

United States Senate

WASHINGTON, DC 20510

February 27, 2020

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Inspector General Horowitz:

We write to request that you investigate an apparent pattern of political interference in Justice Department matters of personal or political interest to the President.

The Department's mission to "ensure fair and impartial administration of justice for all Americans" requires that its prosecutorial decisions be insulated from political influence, including interference from the White House. Yet when Attorney General Barr appeared before the Senate Judiciary Committee on May 1, 2019, he did not provide a clear answer when Senator Harris asked whether he had received or acted upon requests or suggestions from President Trump or the White House to open specific investigations.

The public record provides a number of reasons to believe that President Trump or other White House officials are seeking to influence the Justice Department's handling of certain investigations, civil lawsuits, and criminal prosecutions. For example:

- Attorney General Barr and other political appointees overruled the sentencing recommendation made by career prosecutors in the Roger Stone case. This caused all four career prosecutors to withdraw from the case, with one resigning from the Department.¹
- The Attorney General reportedly assigned an outside prosecutor to scrutinize career prosecutors' handling of the case against Michael Flynn, President Trump's former National Security Adviser. The President has repeatedly called Flynn's prosecution "unfair."²
- Former U.S. Attorney Jessie Liu reportedly pursued a case against former FBI Deputy Director Andrew McCabe even after a team of career prosecutors concluded they could not win a conviction. According to recent reports, the replacement of Liu with a new U.S.

¹ Matt Zapotosky, *et al.*, *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, WASH. POST (Feb. 11, 2020), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html.

² Aaron Blake, *Another case Trump meddled in. Another unorthodox intervention from Barr*, WASH. POST (Feb. 15, 2020), <https://www.washingtonpost.com/politics/2020/02/15/barr-told-trump-stop-meddling-legal-cases-it-sure-seems-have-worked/>.

Attorney was related to her failure to indict McCabe—a frequent target of the President’s “deep state allegations.”³

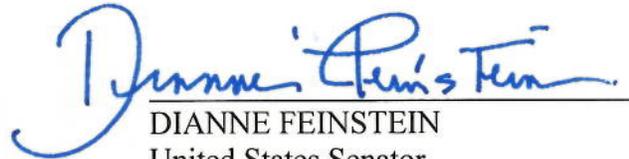
These actions, along with those detailed in the attached appendix, suggest political interference in the Justice Department’s work. A number of Justice Department policies and regulations exist to prevent this from happening.⁴ Our concern is that politically motivated enforcement of federal law could become standard practice. This would permanently damage the integrity and independence of the Justice Department.

We therefore request that your office investigate whether these incidents are indicative of a pattern of abuse or misconduct in Department programs, or by Department employees.

Sincerely,



KAMALA D. HARRIS
United States Senator



DIANNE FEINSTEIN
United States Senator



PATRICK LEAHY
United States Senator



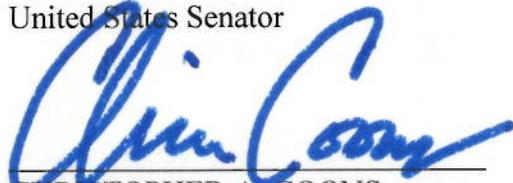
RICHARD J. DURBIN
United States Senator



SHELDON WHITEHOUSE
United States Senator



AMY KLOBUCHAR
United States Senator



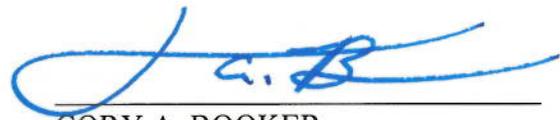
CHRISTOPHER A. COONS
United States Senator



RICHARD BLUMENTHAL
United States Senator



MAZIE K. HIRONO
United States Senator



CORY A. BOOKER
United States Senator

³ Katie Benner and Adam Goldman, *D.C. prosecutors’ tensions with Justice Dept. began long before Stone sentencing*, N.Y. TIMES (Feb. 23, 2020), <https://www.nytimes.com/2020/02/23/us/politics/justice-department-dc-prosecutors.html>.

⁴ See, e.g., Memorandum for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009), https://www.justice.gov/oip/foia-library/communications_with_the_white_house_and_congress_2009.pdf/download; U.S. Dep’t of Justice, Justice Manual § 1-7.400; 5 C.F.R. § 2635.101; 5 C.F.R. § 2635.501 – 503; 28 C.F.R. § 45.2.; U.S. Dep’t of Justice, Justice Manual § 1-4.010.

