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From: Donoghue, Richard (ODAG)
Sent: Wednesday, November 11, 2020 6:27 PM
To: Boyd, Stephen E. (OLA); Dreiband, Eric (CRT); Rabbitt, Brian (CRM); Sullivan, Katie (OJP); Williams, Beth A (OLP); Engel, Steven A. (OLC); Clark, Jeffrey (CIV); Demers, John C. (NSD); Delrahim, Makan (ATR); Zuckerman, Richard E. (TAX); Brightbill, Jonathan (ENRD); Wall, Jeffrey B. (OSG)
Cc: Murray, Claire M. (OASG); Rosen, Jeffrey A. (ODAG)
Subject: Contact Policies
Attachments: Communication with the WH & Congress.pdf; white house communications with DOJ memo 20170127.pdf

Folks,

Happy Veterans Day.

My thanks to you and your teams for the tremendous job you all continue to do in difficult circumstances. While we are living in distracting times, it is imperative that we ignore the noise and remain focused on the responsibilities in our respective lanes and that we keep our teams doing the same.

Attached just for reference is the Department's policy regarding contacts between the Department and the White House, which was first promulgated in 2009 and continues to govern. Also, as a reminder, the Attorney General has delegated to his Chief of Staff, Will Levi, the authority to initiate or receive any communications he would be able to have under the this policy, as well as the authority to designate subordinates to have such communications where appropriate. Finally, it is worth noting that in addition to the Department policy, there is also a White House policy regarding contacts with the Department. I have attached that policy here as well.

Thanks again for the incredible work.

If you have any questions about any of this, please let me know.

Thanks,

Rich

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Office of the Attorney General
Washington, D. C. 20530

May 11, 2009

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS
ALL UNITED STATES ATTORNEYS

FROM:  THE ATTORNEY GENERAL

SUBJECT: Communications with the White House and Congress

The rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan consideration. It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors.

In order to promote the rule of law, therefore, this memorandum sets out guidelines to govern all communications between representatives of the Department, on the one hand, and representatives of the White House and Congress, on the other, and procedures intended to implement those guidelines. (The "White House," for the purposes of this Memorandum, means all components within the Executive Office of the President.) These guidelines have been developed in consultation with, and have the full support of, the Counsel to the President.

1. Pending or Contemplated Criminal or Civil Investigations and Cases

The Assistant Attorneys General, the United States Attorneys, and the heads of the investigative agencies in the Department have the primary responsibility to initiate and supervise investigations and cases. These officials, like their superiors and their subordinates, must be insulated from influences that should not affect decisions in particular criminal or civil cases. As the Supreme Court said long ago with respect to *United States Attorneys*, so it is true of all those who exercise the Department's investigatory and prosecutorial powers: they are representatives "not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935).

a. In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will advise the White House concerning pending or contemplated criminal or civil investigations or cases when—but only when—it is important for the performance of the President's duties and appropriate from a law enforcement perspective.

b. Initial communications between the Department and the White House concerning pending or contemplated criminal investigations or cases will involve only the Attorney General or the Deputy Attorney General, from the side of the Department, and the Counsel to the President, the Principal Deputy Counsel to the President, the President or the Vice President, from the side of the White House. If the communications concern a pending or contemplated civil investigation or case, the Associate Attorney General may also be involved. If continuing contact between the Department and the White House on a particular matter is required, the officials who participated in the initial communication may designate subordinates from each side to carry on such contact. The designating officials must monitor subsequent contacts, and the designated subordinates must keep their superiors regularly informed of any such contacts. Communications about Justice Department personnel in reference to their handling of specific criminal or civil investigations or cases are expressly included within the requirements of this paragraph. This policy does not, however, prevent officials in the communications, public affairs, or press offices of the White House and the Department of Justice from communicating with each other to coordinate efforts.

