

# Unworthy of Reliance

*The Flawed Supplemental Background Investigation Into  
Sexual-Assault Allegations Against Justice Brett Kavanaugh*

**U.S. Senator Sheldon Whitehouse**

*Chairman, Senate Judiciary Subcommittee on Federal Courts,  
Oversight, Agency Action, and Federal Rights*

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## EXECUTIVE SUMMARY

On July 9, 2018, President Donald Trump nominated then-Judge Brett Kavanaugh of the United States Court of Appeals for the D.C. Circuit to be an Associate Justice of the U.S. Supreme Court. Before his confirmation hearing, Kavanaugh was subject to a routine “full-field” background investigation by the FBI, which is a standard part of the confirmation process for all judicial nominees.

On September 4, 2018, the Senate Committee on the Judiciary, following the ordinary procedure for considering Supreme Court nominees, commenced four days of hearings on Kavanaugh’s nomination. On September 12, allegations of sexual misconduct by Kavanaugh, which had not been uncovered during the FBI’s full-field background investigation, began to surface. Over the next few days, Senators and the public learned of accusations by Dr. Christine Blasey Ford, a professor at Palo Alto University, that Kavanaugh had sexually assaulted her while the two were in high school. According to a letter Ford sent to Senator Dianne Feinstein, then the Ranking Member of the Judiciary Committee, “Brett Kavanaugh physically and sexually assaulted [Ford] during High School in the early 1980’s” by locking her in a bedroom, climbing on top of her, attempting to remove her clothes, and putting his hand over her mouth to stop her from screaming.<sup>1</sup> Kavanaugh publicly denied Ford’s allegation.<sup>2</sup>

After Ford came forward, new allegations of sexual misconduct by Kavanaugh emerged, most notably from Deborah Ramirez, a classmate of Kavanaugh’s at Yale University. On September 23, 2018, *The New Yorker* reported Ramirez’s allegation that, while in college, Kavanaugh “exposed himself at a drunken dormitory party, thrust his penis in her face, and caused her to touch it without her consent as she pushed him away.”<sup>3</sup> Kavanaugh publicly denied this allegation as well.<sup>4</sup>

In response to these allegations, the Judiciary Committee held an additional hearing on September 27, 2018. During this hearing, Ford and Kavanaugh testified, and Committee members and an outside counsel hired by Committee Republicans questioned them both. Ford testified that, during the summer of 1982, Kavanaugh and Ford were present at a small gathering at a suburban Maryland home.<sup>5</sup> Also present were their peers Mark Judge, P.J. Smyth, Leland Ingham Keyser, and one other individual whose identity Ford could not recall.<sup>6</sup> Ford told the Judiciary Committee that at this gathering she was “pushed from behind into a bedroom,” after which Kavanaugh and Judge “came into the bedroom and locked the door behind them.”<sup>7</sup> After either Kavanaugh or Judge turned up music playing in the room, Ford “was pushed onto the bed” and Kavanaugh “got on top” of her, “began running his hands over [her] body and grinding into [her],” and “groped [her] and tried to take off [her] clothes.” Ford testified that Kavanaugh struggled to remove her clothes “because he was very inebriated and because [she] was wearing a one-piece bathing suit under [her] clothes.”<sup>8</sup> Ford “believed he was going to rape [her].”<sup>9</sup> She further testified that, at one point, Kavanaugh “put his hand over [her] mouth to stop [her] from yelling,” while Kavanaugh and Judge “were drunkenly laughing,” a memory she described as “[i]ndelible in the hippocampus.”<sup>10</sup> Ford testified that she escaped after Judge “jumped on the bed” and they all “toppled over.”<sup>11</sup>

Kavanaugh “categorically and unequivocally” denied the accusations, claiming that they were a “calculated and orchestrated political hit fueled with apparent pent-up anger about President Trump and the 2016 election” and “revenge on behalf of the Clintons.”<sup>12</sup> He asserted that he “never had any sexual or physical encounter of any kind with Dr. Ford,” “never attended a gathering like the one Dr. Ford describes in her allegation,” and that although “sometimes [he] had too many beers,” he never drank to the point of blacking out.<sup>13</sup> The question of Kavanaugh’s alcohol consumption was important because Ford testified that he had been highly intoxicated at the time of the

assault, perhaps drunk enough to alter his recollection of events.<sup>14</sup>

After the hearing testimony by Ford and Kavanaugh, the Judiciary Committee agreed to request that the FBI conduct a supplemental background investigation, “limited to current credible allegations against” Kavanaugh, before the full Senate voted on his confirmation.<sup>15</sup> The Committee also agreed that the investigation would be completed within one week.<sup>16</sup> Upon direction from the White House, the FBI conducted ten interviews, concluded its investigation, and submitted all the information it gathered to the White House by October 4, 2018.<sup>17</sup> The White House made this information available to the Committee the same day.<sup>18</sup>

Far from getting to the bottom of the allegations against Kavanaugh, the supplemental background investigation performed by the FBI raised additional questions about the thoroughness of the FBI’s review and whether its scope had been purposely curtailed. In the years since, Senator Sheldon Whitehouse and others have pursued answers about the supplemental background investigation, launching the oversight inquiry that is summarized in this report. As part of this inquiry, Senate investigators exchanged correspondence with the White House, Department of Justice, and FBI; interviewed FBI officials involved in the Kavanaugh supplemental background investigation; and reviewed FBI manuals, training materials, and guidance, as well as more than 500 pages of correspondence between Trump White House and FBI officials. This oversight inquiry has lasted nearly six years, hampered by executive branch delays, reluctance to answer even basic questions, and often-incomplete responses. This report summarizes the Senate oversight inquiry’s conclusions based on the limited information the executive branch eventually provided.

The report’s conclusions are: *First*, the Senate’s reliance on the FBI’s supplemental background investigation to inform its constitutional duty to provide advice and consent on Kavanaugh’s nomination to the Supreme Court was misplaced. Multiple Senators expressly cited the supplemental background investigation’s apparent inability to uncover corroborating evidence of the allegations against Kavanaugh as a ground for voting to confirm Kavanaugh. Yet the supplemental background investigation was flawed and incomplete, as the FBI did not follow up on numerous leads that could have produced potentially corroborating or otherwise relevant information.

*Second*, while President Trump publicly claimed the FBI had “free rein” to take any investigative steps it deemed necessary, the Trump White House exercised total control over the scope of the investigation, preventing the FBI from interviewing relevant witnesses and following up on tips. The White House refused to authorize basic investigatory steps that might have uncovered information corroborating the allegations.

*Third*, although the Trump Administration and the FBI assured the Senate that the FBI’s investigation was being conducted “by the book,” they failed to disclose that there was actually no “book” at all. The FBI produced no written protocols for supplemental background investigations, saying it was merely acting as the “agent” for the White House in such matters. Although this undisclosed practice of requiring step-by-step instructions from the White House for supplemental background investigations may be appropriate for following up on discrete, relatively minor questions that routinely arise during a nominee’s initial background investigation, it was uniquely inappropriate for investigating the serious, high-profile allegations against Kavanaugh. Not only did this practice enable the Trump Administration to kneecap FBI investigators’ ability to adequately investigate those allegations, but the lack of transparency misled the Senate and the public about the investigation’s thoroughness.

*Fourth*, the FBI’s tip line was not used to facilitate the FBI’s supplemental background investigation into the

allegations against Kavanaugh. On instructions from the White House, the FBI did not investigate thousands of tips that came in through the FBI's tip line. Instead, all tips related to Kavanaugh were forwarded to the White House without investigation. If anything, the White House may have used the tip line to steer FBI investigators away from derogatory or damaging information.

The Senators' oversight inquiry reveals disturbing gaps in the FBI's supplemental background investigation process for judicial nominees—gaps that enabled the White House to undermine the Senate's ability to reliably exercise its advice and consent responsibility with respect to the Kavanaugh nomination. While these shortcomings may be relevant only in extreme circumstances like the Kavanaugh supplemental background investigation, Senators, the FBI, and the White House should work together to correct them to avoid a similar episode in the future.

## KAVANAUGH SUPPLEMENTAL BACKGROUND INVESTIGATION

Democratic Senators on the Judiciary Committee began asking questions about the sufficiency of the Kavanaugh supplemental background investigation almost immediately, as it became apparent that the Trump White House was limiting the FBI's ability to conduct a thorough investigation into the sexual-assault allegations against Kavanaugh.

The Senate Judiciary Committee held an executive business meeting on September 28, 2018, to consider whether to report Kavanaugh's nomination favorably to the full Senate. In addition to the hearing with Ford and Kavanaugh, staff for Judiciary Committee Chairman Chuck Grassley and Ranking Member Feinstein had conducted limited follow-up on some of the allegations, including through a series of interviews with Kavanaugh.<sup>19</sup> As Senator Chris Coons pointed out at the September 28 meeting, "Senate staff interviews or letters from lawyers" are not equivalent to a "nonpartisan, professional, even-handed investigation" by trained FBI agents.<sup>20</sup> At the meeting, members negotiated a path forward under which the Committee reported Kavanaugh's nomination but conditioned a floor vote on further investigation.<sup>21</sup> Accordingly, the Committee requested from the White House a "supplemental FBI background investigation . . . limited to current credible allegations against [Kavanaugh] and . . . completed no later than one week" from September 28.<sup>22</sup> That same day, the Trump White House agreed to this additional background investigation, to be completed in less than one week.<sup>23</sup>

In the following days, news outlets reported that the White House's request to the FBI was narrower than what Judiciary Committee members had agreed to at the September 28 meeting. On September 29, NBC News and The New York Times reported that the White House had restricted the FBI's investigation to interviews of only Mark Judge, Leland Keyser, P.J. Smyth, and Deborah Ramirez.<sup>24</sup> According to The New York Times, "[l]eft off the list were former classmates who . . . contradicted Judge Kavanaugh's congressional testimony about his drinking and partying as a student."<sup>25</sup> White House Press Secretary Sarah Huckabee Sanders told reporters that the White House had not requested FBI interviews of Kavanaugh or Ford both because President Trump "asked that the Senate be the ones that determine the scope" of the investigation and because Senators already "had a time and opportunity" to question those witnesses at the September 27 hearing.<sup>26</sup> The New York Times reported that "Senate Republicans drafted the witness list for the background check . . . and the Senate majority leader, Mitch McConnell, shared it with the White House"<sup>27</sup>—although one Republican member of the Judiciary Committee, Senator Mike Lee, unequivocally denied that characterization.<sup>28</sup>

President Trump denied each of these reports regarding the White House's directions to the FBI, saying that the FBI was "talking to everybody," that FBI investigators had "free rein to do whatever they have to do," and that he wanted the FBI "to interview whoever they deem appropriate, at their discretion."<sup>29</sup> The White House Counsel likewise assured the Judiciary Committee that the investigation would be done "by the book."<sup>30</sup> President Trump confirmed on October 1 that he had instructed his officials to "give the FBI free rein to interview whomever they feel is necessary"—"within the bounds of what the Senate wants."<sup>31</sup> President Trump further stated that "it's fine" and "up to" the FBI whether the FBI should interview Kavanaugh as part of its supplemental background investigation, and that the FBI should "interview anybody they want, within reason."<sup>32</sup> Several media outlets reported confirmations of this directive, with The New York Times reporting that the "White House authorized the F.B.I. to expand its abbreviated investigation . . . by interviewing anyone it deems necessary."<sup>33</sup>