APPENDIX

President Trump’s efforts to investigate his political rival, Hillary Clinton. Volume II of Special Counsel Robert Mueller’s report on Russian interference in the 2016 election detailed three separate occasions on which President Trump asked or suggested that then-Attorney General Jeff Sessions investigate the president’s former opponent, Hillary Clinton.⁵ The Special Counsel’s report also described a series of tweets in which the president suggested or openly called for criminal investigations into Clinton. In November 2017, Sessions tasked U.S. Attorney John Huber with investigating allegations by Trump and his allies that the FBI had not adequately pursued investigations into the Clinton Foundation and Uranium One. The investigation reportedly concluded with no charges after Huber “found nothing worth pursuing.”⁶

Prior to his confirmation, Attorney General William Barr claimed that there was a stronger predicate for investigating the Clinton Foundation and Uranium One than there was for investigating the Trump campaign’s ties with Russia—although he was unable to detail that predicate during his confirmation hearing, instead referring to “smoke around the issue.”⁷ The Office of the Inspector General recently completed an exhaustive investigation into whether the Crossfire Hurricane investigation had an adequate factual and legal predicate, and should similarly evaluate whether the Huber investigation was adequately predicated.

President Trump’s efforts to investigate his political rival, Joe Biden. As documented in a rough transcript of a phone call released by the White House, on July 25, 2019, President Trump not only attempted to coerce the newly-elected president of Ukraine into assisting with investigations into his political rival—a scheme orchestrated by his personal attorney, Rudy Giuliani—but President Trump also suggested that he would work through the Justice Department and instruct Attorney General Barr to follow up with Ukrainian officials about the investigations. Despite receiving a criminal referral from the CIA General Counsel and the National Security Council’s top lawyer, the Department quickly concluded “there was no campaign finance violation and that no further action was warranted.”⁸

A Justice Department spokesperson later denied that the attorney general had knowledge of or spoke to the president about the July 25 call, but public reports subsequently established that he did in fact meet with individuals involved in the Ukraine scheme. In August 2019, Attorney General Barr met with two lawyers who, working with Giuliani, had reportedly offered to “fix” federal criminal investigations of Ukrainian oligarchs in exchange for the oligarchs’ assistance in digging up dirt on President Trump’s political rivals.⁹ The outcome of that meeting remains unknown.

⁵ U.S. DEP’T OF JUSTICE, SPECIAL COUNSEL ROBERT S. MUELLER, III, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION (2019) vol. II, at 107, 109.

⁶ Devlin Barrett and Matt Zapotosky, *Justice Dept. winds down Clinton-related inquiry once championed by Trump. It found nothing of consequence*, WASH. POST. (Jan. 9, 2020), https://www.washingtonpost.com/national-security/justice-dept-winds-down-clinton-related-inquiry-once-championed-by-trump-it-found-nothing-of-consequence/2020/01/09/ca83932e-32f9-11ea-a053-dc6d944ba776_story.html.

⁷ Transcript of Jan. 15, 2019 Senate Judiciary Committee Hearing.

⁸ Ken Dilanian and Julia Ainsley, *CIA’s top lawyer made ‘criminal referral’ on complaint about Trump Ukraine call*, NBC NEWS (Oct. 4, 2019), <https://www.nbcnews.com/politics/trump-impeachment-inquiry/cia-s-top-lawyer-made-criminal-referral-whistleblower-s-complaint-n1062481>.

⁹ Jo Becker, Walt Bogdanich, Maggie Haberman, and Ben Protess, *Why Giuliani singled out 2 Ukrainian oligarchs to help dig up dirt*, N.Y. TIMES (Nov. 25, 2019), <https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html>.

Efforts to exonerate President Trump's political allies.

