That leaves serious questions about the FBI's independence from politics unanswered.

Mr. McCabe's appearance of a partisan conflict of interest relating to Clinton associates only magnifies the importance of those questions. That is particularly true if Mr. McCabe was involved in approving or establishing the FBI's reported arrangement with Mr. Steele, or if Mr. McCabe vouched for or otherwise relied on the politically-funded dossier in the course of the investigation. Simply put, the American people should know if the FBI's second-in-command relied on Democrat-funded opposition research to justify an investigation of the Republican presidential campaign. Full disclosure is especially important since he is already under investigation for failing to recuse himself from the Clinton matter due to his partisan Democrat ties.

¹ Evan Perez, *FBI Chief on Clinton Investigation: My People 'Don't Give a Rip About Politics'* CNN (Oct. 1, 2015).

The Committee requires additional information to fully understand this situation. Please provide the following information and respond to these questions by April 11, 2017:

1. Has Mr. McCabe been involved in any capacity in the investigation of alleged collusion between Mr. Trump's associates and Russia? If so, in what capacity has he been involved? When did this involvement begin?
2. Has Mr. McCabe been involved in any requests or approvals for physical surveillance, consensual monitoring, searches, or national security letters relating to the investigation? If so, please provide all related documents.
3. In the course of the investigation, has Mr. McCabe been involved in any requests or approvals relating to the acquisition of the contents of stored communications from electronic communication service providers pursuant to the Electronic Communications Privacy Act? If so, please provide all related documents.
4. Has Mr. McCabe been involved in any FISA warrant applications relating to the investigation? If so, in what capacity? Please provide all related documents.
5. In the course of the investigation, has Mr. McCabe, or anyone under his supervision, made any representations to prosecutors or judges regarding the reliability of information in the FBI's possession as part of seeking judicial authorization for investigative tools? Has he or anyone under his supervision made any such representations about the political opposition research dossier compiled by Mr. Steele and Fusion GPS? If so, please explain and provide copies of all relevant documents.
6. Was Mr. McCabe involved in any FBI interactions with Mr. Steele? If so, please explain.
7. Did Mr. McCabe brief or otherwise communicate with anyone in the Obama administration regarding the investigation? If so, who did he brief, and when? Please provide all related documents.
8. Has Mr. McCabe been authorized by the FBI to speak to the media, whether as an anonymous source or otherwise, regarding the investigation? If so, please provide copies of such authorizations. If he was so authorized, to whom did he speak, and when? If he was not authorized to do so, does the FBI have any indication that he nonetheless spoke to the media?
9. To the best of your knowledge, has anyone within the FBI raised concerns within the Bureau that Mr. McCabe appears to have a conflict of interest in the investigation of Trump associates? If so, who raised such concerns, when did they do so, and how did FBI respond?

10. To the best of your knowledge, has anyone within the FBI filed a complaint with the Department of Justice Office of the Inspector General regarding Mr. McCabe's involvement in the investigation?
11. Have personnel from the Department of Justice Office of the Inspector General spoken with you yet as part of that Office's investigation into Mr. McCabe's alleged conflict of interest in the Clinton investigation? If so, did they also raise concerns as to whether Mr. McCabe's alleged partisan conflict would also apply to the investigation of Mr. Trump's associates?
12. Has anyone at FBI, the Department of Justice, or the Department of Justice Office of the Inspector General recommended or requested that Mr. McCabe recuse himself from the investigation of Mr. Trump's associates or from any ongoing investigations of the Clinton Foundation? If so, what action was taken in response?

I anticipate that your responses to these questions may contain both classified and unclassified information. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you for your prompt attention to this important matter. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary

The Honorable Dana Boente
Acting Deputy Attorney General
United States Department of Justice

The Honorable Michael E. Horowitz
Inspector General
United States Department of Justice

Crowell, James (ODAG)

From: Crowell, James (ODAG)
Sent: Friday, June 9, 2017 11:29 AM
To: Rosenstein, Rod (ODAG)
Subject: Fwd: Heads up re Grassley letter to POTUS re OLC, 6/7/17
Attachments: image001.png; ATT00001.htm; image002.png; ATT00002.htm; image003.png; ATT00003.htm; image004.png; ATT00004.htm; FW: 2017-06-07 CEG to President Trump (oversight requests).msg; ATT00005.htm

Sent from my iPhone

Begin forwarded message:

From: "Medina, Amelia (ODAG) (b) (6)"
Date: June 9, 2017 at 11:25:31 AM EDT
To: "Crowell, James (ODAG) (b) (6)" >, "Terwilliger, Zachary (ODAG)" (b) (6) >, "Raman, Sujit (ODAG) (b) (6)" >
Subject: FW: Heads up re Grassley letter to POTUS re OLC, 6/7/17

You may want to bring to DAG's attention due to media implications; in the meantime I'll continue to keep you apprised. Let me know if you'd like me to schedule a meeting or pursue other action.

