

December 8, 2021

VIA ELECTRONIC MAIL

The Honorable Richard J. Durbin
Chair, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on
the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Gary C. Peters
Chair, Committee on Homeland
Security & Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Robert J. Portman
Ranking Member,
Committee on Homeland Security &
Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Thomas Jonathan Ossoff
Chair, Permanent Subcommittee on
Investigations,
Committee on Homeland Security &
Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Ronald H. Johnson
Ranking Member, Permanent
Subcommittee on Investigations,
Committee on Homeland Security &
Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Jerrold L. Nadler
Chair, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable James D. Jordan
Ranking Member, Committee on
the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Carolyn B. Maloney
Chair, Committee on Oversight
and Reform
United States House of Representatives
Washington, D.C. 20515

The Honorable James R. Comer, Jr.
Ranking Member, Committee on
Oversight and Reform
United States House of Representatives
Washington, D.C. 20515

Re: Request to investigate FBI's raid of news organization Project Veritas

Dear Senators Durbin, Grassley, Peters, Portman, Ossoff, and Johnson, and
Representatives Nadler, Jordan, Maloney and Comer:

I write on behalf of my client Project Veritas, a non-profit news organization, to draw your attention to an egregious attack by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) on this news organization and to request that you follow up on recent oversight letters to the DOJ regarding the FBI's assault on Project Veritas's First Amendment rights. Protecting the First Amendment and a free press should be a bipartisan priority.

The FBI executed search warrants in dawn raids at the homes of Project Veritas founder James O'Keefe and two former Project Veritas journalists last month. The United States Attorney's Office for the Southern District of New York also served Project Veritas with a grand jury subpoena two days before the search at Mr. O'Keefe's home. The FBI's actions, if left unchecked, would punish independent journalism and a free press.¹

The FBI claims to be investigating the alleged theft of the President's 40-year-old daughter's diary. Sources provided that diary to Project Veritas in September 2020, representing that it was found abandoned in a place where Ashley Biden had been staying. Project Veritas researched, but ultimately did not run, a news story about the diary's contents and provided the diary to state law enforcement in November 2020. A year later, in a brazen and illegal attack on the First and Fourth Amendments and a free press, the FBI launched its dawn raids against Project Veritas reporters.

Senate Judiciary Committee Ranking Member Charles Grassley, Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Ranking Member Ronald Johnson, House Judiciary Committee Ranking Member James Jordan, House Oversight Committee Ranking Member James Comer, and Senator Thomas Cotton all wrote to Attorney General Merrick Garland to request information relating to the FBI's attack on the First Amendment. (Copies of these letters are attached).

Senate Judiciary Ranking Member Grassley requested additional information "[g]iven the brazen and inconsistent standards employed by the Department against Project Veritas[.]" Senator Grassley asked for a response by December 1, 2021. DOJ ignored that request. House Judiciary Ranking Member Jordan, House Oversight Committee Ranking Member Comer, and Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Ranking Member Johnson likewise

¹ Indeed, even Project Veritas's critics have raised concern about the FBI's actions in this case. *See, e.g., ACLU Comment on FBI Raid of Project Veritas Founder*, ACLU (Nov. 14, 2021), <https://www.aclu.org/press-releases/aclu-comment-fbi-raid-project-veritas-founder> (after criticizing Project Veritas, stating: "Nevertheless, the precedent set in this case could have serious consequences for press freedom. Unless the government had good reason to believe that Project Veritas employees were directly involved in the criminal theft of the diary, it should not have subjected them to invasive searches and seizures."); Josh Gerstein, *FBI raid on Project Veritas founder's home sparks questions about press freedom*, POLITICO (Nov. 13, 2021), <https://www.politico.com/news/2021/11/13/raid-veritas-okeefe-biden-press-521307> (quoting Trevor Timm of the Freedom of the Press Foundation: "I don't personally like Project Veritas at all, but imagine this was a liberal org under Trump. Not a good precedent.")

sent correspondence demanding answers by December 2, 2021, because “[t]he FBI’s actions raise questions about whether you are enforcing the prohibition you announced in July – and President Biden endorsed – against federal law enforcement seizing records from journalists.” DOJ ignored this letter too. Senator Cotton’s November 15, 2021, letter requested that Attorney General Garland provide information about the investigation, including how DOJ complied with the regulations governing the steps that DOJ must take to obtain information from the news media, 28 C.F.R. § 50.10. Senator Cotton asked for this information to be provided by November 19, 2021. DOJ ignored that request.