- It appears that President Trump's personal and political interests influenced the Justice Department's sentencing recommendation for Roger Stone, a longtime adviser to President Trump. On February 10, 2020, career prosecutors filed a sentencing memorandum recommending that Stone be sentenced to seven to nine years in prison after a jury convicted him of seven felonies for obstructing Congress, lying under oath to investigators, and interfering with witness testimony related to his efforts to learn about hacked Democratic emails during the 2016 U.S. presidential election. On February 11, 2020, the morning after the sentencing memorandum was filed, President Trump criticized the proposed sentence on Twitter, saying "This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!" Just hours after President Trump's disapproving tweet, a senior Justice Department official announced that the Department planned to overrule its career prosecutors and reduce the sentence recommendation.¹⁰ After the decision was announced, four career prosecutors who handled the case against Roger Stone withdrew from the case, and one resigned from the Department altogether.¹¹
- According to recent reports, Attorney General Barr has also intervened in the case against President Trump's former National Security Adviser Michael Flynn, whose prosecution Trump has repeatedly criticized as "unfair."¹² Flynn pleaded guilty in 2017 to lying to the FBI but moved to withdraw his guilty plea in January 2020. On January 7, 2020, prosecutors filed a memorandum recommending a prison sentence between zero and six months. The Department weakened that recommendation in a new filing on January 29, which indicated that a sentence of probation would be "reasonable."¹³ Earlier this month, it was reported that Barr had assigned U.S. Attorney for the Eastern District of Missouri Jeff Jensen to review the handling of Flynn's case, which was prosecuted by career attorneys on the Special Counsel's team and in the U.S. Attorney's Office for the District of Columbia.¹⁴

Rudy Giuliani wields undue influence over the actions of the Justice Department.

- **Giuliani peddles his influence at the Justice Department as leverage in his smear campaign against President Trump's political rival, Joe Biden.** As documented in a rough transcript of a phone call released by the White House, on July 25, 2019, President Trump attempted to coerce the newly-elected president of Ukraine into assisting with investigations into his political rival—a

¹⁰ Matt Zaposky, *et al.*, *Justice Dept. to reduce sentencing recommendation for Trump associate Roger Stone, official says, after president calls it 'unfair'*, WASHINGTON POST (Feb. 11, 2020), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html.

¹¹ Matt Zaposky, *et al.*, *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, WASHINGTON POST (Feb. 11, 2020), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html.

¹² Aaron Blake, *Another case Trump meddled in. Another unorthodox intervention from Barr*, WASH. POST (Feb. 15, 2020), <https://www.washingtonpost.com/politics/2020/02/15/barr-told-trump-stop-meddling-legal-cases-it-sure-seems-have-worked/>.

¹³ Carol E. Lee, Ken Dilanian and Peter Alexander, *Barr takes control of legal matters of interest to Trump, including Stone sentencing*, NBC NEWS (Feb. 11, 2020), <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

¹⁴ Charlie Savage, Adam Goldman and Matt Apuzzo, *Barr installs outside prosecutor to review case against Michael Flynn, ex-Trump adviser*, N.Y. TIMES. (Feb. 14, 2020), <https://www.nytimes.com/2020/02/14/us/politics/michael-flynn-prosecutors-barr.html>.

scheme orchestrated by his personal attorney, Rudy Giuliani. In August 2019, Attorney General Barr met with two lawyers who, working with Giuliani, had reportedly offered to “fix” federal criminal investigations of Ukrainian oligarchs in exchange for the oligarchs’ assistance in digging up dirt on President Trump’s political rivals.¹⁵ The outcome of that meeting remains unknown.

- **Giuliani provides Ukrainian propaganda and misinformation to the Justice Department.** On February 11, 2020, Attorney General Barr confirmed a claim made by Senator Lindsey Graham that the Justice Department has “created a process that Rudy could give information [about President Trump’s desired investigation into former Vice President Biden and his son Hunter Biden] and they would see if it’s verified.” A Justice Department official later confirmed that Giuliani—who is currently being investigated in the Southern District of New York—had “recently” shared information obtained from multiple Ukrainian officials related to former Vice President Joe Biden and his family through this “process.”¹⁶
- **President Trump pressures the Justice Department to drop cases against Giuliani’s clients.** Reports suggest that efforts by allies of the president to influence federal criminal investigations are not limited to Ukraine. For example, it was reported that, during a 2017 Oval Office meeting with President Trump and then-Secretary of State Rex Tillerson, Giuliani sought to secure the release of his jailed client, an Iranian-Turkish gold trader named Reza Zarrab, as part of a potential prisoner swap with Turkey.¹⁷ According to reports, President Trump urged Tillerson to pressure the Justice Department to drop its case against Giuliani’s client.¹⁸

Improper communications between the Justice Department and the White House. President Trump has not acted alone in improperly suggesting that the Justice Department be used to settle his personal and political scores. During Matthew Whitaker’s tenure as Chief of Staff to former Attorney General Jeff Sessions, he reportedly “frequently spoke by phone with both [President] Trump and Chief of Staff John Kelly” and “privately provided advice to the president . . . on how the White House might be able to pressure the Justice Department to investigate the president’s political adversaries.”¹⁹ Mr. Whitaker was reportedly “seen by Department officials as a partisan and a White House spy”²⁰ who was “counseling the White House on how the President and his aides might

¹⁵ Jo Becker, Walt Bogdanich, Maggie Haberman, and Ben Protess, *Why Giuliani singled out 2 Ukrainian oligarchs to help dig up dirt*, N.Y. TIMES (Nov. 25, 2019), <https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html>.

