

United States Senate

WASHINGTON, DC 20510

May 24, 2018

The Honorable Rod Rosenstein
Deputy Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Rosenstein:

Pursuant to longtime Department of Justice policy under both Republican and Democratic Administrations, Department of Justice officials are limited in meeting or conferring with White House officials in relation to investigations and prosecutions. A limited few senior Department officials are allowed to meet or confer with a limited few White House officials “when—but only when—it is important for the performance of the President’s duties and appropriate from a law enforcement perspective.”¹ Other contacts between the White House and the Department are not allowed.

The purpose of this longstanding protection is obviously to assure that Department investigations follow the law, and are not tainted by White House political influence. The prevailing concern has been to assure that the White House not use influence to encourage prosecution of political adversaries, or discourage prosecution of political supporters; and to assure that the course of justice runs true. In testimony before the Senate Judiciary Committee, you acknowledged this concern and committed to us that you would act “in accordance with Department of Justice protocols, including the memorandum on communications with the White House issued by former Attorney General Holder.”²

Yesterday, you, FBI Director Christopher Wray, and Director of National Intelligence Daniel Coats met with President Trump at the White House to discuss President Trump’s demand that “that the Department of Justice look into whether or not the FBI/DOJ infiltrated or surveilled the Trump Campaign for Political Purposes.”³ After that meeting, the White House issued the following statement:

Based on the meeting with the President, the Department of Justice has asked the Inspector General to expand its current investigation to include any irregularities with the Federal Bureau of Investigation’s or the Department of Justice’s tactics concerning the Trump Campaign. It was also agreed that White House Chief of Staff Kelly will immediately set up a meeting with the FBI, DOJ, and DNI

¹ *Communications with the White House and Congress*, Attorney General Eric Holder, May 11, 2009, para 1.a.

² Answer to Question for the Record #4.C from Ranking Member Feinstein by Rod J. Rosenstein, March 20, 2017, available at [https://www.judiciary.senate.gov/imo/media/doc/Rosenstein Responses to Feinstein QFRs.pdf](https://www.judiciary.senate.gov/imo/media/doc/Rosenstein%20Responses%20to%20Feinstein%20QFRs.pdf).

³ <https://twitter.com/realDonaldTrump/status/998256454590193665>.

together with Congressional Leaders to review highly classified and other information they have requested.⁴

These circumstances raise several concerns. The President is the subject of an ongoing criminal investigation run by a Special Counsel authorized and supervised by the Department of Justice. Close associates of the President's have been convicted of crimes or are targets of related investigations. Obstruction of justice is widely viewed, and publicly conceded by the President's lawyers, to be an aspect of the investigation. Thus, in meeting with the President in any matter related to the investigation, you are meeting not only with the chief executive, but with an investigative subject. To the extent that the gravamen of the White House meeting was an effort to impede that investigation, the meeting may yield evidence relevant to that investigation. To the extent that future meetings of the President's designees, federal law enforcement officials, and congressional leaders involve the review of evidence, classified or not, relevant to this inquiry, there exists an avenue for a subject of an ongoing investigation to obtain evidence outside the traditional regimes for such disclosure.

During an ongoing and open criminal investigation, any actual or potential evidence that may have been generated should not be released to the public or the legislative branch. It is equally important that ongoing investigations must be protected from any political interference, whether from the legislative branch or the White House. That said, as members of the Senate Judiciary Committee with oversight responsibilities over the Justice Department, we have the right and duty to assure that the Department follows proper protocol. If special allowances were made, we believe it is fair to ask how those allowances diverged from the Department's regular practice. With these concerns in mind, we ask you to address the following questions:

1. What steps were taken before the White House meeting to ensure that information provided to the President or his designees was limited to what is "appropriate from a law enforcement perspective"?
2. What assurance can you provide that adequate steps were taken to ensure that Department procedures were followed during the meeting, which was with the subject of an ongoing investigation, to preserve any evidence that may have been generated? Specifically, were procedures in place to protect against any participant in the meeting from becoming a necessary witness in the special counsel's investigation?⁵
3. What steps will be taken prior to and during future meetings to ensure that information provided to the President or his designees will be limited to what is "appropriate from a law enforcement perspective"?
4. What steps will be taken to ensure that communications with Congress are limited to what is necessary for it to carry out its "legitimate investigatory and oversight functions...consistent with policies, laws, regulations, or professional ethical

⁴ <https://lawfareblog.com/document-white-house-statement-wray-rosenstein-coats-meeting-about-fbi-informant>.