Attorneys for Ford and Ramirez provided the FBI with dozens of names of additional witnesses whom the attorneys

said could corroborate Ford's and Ramirez's allegations.<sup>34</sup> Judiciary Committee Democrats also pressed the White House and FBI for clarity on the scope of the investigation and to ensure that the Committee's negotiated path forward was being honored. Members were receiving calls from people trying to provide information, who could find no authorized point of contact at the FBI. On September 30, 2018, then-Ranking Member Feinstein sent a letter to White House Counsel Don McGahn and FBI Director Christopher Wray asking for a copy of the White House's written directive to the FBI requesting the supplemental background investigation.<sup>35</sup> Committee Democrats sent another letter on October 1 along with a list of relevant witnesses they believed the FBI should interview.<sup>36</sup>

Democratic members of the Senate Judiciary Committee also individually contacted the FBI to provide names of people with potentially corroborating or otherwise relevant information who had reached out after trying—but failing—to get in touch with FBI investigators. Some of these individuals, including Max Stier, a college classmate of Kavanaugh's, contacted Senator Coons after they had “difficulty reaching anyone” at the FBI who would “collect their information.”<sup>37</sup> Senator Coons wrote directly to Director Wray to request “appropriate follow up” with Stier in particular.<sup>38</sup> Ultimately, many people were referred or resorted to the agency's online and telephonic “tip line,” which did not result in any follow-up from the FBI.<sup>39</sup>

As the deadline for the FBI's investigation approached, media outlets reported that the FBI still had “not contacted dozens of potential corroborators or character witnesses.”<sup>40</sup> NBC News reported on October 3 that the FBI's investigation “remain[ed] significantly limited in scope” and it was “unlikely agents will be allowed to interview many, if any, additional witnesses.”<sup>41</sup>

The FBI's supplemental background investigation concluded on October 4.<sup>42</sup> Despite credible allegations from two different women, hundreds of witness leads and tips the FBI received, and the high stakes of a life-tenured Supreme Court nomination, the FBI ultimately interviewed only ten people.<sup>43</sup> According to an “executive summary” of the FBI's supplemental background investigation issued by the Judiciary Committee majority, these people were “all witnesses with potential *firsthand* knowledge of the allegations.”<sup>44</sup> The FBI did not, however, interview Ford or Kavanaugh—the witnesses potentially with the *most* firsthand knowledge—nor did it speak to other potentially corroborating witnesses who had not witnessed the events firsthand.<sup>45</sup> Nonetheless, the Judiciary Committee Republicans' executive summary concluded that the “Supplemental Background Investigation confirms . . . there is no corroboration of the allegations made by Dr. Ford or Ms. Ramirez.”<sup>46</sup>

Later on October 4, the White House provided to the Senate materials related to the FBI's supplemental background investigation, and Judiciary Committee staff briefed Senators on the documents before each member was given a one-hour window to review the documents *in camera*.<sup>47</sup> The information presented to Senators contained more than 1,600 pages of material,<sup>48</sup> which was laid out in piles on tables. The vast majority of the documents consisted of raw information collected through the FBI's “tip line.”<sup>49</sup> Only one copy of the materials was made available to Senators.<sup>50</sup> Neither the FBI nor the White House provided information on how the tip line was operated or staffed, when and why it was set up, and whether the information shown to the Senators was filtered or represented every tip the FBI received. The FBI also did not indicate whether it investigated any of the tips submitted through the tip line.

The Senate voted to confirm Kavanaugh's nomination to the Supreme Court two days later on October 6.<sup>51</sup>



Following Kavanaugh's confirmation to the Supreme Court, Democratic members of the Judiciary Committee, including Senators Sheldon Whitehouse, Dick Durbin, and Chris Coons, as well as then-Senators Patrick Leahy and Kamala Harris, requested information about the process the FBI followed in conducting the supplemental background investigation into the allegations against Kavanaugh. The Senators sought to determine why the FBI's supplemental background investigation fell short and to ensure similar shortcomings were not repeated in the future.



## LACK OF COOPERATION FROM THE EXECUTIVE BRANCH

Senator Whitehouse and other Democrats on the Senate Judiciary Committee have spent nearly six years seeking answers. Senators questioned the FBI, the Department of Justice (DOJ), and the White House about the extent of the Trump White House's control over the FBI's supplemental background investigation; whether the White House or any other Trump Administration officials placed specific limitations on the scope of the investigation; whether the supplemental background investigation process conducted during the Kavanaugh confirmation conformed to standard FBI practices; and about the tip line. The Senators requested relevant information through written correspondence;<sup>52</sup> live and written questioning of DOJ and FBI officials at hearings;<sup>53</sup> and meetings with relevant White House, DOJ, and FBI officials.

The Senators' investigation was severely delayed, largely due to a long period of executive branch obstruction. The executive branch repeatedly refused to provide timely or complete answers to even basic questions, particularly during the Trump Administration. And even when the executive branch became more responsive during the Biden Administration, complete answers to the Senators' questions were few and far between.

### A. Executive Branch Stonewalling During the Trump Administration

Stonewalling from the executive branch in response to Senators' requests for information about the FBI's supplemental background investigation started while that investigation was ongoing. Then-Ranking Member Feinstein never received a substantive response to her letter, sent during the thick of the FBI's supplemental background investigation, requesting a copy of the Trump White House's written instructions setting the parameters of the inquiry. Even following Kavanaugh's confirmation, the Trump Administration repeatedly thwarted Senate investigators' subsequent attempts to get to the bottom of how the supplemental background investigation was conducted.

In Senate hearings held in 2018 and 2019, Senators Whitehouse and Harris questioned FBI Director Christopher Wray about the FBI's supplemental background investigation. Director Wray testified to Senator Harris in October 2018 that the investigation was "limited in scope," which was "consistent with the standard process for such investigations."<sup>54</sup> He also testified that he spoke with the FBI officials responsible for these investigations, who "assured" him that the White House's directives during this investigation were "consistent with" the investigators' "experience and the standard process."<sup>55</sup> The following year, Director Wray similarly testified to Senator Whitehouse that Director Wray "consulted at length with [FBI] security professionals who are specialists in background investigations to make sure that that investigation . . . was done consistent with . . . longstanding policies, practices, and procedures."<sup>56</sup> Director Wray also promised to provide more information on the investigation and the FBI's use of a "tip line" to collect leads, but the FBI withheld that information for more than two years after Director Wray's testimony.<sup>57</sup>

In August 2019, Senators Whitehouse and Coons wrote to Director Wray to ask him for the "long-standing policies, practices, and procedures" that Director Wray referenced during his hearing testimony.<sup>58</sup> The letter also reiterated the previous requests for the written instructions from the Trump White House to the FBI, how the FBI carried out those instructions, and why certain individuals had not been interviewed.<sup>59</sup> The Senators received no response.

Senators Whitehouse and Coons unsuccessfully pursued answers to these questions for the remaining years of the Trump Administration, including through a February 2020 letter with several of their Judiciary Committee colleagues to then-Chairman Lindsey Graham asking for his assistance.<sup>60</sup> This effort culminated in a June 2020 meeting between Senator Whitehouse, Chairman Graham, and then-Deputy Attorney General Jeffrey Rosen. Deputy Attorney General Rosen committed at that meeting to provide responses to these requests, but until 2021, the only information regarding the FBI's supplemental background investigation that the Senators could collect came from non-official channels, including a publicly available YouTube video in which an agent explained the normal operating procedures for the FBI's "tip line,"<sup>61</sup> found by Senate staff through an internet search.

At that same time, Democratic members of the Senate Judiciary Committee watched as DOJ and the FBI willingly provided extensive information to Republican members of Congress regarding "Operation Crossfire Hurricane." The executive branch declassified hundreds of pages of internal information regarding the FBI's ongoing counterintelligence investigation of connections between the Trump campaign and Russia, providing documents wholesale to Republicans on the Senate Judiciary, Finance, and Homeland Security and Governmental Affairs Committees. These productions comprised large swaths of sensitive information related to ongoing national security and law enforcement matters of the type typically withheld from Congress: summaries of FBI national security investigations; communications and notes from senior executive branch officials, FBI agents, and agency counsel; and agency memoranda, including a memorandum from Acting Attorney General Rod Rosenstein to Special Counsel Robert Mueller regarding Special Counsel Mueller's then-ongoing investigation into Russian interference with the 2016 presidential election.<sup>62</sup> At Republicans' request, the executive branch permitted the Committees to interview sitting DOJ and FBI officials as part of these inquiries.<sup>63</sup> A superhighway for FBI information channeled documents and testimony to Republicans on "Operation Crossfire Hurricane," as Democrats were denied basic policy and procedure documents that should have been made swiftly available to the public under the Freedom of Information Act. The contrast was notable.

## B. Oversight Challenges During the Biden Administration

The executive branch's cooperation improved somewhat under President Joe Biden, but Senate investigators still struggled to secure direct answers to written questions, faced considerable delays in receiving answers to those questions, and often received incomplete answers or answers that fully ignored lines of inquiry.

At the start of the Biden Administration, Senator Whitehouse reiterated the need for prompt answers to his and others' outstanding inquiries at hearings with Attorney General Merrick Garland in February 2021, and with Director Wray in March 2021.<sup>64</sup> Senator Whitehouse also documented these matters in multiple letters to Attorney General Garland starting in March 2021.<sup>65</sup>

In response, Director Wray committed to working to provide answers, and the FBI requested that Senator Whitehouse identify all unanswered oversight questions from the previous Congress related to the supplemental background investigation into Kavanaugh.<sup>66</sup> When Senator Whitehouse identified those questions, rather than answering them, the FBI informed him that the Office of Management and Budget would no longer clear any responses to written "questions for the record" from the prior Congress.<sup>67</sup> Although the executive branch now maintains that this is its longstanding practice, it did not disclose this fact to Senator Whitehouse before he identified the outstanding questions at the FBI's request, causing further frustration and delay.<sup>68</sup>

After additional prodding, the FBI began substantively responding to questions about the FBI's supplemental background investigation later that year. In a June 2021 letter, the FBI provided additional information on the Kavanaugh supplemental background investigation's timeline and use of a "tip line."<sup>69</sup> In that same letter, the FBI informed the Senators of a memorandum of understanding (MOU) between the White House and DOJ governing FBI background investigations of presidential nominees. The FBI suggested that its supplemental background investigation had been authorized and conducted pursuant to this MOU, which the FBI had not previously disclosed and which Senate staff located on the internet.<sup>70</sup>

The next month, Senators Whitehouse, Coons, and several of their colleagues asked the FBI for answers to outstanding questions not answered by the FBI's June 2021 letter—such as why certain witnesses with potentially corroborating information were not interviewed—and renewed questions about how the FBI ordinarily handles leads received through its tip line and whether the Kavanaugh tips were processed differently.<sup>71</sup> The Senators also requested relevant communications between the Trump White House and FBI regarding any conditions placed on the supplemental background investigation of Kavanaugh, as well as a briefing on these topics.<sup>72</sup> In August and September 2021, Senator Whitehouse followed up again to request internal FBI or DOJ documents explaining the agencies' understanding of their duties under the MOU and their guidance to agents.<sup>73</sup>

On October 1, 2021—after Senator Whitehouse again questioned Director Wray on these issues at a September 2021 Judiciary Committee hearing<sup>74</sup>—the FBI wrote to Senator Whitehouse, providing additional details about who the FBI interviewed and on what topics, as well as confirming that it was working to schedule the requested briefing.<sup>75</sup> This letter confirmed that the White House requested "limited inquiry interviews" of ten specific individuals.<sup>76</sup> The letter gave no further details on the Trump White House's instructions to the FBI, nor on whether the White House gave the FBI discretion to follow relevant leads as they arose during the supplemental background investigation. The letter also did not answer questions about the FBI's understanding of its own authority under the MOU—specifically, whether and in what circumstances the FBI believes it has discretion to take investigative steps beyond those directed by the White House.

