

United States Senate

WASHINGTON, DC 20510

December 4, 2017

The Honorable Rachel Brand
Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

Dear Associate Attorney General Brand:

In conjunction with your confirmation hearing before the Senate Judiciary Committee, you were asked whether you understood and were prepared to enforce the policy governing contacts between the White House and DOJ related to ongoing investigations and prosecutions. In response to a written question from Senator Coons, you expressed familiarity with the policy and noted that its existence was “important to ensuring that civil and criminal cases proceed free from either inappropriate political influence or the appearance of inappropriate influence.”

Our understanding is that a 2009 memorandum by Attorney General Eric Holder is the operative policy. It states the following:

“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 the influence that should not affect decisions in particular criminal or civil cases.”

In order to insulate key law enforcement officials from improper political influence in prosecutorial decisions, the policy limits initial communications on investigations and cases to the Attorney General, Deputy Attorney General and Associate Attorney General (for civil matters only) at DOJ and the Counsel to the President, the Principal Deputy Counsel to the President, the President and the Vice President at the White House.

In just the past month, the President has made numerous public statements that appear intended to influence DOJ’s and FBI’s activities. For example:

- On November 2 and 3, President Trump made a series of posts to his Twitter account calling on DOJ and FBI to investigate a variety of matters related to the 2016 election:
 - “Everybody is asking why the Justice Department (and FBI) isn't looking into all of the dishonesty going on with Crooked Hillary & the Dems..”
 - “[Senator Warren] just stated that the Democrats, lead [sic] by the legendary Crooked Hillary Clinton, rigged the Primaries! Lets [sic] go FBI & Justice Dept.”
 - “....People are angry. At some point the Justice Department, and the FBI, must do what is right and proper. The American public deserves it!”

- “....This is real collusion and dishonesty. Major violation of Campaign Finance Laws and Money Laundering - where is our Justice Department?”

In a letter dated November 13, 2017, to Chairman of the House Judiciary Committee Robert W. Goodlatte, Assistant Attorney General Stephen E. Boyd confirmed that the Attorney General “has directed senior federal prosecutors to evaluate” several matters related to Hillary Clinton, including the sale of Uranium One and the Clinton Foundation.

- As DOJ has reviewed under the antitrust enforcement authority the proposed merger between AT&T and Time Warner, President Trump has made a series of disparaging comments about Time Warner subsidiary CNN:
 - “While in the Philippines I was forced to watch @CNN, which I have not done in months, and again realized how bad, and FAKE, it is. Loser!” (Nov. 15)
 - “@FoxNews is MUCH more important in the United States than CNN, but outside of the U.S., CNN International is still a major source of (Fake) news, and they represent our Nation to the WORLD very poorly. The outside world does not see the truth from them!” (Nov. 25)
 - “We should have a contest as to which of the Networks, plus CNN and not including Fox, is the most dishonest, corrupt and/or distorted in its political coverage of your favorite President (me). They are all bad. Winner to receive the FAKE NEWS TROPHY!” (Nov. 27)

On November 20, the Department announced it would be seeking to block the proposed merger in federal court. The case is now pending in the U.S. District Court for the District of Columbia.

- This past weekend, following General Michael Flynn’s plea of guilty to making false statements to the FBI, President Trump tweeted the following:
 - “Many people in our Country are asking what the “Justice” Department is going to do about the fact that totally Crooked Hillary, AFTER receiving a subpoena from the United States Congress, deleted and “acid washed” 33,000 Emails? No justice!” (Dec. 2)
 - “After years of Comey, with the phony and dishonest Clinton investigation (and more), running the FBI, its reputation is in Tatters - worst in History! But fear not, we will bring it back to greatness.” (Dec. 3)

With the power of his position, amplified through social media, the President need not have actual communications with any person at DOJ to make his opinions perfectly clear. He knows that. The public knows that. And ultimately, federal judges who may be called upon to hear cases brought by DOJ know that. Given your past experience with the Department, you must appreciate that if it were to develop a reputation as making litigation decisions based on presidential tweets, it would cast a shadow on every action DOJ and FBI take. New measures of attempted influence require new counter-measures to “ensure that partisan considerations do not influence the handling of particular cases.”

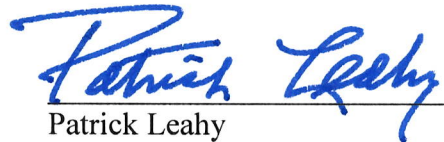
To that end, we request you respond to the following questions not later than December 15, 2017, so we can better understand what steps DOJ is taking to protect its credibility in the federal courts and with the American people:

- Do you believe public statements by President Trump about particular matters that are being, or could be, investigated or prosecuted by DOJ or the FBI are consistent with relevant policies governing contacts between the Department and the White House? If so, please explain your answer.
- Do you believe such public statements by President Trump could inject improper partisan considerations into the handling of particular cases by DOJ attorneys? Please explain your answer.
- Do you believe such public statements by President Trump could undermine prosecutions or other litigation before federal courts? Please explain your answer.
- Have any federal courts cited the President's comments as factors contributing to their rulings or decisions? If so, please explain the circumstances of each case and any specific steps the Department has taken to address the courts' concerns.
- Do you believe public statements by President Trump could erode public confidence in the integrity of Department decisions? Please explain your answer.
- What specific steps have you taken to ensure that those DOJ officials who have "primary responsibility to initiate and supervise investigations and cases...are insulated from the influence that should not affect decisions in particular criminal or civil cases" such as social media messages or other public statements by the President?
- Have you raised any concerns about the DOJ's independence with the White House? If so, what steps if any have been taken to address those concerns?

Thank you for your prompt attention to this important matter.



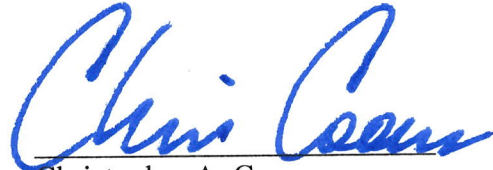
Sheldon Whitehouse
United States Senator



Patrick Leahy
United States Senator



Al Franken
United States Senator



Christopher A. Coons
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator