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THE SECURITY FROM POLITICAL INTERFERENCE IN JUSTICE ACT OF 2007

OCTOBER 23, 2007.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 1845]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1845) to provide for limitations in certain communications between the Department of Justice and the White House Office relating to civil and criminal investigations, and for other purposes, having considered the same, reports favorably thereon with amendment and recommends that the bill, as amended, do pass.

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I. Background and Purpose of the Security From Political Interference in Justice Act of 2007

A. Rules Governing Contact Between Department of Justice and White House Officials

The effectiveness and integrity of the administration of justice depends upon the Department of Justice (the Department) operating free of political interference. The most dangerous potential source of such interference is the White House.

In order to minimize the likelihood of improper White House interference in the Department's affairs, the executive branch has, since at least 1993, regulated contact between Department and White House officials related to pending investigations and cases. Between May, 1993 and April, 2002, seven people at the Department and the White House were permitted to have initial communications regarding pending investigations and cases: the President, Vice President, White House Counsel, Deputy White House Counsel, Attorney General, Deputy Attorney General, and Associate Attorney General. If continuing contact was required on a particular matter, the White House Counsel's Office and the senior Department official involved in the matter were required to design a process for (and monitor) that continuing contact. This policy did not apply to communications regarding matters of policy, appointments, legislation, budgets, public relations and "other similar matters." It also envisioned periodic communications between the White House Counsel's Office and the Office of Legal Counsel on matters in which the White House sought a legal opinion as well as White House contact with the Solicitor General's Office regarding appellate litigation. This policy was memorialized in a September 29, 1994 letter from Attorney General Janet Reno to White House Counsel Lloyd Cutler. (Appendix A).

On April 15, 2002, Attorney General John Ashcroft issued a memorandum while Alberto Gonzales was White House Counsel (published in the Department's Organization and Functions Manual as Rule 32) altering the above-referenced policy. (Appendix B). The new policy stated:

> Except with respect to national security matters, all initial communications that concern or may concern a pending criminal investigation or a criminal case pending at the trial level should take place only between the Office of the Deputy Attorney General and the Office of the Counsel to the President. . . . Staff members of the Office of the Attorney General, if so designated by the Attorney General, may communicate directly with officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security.

By adding the Offices of the Attorney General, Deputy Attorney General, President, Vice President, White House Counsel, National Security Council, and Homeland Security, in their entireties, this new policy permitted at least 417 people in the White House to

communicate with at least 42 people at the Department on non-national security related matters.

On May 4, 2006, Attorney General Alberto Gonzales issued a memorandum altering the policy again. (Appendix C). The new policy added, inter alia, the Chief of Staff and Counsel to the Vice President and staff of the Office of Management and Budget to the list of those permitted to communicate with staff in the Office of the Attorney General regarding pending investigations and cases. The new, and still current, policy permits at least 895 people in the executive branch to communicate with at least 42 people at the Department on non-national security related matters. The Organization and Functions Manual was never updated to reflect this new policy.

B. CONGRESSIONAL OVERSIGHT

On April 19, 2007, the Senate Judiciary Committee held a hearing titled "Department of Justice Oversight," with Attorney General Alberto Gonzales appearing as the sole witness.

Senator Sheldon Whitehouse asked Mr. Gonzales about the changed policy regarding contact between the Department and the White House (Senator Whitehouse referred to the memorandum issued on April 15, 2002 because the most recent, and extant, memorandum was not publicly available):

> Senator WHITEHOUSE. What possible interest in the administration of justice is there to kick the portal so wide open that this many people now can engage directly about criminal cases and matters, compared to before?
>
> Mr. GONZALES. Senator, I think you've raised a good point here, one that I was concerned about at the [White House] counsel's office and I remain concerned as Attorney General, in terms of making sure that communications from the White House and the Department of Justice remain in the appropriate channels.
>
> I do recall being concerned about that as White House counsel.
>
> Senator WHITEHOUSE. Quite a pronounced change, isn't it? . . .
>
> Mr. GONZALES. Senator, let me say this. I am not aware that there are initial contacts between the White House and the Department of Justice as an initial matter with respect to specific criminal cases.
>
> Or if there are—let me put it this way: I don't think there should be. I think it's very, very important—I agree with you. It is important to try to limit the communications about specific criminal cases between the counsel's office and the Department of Justice.
>
> Senator WHITEHOUSE. But when I see the rules opened this much, it makes me wonder to what extent this safeguard is considered significant in this administration.

Attorney General Gonzales did not inform Senator Whitehouse at this oversight hearing that the April 15, 2002 policy was no longer in effect and had, in fact, been expanded.

