

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fifteenth Congress

March 6, 2017

The Honorable Dana J. Boente
Acting Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Deputy Attorney General Boente:

We write to express our concern regarding a disturbing series of events this weekend concerning the ongoing review by the Department of Justice of efforts by the Russian government to unlawfully influence the U.S. presidential election in favor of Mr. Trump. These events include unsubstantiated claims by President Trump concerning surveillance by the prior Administration and related reports of improper contacts between the office of Donald F. McGahn, the White House Counsel, and the Federal Bureau of Investigation, concerning the FBI's ongoing review.

Early Saturday morning, President Trump took to Twitter to claim that "President Obama was tapping my phones in October, just prior to [the] Election!" He went on to ask: "How low has President Obama gone to tapp [sic] my phones during the very sacred election process. This is Nixon/Watergate. Bad (or sick) guy!"

No substantiation was offered for this accusation. Many believe it is based on charges raised by conservative radio host Mark Levin on Thursday evening, which were repeated in turn by *Breitbart* on Friday.¹ According to the *New York Times*:

[A] senior White House official said that Donald F. McGahn II, the president's chief counsel, was working on Saturday to secure access to what Mr. McGahn believed was an order issued by the Foreign Intelligence Surveillance Court authorizing some form of surveillance related to Mr. Trump and his associates.

The official offered no evidence to support the notion that such an order exists.²

¹ Joel B. Pollack, *Mark Levin to Congress: Investigate Obama's "Silent Coup" Vs. Trump*, *Breitbart*, Mar. 3, 2017.

In our experience, it is highly unusual for the White House to seek access to a government application to the Foreign Intelligence Surveillance Court. In almost any circumstance, it would be inappropriate to ask for that information if the President and his associates are related to the underlying investigation.

Perhaps more troubling, this reported contact between the office of White House Counsel and law enforcement officials comes on top of several other reports of similar contacts between the White House and both the Department of Justice and the FBI. For example, according to *CNN*, White House Chief of Staff Reince Priebus asked FBI Director James Comey and FBI Deputy Director Andrew McCabe to “publicly knock down media reports about communications between Donald Trump’s associates and Russians known to US intelligence during the 2016 presidential campaign.”³ Director Comey refused to do so—but reportedly agreed to let Mr. Priebus cite “senior intelligence officials” as part of his pushback, which Mr. Priebus did on national TV that weekend.

If these reports are accurate, then these communications are both inappropriate and in violation of Department of Justice guidance. Since the Carter Administration, the Department has had guidelines in place to limit communications between the White House and career investigators and prosecutors, “to insure, to the extent possible, that improper considerations will not enter into our legal judgments.”⁴ The standing policy, issued in 2009, states: “The Justice Department will advise the White House concerning any pending or contemplated criminal or civil investigations on cases when, but only when, it is important for the performance of the President’s duties and appropriate from a law enforcement perspective.”⁵ The sitting Attorney General is, of course, free to revise or replace this guidance—but Attorney General Sessions has not done so.

The independence of the Department of Justice and the FBI is a particular concern when individuals associated with both the Administration and the President’s campaign may be the targets of the investigation. As former DOJ Inspector General Michael Bromwich stated, “it’s quite inappropriate for anyone from the White House to have contact with the FBI about a pending criminal investigation, that has been an established rule down the road, probably since Watergate.”⁶

Accordingly, we request that you provide us with a description of any and all contacts or other communications (including phone contacts, emails, texts, voicemails, notes or other forms of contact, whether written, oral, or otherwise) between anyone employed by or associated with

² Michael D. Shear and Michael S. Schmidt, *Trump Offering No Evidence, Says Obama Tapped His Phones*, N.Y. TIMES, Mar. 4, 2017.

³ Jim Sciutto et al., *FBI refused White House request to knock down recent Trump-Russia stories*, CNN, Feb. 24, 2017.

⁴ *Remarks by the Hon. Griffin B. Bell, Attorney General of the United States*, U.S. Dept. of Justice, Sept. 6, 1978.

⁵ Memorandum from U.S. Attorney General Eric Holder, *Communications with the White House and Congress*, U.S. Dept. of Justice, May 11, 2009.

⁶ Adam Serwer, *When Does Contact between the FBI and the White House Cross the Line*, ATLANTIC, Feb. 24, 2017.

the White House and any official or representative of the FBI or the Department of Justice, relating to any investigation into Russian interference in the recent presidential election and any related matter. Please provide this information to us no later than March 24, 2017.

In addition, it has been reported that, subsequent to the Tweets by the President this weekend, Director Comey asked the Department of Justice to issue a statement refuting the President's assertion because the Director knows that "the highly charged claim is false and must be corrected."⁷ However, the Department has not done so as of this writing. We believe it is imperative that the Department issue a statement publicly addressing the accuracy of the President's assertion because of the seriousness of the claim that the Department was used as a political weapon during an election campaign. Of course, if Donald Trump or his associates were the subject of lawful electronic surveillance due to suspicions that they were acting as agents of a foreign power or otherwise acting unlawfully, Congress should be advised of that in an appropriate setting.

The honest, responsible professionals of the Department of Justice work to protect our Nation from a variety of threats of every day. We recognize their dedication, and it is unfortunate that they must now deal with these difficult circumstances generated by their own President. However, the charges made by the President and related contacts between the White House and the Department and the FBI are serious matters that should not be met with silence by the Department, lest there be the appearance that the Department is acquiescing to pressure and otherwise not doing the job the American people expect.

Thank you for your prompt attention to this matter.

Sincerely,

John Conyers Jr.

Gerold Radtke

Hank Johnson

Karen Bass

David N. Cicilline

Richard E. Deatch

⁷ Michael S. Schmidt and Michael D. Shear, *Comey Asks Justice Dept. to Reject Trump's Wiretapping Claim*, The New York Times, Mar. 5, 2017.

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cc: James Comey, Director, Federal Bureau of Investigation
Bob Goodlatte, Chairman, House Judiciary Committee