¹⁶ Matt Zapotosky & Devlin Barrett, *Barr acknowledges Justice Dept. has created ‘intake process’ to vet Giuliani’s information on Bidens*, WASHINGTON POST (Feb. 10, 2020), https://www.washingtonpost.com/national-security/barr-acknowledges-justice-dept-has-created-intake-process-to-vet-giulianis-information-on-bidens/2020/02/10/0fba553a-4c1e-11ea-bf44-f5043eb3918a_story.html.

¹⁷ Jo Becker, Maggie Haberman & Eric Lipton, *Giuliani pressed for Turkish prisoner swap in Oval Office meeting*, N.Y. TIMES (Oct. 10, 2019), <https://www.nytimes.com/2019/10/10/us/politics/giuliani-trump-rex-tillerson.html>.

¹⁸ John Santucci, *Trump pushed Tillerson to help Giuliani’s client out of DOJ probe: Source*, ABC NEWS, Oct. 10, 2019, <https://abcnews.go.com/Politics/trump-pushed-tillerson-giulianis-client-doj-probe/story?id=66193540>.

¹⁹ Murray Waas, *Exclusive: Trump loyalist Matthew Whitaker was counseling the White House on investigating Clinton*, VOX (Nov. 9, 2018), <https://www.vox.com/policy-and-politics/2018/11/9/18080656/matthew-whitaker-trump-hillary-clinton-sessions-attorney-general>.

²⁰ Adam Goldman & Edward Wong, *Trump installs a critic of the Mueller investigation to oversee it*, N.Y. TIMES (Nov. 7, 2018), <https://www.nytimes.com/2018/11/07/us/politics/whitaker-mueller-trump.html>.

successfully pressure Sessions and [former Deputy Attorney General Rod] Rosenstein to give in to Trump's demands."²¹

Targeting states that use their sovereign powers to minimize the damage of President Trump's regressive policies and positions. President Trump has repeatedly expressed an animus toward the state of California,²² and that animus appears to have played a role in the Department's decisions to challenge the state's carbon-cutting pact with Quebec and open an antitrust inquiry into a deal California made with four automakers to reduce carbon emissions.²³

Targeting companies that President Trump dislikes. President Trump has repeatedly expressed his disdain for CNN, and in late summer 2017, President Trump reportedly ordered then-director of the National Economic Council Gary Cohn to pressure the Justice Department to intervene in AT&T's acquisition of Time Warner, which owns CNN.²⁴ The Department later filed suit to block the merger.

The Office of Legal Counsel's use of its power and status to insulate President Trump from accusations of wrongdoing. Over the past three years, OLC has provided questionable legal justifications and political cover for some of the Trump Administration's most controversial and politically fraught actions.

- **The Whistleblower:** On September 24, 2019, OLC issued a memorandum that overruled a decision made by the Inspector General of the Intelligence Community ("ICIG") that a whistleblower complaint outlining President Trump's misconduct was not an "urgent concern" as defined in the Intelligence Community Whistleblower Protection Act, 50 U.S.C. § 3033(k)(5)(G).²⁵ The complaint outlined President Trump's attempt to pressure the newly-elected president of Ukraine to announce investigations into President Trump's political rival and a debunked conspiracy theory that Ukraine—not Russia—had interfered in the 2016 election—serious accusations that ultimately resulted in President Trump's impeachment.

After OLC overruled the ICIG, the whistleblower complaint was referred to the Criminal Division of the Department of Justice for "appropriate review."²⁶ The OLC memorandum and subsequent actions taken by the Department of Justice were resoundingly criticized by dozens of Inspectors General, including yourself. You, and your fellow inspectors general, wrote, "OLC

²¹ Katie Benner & Maggie Haberman, *Matthew Whitaker, a Trump loyalist, is seen as ascendant amid Rosenstein chaos*, N.Y. TIMES (Sept. 26, 2018), <https://www.nytimes.com/2018/09/26/us/politics/matthew-whitaker-justice-department.html>.