Four days later, the FBI provided a collection of internal manuals and agency guidelines related to the MOU and the typical process for FBI background investigations into presidential nominees, but no documents or communications related to the scope of the specific supplemental background investigation into Kavanaugh.

Although the FBI initially indicated that it would provide the Senators' requested briefing in October 2021, the briefing was not scheduled until December 2021, following repeated requests from Senator Whitehouse's staff. The FBI official who conducted the briefing refused to discuss the FBI's supplemental background investigation into Kavanaugh, was not prepared to answer questions about the internal manuals and agency guidelines previously provided by the FBI, and gave largely nonresponsive answers to questions about the ordinary process for supplemental background investigations.

From April through November 2022, Senators Whitehouse and Coons, Senate Judiciary Committee Chairman Durbin, and then-Senate Appropriations Committee Chairman Leahy repeatedly requested responses to the outstanding questions on the scope of the White House's control over the Kavanaugh supplemental background investigation and the ordinary procedures for such investigations under the MOU. In addition to the Senators' multiple letters to the White House Counsel, the Attorney General, and Director Wray,<sup>77</sup> Senator Leahy submitted questions for the record to Director Wray following an Appropriations Committee hearing.<sup>78</sup>

At an August 2022 Senate Judiciary Committee hearing, Director Wray again committed to providing answers to the Senators' outstanding questions, within one month.<sup>79</sup> In a September 2022 letter, the FBI told Senators that it "is not in a position to release records of communications between" the White House and the FBI related to background investigations, while providing no new information responsive to the Senators' outstanding questions.<sup>80</sup> When the Senators followed up, they faced the challenge of aligning FBI, DOJ, and White House equities: The FBI claimed it could not answer without authorization from DOJ and the White House; DOJ directed the Senators' inquiries to the White House and FBI; and the White House referred the Senators back to the agencies.<sup>81</sup>

With more than three years having passed since Senators Whitehouse and Coons's August 2019 letter and four years since Ranking Member Feinstein's September 2018 letter, the Senators again sent multiple letters to the White House and Attorney General asking them to end the gamesmanship and release the communications as soon as possible.<sup>82</sup>

Finally, on February 3, 2023, the FBI provided for *in camera* review 25 pages of relevant communications between the White House and FBI officials regarding the Kavanaugh supplemental background investigation. Following review of those documents, staff for Senators Whitehouse and Coons asked to speak with someone with knowledge of the Kavanaugh supplemental background investigation to explain how the FBI interpreted the White House communications; whether the FBI considered itself to have authority to follow leads that exceeded the scope of the White House's instructions; and to provide any additional communications or documents on those topics. No response.

So, in June 2023, the Senators renewed the request in writing.<sup>83</sup> The FBI in July 2023 told the Senators that the FBI official who had participated in the Kavanaugh supplemental background investigation and could answer the Senators' questions had left the FBI. Her departure took place several months after the Senators had initially asked to speak with her.

In November 2023, the FBI provided for *in camera* review an additional batch of nearly 600 pages of communications between the Trump White House and FBI officials that had not been provided previously. Many of these communications were responsive to questions asked in 2019 regarding limitations the Trump White House placed on the supplemental background investigation and whether the FBI interpreted its authority to exceed those limitations. These communications fell within the scope of the Senators' initial request, yet were not included in the February production nine months earlier. No privilege log or other ground for withholding them was provided, and the Senators' repeated requests for these additional communications went unanswered for many months.<sup>84</sup> The documents were produced only after Senator Whitehouse indicated he intended to withhold support for the Administration's nominee to lead DOJ's Office of Legal Counsel until his outstanding oversight requests were addressed.

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The above timeline paints a stark picture of the executive branch's lack of cooperation in this matter. Not included for the sake of brevity are many dozens of emails, calls, and meetings between Senators or their staff and the FBI, DOJ, and White House officials over the course of this nearly six-year oversight inquiry prodding them about responses to questions that had been pending for years.

As this timeline shows, Senate investigators consistently faced considerable, unexplained delays in response to their inquiries. They often received conflicting information, when they received information at all, about why certain information had not yet been or could not be provided and which entity could provide it. At times, the executive branch provided conflicting answers in response to questions central to the inquiry, such as whether, under the MOU, the FBI has discretion to take investigative steps beyond those directed by the White House.

The difficulties in pursuing this oversight inquiry were immense. There was the long Trump Administration stall in delivering any meaningful information. There was information delivered in dribs and drabs, and only after persistent follow-up. There was the agency merry-go-round of the FBI, DOJ, and White House all pointing to each other. There was the misdirection to FBI investigative procedures, and then to the MOU and standard background investigation procedures, and then to the ultimate disclosure that supplemental background investigations have no procedures.

The Senate has a constitutional obligation to provide advice and consent on judicial nominees and an institutional interest in ensuring that it receives complete, accurate, and timely information to facilitate carrying out that responsibility. Furthermore, the Senate has the constitutional authority to pursue—and the FBI and other executive branch agencies a corresponding duty to comply with—proper and lawful requests for information.<sup>85</sup> The executive branch's intransigence here makes it difficult to know to what extent the executive branch has withheld relevant information. This report reflects Senate investigators' findings based on information received to date; we reserve the right to modify or expand on these findings should further information come to light in the future, through the National Archives or other sources.



## FINDINGS

After nearly six years of seeking answers from an obstinate executive branch, Senate investigators have pieced together a picture of a flawed and incomplete supplemental background investigation that was unworthy of reliance by the Senate.

At the time of Kavanaugh’s confirmation vote, many Senators cited the FBI’s supplemental background investigation—and the apparent dearth of corroborating evidence it uncovered—to justify their votes to confirm Kavanaugh. But that investigation could not have produced the corroborating information those Senators demanded. The FBI did not take basic investigative steps it would have taken in other contexts, like interviewing potentially corroborating witnesses and following up on relevant tips that could have yielded corroborative evidence.

Only through repeated, persistent inquiries over more than a half decade did Senate investigators discover that the Trump White House controlled the scope and conduct of the supplemental background investigation, specifically engineering it to exclude evidence that could have corroborated the allegations against Kavanaugh. All the while, the Trump Administration and FBI misled the public and the Senate about the investigation’s scope, claiming the FBI had complete discretion to take all investigative steps and that it conducted the supplemental background investigation “by the book,” without disclosing that there was no “book” for such investigations.

### A. Many Senators Cited the FBI’s Supplemental Background Investigation to Justify Their Votes to Confirm Kavanaugh

Senators routinely rely on FBI background investigations to inform their decisions when fulfilling their constitutional duty to provide advice and consent on presidential nominees. It is important to the Senate as an institution that the FBI background process be honest and reliable. The supplemental background investigation process, at least as employed during the Kavanaugh confirmation, does not meet that standard. In this case, multiple Senators cited the FBI’s supplemental background investigation to justify their vote to confirm Kavanaugh. In particular, Senators explained that they were unable to credit the allegations against him because the FBI was unable to produce corroborating information.

As soon as the FBI completed its supplemental background investigation, Judiciary Committee Republicans issued an “executive summary” concluding, “[t]he Supplemental Background Investigation confirms what the Senate Judiciary Committee concluded after its investigation: **there is no corroboration of the allegations made by Dr. Ford or Ms. Ramirez.**”<sup>86</sup> Then-Majority Leader Mitch McConnell echoed this line, asserting, “[w]hat we know for sure is the FBI report did not corroborate any of the allegations against Judge Kavanaugh”<sup>87</sup> and “[t]he fact is that these allegations have not been corroborated.”<sup>88</sup> Other Senators who voted for Kavanaugh’s confirmation had similar reactions:

- Senator Shelley Moore Capito: “There was no new corroborating evidence.”<sup>89</sup>
- Former Senator Bob Corker: “The supplemental background investigation found absolutely zero corroboration of the allegations that have been made.”<sup>90</sup>
- Former Senator Jeff Flake: “[W]e’ve seen no additional corroborating information.”<sup>91</sup>
- Then-Senate Judiciary Committee Chairman Chuck Grassley: “These uncorroborated accusations have

been unequivocally and repeatedly rejected by Judge Kavanaugh, and neither the Judiciary Committee nor the FBI could locate any third parties who can attest to any of the allegations.”<sup>92</sup>

Senators also cited the perceived thoroughness of the FBI’s supplemental background investigation. Senator Susan Collins commented that the FBI investigation “appears to be a very thorough investigation,”<sup>93</sup> while Senator Capito said, “I’m satisfied it was comprehensive, so I feel confident in the report.”<sup>94</sup> Senator Graham said he was “more confident than ever of Brett Kavanaugh that the allegations levied against him were not proven to be more reliable” in part because FBI agents “were given the latitude they wanted. Nobody told them where to go, who to interview or how to interview them.”<sup>95</sup>

Senators likewise characterized the supplemental background investigation as having been conducted independently pursuant to existing FBI policies and without “politicians telling the agency how to do its job.”<sup>96</sup> Senator Mike Lee, a member of the Judiciary Committee, denied reports that Republican Senators dictated the precise scope of the FBI’s supplemental background investigation, saying, “[t]he FBI was requested to conduct an investigation into any and all credible, current accusation[s] of sexual misconduct by Judge Kavanaugh. And the[] FBI made the decision from there as to who to interview.”<sup>97</sup> Then-Chairman Grassley said that the FBI “decided” which individuals to contact,<sup>98</sup> that the FBI’s investigation was being conducted “in accordance with the agency’s standard operating procedures,” that “the career public servants and professionals at the FBI know what they’re doing and how best to conduct a background investigation,” and that the FBI’s investigation “should be carried out independent of political or partisan considerations.”<sup>99</sup>

#### B. The FBI Did Not Interview Key Witnesses or Follow Relevant Tips that Could Have Produced Corroborating Evidence

We now know that these Senators’ reliance on the FBI’s supplemental background investigation to inform their vote was misplaced. The FBI conducted a narrow investigation into the allegations, interviewing only a handful of relevant witnesses and not exploring obvious potential sources of corroborating information. Potential sources included Ford and Kavanaugh themselves, others who were presented or presented themselves to the FBI as having corroborating or otherwise relevant information, and tips submitted to the FBI through its tip line, which the FBI forwarded directly to the White House in bulk without any follow-up or further investigation.

##### *1. The FBI did not interview key witnesses*

During the supplemental background investigation, the FBI did not interview several witnesses whose accounts were obviously relevant to the allegations against Kavanaugh and could have produced corroborating information.

