

## United States Senate

WASHINGTON, DC 20510-3905

August 1, 2019

The Honorable Christopher A. Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Dear Director Wray:

We write to follow up on your testimony before the Senate Judiciary Committee on July 23 about the supplemental background investigation the FBI conducted after allegations of sexual misconduct against Justice Brett Kavanaugh came to light. You testified that you met with Bureau personnel to ensure that the Kavanaugh background investigation was “consistent with our long-standing policies, practices, and procedures for background investigations.” We seek to learn more about such policies, practices, and procedures and to evaluate whether they were appropriate for and executed fully in this case.

We understand that the process and purpose of background investigations are different than criminal investigations. The situation presented by the Kavanaugh nomination did not squarely fit into either box. The FBI initially conducted a background investigation of Justice Kavanaugh, which failed to turn up any allegations of possible sexual misconduct by the nominee, including the credible allegations made by Dr. Christine Blasey Ford. When Dr. Ford’s allegations became public, additional allegations of misconduct came to light, including alleged misconduct during Justice Kavanaugh’s time at Yale. The Committee had significant enough concerns about the record at that point that a request was made for the FBI to conduct a supplemental investigation.

Representations were made by the Trump administration to members of the Senate that the supplemental investigation would be conducted “by the book” by the FBI, free from direction or limitation by the White House. However, press reports indicated the White House set the direction of the supplemental investigation and that Republican Senators and/or Senate staff were also involved in setting the scope and mandate of the FBI’s actions. In addition, the process used to begin and conduct the investigation does not appear to meet even the minimal steps taken by the FBI when allegations were raised against Justice Thomas. When the request for a supplemental investigation was made, this was no longer a typical background check; the FBI was tasked with investigating specific and serious allegations of sexual misconduct by a nominee to a lifetime appointment on the highest court in the nation.

At least two law firms contacted the FBI with the names of credible witnesses who had information pertaining to the investigation. One firm provided names of potential witnesses that had information “highly relevant to ... allegations” of sexual misconduct by Justice Kavanaugh.<sup>1</sup>

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<sup>1</sup> See October 4, 2018, letter from Katz, Marshall & Banks, LLP to Director Wray



The other firm's letter recounted how the counsel of a witness with whom agents had met provided the FBI with "more than twenty additional witnesses likely to have relevant information," and even included an affidavit from a highly credible witness.<sup>2</sup> As Senator Whitehouse observed during your hearing, there was no clear process by which members of the public or Congress could provide information to the FBI. Senator Coons asked for a clear procedure at the time, to no avail. To the extent members of the public did reach out to provide information—and we know that many did—it appears that information disappeared into a "tip line." We still do not know how leads to the FBI's tip line were processed and evaluated, or whether any were processed and evaluated at all. It is particularly unusual in a background investigation to deploy a "tip line," and we are not aware of that ever being done before.

We do know that in the span of one week, the FBI interviewed ten individuals and the Republican majority concluded there was "no corroboration of the allegations made by Dr. Ford or Ms. [Debbie] Ramirez."<sup>3</sup> In our experience, it is not the practice of the FBI to decline to pursue credible leads in an investigation or to fail to interview the accuser and accused.

To better understand what the FBI did and why, we respectfully request that you answer the following questions:

1. What policies and procedures does the FBI follow when allegations of sexual misconduct arise during a background investigation of a judicial or executive branch nominee? What is "the book"?
2. How do those policies and procedures differ from the policies and procedures the FBI uses to investigate wrongdoing in its criminal investigations, and from the policies and procedures of a background investigation without such allegations?
3. What policies and procedures were used to investigate the allegations of misconduct in the supplemental investigation of Justice Kavanaugh?
4. What limitations on duration and scope did the White House or Justice Department place on the FBI's supplemental investigation? Please provide all documents reflecting instructions provided to the FBI regarding this investigation.
5. Was a special agent ever assigned to manage the Kavanaugh background investigation? If not, what was the professional background of the staff who managed the investigation? How long have they been at the Bureau and how many background investigations had they undertaken prior to the Kavanaugh investigation?
6. Who identified which witnesses would be interviewed, and how were they chosen?
7. What was the scope of questions asked of the witnesses? What policies were followed to determine the scope? Who determined the scope of the questions? Were there any limitations placed on the questions to be asked of witnesses?
8. What process was established if the interviews raised additional questions? Were investigators allowed to ask for additional interviews?
9. If additional facts arose, what was the process for handling those? Who made the decision whether to pursue additional facts and leads?

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<sup>2</sup> See October 4, 2018, letter from KaiserDillon PLLC to Director Wray.

<sup>3</sup> Supplemental FBI Investigation Executive Summary, Senate Judiciary Committee (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/rep/releases/supplemental-fbi-investigation-executive-summary>.

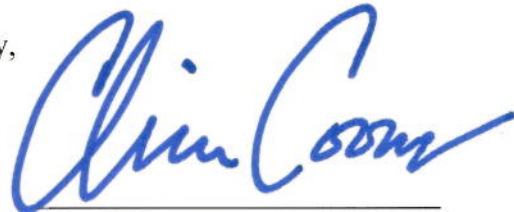
10. Why weren't witnesses identified as having "highly relevant" information interviewed by the FBI? Are there other contexts in which the FBI would not speak with relevant witnesses in the course of an investigation?
11. Has the FBI ever used a tip line in previous background investigations to manage incoming allegations and information regarding a nominee? If so, please provide the details of those events.
12. Did the FBI set up a tip line designated specifically for the Kavanaugh investigation? If not, why not? If so, who decided to set it up? Who was in charge of it?
13. In 2011, the FBI posted a video "Inside the FBI's Internet Tip Line,"<sup>4</sup> which explains the FBI's procedures for processing information that it receives through its tip line at fbi.gov. How did the procedure for processing tips related to the allegations against Justice Kavanaugh compare with the process described in this video? If it differed, why? If this was a process for criminal or terrorist tips, why was it used in this context?
14. How many calls or electronic submissions did the tip line established for the Kavanaugh background investigation receive? Were these calls recorded? Were these electronic submissions preserved? How were these calls or electronic submissions catalogued and documented?
15. Were any of the tips vetted? Were any evaluated for relevancy or credibility? Were any steps taken to verify information on any of the tips? Who made these decisions?
16. What steps were taken to follow up on any of the tips? If no action was taken, why not? Who made these decisions?
17. In total, how many live or otherwise in-person interviews did the Bureau undertake in the course of the Kavanaugh background investigation?
18. How many live or otherwise in-person interviews did the Bureau undertake in the course of the Kavanaugh supplemental background investigation once it was re-opened to address the newly revealed sexual assault allegations (excluding those interviews that occurred before the investigation was re-opened)?

Thank you for your attention to this matter. We would appreciate the courtesy of a response no later than August 30, 2019. If you have any questions, please do not hesitate to reach out to Joe Gaeta ([joe\\_gaeta@whitehouse.senate.gov](mailto:joe_gaeta@whitehouse.senate.gov)) of Senator Whitehouse's staff, or Erica Songer ([erica\\_songer@judiciary-dem.senate.gov](mailto:erica_songer@judiciary-dem.senate.gov)) of Senator Coons' staff.

Sincerely,



Sheldon Whitehouse  
United States Senator



Christopher A. Coons  
United States Senator

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<sup>4</sup> <https://www.youtube.com/watch?v=KJIDZ4OMIMM>.