On June 29, 2007, the Senate Judiciary Committee held a hearing titled "Oversight of the U.S. Department of Justice," with At-

torney General Gonzales again appearing as the sole witness. During the period of time between this hearing and the above-referenced April 19 hearing, Senator Whitehouse became aware of the policy issued by Attorney General Gonzales on May 4, 2006. Senator Whitehouse asked Attorney General Gonzales about the most recent policy change:

> Senator WHITEHOUSE. Isn't the White House the number one locus of general concern that's persisted through many administrations as to where political influence coming into the Department of Justice improperly is going to come from?
>
> Mr. GONZALES. Obviously, that would be certainly a key source of concern.
>
> Senator WHITEHOUSE. The key—the key, right?
>
> Mr. GONZALES. Probably the key source of concern.
>
> Senator WHITEHOUSE. OK. And in response to that, as we discussed in the last hearing—I'd like to remind you there was the 1994 letter from Janet Reno to Lloyd Cutler.
>
> And in response to that concern, which we agree is a very real one, the letter announced—and I believe that the letter—I wasn't here at the time, but I believe the letter was actually reduced to writing at the direction and instigation of then-Judiciary Chairman Orrin Hatch, who saw this as a significant concern.
>
> And the letter said this: "Initial communications between the White House and the Justice Department regarding any pending department investigation or criminal or civil case should involve only the White House counsel or deputy counsel (or the president or vice president) and the attorney general or deputy or associate attorney general"—seven people.
>
> As you'll recall, I showed you a graph of what had been done since.
>
> And in response to that, you seemed to agree that I had a somewhat legitimate concern that I was pursuing. You said—and this is from your transcript—"I remain concerned as attorney general in terms of making sure that communications from the White House and the Department of Justice remain in the appropriate channels."
>
> You further said, "I agree with you, it is important to you to try to limit the communications about specific criminal cases between the counsel's office and the Department of Justice."
>
> You specifically said, "I think the safeguards that you're referring to I think are very, very important."
>
> And then you said, "I, like you, am concerned about the level of contacts in ensuring that the communications from the White House and the Department of Justice occur at the appropriate—within the appropriate channels."
>
> Mr. GONZALES. Channels.
>
> Senator WHITEHOUSE. Now, I then showed you the letter that Attorney General—the memorandum that Attorney General Ashcroft prepared. And that's the document that, sort of, kicked open the door from seven to hundreds of people to be involved and have discussions about ongoing

criminal/civil investigative matters. And that's what led to our discussion about all of this.

Now, you've had some time to think about this. You've indicated desire to clean up the mess at the department. I would like to bring to your attention a May 4th, 2006, memorandum that is a subsequent document to the Ashcroft memorandum. This one is signed by you.

Here's what concerns me. In the Ashcroft memorandum, which was a subject of concern before, at the very, very end of the Ashcroft memorandum, as you'll remember, there was that paragraph under asterisks that changes the whole memorandum in front of it.

It says, "Notwithstanding any procedures, limitations set forth above, the attorney general may communicate directly with the president, vice president, counsel to the president, assistant to the president for national security affairs, and various others." And then it provides who the staff members can consult with: "directly with officials and staff of the Office of President, Office of the Vice President, Office of the Counsel to the president, National Security Council" and so forth.

Now, I took the position that that was pretty much kicking down a very important door that had protected the department from political influence, but I see in your May 4th, 2006, memorandum a number of things that concern me even more.

The first is at the bottom of the first page where there is an asterisked footnote, which says at the bottom, "For convenience, the executive functions of the vice presidency are referred to in this document as the Office of the Vice President or OVP, and the provisions of this memorandum that apply with respect to communications with the EOP"—Executive Office of the President, I assume that is—"will apply in parallel fashion to communications with the Office of the Vice President."

Let me ask you first, what on Earth business does the Office of the Vice President have in the internal workings of the Department of Justice with respect to criminal investigations, civil investigations, ongoing matters?

Mr. GONZALES. As a general matter, I would say that that's a good question.

Senator WHITEHOUSE. Why is it here then?

Mr. GONZALES. I'd have to go back and look at this.

Senator WHITEHOUSE. I'd like to know where this came from and how that addition was made.

Then, if you look at the very back, the very last paragraph, once again there's a final paragraph set off by asterisks that pretty much undercuts everything that was said in the previous enumerated paragraphs.

And here, you can see the difference. It's almost identical with the previous memorandum, only it adds some things: "Notwithstanding any procedure or limitations set forth above, the attorney general may communicate directly with the president, vice president"—so far, same as the Ashcroft memorandum. Then you add, "their chiefs of

staff, counsel to the president," then you add "or vice president."