DOJ’s flouting of these inquiries concerning its motivations and disregard for its own regulations compound the harm caused by its searches of journalists’ homes. The motivations for DOJ’s searches are suspect. More than a year after Project Veritas decided *not* to run a story on the diary’s contents and voluntarily provided it to state law enforcement, the FBI belatedly treated it as a criminal entity and launched its dawn raids on November 4 and November 6, 2021. With a battering ram in hand, FBI agents handcuffed Mr. O’Keefe, standing in his underwear, in the hallway outside his apartment, while ten to twelve agents searched his home. They seized two work cell phones containing reporter’s notes and attorney-client privileged information and almost immediately began extracting information from the phones. The FBI refused to pause its extraction for even one day while Project Veritas sought redress before a court. Such a blatant attempt to circumvent judicial review, even after the relevant devices were secured in FBI custody, confirms the disingenuousness of the FBI conduct.

These raids were not justified by any legitimate law enforcement concern. Project Veritas acted lawfully and within its First Amendment right to investigate a potential source of information relevant to the public interest. The Supreme Court has long held that when a news organization publishes “information of great public concern,” the government may not punish it for that publication, even if the information was obtained unlawfully by a third party. *Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001). “Nor may the government go on a fishing expedition among confidential press communications to troll for information on the source of the diary or to try to gin up a claim that the recipient news organization was somehow involved in the initial acquisition of the diary. Such flimsy cause for a sweeping search and seizure threatens all news-gathering operations and can hardly be squared with the Fourth Amendment.” As another court has recognized, collaborating with sources to obtain information—even information that may have been obtained unlawfully—is a “common journalistic practice.” *See Democratic Nat’l Comm. v. Russian Fed’n*, 392 F. Supp. 3d 410, 435 (S.D.N.Y. 2019). Holding a news organization or publisher liable for or even subject to search regarding a theft as a supposed “after-the-fact coconspirator” of stolen information would “eviscerate” First Amendment protections for the press and allow the government to silence and punish journalists who dare to investigate matters that may embarrass politicians. *See id.* The principle is simple: the government can’t punish journalists for lawfully obtaining, investigating, or publishing information—even information that a source may have obtained illegally.

The FBI and DOJ try to justify their targeting of Project Veritas by arguing that it isn't a real news organization, and its reporters aren't real journalists, citing a litany of blogs, student newspapers, and *Newsweek*, seeking to diminish the legitimacy of the upstart competition.² This is absurd. Project Veritas is a news gathering organization that engages in undercover journalism, which has long been a form of investigative journalism used to hold the government, corporations, and other organizations accountable. And as a news organization, it is entitled to the protection the Attorney General promised in his memo. But more importantly, the First Amendment's protection is not limited to those the government or other legacy media deign to call "real" journalists. It belongs to all the people of the United States who engage in reporting and "press" activities, whether formally or informally. As United States District Court for the District of Columbia Chief Judge Beryl A. Howell ruled on November 9, 2021, the protections from governmental fishing expeditions into journalistic organizations applies to any "individual or entity who is, or who purports to be, a member of the news media[.]"³ Neither the FBI nor the DOJ are properly in the role of deciding who is and who is not a journalist. As Glenn Greenwald recently wrote, "None of the rights in the Constitution, including press freedom, was intended to apply only to a small, cloistered, credentialed, privileged group of citizens. The exact opposite was true: the only reason they are valuable as rights is because they enjoy universal application, protecting all citizens."⁴