²² Michael Grunwald, *Trump's war on California*, POLITICO (Feb. 21, 2019), <https://www.politico.com/magazine/story/2019/02/21/trump-california-attacks-economy-225191>

²³ Lisa Friedman & Katie Benner, *Justice Dept. sues California to stop climate initiative from extending to Canada*, N.Y. TIMES (Oct. 23, 2019) <https://www.nytimes.com/2019/10/23/climate/trump-california-climate-change.html>; Hiroko Tabuchi & Coral Davenport, *Justice Dept. investigates California emissions pact that embarrassed Trump*, N.Y. TIMES (Sept. 6, 2019), <https://www.nytimes.com/2019/09/06/climate/automakers-california-emissions-antitrust.html>.

²⁴ Jane Mayer, *The making of the Fox News White House*, NEW YORKER (Mar. 4, 2019), <https://www.newyorker.com/magazine/2019/03/11/the-making-of-the-fox-news-white-house>.

²⁵ "Urgent concern" determination by the Inspector General of the Intelligence Community, U.S. DEP'T OF JUSTICE, OFFICE OF LEGAL COUNSEL (Sept. 24, 2019), <https://www.lawfareblog.com/olc-issues-opinion-about-urgent-concern-determination-whistleblower-complaint-dni>.

²⁶ *Id.*

substituted its judgement and reversed a determination the statute specifically entrusted to the ICIG” and that the opinion was “wrong as a matter of law and policy.”²⁷

- **President Trump’s So-Called Border Wall:** OLC bowed to political pressure to legitimize President Trump’s decision to invoke a national emergency to secure funding for a border wall. Despite the fact that OLC lawyers were “frustrated” and “skeptical” of the decision, OLC “ultimately gave its blessing, people familiar with the matter said.”²⁸
- **President Trump’s Tax Returns:** OLC again bowed to political pressure when it provided a legal justification for Treasury Secretary Steve Mnuchin’s refusal to produce President Trump’s tax returns—despite a contrary legal opinion issued by the Internal Revenue Service—and cautioned the judicial branch that intervention in the dispute would be inappropriate.²⁹
- **Online Gambling:** In January 2019, bowing to political pressure and political donors, OLC released an opinion that restricted online gambling. The opinion appears to have been influenced in part by Sheldon Adelson, a casino owner and political donor who spent millions of dollars to elect President Trump.³⁰

²⁷ Gordon Ahl, *Inspectors general criticize OLC whistleblower opinion*, LAWFARE (Oct. 25, 2019), <https://www.lawfareblog.com/inspectors-general-criticize-olc-whistleblower-opinion>.

²⁸ Matt Zaptosky & Josh Dawsey, *How President Trump came to declare a national emergency to fund his border wall*, WASHINGTON POST (Feb. 15, 2019), https://www.washingtonpost.com/world/national-security/how-president-trump-came-to-declare-a-national-emergency-to-fund-his-border-wall/2019/02/15/3e9f4348-3152-11e9-8ad3-9a5b113ecd3c_story.html.

²⁹ Devlin Barrett & Matt Zaptosky, *Justice Dept. issues memo backing Mnuchin’s refusal to give Trump’s tax returns to Congress*, WASHINGTON POST (June 15, 2019), https://www.washingtonpost.com/world/national-security/justice-dept-issues-memo-backing-mnuchins-refusal-to-provide-trumps-tax-returns-to-congress/2019/06/14/3c8b3376-8ee7-11e9-b08e-cfd89bd36d4e_story.html.

³⁰ Tom Hamburger, *Justice Dept. decision to issue legal opinion long sought by casino magnate Sheldon Adelson draws criticism*, WASHINGTON POST (Feb. 7, 2019), https://www.washingtonpost.com/politics/justice-department-decision-to-issue-legal-opinion-long-sought-by-casino-magnate-sheldon-adelson-draws-criticism/2019/02/07/fb705da6-2ae8-11e9-b011-d8500644dc98_story.html; Tom Hamburger, Matt Zaptosky, & Josh Dawsey, *Justice Dept. issues new opinion that could further restrict online gambling*, WASHINGTON POST (Jan. 14, 2019), https://www.washingtonpost.com/politics/justice-department-issues-new-opinion-that-could-further-restrict-online-gambling/2019/01/14/a501e2da-1857-11e9-8813-cb9dec761e73_story.html; *Reconsidering whether the Wire Act applies to non-sports gambling*, U.S. DEP’T OF JUSTICE, OFFICE OF LEGAL COUNSEL (Nov. 2, 2018), <https://www.justice.gov/olc/file/1121531/download>.