

“Arctic Frost: The Modern Watergate”

**United States Senate
Committee on the Judiciary**

**December 3, 2025
Statement for the Record**

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Chairman Graham, Ranking Member Durbin, and members of the subcommittee, thank you for the opportunity to testify today.

On February 26, 2025, Reuters broke a remarkable story. They reported first that in 2022 and 2023, Jack Smith and the Biden Justice Department subpoenaed toll records of calls from Kash Patel and Susie Wiles as part of the now-infamous Arctic Frost investigation.¹ Both were private citizens at the time, and this surveillance continued while Wiles was co-managing President Trump's election campaign. This was troubling, but it sadly wasn't shocking; this committee has been investigating Smith's abuse of his subpoena power against a slew of Republican Senators alongside Judge James Boasberg's unlawful nondisclosure orders that hid the existence of the subpoenas from those Senators.

But Reuters, if anything, buried the lede. The article also revealed that in 2023 the Biden FBI had surreptitiously recorded a phone call between Susie Wiles and her attorney.² This was a remarkable breach of attorney–client privilege. The Reuters article, relying on two FBI sources, claimed that Wiles' attorney had been aware of the surveillance on the phone call, which, if it were true, would have been a shocking ethical breach by Wiles' lawyer.³

The following day, however, Wiles' lawyer denied having consented to any such recording, stating correctly that “if [he] ever pulled a stunt like that [he] wouldn't—and shouldn't—have a license to practice law.”⁴ His denial is, in my view, credible: what lawyer in their right mind would secretly consent to law enforcement recording a privileged phone call with their client?

But the lawyer's denial raises more questions than it answers. Why, then, did two FBI sources tell Reuters that the lawyer had consented? Were the sources lying, or were they relying on false records created by FBI agents working with Smith? It wouldn't be the first time FBI personnel have falsified records in their pursuit of President Trump. Remember that Kevin Clinesmith, a former FBI lawyer, pled guilty to intentionally falsifying information to obtain a FISA warrant in the Russiagate investigation.⁵

¹ See Jana Winter, *Exclusive: FBI obtained Kash Patel and Susie Wiles phone records during Biden administration*, Reuters (Feb. 25, 2026), <https://www.reuters.com/world/us/fbi-obtained-kash-patel-susie-wiles-phone-records-during-biden-administration-2026-02-25/>.

² See *id.*

³ See, e.g., Model Rules of Pro. Conduct rr. 1.4, 1.6, 1.7, 8.4(c) (A.B.A. 2025)

⁴ Emma Colton, *Susie Wiles' lawyer denies approving FBI recording, says he'd lose license over 'stunt'*, Fox News (Feb. 27, 2026), <https://www.foxnews.com/politics/susie-wiles-lawyer-denies-approving-fbi-recording-says-hed-lose-license-over-stunt>

⁵ See Eric Tucker, *Ex-FBI lawyer admits to false statement during Russia probe*, Associated Press (Aug. 19, 2020), <https://apnews.com/article/election-2020-b9b3c7ef398d00d5dfce9170d66cefec>.

The scandal isn't merely that this phone call was recorded; it's also about how the records of the recording were hidden. The FBI's primary digital case management system is called Sentinel. Within it, investigators can apply a special designation to a file called "Prohibited Access"; files coded this way become completely invisible in standard Sentinel searches.⁶ If an agent runs a keyword search that should hit these documents, the system returns a false negative — it reports "no responsive documents" even though they exist.⁷

While this "prohibited access" designation might make theoretical sense for files dealing with the most sensitive classified matters, it clearly does not make sense that records of Susie Wiles' phone call being surveilled would qualify. The agent who marked these records "prohibited" would have known that. If Wiles' lawyer had been aware of the recording, it would have constituted "consensual monitoring." Monitoring such a call would likely require DOJ approval, but it could be lawful.⁸

But if Wiles' lawyer did not consent to the recording, we are likely looking at an illegal wiretap⁹ of a phone call between a Presidential campaign manager and her own lawyer, one where the agent or agents who conducted the wiretap lied about Wiles' lawyer's lack of consent and then coded it as a "prohibited file" in the hopes that no one would ever find out about it. This would be a more brazen FBI intervention into domestic politics than anything during the Russiagate investigation, which is certainly saying something.

We often hear liberal law professors complain about the Trump administration undermining the DOJ and FBI's "independence." Sophisticated listeners should immediately translate "independent" as "unaccountable." Illegal wiretaps and inappropriate prohibited file classifications are the fruits of an "independent" FBI that acted with impunity because it was not subject to the democratic accountability that our Constitution demands. The President is tasked with the responsibility to "take care" that our laws be faithfully executed,¹⁰ not to submit to the FBI and DOJ transforming themselves into an unaccountable fourth branch of government. This body can help by providing essential oversight and scrutiny.

I welcome any questions.

⁶ See Hans Mahncke, *New Docs Reveal How FBI Insiders Buried Evidence of Spycast Crimes*, *The Federalist* (May 30, 2025), <https://thefederalist.com/2025/05/30/new-docs-reveal-how-fbi-insiders-buried-evidence-of-spygate-crimes>.

⁷ See *id.*

⁸ See Justice Manual § 9-7.302 (U.S. Dep't of Justice).

⁹ See 18 U.S.C. § 2511(1)(a).

¹⁰ U.S. Const. art. II, § 3.