Project Veritas's right to investigate information of public concern has been threatened by FBI actions that appear to be deliberately misleading. Journalists are, of course, not immune from prosecution for theft. The FBI obtained warrants to raid the homes of Project Veritas reporters by representing to a magistrate judge that the government had probable cause to believe Project Veritas had in some way conspired with its sources to help steal and transport the diary. Despite such a bold claim, the FBI has refused to disclose the informational basis for that claim, and even a basic review of known facts suggests it may well have misled the court that issued the warrant. Had the FBI done its job, it would know that Project Veritas did not play any part in the alleged theft of the diary. The diary was obtained before Project Veritas was even contacted, and it credibly was described as having been abandoned, not stolen.

The FBI cites no evidence that Project Veritas participated in the transport of supposedly stolen property, and even if it had, where such "property" is information already obtained, a news organization cannot be held accountable for the mere conveyance of such

² See Gov. Mem. Opp. Mot. Appointment Special Master, *In re Search Warrant dated November 5, 2021*, No. 1:21-mc-00813-AT (S.D.N.Y.) (ECF No. 29).

³ See Standing Order No. 21-67, *In re Government Applications for Warrants and Court Orders Pursuant to 18 U.S.C. §§ 2703, 2705 & 3213 Pertaining to Records and Communications of the News Media* (D.D.C.) (Nov. 9, 2021).

⁴ Glenn Greenwald, *Kyle Rittenhouse, Project Veritas, and the Inability to Think in Terms of Principles* (Nov. 16, 2021), <https://greenwald.substack.com/p/kyle-rittenhouse-project-veritas>.

information after the fact. Because Project Veritas played no part in the source obtaining this diary or any property that is the subject of this matter, any transport of such property by Project Veritas cannot possibly be deemed a federal crime.

The individual who found the diary had already taken possession of it before sources contacted Project Veritas. That individual told the sources with whom Project Veritas had communicated that the diary and other personal effects were abandoned in a room in which Ashley Biden had previously stayed. And those sources told Project Veritas the same thing. Interviews with those individuals would have made clear that Project Veritas “played no part” in any “illegal interception” of the diary but instead learned about the items only after the sources found them; that Project Veritas’s access to the diary was “obtained lawfully,” even if “the information itself was intercepted unlawfully by someone else,”; and that the subject matter of the diary was “a matter of public concern.” See *Bartnicki*, 532 U.S. at 525.⁵

Only a few months ago, Attorney General Garland claimed to understand that “a free and independent press is vital to the functioning of our democracy.”⁶ And to protect the vital rights of the press, he pledged that DOJ would “no longer use compulsory legal process”—including subpoenas and warrants—“for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering activities.”⁷ Apparently that promise is hollow, at least for journalists who consider publishing information that could embarrass President Biden.

To the best of our knowledge, the FBI has not interviewed the individual who found the abandoned diary and personal items. Nor has it interviewed the source who first communicated with Project Veritas. The FBI has not done so even though it knows the individuals’ identities and has listed them by name in documents before the United States District Court for the Southern District of New York. It is unclear whether the S.D.N.Y. prosecutors have placed a real witness – not an FBI agent – in the grand jury at all. Instead, it has harassed journalists with the most invasive methods possible: the execution of search warrants and seizures of not merely a limited set of communications, but entire electronic devices with broad-ranging and confidential news-gathering information going far beyond the supposed topic under investigation. In ruling on a motion by the Reporters Committee for Freedom of the Press to unseal the search warrant affidavit, the magistrate

⁵ In fact, last October, another news organization published the entire diary on its website, evidencing that information in the diary concerning President Biden was a matter of public interest. Patrick Howley, *FULL RELEASE: Ashley Biden Diary Reveals Child Sex Trauma, Drug Abuse, Resentment for Joe – Whistleblower*, NATIONAL FILE (Oct. 26, 2020), <https://nationalfile.com/full-release-ashley-biden-diary-reveals-child-sex-trauma-drug-abuse-resentment-for-joe-whistleblower/>.