Most glaringly, the FBI did not interview Ford about her allegations or Kavanaugh about those claims or any of the other credible allegations against him. Ford was not interviewed even though, according to contemporaneous communications between the FBI and White House, her attorney repeatedly contacted the FBI directly to request the FBI interview her or, at a minimum, permit a phone call with the FBI agent overseeing the supplemental background investigation.<sup>100</sup> The FBI denied these requests presumably because, as the Trump White House explained, Senators already “had a time and opportunity” to question Ford and Kavanaugh at the September 27 Judiciary Committee hearing.<sup>101</sup> As then-Ranking Member Feinstein noted, this testimony was not “a substitute for interviews by FBI agents. Not only do senators lack the expertise of FBI agents, [the senators] were only



given five minutes to question Kavanaugh.”<sup>102</sup> Questioning by trained FBI investigators could have yielded additional leads and provided additional evidence for Senators to weigh when evaluating the credibility of Ford’s and Kavanaugh’s testimony.

As then-Chairman Grassley admitted, the only other people the FBI interviewed were “witnesses with potential *firsthand* knowledge of the allegations.”<sup>103</sup> This limitation excluded individuals who came forward alleging to have information directly relevant to the allegations against Kavanaugh, including details that could corroborate Ford’s and Ramirez’s accounts, but who were not present at the events in question.

Indeed, Ford and Ramirez provided lists of suggested witnesses with corroborating information directly to the FBI. On September 30, counsel for Ramirez sent the FBI “a list of more than twenty additional witnesses likely to have relevant information” and who Ramirez “suspected . . . could corroborate her account of Mr. Kavanaugh’s behavior.”<sup>104</sup> Ramirez’s counsel also sent the FBI a signed declaration from a credible witness.<sup>105</sup> Counsel for Ford similarly provided the FBI with the names of “witnesses . . . possessing information highly relevant to Dr. Ford’s allegations.”<sup>106</sup> Some members of the Judiciary Committee contacted the FBI and White House directly on behalf of individuals struggling to convey their stories to the FBI,<sup>107</sup> and on October 1, several Senators sent a list of more than two dozen witnesses to the FBI and White House Counsel’s Office.<sup>108</sup>

Max Stier, a college classmate of Kavanaugh’s with potentially corroborating information regarding the Ramirez allegations, contacted Senator Coons in an attempt to convey that information to the FBI.<sup>109</sup> Senator Coons wrote directly to Director Wray to request “appropriate follow up.”<sup>110</sup> In the same letter, Senator Coons notified Director Wray that his office had heard from “several individuals” in addition to Stier who reached out to the FBI to share what they knew regarding the allegations against Kavanaugh but who had “difficulty reaching anyone who will collect their information.”<sup>111</sup> The FBI never contacted Stier regarding this allegation. Stier’s experience matches that of numerous others who knew Ford, Kavanaugh, or Ramirez and claimed to possess relevant information.<sup>112</sup> The next year, *The New York Times* reported that Stier “saw Mr. Kavanaugh with his pants down at a different drunken dorm party, where friends pushed his penis into the hand of a female student.”<sup>113</sup>

As Senator Whitehouse later described it, despite these repeated attempts to contact the FBI, “the shutters were closed, the drawbridge drawn up, and there was no point of entry by which members of the public or Congress could provide information to the FBI.”<sup>114</sup>

## 2. *The FBI did not follow up on thousands of tips received through its tip line*

The FBI did not pursue information reported to it through the FBI’s “tip line.” The FBI held out this tip line to the Senate and the public as proof of the supplemental background investigation’s thoroughness. In reality, however, the FBI simply sorted Kavanaugh-related tips from general tip-line traffic and forwarded the tips it collected from the tip line to the Trump White House, without any investigation.<sup>115</sup>

Former classmates or friends of Ford, Ramirez, and Kavanaugh reported difficulty getting the FBI to respond to their outreach, or finding someone at the FBI to whom they could convey their information.<sup>116</sup> After being unable to speak to anyone or after being redirected to and from FBI field offices, many people resorted to the agency’s online and telephonic “tip line.”<sup>117</sup> The FBI reported receiving “over 4,500 tips, including phone calls and electronic submissions,” related to the Kavanaugh supplemental background investigation.<sup>118</sup> None were

investigated or even screened for indicia of credibility.<sup>119</sup>

In a June 2021 letter to Senators Whitehouse and Coons, the FBI created the impression that it had established a dedicated tip line as part of its supplemental background investigation into the allegations against Kavanaugh:

Justice Kavanaugh’s nomination was the first time that the FBI set-up a tip line for a nominee undergoing Senate confirmation. It was established at the direction of the FBI’s Security Division to centralize and manage incoming information related to the nomination. . . . The Security Division section handling the [background investigation] and supplemental background investigations provided all relevant tips to the Office of White House Counsel (as the requesting entity).<sup>120</sup>

There was no dedicated tip line. In October 2021, after repeated follow-up from the Senators, the FBI stated that this tip line was not specific to the Kavanaugh allegations and was instead part of the preexisting Public Access Line, now known as the National Threat Operations Center.<sup>121</sup> In a December 2021 briefing, the FBI clarified that the Kavanaugh “tip line” was only a sorting function to remove Kavanaugh-related tips from the tips flowing into the National Threat Operations Center.<sup>122</sup>

According to the FBI, typically, including at the time of the Kavanaugh supplemental background investigation, electronic tips received through that process are prioritized algorithmically by importance and threat level, and then reviewed by a threat intake examiner. Telephonic tips are processed in real time by FBI employees. These employees can ask questions but do not themselves investigate the tips; the Center disseminates to the appropriate field office anything alleging criminal activity at the federal level.<sup>123</sup>

In certain instances, the Center sends tips to the FBI’s Security Division for review. At the Security Division, tips are reviewed by an analyst, a supervisor, and a special agent. According to a Security Division official, the Security Division reviews for any investigative matter and investigates, where appropriate, tips received during a nominee’s initial “full and logical” background investigation (the FBI’s internal name for the initial full-field background investigation), while tips received about nominees after investigations are closed are forwarded to the White House Counsel’s Office without any investigation.<sup>124</sup>

During the Kavanaugh investigation, officials at the National Threat Operations Center forwarded any tips pertaining to Kavanaugh to the Security Division.<sup>125</sup> On September 29, 2018, the White House directed the FBI to treat all tips “the same way that other leads have been handled”—i.e., by forwarding them to the White House without further investigation, no matter how reliable or corroborative the tips seemed.<sup>126</sup>

On those instructions, the Security Division treated tips received during the Kavanaugh supplemental background investigation as if its investigation were closed: The Security Division turned over all “relevant” tips to the White House Counsel’s Office without investigation. A Security Division official subsequently told Senate investigators that the Security Division reviewed these tips only for relevancy to Kavanaugh and to remove duplicates.<sup>127</sup> On at least two occasions, Security Division officials pointed the White House to specific tips, because of the information provided or the apparent identity of the individual who provided the information.<sup>128</sup> The White House did not authorize the FBI to follow up on those tips. If anything, there is a danger that the tip line was used by the White House to steer FBI investigators away from relevant or corroborative information.

In May 2019, in response to litigation over Freedom of Information Act requests for materials related to the FBI's supplemental background investigation, the FBI published on its website "more than 500 pages of heavily redacted tips" received as part of the Kavanaugh investigation.<sup>129</sup> Because of the redactions—including to the identities of those who submitted the tips and, often, the substance of the tips themselves—it is not clear how many of these tips contained credible, relevant leads. But the fact remains that even tips highlighted for the White House were not independently investigated.

### C. The Trump Administration Prevented the FBI from Seeking Corroborating Information, While Misleading the Public and the Senate About the Investigation's Scope and Procedures

The FBI's supplemental background investigation into the sexual-assault allegations against Kavanaugh was unreliable, not because of FBI ineptitude, but because the Trump White House tightly controlled the scope of the investigation, preventing the FBI from conducting a thorough investigation that followed all relevant leads as it would in other investigative contexts. The Trump White House strictly controlled which witnesses the FBI was authorized to interview and which leads the FBI could follow. Indeed, the Trump White House specifically declined to authorize the FBI to interview witnesses and pursue tips that might have uncovered the corroborating information some Senators later claimed was lacking.

The Trump White House and FBI repeatedly assured concerned Senators that the investigation was conducted "by the book"—but omitted the fact that, for supplemental background investigations, there is no book. In fact, there is barely any written guidance at all. That lack of written procedures for supplemental background investigations, coupled with the FBI's general practice of requiring step-by-step instruction from the White House in such circumstances, meant the FBI had no specific procedures beyond the instructions from the Trump White House. Although such a practice might not raise concerns in the vast majority of cases where limited follow-up on relatively minor questions about a nominee's background is appropriate, it was wholly inadequate to investigate the serious allegations of sexual assault against a Supreme Court nominee—and the executive branch's misleading statements to the Senate and the public about the scope of the investigation concealed that fact.

#### 1. *The Trump White House maintained tight control over the FBI's supplemental background investigation, despite public denials from President Trump and other White House officials*

In late September and early October of 2018, President Trump repeatedly and publicly denied that he had placed restrictions on the FBI's supplemental background investigation into the allegations against Kavanaugh. He asserted, among other things, that the FBI was "talking to everybody," that the FBI had "free rein to do whatever they have to do," and that he wanted the FBI "to interview whoever they deem appropriate, at their discretion."<sup>130</sup> These statements were not true.

Contemporaneous email correspondence between the Trump White House and FBI provided in response to questions from Senate investigators demonstrates that the Trump White House maintained strict control over the FBI's supplemental background investigation, cabining it to "limited inquiry" interviews of specific individuals on specific topics and denying authorization to interview others. The FBI did not interview Ford or Kavanaugh, for example, because the Trump White House refused to allow it.

Similarly, the White House denied interviews of numerous people who presented themselves to the FBI or

were referred to the FBI as possessing potentially corroborating information. For example, according to FBI communications from September 28, 2018, an individual claiming to be a former classmate of Kavanaugh reached out to the FBI with an offer to share information relevant to the sexual-assault allegations involving Ramirez.<sup>131</sup> FBI offices across the country had received similar outreach.<sup>132</sup> But the FBI required White House instructions to pursue these matters, and the FBI never received those instructions.<sup>133</sup> Likewise, as explained above, the FBI forwarded thousands of tips that came in through its tip line to the Trump White House without investigation, per the White House's instruction.