⁵ See U.S. Attorneys' Manual 9-5.002(b)(8), Criminal Discovery, ("Whenever possible, prosecutors should not conduct an interview without an agent present to avoid the risk of making themselves a witness to a statement and being disqualified from handling the case if the statement becomes an issue.")

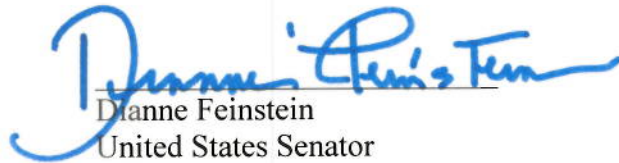
obligations that may require confidentiality and consistent with the need to avoid publicity that may undermine a particular investigation or litigation”⁶

Thank you for your prompt attention to these questions. We request the courtesy of a response no later than Friday, June 1, 2018.

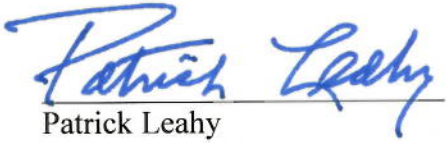
Sincerely,



Sheldon Whitehouse
United States Senator



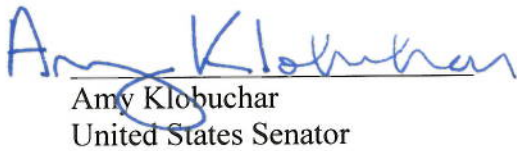
Dianne Feinstein
United States Senator



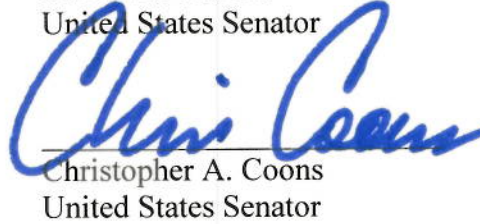
Patrick Leahy
United States Senator



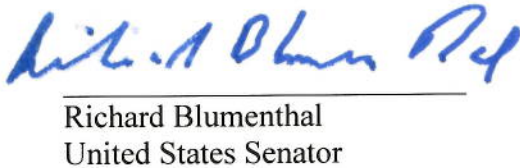
Richard J. Durbin
United States Senator



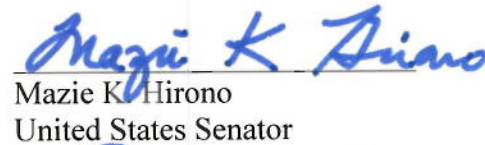
Amy Klobuchar
United States Senator



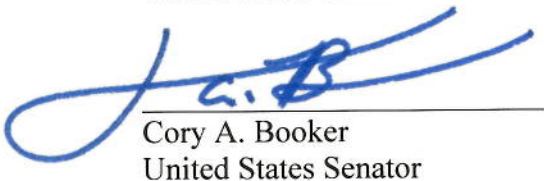
Christopher A. Coons
United States Senator



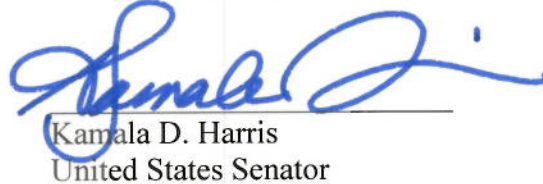
Richard Blumenthal
United States Senator



Mazie Hirono
United States Senator



Cory A. Booker
United States Senator



Kamala D. Harris
United States Senator

⁶ Holder Memorandum, para 1.c.