Statement of James A. Baker
before the
Committee on Oversight and Accountability
United States House of Representatives

February 8, 2023

Mr. Chairman, Ranking Member Raskin, and members of the Committee: Thank you for the opportunity to appear before you today. I hope that we will have a useful conversation about matters that are of great importance to the nation and the world.

My main goals in this statement are to attempt to set the record straight with respect to certain false assertions that have been made about me in the public arena and to offer a suggestion regarding potential legislation in the area of social media regulation.

As the Committee is aware, however, based on the advice of counsel I believe in good faith that I am constrained today by my legal and ethical obligations as a former lawyer for Twitter as well as by certain non-disclosure agreements. Within those constraints, however, I will endeavor to respond to the Committee's questions as fully as I can. And I believe that I can make the following statements.

First, I was not aware of and certainly did not engage in any conspiracy or other effort to do anything unethical, improper, or unlawful while I was at Twitter. Period. I understand that the Committee is interested in, among other things, the Hunter Biden laptop and Twitter Files related to that. To be clear, I did not act unlawfully or otherwise inappropriately in any manner with respect to Hunter Biden's laptop computer. Indeed, documents that Twitter has disclosed publicly reflect that I urged caution with respect to the matter and noted that we needed more information to fully assess what was going on and to decide what to do, hardly a surprising piece of advice from a corporate lawyer. Moreover, I am aware of no unlawful collusion with, or direction from, any government agency or political campaign on how Twitter should have handled the Hunter Biden laptop situation.

Even though many disagree with how Twitter handled the Hunter Biden matter, I believe that the public record reveals that my client acted in a manner that was fully consistent with the First Amendment. I think the best reading of the law is that as a private entity, the First Amendment protects Twitter and its content moderation decisions. I do not believe that the facts in the public record indicate that Twitter became a "state actor" as that concept is defined under existing precedent such that the First Amendment would have constrained it.

Second, I believe that at all times I executed my duties and responsibilities to my client–Twitter–lawfully and ethically. At no time was I an agent or operative of the government or any political actor when I worked at Twitter. To the contrary, I believe that I worked zealously and diligently within the bounds of the law in pursuit of my client's best interests.

Third, I did not destroy or improperly suppress any documents at Twitter regarding information important to the public dialogue. At all times I sought to help my client understand and comply with its legal obligations. It is worth noting that the public record indicates that after I left the company, attorneys or other unidentified third parties collected and/or reviewed the contents of at least some the Twitter Files prior to their release.

Fourth, Twitter disclosed publicly emails between me and Yoel Roth regarding one of Donald Trump's Tweets about COVID. I do not have access to my Twitter emails, so I don't know if or how I responded to Mr. Roth. To the best of my recollection, I do not recall directing or urging him to take action on Mr. Trump's Tweet. Instead, what I recall is that I asked him a question so that I could better understand how he and others were implementing Twitter's COVID misinformation policy. Asking questions and learning more about a client's activities is what I think good lawyers should do. And, again, hardly surprising.

Fifth, the Twitter Files reference prior investigations of me. It is true that the Department of Justice investigated certain aspects of my conduct while I was employed by the FBI related to the handling of certain information. Because I believe in accountability for government officials, I cooperated with the Department, including sitting for lengthy interviews. Eventually the Department closed the matter. No adverse action was taken with respect to me, and my security clearances while a government employee were never restricted because of the matter.

In closing, Mr. Chairman, I want to return briefly to the general topic of government interaction with social media companies. The law permits the government to have complex, multi-faceted, and long-term relationships with the private sector. Law enforcement agencies and companies can engage with each other regarding: compulsory legal process served on companies; criminal activity that companies, the government, or the public identify, such as crimes against children, cybersecurity threats, and terrorism; and instances where companies themselves are victims of crime. When done properly, these interactions can be beneficial to both sides and in the interests of the public.

As you, Mr. Jordan, and others have proposed, a potentially workable way to legislate in this area may be to focus on the actions of federal government agencies and officials with respect to their engagement with the private sector. Congress might be able to limit the nature and scope of those interactions in certain ways, require enhanced transparency and reporting by the executive branch about its engagements, and require higher level approvals within the executive branch prior to engagements on certain topics so that you could hold Senate-confirmed officials accountable for their decisions. In any event, if you want to legislate, my recommendation is to focus first on reasonable and effective limitations on governmental actors.

Thank you.

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