The Trump White House specified the name of each witness the FBI was permitted to contact as part of the supplemental background investigation. Sometimes the White House specified particular lines of questioning. For example, the supplemental background investigation was officially opened on September 28, 2018, when a representative from the Office of White House Counsel emailed FBI officials to request the FBI conduct narrow interviews of three people Ford had identified as eyewitnesses, as well as an interview of Deborah Ramirez.<sup>134</sup> With respect to one interview in particular, the White House asked the FBI to interview Mark Judge about Ford's allegations and requested that Judge be asked about his knowledge regarding a different allegation that Kavanaugh participated in "gang rape."<sup>135</sup>

At no point in these exchanges did the White House permit the FBI discretion to decide whom to interview, or what follow-up investigative steps to take, even as FBI officials sought clarification in light of contrary media reports and public statements by President Trump. Throughout the afternoon and evening of September 29, 2018, an official in the FBI Office of Public Affairs forwarded to her colleagues reports of public statements by President Trump and White House officials suggesting that the FBI had free rein regarding the scope of the supplemental background investigation.<sup>136</sup> One email quoted White House spokesman Raj Shah as telling NBC News that "[t]he White House is letting the FBI agents do what they are trained to do."<sup>137</sup> Also included in these emails was a video of President Trump telling reporters that "[t]he FBI as you know is all over, talking to everybody," and that the FBI has "free rein" to "do whatever they have to do. . . . They'll be doing things that we have never even thought of,"<sup>138</sup> as well as a tweet by President Trump saying "NBC News incorrectly reported (as usual) that I was limiting the FBI investigation of Judge Kavanaugh, and witnesses, only to certain people. Actually, I want them to interview whoever they deem appropriate, at their discretion. Please correct your reporting!"<sup>139</sup>

The next morning, in light of these reports—which contradicted the September 28 directive to the FBI from the Trump White House—an FBI Security Division official contacted the White House to verify whether the scope of the investigation had changed, forwarding the relevant September 29 Public Affairs emails.<sup>140</sup> The Security Division official later reported to her colleagues that, after calling and emailing the White House, she had not received any confirmation that the FBI's discretion had been enlarged.<sup>141</sup> Later that night, the FBI "again" requested "additional guidance," writing, "[w]e understand that we aren't authorized [sic] by White House Counsel to take any investigative steps beyond these four interviews" the White House had initially requested.<sup>142</sup> The White House representative responded the next morning saying only that the White House would be in touch if it had additional guidance.<sup>143</sup>

Although the White House on October 1, 2018, did request additional limited-inquiry interviews (the FBI's internal name for supplemental background investigations), those requests did not grant the FBI the broad investigative discretion that President Trump and Administration officials publicly claimed the FBI had been given. On the afternoon of October 1, an FBI Public Affairs employee again emailed other FBI officials, saying



that media outlets were expected to report that the White House had lessened “restrictions” on the investigation and that the FBI would be able to conduct any necessary follow-up investigation.<sup>144</sup> In response, the Director of the FBI Security Division responded that he had not received any additional instructions from the White House beyond the initial four interviews.<sup>145</sup> The Security Division Director added shortly thereafter that the White House called and would be requesting additional interviews.<sup>146</sup> Around the same time, a representative from the Office of White House Counsel emailed the FBI with additional specific limited-inquiry requests of two particular witnesses mentioned in the calendar entries Kavanaugh provided to the Senate Judiciary Committee.<sup>147</sup> That evening, the White House reached out again to ask the FBI to conduct limited-inquiry phone interviews of four additional individuals mentioned during the FBI’s interview of Ramirez to determine whether they had “personal knowledge” of Ramirez’s allegations.<sup>148</sup> Each of these new requests remained confined to interviews of specific individuals on specific topics; the White House, which at times even directed specific lines of questioning, did not provide the FBI with additional leeway regarding how to conduct the interviews or to follow relevant leads that might have arisen.<sup>149</sup>

On October 2, 2018, the FBI again requested White House confirmation as to the investigation’s scope in light of additional news reports and statements by President Trump and White House officials, which the FBI forwarded to the White House.<sup>150</sup> These items included:

- President Trump’s previous remarks about the FBI “talking to everybody” and having “free rein”;<sup>151</sup>
- President Trump’s tweet that he wants the FBI to “interview whoever they deem appropriate”;<sup>152</sup>
- An October 1 statement by President Trump that “[t]he FBI should interview anybody that they want within reason. . . . But they should also be guided, and I’m being guided, by what the senators are looking for”;<sup>153</sup>
- An October 1 Washington Post article with the headline, “White House agrees to expand Kavanaugh probe slightly as McConnell signals vote is imminent”;<sup>154</sup>
- An October 1 CNN article in which a White House official is reported as telling CNN “that the White House has made it clear to the FBI that agents are not limited in their expanded background search”;<sup>155</sup> and
- An October 1 CBS News article stating that “[t]he White House has authorized the FBI to expand its supplemental background investigation to include interviews of anyone it deems necessary to vet claims of sexual misconduct against Supreme Court nominee Brett Kavanaugh, a Justice Department official and an administration official briefed on the development confirm to CBS News.”<sup>156</sup>

The FBI received no response to this additional request for clarification on whether it could take additional investigative steps beyond what the Trump White House had authorized. Finally, on October 3, 2018, at the request of Leland Keyser—whom Ford alleged was at the gathering at which Kavanaugh assaulted her—the White House asked for an additional limited-inquiry interview of Keyser.<sup>157</sup>

As this correspondence reveals, contrary to President Trump’s public pronouncements, the Trump White House directed the FBI’s supplemental background investigation through narrow requests for a small number of limited-inquiry interviews, beyond which the FBI was not authorized to investigate. These limitations prevented the FBI from pursuing witnesses and tips that, among other things, might have provided evidence corroborating the allegations against Kavanaugh.

2. *The Trump White House exercised complete control over the scope of the Kavanaugh supplemental background investigation, contrary to misleading statements the FBI made to Senators and the public*

Although the FBI was not directly responsible for the supplemental background investigation's shortcomings, its own lack of clear, specific policies governing such investigations allowed the Trump White House to wield near-total control over the investigation's scope—and to mislead the Senate and the public about the thoroughness of that investigation. While former President Trump was falsely claiming that the FBI had full discretion to investigate the allegations against Kavanaugh, the FBI misleadingly maintained that it had conducted the supplemental background investigation—in the words of Trump White House Counsel Don McGahn—“by the book.”<sup>158</sup> What the FBI did not admit until later, however, is that, when it comes to supplemental background investigations, there is no book. Indeed, based on Senate investigators' review of almost 300 pages of internal FBI guidance documents, the FBI has *no* specific protocols governing supplemental background investigations, aside from a general reference in its memorandum of understanding with the White House, as discussed below. Senate investigators could not identify—and the FBI did not provide—any FBI document that would guide agents during a supplemental background investigation, beyond instructions from the White House.

Nonetheless, over several years following the Kavanaugh supplemental background investigation, FBI officials repeatedly represented to Senators that the investigation was conducted consistent with ordinary FBI policies. Director Wray testified in 2018 to then-Senator Harris that the investigation was “limited in scope” but “consistent with the standard process for such investigations.”<sup>159</sup> He also testified that he spoke with the FBI's Security Division background investigation “specialists,” who “assured” him that the Trump White House's directives were “consistent with [the investigators'] experience and the standard process.”<sup>160</sup> In 2019, Director Wray further testified to Senator Whitehouse that he “consulted at length” with the FBI officials responsible for the background investigation “to make sure that that investigation . . . was done consistent with . . . longstanding policies, practices, and procedures.”<sup>161</sup>

Senators were stymied in trying to determine what these “longstanding policies, practices, and procedures” were. Crucially, the FBI failed to convey to the Senate and the public that the FBI regards supplemental background investigations as distinct from—and involving different procedures than—both ordinary criminal investigations and routine “full field” background investigations for nominees. The FBI's best-known function, detecting and investigating potential crimes against the United States, is an authority granted by statute.<sup>162</sup> In an ordinary criminal investigation, the FBI can undertake “[a]ll lawful methods” to “detect, obtain information about, or prevent or protect against federal crimes.”<sup>163</sup> FBI agents thus have “the discretion to, among other things, follow leads where appropriate and accept voluntary information and evidence from the public.”<sup>164</sup> By contrast, as explained below, routine, full-field background investigations conducted of every nominee follow a more limited practice set forth in a March 2010 Memorandum of Understanding (MOU) between the Department of Justice and White House and accompanying guidance.<sup>165</sup> And *supplemental* background investigations of the type at issue here are even more constrained, apparently done at the sole discretion of the White House.

The FBI's authority to conduct ordinary, full-field background investigations flows from the MOU, which provides that the FBI generally operates “as an investigative service provider (ISP) for federal background investigations.”<sup>166</sup> Accordingly, “the FBI responds to requests from the Office of White House Counsel and other government entities to conduct [background investigations] of candidates for certain positions.”<sup>167</sup> According to the FBI,

The FBI's function as an ISP is purely fact finding. The authorities, policies, and procedures relied on by the FBI to conduct [background investigations] are not the same as authorities, policies, and procedures used to investigate criminal matters. Accordingly, the FBI division responsible for conducting [background investigations] is the Security Division, which is separate from the divisions responsible for investigating criminal matters.<sup>168</sup>

Pursuant to the MOU, the White House normally requests a “full-field background investigation” for each nominee before Senate consideration.<sup>169</sup> During a full-field background investigation, the FBI's role under the MOU is to gather “facts and information” relevant to the nominee's suitability and trustworthiness for the federal government position to which the person has been nominated.<sup>170</sup> These investigations include interviewing the nominee, reviewing law enforcement and other official records, and interviewing third parties to compile a report on the nominee's residential, education, financial, criminal, and employment history.<sup>171</sup> If “during the course of the background investigation the FBI discovers any adverse . . . information bearing on the suitability or trustworthiness of” a nominee, the MOU requires the FBI to “promptly inform” the White House.<sup>172</sup>

Internal FBI directives go further. During the full-field investigation process, the FBI ordinarily can conduct follow-up investigations at its discretion without additional instructions from the White House if the follow-up investigation is within the scope of the original investigation request. FBI guidance directs agents to probe any “derogatory information” that emerges during an investigation, including “[a]ny activity or conduct that could be used to influence, pressure, coerce, or compromise the candidate in any way, or that could have an adverse impact on the candidate's character, judgment, stability, discretion, trustworthiness, or responsibility.”<sup>173</sup> Thus:

If the [background investigation] develops information of alleged misconduct or any other type of unfavorable information or issues which may be pertinent to the candidate, . . . all aspects of the allegation or issue are thoroughly explored. Inquiries will be conducted, within the parameters of the [background investigation], in an effort to substantiate or refute the information, and both sides of the allegation or issue are fully reported to the client entity. . . . Normally, the candidate is interviewed in an attempt to address and/or resolve any issues or allegations and the candidate's response is made part of the [background investigation].<sup>174</sup>

The FBI follows a different practice for supplemental background investigations, which the Trump Administration hid from the Senate and the public when questions arose about the procedures the FBI followed to investigate the sexual-assault allegations against Kavanaugh. Should particular issues or questions arise about a nominee's fitness, the White House may request a supplemental background investigation—or, as the FBI calls it, a “limited inquiry”—to investigate further,<sup>175</sup> as it did when the allegations of sexual assault against Kavanaugh arose. During such an investigation, far from following its playbook for ordinary background investigations, during which “all aspects of the allegation or issue are thoroughly explored,” the FBI's investigative steps are at the sole discretion of the White House. As the FBI explained in a September 2022 letter:

After a full [background investigation] is complete, it is not uncommon for the WHCO [White House Counsel's Office] to ask the FBI to conduct limited follow-up. That follow-up, which the FBI calls a supplemental [background investigation], is conducted in response to specific requests from the WHCO. Accordingly, the scope of any supplemental [background investigation] will be



unique to the nomination and at the WHCO's discretion. Such requests can range from requests for additional documentation to directives to interview additional witnesses.<sup>176</sup>

That letter went on to explain that “[t]he FBI does not have the independent authority to expand the scope of a supplemental [background investigation] outside the requesting agency’s parameters.”<sup>177</sup> Similarly, the FBI wrote in 2021 that it “does not have authority under the MOU to unilaterally conduct further investigative activity absent instructions from the requesting entity.”<sup>178</sup>

An FBI Security Division official involved in the Kavanaugh supplemental background investigation echoed this characterization during an interview with Senate investigators. According to that official, the FBI’s discretion to conduct a supplemental background investigation is more limited than in a full background investigation because the White House has not “loaned” the FBI the same authority to investigate: During a full background investigation, the White House “loans” the FBI “full authority,” while during a supplemental investigation, the White House “loans” only the authority to conduct whatever limited inquiry the White House defines.<sup>179</sup> Senate investigators cannot identify, nor could the Security Division official point to, any text in the MOU specifically supporting such an interpretation or requiring such strict parameters during limited inquiries. It appears to be a matter of practice.

