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September 23, 2016

Lamar Smith
Chairman, Committee on Science, Space, and Technology
US House of Representatives
2321 Rayburn Office Building
Washington, DC 20515-6143

Dear Chairman Smith:

I am in receipt of both your subpoena dated September 12, 2016, in which you requested that my client, Treve Suazo, produce records to your committee, and your letter dated September 19, 2016, in which you requested interviews with various Platte River Networks ("PRN") employees. Our voluntary cooperation has been derailed by the Oversight Committee's criminal referral to federal prosecutors. For over a year, PRN has fully cooperated with the various government inquiries regarding Secretary Clinton's email server. However, since the FBI concluded its investigation in July 2016, your committee has drifted from its mandate to oversee scientific research and technology issues relating to marine and space exploration, and has begun a coordinated political inquisition with the goal of prosecuting PRN employees. All PRN employees will be ceasing voluntary cooperation with your committee pursuant to their rights under the Fourth and Fifth Amendments. Consequently, should your requests turn into subpoenas, those individuals will also be asserting their constitutional rights.

It is important for your committee to take notice that, even though PRN was not involved with former Secretary Clinton while she was in office, PRN has provided a great service to the government throughout its investigation. PRN has produced confidential, business-sensitive discovery to the Senate Committee on Homeland Security and Governmental Affairs and to the FBI. PRN did everything possible to assist the FBI in their investigation, helping them understand the configuration, maintenance, administration, and security of the technology under PRN's management, as well as supplying valuable IT expertise. This information, in conjunction with data harvested by the FBI, led to the conclusion that PRN acted appropriately and legally.

Nonetheless, the House Committee on Oversight and Government Reform, in a transparently partisan maneuver, sought to reopen the matter. In a publicly-released letter to United States Attorney Channing Phillips dated September 6, 2016, Chairman Chaffetz requested that Phillips' office investigate whether Secretary Clinton and employees of PRN violated various provisions of federal law. The following afternoon, the Committee – providing only a few days' notice – summoned PRN employees Paul Combetta and Bill Thornton to a hearing in Washington scheduled for September 13. Despite asserting their Fifth Amendment rights at this hearing, both Mr. Combetta and Mr. Thornton respected the authority of Congress by asserting these rights

before the Committee in person and in public.[1] However, it is clear that the threat of prosecution has created a situation where it is no longer possible for PRN to offer further assistance. Indeed, situations like this are why the Fifth Amendment exists: to prevent innocent parties from being compelled to testify to their detriment.[2] The last thing we want is for a document disclosure to create the appearance that PRN is waiving its Fifth Amendment privilege.

Further, this investigation goes beyond the scope of Congress's investigatory power and, more specifically, the jurisdiction of the Science Committee. Congressional investigations are subject to the limitations of the Bill of Rights, including a witness' right to be free from unreasonable searches in the form of oppressive and overly broad subpoenas.[3] Where a committee is utilizing its investigatory power, the following requirements must be met: (1) the committee's investigation of the broad subject matter area must be authorized by Congress; (2) the investigation must be pursuant to a valid legislative purpose; and (3) the specific inquiries put to the witness must be pertinent to the matter under inquiry by the committee.[4] Here, the Science Committee's investigation goes beyond the power delegated to it by the House and serves no valid legislative purpose. Additionally, as PRN had no relationship with former Secretary Clinton while she was in office, the inquiries put to PRN are not pertinent to the investigation.[5] The Supreme Court has stated that Congress is not "a law enforcement or trial agency."[6] This coordinated congressional investigatory process is a thinly veiled attempt at a second criminal investigation, rather than an inquiry meant to facilitate the legislative process.

Additionally, despite promises and rules to the contrary,[7] the confidential, business-sensitive information voluntarily provided by PRN to the FBI and Congress was leaked to the public and has greatly harmed PRN, both in terms of lost business and repeated threats against PRN personnel. Despite the fact that the FBI and the Senate Committee on Homeland Security and Governmental Affairs were the only recipients of discovery provided by PRN, emails have been steadily leaked since first being produced in good faith by PRN.

Regardless, it is clear that all pertinent materials requested from PRN are already available from both the FBI and the Senate Committee on Homeland Security and Governmental Affairs.