c. In order to ensure that Congress may carry out its legitimate investigatory and oversight functions, the Department will respond as appropriate to inquiries from Congressional Committees consistent with policies, laws, regulations, or professional ethical obligations that may require confidentiality and consistent with the need to avoid publicity that may undermine a particular investigation or litigation. Outside the context of Congressional hearings or investigations, all inquiries from individual Senators and Members of Congress or their staffs concerning particular contemplated or pending criminal investigations or cases should be directed to the Attorney General or the Deputy Attorney General. In the case of particular civil investigations or cases, inquiries may also be directed to the Associate Attorney General.

d. These procedures are not intended to interfere with the normal communications between the Department and its client departments and agencies (including agencies within the Executive Office of the President when they are the Department's clients) and any meetings or communications necessary to the proper conduct of an investigation or litigation.

2. National Security Matters

It is critically important to have frequent and expeditious communications relating to *national security matters, including counter-terrorism and counter-espionage issues*. Therefore communications from (or to) the Deputy Counsel to the President for National Security Affairs, the staff of the National Security Council and the staff of the Homeland Security Council that relate to a national security matter are not subject to the limitations set out above. However, this exception for national security matters does not extend to pending adversary cases in litigation that may have national security implications. Communications related to such cases are subject to the guidelines for pending cases described above.

3. White House Requests for Legal Advice

All requests from the White House for formal legal opinions shall come from the President, the Counsel to the President, or one of the Deputy Counsels to the President, and shall be directed to the Attorney General and the Assistant Attorney General for the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel shall report to the Attorney General and the Deputy Attorney General any communications that, in his or her view, constitute improper attempts to influence the Office of Legal Counsel's legal judgment.

4. Communications Involving the Solicitor General's Office.

Matters in which the Solicitor General's Office is involved often raise questions about which contact with the Office of the Counsel to the President is appropriate. Accordingly, the Attorney General and Deputy Attorney General may establish distinctive arrangements with the Office of the Counsel to govern such contacts.

5. Presidential Pardon Matters

The Office of the Pardon Attorney may communicate directly with the Counsel to the President and the Deputy Counsels to the President, concerning pardon matters. The Counsel to the President and the Deputy Counsels to the President may designate subordinates to carry on contact with the Office of the Pardon Attorney after the initial contact is made.

6. Personnel Decisions Concerning Positions in the Civil Service

All personnel decisions regarding career positions in the Department must be made without regard to the applicant's or occupant's partisan affiliation. Thus, while the Department regularly receives communications from the White House and from Senators, Members of Congress, and their staffs concerning political appointments, such communications regarding positions in the career service are not proper when they concern a job applicant's or a job holder's partisan affiliation. Efforts to influence personnel decisions concerning career positions on partisan grounds should be reported to the Deputy Attorney General.

7. Other Communications Not Relating to Pending Investigations or Criminal or Civil Cases

All communications between the Department and the White House or Congress that are limited to policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, or administrative matters that do not relate to a particular contemplated or pending investigation or case may be handled directly by the parties concerned. Such communications should take place with the knowledge of the Department's lead contact regarding the subject

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under discussion. In the case of communications with Congress, the Office of the Deputy Attorney General and Office of the Assistant Attorney General for Legislative Affairs should be kept informed of all communications concerning legislation and the Office of the Associate Attorney General should be kept informed about important policy communications in its areas of responsibility.

As Attorney General Benjamin Civiletti noted in issuing a similar memorandum during the Carter Administration, these guidelines and procedures are not intended to wall off the Department from legitimate communication. We welcome criticism and advice. What these procedures are intended to do is route communications to the proper officials so they can be adequately reviewed and considered, free from either the reality or the appearance of improper influence.

Decisions to initiate investigations and enforcement actions are frequently discretionary. That discretion must be exercised to the extent humanly possible without regard to partisanship or the social, political, or interest group position of either the individuals involved in the particular cases or those who may seek to intervene against them or on their behalf.

This memorandum supersedes the memorandum issued by Attorney General Mukasey on December 19, 2007, titled *Communications with the White House*.