From: Gannon, Curtis E. (OLC)
Sent: Friday, June 9, 2017 11:18 AM
To: Burton, Faith (OLA (b) (6)); Colborn, Paul P (OL (b) (6))
Ramer, Sam (OL (b) (6)); Medina, Amelia (ODA (b) (6))
Cc: Kellner, Kenneth E. (OLA (b) (6)); Brooks, Roshelle (OLA (b) (6))
Subject: RE: Heads up re Grassley letter to POTUS re OLC, 6/7/17

OLA received a "courtesy copy" by email on Wednesday afternoon. See attached.

From: Burton, Faith (OLA)
Sent: Friday, June 9, 2017 11:15 AM
To: Colborn, Paul P (OLC (b) (6)); Gannon, Curtis E. (OLC (b) (6)) >; Ramer, Sam (OLA (b) (6)) >; Medina, Amelia (ODAG (b) (6))
Cc: Kellner, Kenneth E. (OLA (b) (6)); Brooks, Roshelle (OLA (b) (6))
Subject: Heads up re Grassley letter to POTUS re OLC, 6/7/17

Ian Prior in OPA has been queried about this Grassley letter by Politico, and we're checking to see if we have received it. On its face, it doesn't appear to have been copied to DOJ. FB

From: Chairman Grassley (Judiciary-Rep (b) (6) [REDACTED])

Sent: Friday, June 09, 2017 10:41 AM

To: Foy, Taylor (Judiciary-Re (b) (6) [REDACTED])

Subject: Grassley Calls on President to Rescind OLC Opinion Shielding Bureaucrats from Scrutiny

Burton, Faith (OLA)

From: Burton, Faith (OLA)
Sent: Wednesday, June 7, 2017 12:27 PM
To: Colborn, Paul P (OLC); Gannon, Curtis E. (OLC)
Cc: Tyson, Jill C. (OLA); Ramer, Sam (OLA); Kellner, Kenneth E. (OLA); Brooks, Roshelle (OLA); McKay, Shirley A (OLA)
Subject: FW: 2017-06-07 CEG to President Trump (oversight requests)
Attachments: 2017-06-07 CEG to DJT (oversight requests).pdf

Please see the enclosed letter; we'll confirm receipt. FB

From: Foster, Jason (Judiciary-Re (b) (6))
Sent: Wednesday, June 07, 2017 12:20 PM
To: Burton, Faith (OL (b) (6))
Subject: FW: 2017-06-07 CEG to President Trump (oversight requests)

My email to Jill bounced. Please see below and attached.

From: Foster, Jason (Judiciary-Rep)
Sent: Wednesday, June 07, 2017 12:18 PM
To: Ramer, Sam (OLA (b) (6)); 'Wade Tyson, Jill C (OLA)' (b) (6) >
Cc: Lay, DeLisa (Judiciary-Rep (b) (6))
Subject: 2017-06-07 CEG to President Trump (oversight requests)

Attached, please find a courtesy copy for Acting Assistant Attorney General Gannon of a letter transmitted today to the President from Chairman Grassley. Please ensure that it is delivered. Thank you.

Cordially,
Jason Foster
Chief Investigative Counsel
Committee on the Judiciary

United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Direc (b) (6)

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
JENNIFER DUCK, Democratic Staff Director

June 7, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Donald J. Trump
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

In February, I wrote to you about the importance of empowering whistleblowers to help you “drain the swamp.”¹ Today, I write to urge you to encourage cooperation with congressional oversight as another key way to accomplish that goal and to alert you to a bureaucratic effort by the Office of Legal Counsel to insulate the Executive Branch from scrutiny by the elected representatives of the American people.

Our Constitutional system of separation of powers grants to Congress all legislative authority.² The Supreme Court has recognized time and again that the power of congressional inquiry is inherent in these vested legislative powers.³ That is because without access to information held by the Executive Branch, Congress cannot legislate effectively or help assure the American people that their hard-earned tax dollars are being spent wisely.