⁶ Attorney General Memorandum for the Deputy Attorney General, The Associate Attorney General, Heads of Department Components, United States Attorneys, Federal Prosecutors, July 19, 2021, available at <https://www.justice.gov/ag/page/file/1413001/download>.

⁷ *Id.*

judge who authorized the search warrant declined to unseal the underlying affidavit in support of the warrant. In her Order, the magistrate observed, "[T]he Court is attentive to the fact that the Government is investigating potential criminal activity relating to the transmission of personal information about a private citizen, who happens to be the daughter of President Biden."⁸ That is precisely the point — it is impossible to imagine the DOJ and FBI invading the homes of journalists to seize their reporter's notes on a story they never published, if the diary did not belong to someone named Biden. And the diary remains on the internet, where it was published by a separate news outlet over one year ago.

This is not the first time the FBI or DOJ have misled the other branches of government to pursue what appears to be a political agenda. As recently disclosed, the Attorney General testified in Congress that the FBI was not surveilling parents voicing concerns at school board meetings, but a whistleblower revealed internal documentation showing the FBI was in fact doing that very thing.⁹

Previously, the FBI changed or withheld significant information in its applications for surveillance warrants against Carter Page in connection with alleged Russian interference in the 2016 election. *See In re Accuracy Concerns Regarding FBI Matters Submitted to FISC*, 411 F. Supp. 3d 333, 336 (FISC Ct. 2019). As the Foreign Intelligence Surveillance Court noted, the fact that the FBI withheld information detrimental to that case “calls into question whether information contained in other FBI applications is reliable.” *Id.* at 337.

Regardless of what one might think of the politics of the above examples, it is undeniable that the court’s concern has borne out. By deliberately choosing not to interview individuals with critical information, the FBI has misled the courts into allowing it to proceed with an “investigation” that is actually a half-baked witch-hunt against journalists who dared to even *consider* publishing information which might embarrass the President. These rampant abuses of the justice system must stop.

When law enforcement officials want to get to the truth of the matter, they get all the facts and are far more candid with the courts. When they want to punish the President’s opponents, they avoid confirming facts detrimental to their agenda and tell the courts a carefully curated version of the “facts” designed to get to a pre-ordained result rather than allow courts to exercise their independent judgment. The FBI’s and DOJ’s actions in this

⁸ Op. and Order, *In re Search Warrant dated November 5, 2021*, No. 1:21-mc-00813-AT (S.D.N.Y. Dec. 7, 2021) (ECF No. 47).

⁹ Letter from Representative Jim Jordan to Attorney General Merrick Garland, Nov. 16, 2021, available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/11/2021-11-16-JDJ-to-Garland-re-completeness-of-testimony.pdf>.

case make it clear that they're more interested in punishing and intimidating the press than seeking the actual facts or respecting the Constitution.

While I appreciate the efforts of the Ranking Members to hold the DOJ and FBI accountable, this type of assault on the First Amendment should be a priority for both sides of the aisle. As a former Chief Counsel for Oversight & Investigations for the House Energy & Commerce Committee who conducted vigorous oversight of both Democrat and Republican Administrations, including the Bush 43 DOJ and FBI, I urge these Committees' Chairs and Ranking Members to conduct bi-partisan oversight by requesting information and documents from the FBI and DOJ about the origins of this unlawful raid. It is imperative to learn what were the origins and purposes of this raid, and who in the FBI, the DOJ, or the White House signed off. I also urge you to hold hearings on these outrageous actions by the FBI and DOJ against a media company. These agencies have not been living up to the "heightened duty of candor" they have to the courts when obtaining warrants. *See In re Accuracy Concerns Regarding FBI Matters*, 411 F. Supp. 3d at 336. It's high time the DOJ and FBI are subject to some transparency and sunlight – the best disinfectant.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Paoletta', written in a cursive style.

Mark Paoletta

Counsel for Project Veritas