When the Trump White House and FBI misleadingly told the Senate and the public that the Kavanaugh supplemental background investigation would be conducted “by the book” and “in accordance with the agency’s standard operating procedures,” they actually meant that the Trump Administration would have full control over the scope and investigative steps employed during the investigation. An ordinary, full-field background investigation is governed by express procedures in the MOU and associated guidance. The FBI’s “standard operating procedures” in the Kavanaugh supplemental background investigation involved taking step-by-step direction from political officials at the Trump White House, who limited the scope of the investigation to ensure no corroborating evidence would be discovered.

## CONCLUSION AND NEXT STEPS

On October 2, 2018, The Washington Post published an op-ed by Senator Coons, who helped negotiate the Senate Judiciary Committee’s agreement to request the FBI supplemental background investigation. In that piece, Senator Coons wrote that he was “very concerned that we might not get the prompt but thorough investigation that these serious allegations [against Kavanaugh] warrant and that the Senate and the American people deserve.”<sup>180</sup> According to Senator Coons, for the ongoing FBI investigation to be credible, the Trump White House needed to clarify the scope of the investigation and “what procedures are in place for the investigation.”<sup>181</sup> In addition, the FBI must be “able to pursue the facts wherever they lead,” including interviews of Ford, Kavanaugh, and “others they identify and whomever the FBI finds in the course of its investigation who can corroborate or dispute their accounts.”<sup>182</sup>

We now know those things never happened. The Trump White House prohibited the FBI both from choosing whom to interview and from following up on potential leads that might have corroborated the allegations. Several Senators expressly cited the supplemental background investigation’s apparent failure to uncover corroborating evidence to justify their decision to vote to confirm Kavanaugh. In reality, the White House had purposely circumscribed the investigation to prevent the FBI from collecting such evidence. As a result, Senators cast their vote on the confirmation of a Supreme Court nominee credibly accused of sexual assault by multiple women on the basis of a truncated and incomplete investigation about whose scope the Senators had been misled.

Reliable background investigations of judicial nominees are crucial to the Senate’s constitutional duty to provide advice and consent. There is no reason to doubt that the Senate can rely on the FBI’s ordinary process for conducting routine, “full-field” background investigations of nominees. The Kavanaugh supplemental background investigation was unusual, even for a supplemental background investigation, in that most such investigations are employed to follow up on relatively minor, discrete issues in a nominee’s background.

As the Kavanaugh episode reveals, the FBI’s process for conducting supplemental background investigations can be easily manipulated to prevent a thorough investigation into potentially disqualifying allegations against a nominee. Precise recommendations to avoid the shortcomings that plagued the Kavanaugh supplemental background investigation would require additional oversight investigation (including potential information requests to the National Archives); better cooperation from the executive branch in providing that information; and coordination between the White House, DOJ, the FBI, and the Senate.

This oversight inquiry has made clear that some commonsense, basic improvements should be swiftly implemented. The FBI supplemental background investigation process would benefit from greater transparency. The FBI and White House should implement clear, written procedures that apply uniformly to the conduct of supplemental background investigations—or at least to situations like the Kavanaugh nomination, where major allegations of misconduct surface after a nominee’s initial background investigation is complete. The Senate should have a clear picture of what investigatory steps the FBI took and whether the White House imposed restrictions that prevent the FBI from uncovering the truth. Only then can the Senate assess the adequacy of a supplemental background investigation and know if it was truly conducted “by the book.” Only then can the Senate be assured that a supplemental background investigation is used to gather rather than suppress information.

- <sup>1</sup> Letter from Christine Blasey Ford to Sen. Dianne Feinstein (July 30, 2018) (enclosure to Letter from Sen. Dianne Feinstein to Sen. Charles Grassley (Sept. 20, 2018)), <https://s3.documentcloud.org/documents/4932636/2018-09-20-Feinstein-to-Grassley-July-30-Letter.pdf>.
- <sup>2</sup> *Nomination of the Hon. Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 115th Cong., at 685 (Sept. 27, 2018) [hereinafter Kavanaugh Hearing] (testimony of Hon. Brett M. Kavanaugh).
- <sup>3</sup> Ronan Farrow & Jane Mayer, *Senate Democrats Investigate a New Allegation of Sexual Misconduct, From Brett Kavanaugh's College Years*, *NEW YORKER* (Sept. 23, 2018), <https://www.newyorker.com/news/news-desk/senate-democrats-investigate-a-new-allegation-of-sexual-misconduct-from-the-supreme-court-nominee-brett-kavanaughs-college-years-deborah-ramirez>.
- <sup>4</sup> Kelsey Snell & Brett Neely, *Kavanaugh Denies Fresh Harassment Allegations From College Classmate Deborah Ramirez*, *NPR* (Sept. 23, 2018), <https://www.npr.org/2018/09/23/650979665/kavanaugh-denies-fresh-harassment-allegations-from-college-classmate>.
- <sup>5</sup> Kavanaugh Hearing, *supra* note 2, at 634–35 (Sept. 27, 2018) (testimony of Dr. Christine Blasey Ford).
- <sup>6</sup> *Id.* at 646.
- <sup>7</sup> *Id.* at 635.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.*
- <sup>10</sup> *Id.* at 635, 645.
- <sup>11</sup> *Id.* at 635.
- <sup>12</sup> *Id.* at 685, 683 (testimony of Hon. Brett M. Kavanaugh).
- <sup>13</sup> *Id.* at 685, 687, 693–94.
- <sup>14</sup> *Id.* at 635 (testimony of Dr. Christine Blasey Ford).
- <sup>15</sup> Press Release, S. Comm. on the Judiciary, *Statement from the Senate Judiciary Committee* (Sept. 28, 2018), <https://www.judiciary.senate.gov/press/rep/releases/statement-from-the-senate-judiciary-committee> [hereinafter Sept. 28, 2018, Press Release].
- <sup>16</sup> *Id.*
- <sup>17</sup> Press Release, S. Comm. on the Judiciary, *Senate Judiciary Committee Receives Supplemental Background Investigation File on Kavanaugh Nomination* (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/rep/releases/senate-judiciary-committee-receives-supplemental-background-investigation-file-on-kavanaugh-nomination> [hereinafter Oct. 4, 2018, Press Release]; Press Release, S. Comm. on the Judiciary, *Supplemental FBI Investigation Executive Summary* (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/rep/releases/supplemental-fbi-investigation-executive-summary> [hereinafter Oct. 4, 2018, Executive Summary Press Release].
- <sup>18</sup> Oct. 4, 2018, Press Release, *supra* note 17.
- <sup>19</sup> Elana Schor & Burgess Everett, *Senate asks Kavanaugh about fourth misconduct accusation*, *POLITICO* (Sept. 26, 2018), <https://www.politico.com/story/2018/09/26/jockeying-over-evidence-kavanaugh-hearing-842711>.
- <sup>20</sup> *Executive Business Meeting: S. Comm. on the Judiciary*, 115th Cong., at 02:51:55 (Sept. 28, 2018), <https://www.judiciary.senate.gov/committee-activity/hearings/09/28/2018/executive-business-meeting> (statement of Sen. Chris Coons).
- <sup>21</sup> Eric Bradner et al., *Trump orders FBI probe into Kavanaugh; Senate vote delayed*, *CNN* (Sept. 29, 2018), <https://www.cnn.com/2018/09/28/politics/kavanaugh-senate-judiciary-vote/index.html>.
- <sup>22</sup> Sept. 28, 2018, Press Release, *supra* note 15.
- <sup>23</sup> Bradner et al., *supra* note 21.
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- <sup>43</sup> Oct. 4, 2018, Executive Summary Press Release, *supra* note 17.
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*the Subcomm. on Commerce, Justice, Science, and Related Agencies, S. Comm. on Appropriations, 117th Cong. (May 25, 2022) [hereinafter Leahy QFR].*

<sup>54</sup> 2018 HSGAC Threats Hearing, *supra* note 53, at 28 (testimony of Hon. Christopher A. Wray, Dir., FBI).

<sup>55</sup> *Id.* at 29.

<sup>56</sup> 2019 FBI Oversight Hearing, *supra* note 53, at 01:17:56–01:18:15, 01:22:58–01:23:04 (testimony of Hon. Christopher A. Wray, Dir., FBI).

<sup>57</sup> *Id.* at 01:19:19–01:19:23.

<sup>58</sup> Aug. 1, 2019, Letter, *supra* note 52.

<sup>59</sup> *Id.*

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<sup>62</sup> Press Release, Sen. Chuck Grassley, *Johnson, Grassley Release FBI, DOJ, State Department Records Related To The FBI's Crossfire Hurricane Investigation* (Dec. 3, 2020), <https://www.grassley.senate.gov/news/news-releases/johnson-grassley-release-fbi-doj-state-department-records-related-fbi-s-crossfire>; Press Release, Sen. Chuck Grassley, *Grassley, Johnson Release Recently Declassified Strzok Messages About FBI's Midyear And Crossfire Hurricane Investigations* (Dec. 18, 2020), <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-release-recently-declassified-strzok-messages-about-fbi-s>; Press Release, S. Comm. on the Judiciary, *FISA Abuse Investigation* (Jan. 15, 2021), <https://www.judiciary.senate.gov/fisa-investigation?all=true> [hereinafter FISA Press Release].

<sup>63</sup> FISA Press Release, *supra* note 62.

<sup>64</sup> Garland Nomination Hearing, *supra* note 53, at 23–24, 91 (statement of Sen. Sheldon Whitehouse); 2021 FBI Oversight Hearing, *supra* note 53, at 01:33:00–01:41:26 (statement of Sen. Sheldon Whitehouse).

<sup>65</sup> Mar. 11, 2021, Letter, *supra* note 52; Mar. 11, 2022, Letter, *supra* note 52; Apr. 19, 2022, Letter, *supra* note 52; Aug. 11, 2022, Letter, *supra* note 52; Sept. 8, 2022, Letter, *supra* note 52; Nov. 14, 2022, Letter, *supra* note 52; Feb. 21, 2023, Letter, *supra* note 52.

<sup>66</sup> 2021 FBI Oversight Hearing, *supra* note 53, at 01:37:14–01:37:21, 01:40:52–01:41:00 (statement of Christopher A. Wray, Dir., FBI); Email from Office of Cong. Affs., FBI, to Office of Sen. Sheldon Whitehouse, *Re: Follow-up* (Mar. 2, 2021, 3:55 P.M. EST) (on file with author) [hereinafter Mar. 2, 2021, Email].