Every member of Congress is a Constitutional officer, duly elected to represent and cast votes in the interests of their constituents. This applies obviously regardless of whether they are in the majority or the minority at the moment and regardless of whether they are in a leadership position on a particular committee. Thus, *all* members need accurate information from the Executive Branch in order to carry out their Constitutional function to make informed decisions on all sorts of legislative issues covering a vast array of complex matters across our massive federal government.

¹ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Donald J. Trump, President of the United States (Feb. 8, 2017).

² U.S. CONST. art. I, § 1.

³ *McGrain v. Daugherty*, 273 U.S. 135, 177, 181-182 (1927).

Unfortunately, the May 1, 2017 Office of Legal Counsel (OLC) opinion authored by Acting Assistant Attorney General Curtis E. Gannon on this topic completely misses the mark. It erroneously rejects any notion that individual members of Congress who may not chair a relevant committee need to obtain information from the Executive Branch in order to carry out their Constitutional duties. It falsely asserts that only requests from committees or their chairs are “constitutionally authorized,”⁴ and relegates requests from non-Chairmen to the position of “non-oversight” inquiries—whatever that means.⁵

This is nonsense.

The Constitution does not mention committees or committee Chairmen at all. The committee structure in Congress is simply how the Legislative Branch has chosen to internally organize itself. It works through committees “[b]ecause of the high volume and complexity of its work,” not for the purpose of cutting off the flow of information to members who do not chair those committees.⁶ Unless Congress explicitly tells the Executive Branch to withhold information based on committee membership or leadership position, there is no legal or Constitutional basis for the Executive Branch to do so.

For OLC to so fundamentally misunderstand and misstate such a simple fact exposes its shocking lack of professionalism and objectivity. Indeed, OLC appears to have utterly failed to live up to its own standards. You are being ill-served and ill-advised. OLC’s best practice guidelines states:

[R]egardless of the Office’s ultimate legal conclusions, it should strive to ensure that it candidly and fairly addresses the *full range* of relevant legal sources and *significant arguments on all sides* of a question.

* * *

The Office must strive in our opinions for clear and concise analysis and a *balanced presentation of arguments on each side* of an issue.⁷

⁴ OLC opinion at 2 (citing Congressional Oversight Manual at 65); *id.* at 3 (noting that requests from individual members do not “trigger any obligation to accommodate congressional needs and is not legally enforceable through a subpoena or contempt proceedings”).

⁵ *Id.* at 3.

⁶ See Judy Schneider, Cong. Research Serv., RS20794, *The Committee System in the U.S. Congress* 1 (Oct. 14, 2009) (“Because of the high volume and complexity of its work, Congress divides its legislative, oversight, and internal administrative tasks among committees and subcommittees.”).

⁷ U.S. Department of Justice, Office of Legal Counsel, “Best Practices for OLC Legal Advice and Written Opinions” (Jul. 16, 2010) (emphasis added), at 1-2, 4; available at <http://www.justice.gov/olc/pdf/olc-legal-advice-opinions.pdf>.

The most recent OLC opinion is anything but balanced. For example, it fails to cite and analyze any authority that challenges its conclusion.

As a result, the opinion takes an unduly restrictive and unsupported view of the responsibilities of Members of Congress and the nature of congressional oversight. In so doing, the opinion equates requests from individual members to Freedom of Information Act (FOIA) requests from unelected members of the public. But the powers vested in the Congress—both explicitly and inherently by the Constitution—impose significant and far-reaching responsibilities on the people’s elected representatives. They include the authorization and appropriation of federal funds, the organization of federal departments, the enactment of laws executing the enumerated powers, the confirmation of nominees, the impeachment and removal of officers, and the investigation of the execution of the laws and of waste, fraud, and abuse in federal programs. These responsibilities are all forms of oversight, all mechanisms that support the legislative check and balance of the executive power.⁸ All members participate in deciding whether, when, and how Congress will exercise these authorities.

The United States Court of Appeals for the D.C. Circuit recognized in *Murphy v. Dep’t of the Army* that, “[a]ll Members [of Congress] have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information.”⁹ Each member “participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.”¹⁰ Yet, the OLC opinion ignores these points and authorities. It avoids good faith presentation of any significant arguments contrary to its conclusion. It utterly fails to acknowledge or respond to anything supporting the notion that a request from a Member of Congress might be entitled to greater weight than a FOIA request.