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[1] In the September 21 business meeting for the House Committee on Oversight and Government Reform regarding contempt charges against Bryan Pagliano, many members highlighted the importance of appearing before the committee when called, even when asserting the Fifth Amendment privilege, in contrast to refusing to appear altogether. Consequently, contempt charges would be inappropriate against any PRN personnel.

[2] *See Grunewald v. United States*, 353 U.S. 391, 421 (1957); *Ohio v. Reiner*, 532 U.S. 17, 21 (2001).

[3] *Watkins v. United States*, 354 U.S. 178, 188 (1957); "Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need." *Watkins* at 205.

[4] *Wilkinson v. United States*, 365 U.S. 399, 408–09 (1961).

[5] "The Committee on Science, Space, and Technology is examining former Secretary of State Hillary Clinton's use of a private email account and server *during her time at the State Department*." Letter from Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. to Kenneth F. Eichner, September 19, 2016, emphasis added.

[6] *Watkins v. United States*, 354 U.S. 178, 187 (1957).

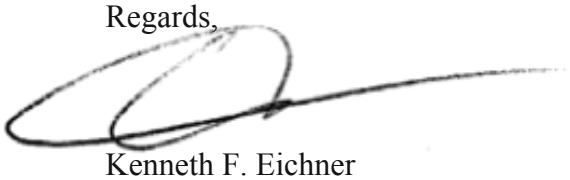
[7] *See, e.g.,* Senate Rule 29.5 ("Any Senator, officer, or employee of the Senate who shall disclose the secret or confidential business or proceedings of the Senate, including the business and proceedings of the committees, subcommittees, and offices of the Senate, shall be liable, if a Senator, to suffer expulsion from the body; and if an officer or employee, to dismissal from the service of the Senate, and to punishment for contempt."); House Rule VIII(6)(b) ("Under no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied.").

Apparently, the FBI has already agreed to provide Mr. Combetta's immunity letter to the House Committee on Oversight and Government Reform, which demonstrates this committee has alternative means of acquiring relevant materials without placing PRN personnel in a position to compromise their Fifth Amendment privilege.

Ultimately, the continued congressional demands for the personal appearance of PRN personnel, despite having full knowledge that they will assert their Fifth Amendment rights, arguably constitutes harassment under ethical rules.[8] As an attorney, both you and your senior counsel, Ashley Callen, with whom we have been in communication, are aware of such rules. Given that this Committee knows that PRN personnel will invoke their Fifth Amendment privileges and will not provide any new information, the continued demands for PRN personnel to schedule interviews and produce documents constitutes harassment and are arguably a violation of the Rules of Professional Conduct.

We ask this committee respect the findings of the FBI and cease its harassment of PRN in a misguided quest to gain political leverage against an opposition presidential candidate. PRN employees will continue to assert their rights under the Fourth and Fifth Amendments going forward.

Regards,



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[8] The DC Rules of Professional Conduct prohibit lawyers from, *inter alia*, "us[ing] means that have no substantial purpose other than to embarrass, delay, or burden a third person." DC RPC 4.4(a). DC Rule 8.4(d) similarly prohibits a lawyer from engaging in "offensive, abusive, or harassing conduct that seriously interferes with the administration of justice." DC RPC Rule 8.4, Comment [3]. Two DC legal ethics opinions have addressed the propriety of a congressional staff lawyer requiring a witness to appear before a congressional committee after being advised that the witness will invoke his privilege against self-incrimination. In the first opinion, DC Legal Ethics Opinion 31 (1977), the Legal Ethics Committee stated that it is a violation of the former DC Code of Professional Responsibility to require a witness' appearance in these circumstances if "the sole effect of the summons will be to pillory the witness." In a recent opinion, the Committee declined to vacate Opinion 31, finding that neither the revised Rules of Professional Conduct nor the scope of the opinion warranted vacation of the original opinion. *See* DC Ethics Opinion 358 (2011). Opinion 358 reaffirmed the core principle that the Rules of Professional Conduct are violated if, in calling a witness who expresses an intention to assert the privilege against self-incrimination, there is no substantial purpose other than embarrassment, burden or delay.