THE WHITE HOUSE

WASHINGTON

January 27, 2017

MEMORANDUM TO ALL WHITE HOUSE STAFF

FROM: Donald F. McGahn II Counsel to the President

SUBJECT: Communications Restrictions with Personnel at the Department of Justice

This Memorandum outlines important rules and procedures regarding communications between the White House (including all components of the Executive Office of the President) and the Department of Justice. These rules exist to ensure both efficient execution of the Administration's policies and the highest level of integrity with respect to civil or criminal enforcement proceedings handled by DOJ. *In order to ensure that DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence, these rules must be strictly followed.*

A. Limitations on discussing ongoing or contemplated cases or investigations

DOJ currently advises the White House about contemplated or pending investigations or enforcement actions under specific guidelines issued by the Attorney General. As a general matter, only the President, Vice President, Counsel to the President, and designees of the Counsel to the President may be involved in such communications. These individuals may designate subordinates to engage in ongoing contacts about a particular matter with counterparts at DOJ similarly designated by DOJ. Any ongoing contacts pursuant to such a designation should be handled in conjunction with a representative of the Counsel's office.

The White House often coordinates more broadly with DOJ (including its Office of Legal Counsel, Office of the Solicitor General, and Civil Division) where the government is or may be a defendant in litigation. These communications must first be cleared by the Counsel's Office.

If DOJ requests the views of the White House on any litigation, you must consult with the Counsel's Office before responding, and any response must be made in consultation with the Counsel's Office. This ensures that the White House provides a coherent response that takes account of both the Counsel's Office legal views and the President's broader policy objectives.

Communications with DOJ about individual cases or investigations should be routed through the Attorney General, Deputy Attorney General, Associate Attorney General, or Solicitor General, unless the Counsel's Office approves different procedures for the specific case at issue. In their discretion, and as appropriate for the handling of individual cases, those DOJ officials may authorize additional DOJ attorneys to discuss individual cases or investigations with members of the Counsel's Office. The President, Vice President, Counsel to the President, and Deputy Counsel to the President are the only White House individuals who may initiate a conversation with DOJ about a specific case or investigation.

These rules recognize the President's constitutional obligation to take care that the laws of the United States are faithfully executed, while ensuring maximum public confidence that those laws are administered and applied impartially in individual investigations or cases.

B. Limitations on discussing other matters

The White House may communicate with DOJ about matters of policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, administrative matters, or other matters that do not relate to a particular contemplated or pending investigation or case. You must route these communications through the offices of the Attorney General, Deputy Attorney General, or Associate Attorney General unless you have received clearance from the Counsel's office to follow different procedures.

C. Restrictions on soliciting an OLC opinion

The White House often relies upon the Office of Legal Counsel to issue formal legal opinions. Requests for such opinions must be limited to specific legal questions impacting particular matters before the Executive Branch. Such requests must be authorized by the President, the Vice President, the Counsel to the President, or a Deputy Counsel to the President. These individuals may also designate others who may engage in ongoing contacts with OLC where a request for a formal legal opinion has been authorized. If this designation extends to individuals outside the Counsel's Office, it should be in writing, and the ongoing contacts should be handled in conjunction with a member of the Counsel's office. All requests for an OLC opinion shall be directed to the Attorney General, the Assistant Attorney General for OLC, or one of their designees.

D. National Security Exceptions

Frequent communications between the White House and DOJ will be necessary on matters of national security and intelligence, including counter-terrorism and counter-espionage issues. Accordingly, communications that relate to urgent and ongoing national-security matters may be handled by specifically designated individuals. This exception does not relate to a particular contemplated or pending investigation or case absent written authorization from the Counsel to the President. In emergencies for which application of these procedures would pose a serious threat to national security, White House personnel may receive from DOJ communications necessary to protect against such threats. The Counsel to the President shall be informed about any such contacts as promptly as is practicable.

E. Consultation

If you have any questions or do not believe that a potential contact with DOJ fits neatly into any of these categories, you must consult the Counsel's office for guidance. Moreover, unless you are certain that the particular contact is permissible, you must consult with the Counsel's Office before proceeding.