The OLC opinion also inexplicably asserts that this responsibility of congressional “oversight” is restricted to only certain inquiries made by Chairmen or full committees on the grounds that only those responses can be compelled. As the OLC opinion notes, the rules of the House and the Senate authorize its standing committees to conduct oversight. And that authority, as the Supreme Court has recognized time and again, is extremely broad.

It is true that through this process Congress can compel the production of witnesses and documents. However, the scope of information Members of Congress need from the Executive Branch in order to carry out their Constitutional duties is far

⁸ Elaine Halchin et al., Cong. Research Serv., RL30240, *Congressional Oversight Manual* 4-5 (Dec. 19, 2014).

⁹ 613 F.2d 1151, 1157 (D.C. Cir. 1979) (emphasis added).

¹⁰ *Id.*

broader than merely what is obtained through compulsory process. The vast majority of information Congress obtains, even through a Chairman's requests, is obtained voluntarily, not by compulsion. Yet, reading the OLC opinion, it would seem oversight is only "oversight" if it's mandatory.

Simply put, that's just not how it works.

First, by declaring that non-Chairman requests are not "authorized," OLC purports to speak for the Legislative Branch, an act which itself lacks any authority. It simply is not the province of another branch of government to say which information gathering activities by Members of Congress are "authorized" or not. Voluntary requests for information from the Executive Branch by members or groups of members without regard to committee chairmanship or membership have occurred and have been accommodated regularly since the beginning of the Republic.

As the court further recognized in *Murphy*:

It would be an inappropriate intrusion into the legislative sphere for the courts to decide without congressional direction that, for example, only the chairman of a committee shall be regarded as the official voice of the Congress *for purposes of receiving such information*, as distinguished from its ranking minority member, other committee members, or other members of the Congress.¹¹

It is just as inappropriate for the Executive Branch as it would be for the Courts. Receiving information in response to voluntary requests is completely different from compelling information, and Members of Congress need access to both in order to do their jobs effectively. But the OLC opinion unnecessarily conflates the two in order to reach its conclusions.

Second, as noted above, nothing in the committee structure or in our internal rules suggests that Congress meant to stifle the flow of information to non-Chairmen. In fact, the consideration of compulsory process generally requires the consent or other participation of non-Chairmen. That process almost always begins with voluntary requests and negotiations with the Executive Branch. Non-Chairmen need to, and often do, participate in receiving information voluntarily in the course of that process in order to determine whether, and when, compulsory process becomes necessary. And, the decision to enforce that process through contempt belongs to the whole body—a decision in which every Member participates.

Even a cursory review of House and Senate committee rules, which the OLC apparently did not perform, plainly shows that most committees' rules envision or

¹¹ 613 F.2d 1151, 1157 (D.C. Cir. 1979).

require the participation of the minority ranking member or even the full committee in the issuance of a subpoena.¹² Only a handful of committees have delegated the authority to a Chairman to unilaterally issue a subpoena without even consulting or notifying the Ranking Member. Thus, OLC’s distinction between Chairmen as “authorized” to seek information because such oversight can be compelled by a Chairman acting alone is mostly false. The Executive Branch’s so-called “longstanding” practice of responding only to Chairmen plainly does not, and cannot, depend on the voluntariness of such a response. The actual practice in almost every case, whether made to a Chairman or not, is that responses are fully voluntary.

The Executive Branch has in fact been *voluntarily* responding to requests from individual members for the entirety of its existence, whether or not those members did or had the power to unilaterally issue a subpoena. In most cases, congressional requests—even from Chairmen—never reach the compulsory stage precisely *because* of this process of voluntary accommodation. Traditionally, a subpoena has been used as a last resort, when the voluntary accommodation process has already failed. Thus that process begins, or at least ought to begin, well before a Chairman or a committee issues a subpoena or a house issues a contempt citation. OLC offers no authority indicating that courts expect the other two branches to cooperate with each other only when compelled to do so. Such a position would itself undermine the very purpose of comity and cooperation between the branches.