<sup>67</sup> Email from Office of Cong. Affs., FBI, to Office of Sen. Sheldon Whitehouse, *Re: RE: Follow-up* (Mar. 26, 2021, 8:41 P.M. EDT) (on file with author). The same day, Senators Whitehouse and Durbin requested that the Government Accountability Office (GAO) investigate DOJ's non-responsiveness to congressional inquiries. After numerous attempts to secure DOJ's cooperation with that review, GAO informed Senators Whitehouse and Durbin in November 2021 that DOJ's "failure to provide requested information" left GAO "unable to make progress" on the senators' request. Letter from Charles Johnson, Managing Director of Homeland Sec. and Justice, Gov't Accountability Off., to Sen. Richard J. Durbin and Sen. Sheldon Whitehouse, *Re: Status of GAO Engagement on DOJ Responsiveness to Congressional Inquiries* (Nov. 4, 2021) (on file with author). After DOJ eventually began complying with GAO's statutorily authorized audit, GAO completed and published in November 2022 a report finding that DOJ lacked effective policies and procedures for tracking and responding to congressional inquiries. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105231, DEPARTMENT OF JUSTICE: ACTIONS NEEDED TO BETTER TRACK AND MONITOR RESPONSES TO CONGRESSIONAL CORRESPONDENCE (Nov. 2022), <https://www.gao.gov/assets/gao-23-105231.pdf>.

<sup>68</sup> See Mar. 2, 2021, Email, *supra* note 66.

<sup>69</sup> Letter from Jill C. Tyson, Assistant Director, Off. of Cong. Affs., FBI, to Sen. Sheldon Whitehouse & Sen. Christopher A. Coons (June 30, 2021) (on file with author) [hereinafter June 30, 2021, Letter].

<sup>70</sup> See Memorandum of Understanding between the Department of Justice and the President of the United States Regarding Name Checks and Background Investigations Conducted by the Federal Bureau of Investigation (Mar. 4, 2010), <https://www.justice.gov/d9/2023-10/09.29.23.%20--%20Judicial%20Nominations%20-%20Interim.pdf> [hereinafter 2010 MOU]. The MOU was released pursuant to a FOIA request by BuzzFeed. *Buzzfeed, Inc. v. Fed. Bureau of Investigation*, 613 F. Supp. 3d 453 (D.D.C. 2020).

<sup>71</sup> July 21, 2021, Letter, *supra* note 52.

<sup>72</sup> *Id.*

<sup>73</sup> Aug. 12, 2021, Email, *supra* note 52; Sept. 10, 2021 Letter, *supra* note 52.

<sup>74</sup> Nassar Hearing, *supra* note 53, at 03:49:54–03:55:34 (statement of Sen. Sheldon Whitehouse).

- <sup>75</sup> Letter from Jill C. Tyson, Assistant Dir., Off. of Cong. Affs., FBI, to Sen. Sheldon Whitehouse (Oct. 1, 2021) (on file with author) [hereinafter Oct. 1, 2021, Letter].
- <sup>76</sup> *Id.*
- <sup>77</sup> Apr. 19, 2022, Letter, *supra* note 52; July 27, 2022, Letter, *supra* note 52; July 28, 2022, Letter, *supra* note 52; Aug. 11, 2022, Letter, *supra* note 52; Sept. 8, 2022, Letter, *supra* note 52; Nov. 14, 2022, Letter, *supra* note 52; June 27, 2023, Letter, *supra* note 52.
- <sup>78</sup> Leahy QFR, *supra* note 53.
- <sup>79</sup> 2022 FBI Oversight Hearing, *supra* note 53, at 02:15:39–02:16:00 (testimony of Hon. Christopher A. Wray, Dir., FBI).
- <sup>80</sup> Letter from Jill C. Tyson, Assistant Dir., Off. of Cong. Affs., FBI, to Sen. Sheldon Whitehouse (Sept. 6, 2022) (on file with author) [hereinafter Sept. 6, 2022, Letter].
- <sup>81</sup> See, e.g., *id.*; Nov. 14, 2022, Letter, *supra* note 52; Email from Office of Sen. Sheldon Whitehouse, to Off. of Leg. Aff., DOJ, *Re: Re: Kavanaugh Supplemental BI Matter* (Oct. 19, 2023, 2:52 P.M. EDT).
- <sup>82</sup> Sept. 8, 2022, Letter, *supra* note 52; Nov. 14, 2022, Letter, *supra* note 52.
- <sup>83</sup> June 27, 2023, Letter, *supra* note 52.
- <sup>84</sup> Email from Office of Sen. Sheldon Whitehouse, to Off. of Leg. Aff., DOJ, *Re: RE: Letter from Sens. Whitehouse and Coons re Kavanaugh Supplemental BI* (Sept. 18, 2023, 8:49 P.M. EDT).
- <sup>85</sup> *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862, 865 (2020); see *Watkins v. United States*, 354 U.S. 178, 187–88 (1957) (“It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.”).
- <sup>86</sup> Oct. 4, 2018, Executive Summary Press Release, *supra* note 17 (emphasis in original).
- <sup>87</sup> Stephen Collinson, *A day of fury and mistrust as Kavanaugh drama hits final stretch*, CNN (Oct. 5, 2018), <https://www.cnn.com/2018/10/04/politics/senate-receives-fbi-kavanaugh-file/index.html>.
- <sup>88</sup> Jordain Carney, *McConnell lashes out at ‘uncorroborated mud’ thrown at Kavanaugh*, THE HILL (Oct. 4, 2018), <https://thehill.com/blogs/floor-action/senate/409911-mcconnell-lashed-out-at-uncorroborated-mud-thrown-at-kavanaugh/>.
- <sup>89</sup> *The Kavanaugh Report: Reactions From Senators on the Right and Left*, N.Y. TIMES (Oct. 4, 2018), <https://www.nytimes.com/2018/10/04/us/politics/fbi-report-kavanaugh-senators.html>.
- <sup>90</sup> *Id.*
- <sup>91</sup> Elana Schor et al., *Key Republicans signal confidence in FBI report on Kavanaugh*, POLITICO (Oct. 4, 2018), <https://www.politico.com/story/2018/10/04/kavanaugh-confirmation-fbi-report-869433>.
- <sup>92</sup> Press Release, S. Comm. on the Judiciary, *Grassley: With FBI Work Complete, It’s Time to Vote* (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/rep/releases/grassley-with-fbi-work-complete-its-time-to-vote>.
- <sup>93</sup> Michael Burke, *Collins: FBI’s Kavanaugh investigation appears to be ‘very thorough’*, THE HILL (Oct. 4, 2018), <https://thehill.com/homenews/senate/409898-collins-fbis-kavanaugh-investigation-appears-to-be-very-thorough/>.
- <sup>94</sup> *The Kavanaugh Report*, *supra* note 89.
- <sup>95</sup> *Id.*
- <sup>96</sup> Press Release, Sen. Chuck Grassley, *Grassley Statement on Supplemental FBI Background Investigation* (Oct. 2, 2018), <https://www.grassley.senate.gov/news/news-releases/grassley-statement-supplemental-fbi-background-investigation> [hereinafter Oct. 2, 2018, Press Release].
- <sup>97</sup> Herb et al., *supra* note 28.
- <sup>98</sup> Oct. 4, 2018, Executive Summary Press Release, *supra* note .
- <sup>99</sup> Oct. 2, 2018, Press Release, *supra* note 96.
- <sup>100</sup> Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: Update* (Oct. 1, 2018, 5:08 P.M. EDT), BI-000016–17.
- <sup>101</sup> Birnbaum, *supra* note 26.
- <sup>102</sup> Press Release, S. Comm. on the Judiciary Ranking Member Dianne Feinstein, *Feinstein on FBI Investigation: Incomplete, Limited* (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/dem/releases/feinstein-on-fbi-investigation-incomplete-limited>.
- <sup>103</sup> Oct. 4, 2018, Executive Summary Press Release, *supra* note 17 (emphasis in original).
- <sup>104</sup> Ramirez Letter, *supra* note 34.
- <sup>105</sup> *Id.*
- <sup>106</sup> Ford Letter, *supra* note 34.
- <sup>107</sup> Kim, *supra* note 37; Heidi Przybyla & Leigh Ann Caldwell, *Text messages suggest Kavanaugh wanted to refute accus-*



er's claim before it became public, NBC NEWS (Oct. 18, 2018), <https://www.nbcnews.com/politics/supreme-court/mutual-friend-ramirez-kavanaugh-anxious-come-forward-evidence-n915566>.

<sup>108</sup> Senate Democrats Letter, *supra* note 36.

<sup>109</sup> Kim, *supra* note 37.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See, e.g., *id.*; Mayer & Farrow, *The F.B.I Probe Ignored Testimonies*, *supra* note 45; Alice Truong, *What Christine Blasey Ford's witness has to say after being left out of the FBI probe*, QUARTZ (Oct. 6, 2018), <https://qz.com/1415990/read-letter-of-blasey-fords-witness-after-fbis-kavanaugh-probe>.

<sup>113</sup> Robin Pogrebin & Kate Kelly, *Brett Kavanaugh Fit in With the Privileged Kids. She Did Not.*, N.Y. TIMES (Sept. 14, 2019), <https://www.nytimes.com/2019/09/14/sunday-review/brett-kavanaugh-deborah-ramirez-yale.html>.

<sup>114</sup> Mar. 11, 2021, Letter, *supra* note 52.

<sup>115</sup> 2022 FBI Oversight Hearing, *supra* note 53, at 02:10:33–02:11:00 (testimony of Hon. Christopher A. Wray, Dir., FBI).

<sup>116</sup> See, e.g., Kim, *supra* note 37; Mayer & Farrow, *The Confusion*, *supra* note 39; Mayer & Farrow, *The F.B.I Probe Ignored Testimonies*, *supra* note 45; Truong, *supra* note 112.

<sup>117</sup> Mayer & Farrow, *The Confusion*, *supra* note 39; Mayer & Farrow, *The F.B.I Probe Ignored Testimonies*, *supra* note 45; Fox et al., *supra* note 39.

<sup>118</sup> June 30, 2021, Letter, *supra* note 69.

<sup>119</sup> See *infra* notes 122–127 and accompanying text.

<sup>120</sup> *Id.*

<sup>121</sup> Oct. 1, 2021, Letter, *supra* note 75.

<sup>122</sup> Briefing for Senators and Staff on FBI National Threat Operations Center and Security Division Background Investigation Protocols, FBI (Dec. 2, 2021) [hereinafter FBI Briefing].

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, *Re: Update* (Sept. 29, 2018, 12:05 P.M. EDT), BI-000005.

<sup>127</sup> FBI Briefing, *supra* note 122; see also 2022 FBI Oversight Hearing, *supra* note 53, at 02:10:33–02:11:00 (testimony of Hon. Christopher A. Wray, Dir., FBI).

<sup>128</sup> Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: RE: Tip 1217* (Oct. 2, 2018, 8:12 A.M. EDT), BI-000405; Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: RE: Update 10/01 limited inquiry* (Oct. 2, 2018, 1:19 P.M. EDT), BI-000423.