Moreover, in recent years, particularly under the Obama administration, the Executive Branch has sought to rely on increasingly tenuous claims of privilege and force congressional investigators to seek compulsory process and avoid scrutiny in the absence of a subpoena. The OLC opinion’s refusal to recognize a voluntary request as a legitimate, constitutionally-grounded part of the each Member’s participation in the legislative powers will only feed this unfortunate trend. It risks increased brinksmanship in Executive-Legislative relations and will result in less, not more, “dynamic . . . furthering [of] the constitutional scheme.”¹³

Imagine if the Congress took a similar position and refused to voluntarily disclose any information to an Executive Branch official unless the official was capable of compelling an answer. Imagine Congressional legal opinion instructing Members and staff to withhold all information about bills, nominations, or appropriations from most Executive Branch officials on the grounds that Congress has “no constitutional obligation to accommodate information requests from the Deputy Undersecretary of Legislative Affairs.” It’s absurd. It would never happen, but that is analogous to what this OLC opinion says. Members of Congress simply do not treat Executive Branch officials with such contempt and they do not deserve such treatment in return. This is

¹² <http://gibsondunn.com/publications/Documents/HouseSenateCommitteeRulesChart-2015.pdf>.

¹³ OLC opinion at 3 (quoting *United States v. AT&T*, 567 F.2d 121, 130-31 (D.C. Cir. 1977)).

especially true given that, unlike virtually all Executive Branch officials, Members are elected to Constitutional positions. Instead, the Executive Branch should work to cooperate in good faith with all congressional requests to the fullest extent possible.

Finally, the practical implications of the policy that this opinion is reportedly designed to support are extremely troublesome for the effective and efficient functioning of our constitutional democracy. Notably, leaving aside the fact that the contrived distinction between “oversight” and “non-oversight” requests makes little sense, the opinion does *not* say that determinations whether to comply voluntarily with an individual request depend or should depend upon the party of the requester. Nonetheless, I know that bureaucrats in the Executive Branch sometimes choose to respond only to the party in power at the moment. I also encountered significant problems in gaining answers to my requests from the Obama administration, whether I was in the majority or the minority.

I know from experience that a partisan response to oversight only discourages bipartisanship, decreases transparency, and diminishes the crucial role of the American people’s elected representatives. Oversight brings transparency, and transparency brings accountability. And, the opposite is true. Shutting down oversight requests doesn’t *drain* the swamp, Mr. President. It *floods* the swamp.

I also know from long experience that, even in a highly charged political environment, most requests for information—by majority and minority members—are not “partisan” or at least not intended to be so. Many requests simply seek information to help inform Members as they perform their Constitutional duty to legislate and fix real problems for the American people. That is the kind of information Republicans *and* Democrats in Congress need to be able to do our jobs on behalf of the people we all represent.

Therefore, I respectfully request that the White House rescind this OLC opinion and any policy of ignoring oversight request from non-Chairmen. It harms not just the Members who happen to be in the minority party at the moment, but also, Members in the majority party who are not currently Chairmen. It obstructs what ought to be the natural flow of information between agencies and the committees, which frustrates the Constitutional function of legislating.

Sincerely,



Charles E. Grassley
Chairman

cc: The Honorable Dianne Feinstein
Ranking Member

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, June 26, 2018 10:31 AM
To: O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Flores, Sarah Isgur (OPA); Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Engel, Steven A. (OLC); Schools, Scott (ODAG)
Cc: Colborn, Paul P (OLC)
Subject: Draft Letter
Attachments: Revised.Draft.Response.Grassley.2018.05.17.docx
Importance: High

I plan to send this letter tomorrow (b) (5). I anticipate (b) (5)

[REDACTED]

[REDACTED]

I would appreciate OLC's advice about the legal issues. The citations are not in proper form, but this is not a brief.

Let's discuss at the 4:30 meeting.

Gannon, Curtis E. (OLC)

From: Gannon, Curtis E. (OLC)
Sent: Tuesday, June 26, 2018 3:15 PM
To: Rosenstein, Rod (ODAG); O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Flores, Sarah Isgur (OPA); Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Engel, Steven A. (OLC); Schools, Scott (ODAG)
Cc: Colborn, Paul P (OLC)
Subject: RE: Draft Letter
Attachments: Revised.Draft.Response.Grassley.2018.05.17 + olc.docx

Thanks for the chance to review this. Here are some comments from OLC. (Note that Steve has not yet had a chance to review, so we might have additional comments later.)

Curtis

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, June 26, 2018 10:31 AM
To: O'Callaghan, Edward C. (ODAG) (b) (6); Bolitho, Zachary (ODAG) (b) (6); Flores, Sarah Isgur (OP (b) (6); Boyd, Stephen E. (OLA) (b) (6); Lasseter, David F. (OL (b) (6); Engel, Steven A. (OLC) (b) (6); Schools, Scott (ODA (b) (6)
Cc: Colborn, Paul P (OL (b) (6)
Subject: Draft Letter
Importance: High

Duplicative Material (Document ID: 0.7.22218.381243)