<sup>129</sup> Jacqueline Thomsen, *FBI releases heavily redacted tips from public on Kavanaugh nomination*, THE HILL (May 6, 2019), <https://thehill.com/regulation/court-battles/442373-fbi-releases-heavily-redacted-tips-from-public-on-kavanaugh/>; *Supreme Court Justice Brett Kavanaugh Supplemental Background Investigation and Related Tip Records*, FBI Records: The Vault, The Federal Bureau of Investigation, <https://vault.fbi.gov/supreme-court-justice-brett-kavanaugh-supplemental-background-investigation-and-related-tip-records>.

<sup>130</sup> Stracqualursi, *supra* note 29; Sept. 29, 2018, Trump Tweet, *supra* note 29.

<sup>131</sup> Email from [REDACTED], to [REDACTED], FBI, *Re: senate investigation* (Sept. 28, 2018, 5:38 P.M. EDT), BI-000026.

<sup>132</sup> Materials provided by the FBI support this proposition, but DOJ has requested they not be cited in this report.

<sup>133</sup> *Id.*

<sup>134</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to [REDACTED], Security Division, FBI, *Re: Limited Inquiry Request* (Sept. 28, 2018, 3:29 P.M. EDT), BI-000001; Email from Dino L. LaVerghetta, Off. of White House Counsel, to [REDACTED], Security Division, FBI, *Re: Re: Limited Inquiry Request* (Sept. 28, 2018, 4:25 P.M. EDT), BI-000002; Email from Dino L. LaVerghetta, Off. of White House Counsel, to [REDACTED], Security Division, FBI, & Jennifer L. Moore, Security Division, FBI, *Re: Limited Inquiry: Smyth and Keyser* (Sept. 28, 2018, 5:21 P.M. EDT), BI-000003; Email from Dino L. LaVerghetta, Off. of White House Counsel, to [REDACTED], Security Division, FBI, & Jennifer L. Moore, Security Division, FBI, *Re: Limited Inquiry: Ramirez* (Sept. 28, 2018, 5:40 P.M. EDT), BI-000004.

<sup>135</sup> Email from LaVerghetta to [REDACTED], *Re: Re: Limited Inquiry Request*, BI-000002, *supra* note 134.

<sup>136</sup> Email from Jacqueline Maguire, FBI, to David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov't Affs., FBI, Andrew W.

Vale, FBI, Gerald Roberts Jr., FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: NBC News Story* (Sept. 29, 2018, 5:39 P.M. EDT), BI-000009–12; Email from Jacqueline Maguire, FBI, to David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov’t Affs., FBI, Andrew W. Vale, FBI, Gerald Roberts Jr., FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: POTUS Comments* (Sept. 29, 2018, 5:53 P.M. EDT), BI-000008–09; Email from Jacqueline Maguire, FBI, to David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov’t Affs., FBI, Andrew W. Vale, FBI, Gerald Roberts Jr., FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: POTUS Tweet* (Sept. 29, 2018, 11:05 P.M. EDT), BI-000008.

<sup>137</sup> Email from Maguire to Bowdich et al., *Re: NBC News Story*, BI-000009–12, *supra* note 136; *see* Dilanian et al., *supra* note 24.

<sup>138</sup> Email from Maguire to Bowdich et al., *Re: POTUS Comments*, BI-000008–09, *supra* note 136; *see* NBC News (@NBC-News), TWITTER (Sept. 29, 2018, 5:31 PM), <https://x.com/NBCNews/status/1046150399592411137>.

<sup>139</sup> Email from Maguire, FBI to Bowdich et al., *Re: POTUS Tweet*, BI-000008, *supra* note 136; *see* Sept. 29, 2018, Trump Tweet, *supra* note 29.

<sup>140</sup> Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: Fwd: POTUS Tweet* (Sept. 30, 2018, 8:09 A.M. EDT), BI-000008.

<sup>141</sup> Email from Jennifer L. Moore, Security Division, FBI, to Gerald Roberts Jr., FBI, & Andrew W. Vale, FBI, *Re: Re: Conference Call* (Sept. 30, 2018, 12:23 P.M. EDT), BI-000032; Email from Jennifer L. Moore, Security Division, FBI, to Gerald Roberts Jr., FBI, *Re: Re: Conference Call* (Sept. 30, 2018, 10:46 A.M. EDT), BI-000033.

<sup>142</sup> Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: Update and Guidance* (Sept. 30, 2018, 8:10 P.M. EDT), BI-000013–14.

<sup>143</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, *Re: Re: Update and Guidance* (Oct. 1, 2018, 5:49 A.M. EDT), BI-000013.

<sup>144</sup> Email from Jacqueline Maguire, FBI, to David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov’t Affs., FBI, Andrew W. Vale, FBI, Gerald Roberts Jr., Security Division, FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: Latest NYT Reporting...* (Oct. 1, 2018, 1:37 P.M. EDT), BI-000059.

<sup>145</sup> Email from Gerald Roberts Jr., Security Division, FBI, to Jacqueline Maguire, FBI, David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov’t Affs., FBI, Andrew W. Vale, FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: Re: Latest NYT Reporting...* (Oct. 1, 2018, 1:47 P.M. EDT), BI-000059.

<sup>146</sup> Email from Gerald Roberts Jr., Security Division, FBI, to Jacqueline Maguire, FBI, David L. Bowdich, FBI, Jill C. Tyson, Off. of Gov’t Affs., FBI, Andrew W. Vale, FBI, Zachary J. Harmon, FBI, & Dana Boente, FBI, *Re: Re: Latest NYT Reporting...* (Oct. 1, 2018, 1:50 P.M. EDT), BI-000064.

<sup>147</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, *Re: Limited Inquiry Request* (Oct. 1, 2018, 2:17 P.M. EDT), BI-000015.

<sup>148</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, and [REDACTED], Security Division, FBI, *Re: Limited Inquiry Request* (Oct. 1, 2018, 5:09 P.M. EDT), BI-000018.

<sup>149</sup> *See, e.g.*, Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, *Re: RE: Update on [REDACTED] and [REDACTED]* (Oct. 2, 2018, 3:04 P.M. EDT), BI-000019 (White House contacting FBI “to request that a line of questioning be added to [REDACTED] limited inquiry interview”).

<sup>150</sup> Email from Jennifer L. Moore, Security Division, FBI, to Dino L. LaVerghetta, Off. of White House Counsel, *Re: Confirmation on Inquiry* (Oct. 2, 2018, 3:48 P.M. EDT), BI-000020.

<sup>151</sup> Michael Balsamo, *Trump says FBI has ‘free rein’ in Kavanaugh investigation*, PBS (Sept. 30, 2018), <https://www.pbs.org/newshour/politics/trump-says-fbi-has-free-rein-in-kavanaugh-investigation>.

<sup>152</sup> Sept. 29, 2018, Trump Tweet, *supra* note 29.

<sup>153</sup> Baker & Schmidt, *supra* note 33.

<sup>154</sup> Devlin Barrett et al., *White House agrees to expand Kavanaugh probe slightly as McConnell signals vote is imminent*, WASH. POST (Oct. 1, 2018), [https://www.washingtonpost.com/politics/trump-adds-to-confusion-over-scope-of-fbi-investigation-of-kavanaugh-accusations/2018/10/01/1aa5e922-c561-11e8-b1ed-1d2d65b86d0c\\_story.html](https://www.washingtonpost.com/politics/trump-adds-to-confusion-over-scope-of-fbi-investigation-of-kavanaugh-accusations/2018/10/01/1aa5e922-c561-11e8-b1ed-1d2d65b86d0c_story.html).

<sup>155</sup> Dana Bash et al., *Key GOP senators make clear to White House that they want ‘real’ investigation on Kavanaugh*, CNN (Oct. 1, 2018), <https://www.cnn.com/2018/10/01/politics/congress-fbi-kavanaugh-white-house/index.html>.

<sup>156</sup> Paula Reid et al., *White House authorizes broader FBI interviews in Kavanaugh review*, CBS NEWS (Oct. 1, 2018), <https://www.cbsnews.com/news/white-house-authorizes-broader-fbi-interviews-in-kavanaugh-review/>.

<sup>157</sup> Email from Dino L. LaVerghetta, Off. of White House Counsel, to Jennifer L. Moore, Security Division, FBI, *Re: Keyser* (Oct. 3, 2018, 10:46 A.M. EDT), BI-000021.

<sup>158</sup> Stolberg, *supra* note 30.

<sup>159</sup> 2018 HSGAC Threats Hearing, *supra* note 53, at 28 (testimony of Hon. Christopher A. Wray, Dir., FBI).  
<sup>160</sup> *Id.*  
<sup>161</sup> 2019 FBI Oversight Hearing, *supra* note 53, at 01:17:56–01:18:15, 01:22:58–01:23:04 (testimony of Hon. Christopher A. Wray, Dir., FBI).  
<sup>162</sup> 28 U.S.C. § 533.  
<sup>163</sup> Dep’t of Justice, *The Attorney General’s Guidelines for Domestic FBI Operations*, at 16, 18 (Sept. 29, 2008), <https://justice.gov/archive/opa/docs/guidelines.pdf>.  
<sup>164</sup> Rudy Mehrbani, *Taking Stock of the FBI’s Role in Senate Confirmations after Kavanaugh*, JUST SECURITY (Oct. 9, 2018), <https://www.justsecurity.org/60985/stock-fbis-role-senate-confirmations-kavanaugh/>.  
<sup>165</sup> 2010 MOU, *supra* note 70.  
<sup>166</sup> June 30, 2021, Letter, *supra* note 69.  
<sup>167</sup> *Id.*  
<sup>168</sup> *Id.*  
<sup>169</sup> See 2010 MOU, *supra* note 70, § 2(a) n.3.  
<sup>170</sup> *Id.* § 2(b).  
<sup>171</sup> See June 30, 2021, Letter, *supra* note 69.  
<sup>172</sup> 2010 MOU, *supra* note 70, § 4(a).  
<sup>173</sup> Training Materials, Federal Bureau of Investigation, CARLABFAD (undated), BI-000194.  
<sup>174</sup> Special Inquiry and General Background Investigation Unit, Federal Bureau of Investigation, *2016 Presidential Transitions: Office of the President-Elect* (Dec. 2016), BI-000286 (emphases added).  
<sup>175</sup> 2010 MOU, *supra* note 70, § 2(a) n.3.  
<sup>176</sup> Sept. 6, 2022, Letter, *supra* note 80 (emphasis added).  
<sup>177</sup> *Id.*  
<sup>178</sup> June 30, 2021, Letter, *supra* note 69.  
<sup>179</sup> FBI Briefing, *supra* note 122.  
<sup>180</sup> Chris Coons, *We Need the Facts on Kavanaugh. Here’s How the FBI can Get Them.*, WASH. POST (Oct. 2, 2018), [https://www.washingtonpost.com/opinions/heres-what-the-fbi-investigation-into-the-kavanaugh-allegations-should-look-like/2018/10/02/8709d4e8-c65b-11e8-9158-09630a6d8725\\_story.html](https://www.washingtonpost.com/opinions/heres-what-the-fbi-investigation-into-the-kavanaugh-allegations-should-look-like/2018/10/02/8709d4e8-c65b-11e8-9158-09630a6d8725_story.html).  
<sup>181</sup> *Id.*  
<sup>182</sup> *Id.*