Somebody took the trouble to write in "counsel to the vice president" and provide that individual access to ongoing criminal investigations, ongoing civil investigations and ongoing other investigative matters.

Mr. GONZALES. Which—I don't know whether or not that, in fact, has happened, so I want to—I want to (inaudible) . . .

Senator WHITEHOUSE. Part of what we do around here is to prevent things from happening.

Mr. GONZALES. Exactly, exactly.

Senator WHITEHOUSE. And when you kick down doors, you invite people to do it whether or not it's been done.

Mr. GONZALES. And I agree.

Senator WHITEHOUSE. OK.

Mr. GONZALES. And on its face, I must say, sitting here, I'm troubled by this.

Senator WHITEHOUSE. Yes.

Mr. GONZALES. I will say . . .

Senator WHITEHOUSE. And if you can continue—just let me finish, because we're not done with the paragraph.

Mr. GONZALES. All right.

Senator WHITEHOUSE. If you go further on down, what was the staff of the Office of the President has become the staff of the White House Office and the entire Office of Management and Budget has been thrown in.

So you come here today with, I think, to put it mildly, highly diminished credibility, asserting to us that you want to bring—to restore the Department of Justice.

And yet here, where there is something that you could do about it, since our past discussion, nothing has been done, the memo that has your signature makes it worse, and we've agreed that this connection between the White House and the Department of Justice is the most dangerous one from a point of view of the potential for the infiltration of political influence into the department.

How, in the light of all those facts, can I give you any credibility for being serious about the promises you've made that you intend to clean up the mess you've made?

Mr. GONZALES. Well, because we have taken—I've taken several steps to clean up, to address some of the mistakes that have been made, Senator.

I can say that I have directed my staff to try to understand what happened with respect to the Ashcroft memo, what was the genesis of it. And in fact, we went back and talked to a former member of the Ashcroft leadership team to understand what was the basis of the change. What caused this to happen? And so we have been looking at this issue because I am concerned about it.

And with respect to this memo, quite frankly, I'd have to look at it. And I would be concerned about inappropriate access to ongoing investigations. And it's something that—if that's encouraged by this kind of memorandum, I think it's something that we ought to rethink.

C. REPORTING REQUIREMENTS AS AN ESSENTIAL TOOL OF CONGRESSIONAL OVERSIGHT

Congress has a compelling interest in protecting the Department of Justice from undue political interference and in conducting vigorous oversight of the executive branch. One of the most common, and effective, tools of Congressional oversight is to require the executive branch to produce reports to Congress. Indeed, the Department is currently responsible for more than 100 statutorily mandated reports to Congress on issues as varied as the administration of the Dispute Resolution Act (Pub. L. 96–160) and the joint United States-Canada Alternative Inspections Project (Pub. L. 107–173). The White House is responsible for more than 600 statutorily mandated reports to Congress. See "Reports To Be Made To Congress, Communication from the Clerk of the U.S. House of Representatives," House Document 108–188.

The Security from Political Interference in Justice Act of 2007 would create a simple reporting requirement: the Department and the White House would be required to make separate, semi-annual reports to the House and Senate Judiciary Committees detailing which Department and which White House personnel had communications regarding ongoing Department investigations or cases. The reporting requirement would not apply to the President, Vice President, White House Counsel, Deputy White House Counsel, Attorney General, Deputy Attorney General, or Associate Attorney General. Furthermore, it would not apply to communications relating to policy, appointments, legislation, rulemaking, budgets, public relations, programmatic matters, intergovernmental relations, administrative or personnel matters, appellate litigation, or requests for legal advice. The bill would place no restriction on which personnel in either the White House or the Department may have such communications.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

Senator Whitehouse introduced S. 1845 on July 23, 2007, joined by Chairman Leahy. The bill was referred to the Committee on the Judiciary.

B. COMMITTEE CONSIDERATION

The bill was considered by the Committee on the Judiciary on September 20, 2007. During committee consideration, Senator Cornyn requested to be added as a cosponsor of the measure.

After discussions with the offices of Senators Leahy, Hatch, and Cornyn, Senator Whitehouse introduced an amendment in the nature of a substitute. In addition to a minor change meant to clarify that the bill does not apply to contacts regarding appellate litigation, the substitute amendment deleted language prohibiting non-covered officers from engaging in "covered communication."

Instead, as discussed above, the substitute amendment requires the Department and the White House to produce separate, semi-annual reports to the House and Senate Judiciary Committees detailing which Department and White House personnel had communications regarding ongoing Department investigations or cases.

The reporting requirement would not apply to the President, Vice President, White House Counsel, Deputy White House Counsel, Attorney General, Deputy Attorney General, or Associate Attorney General. Furthermore, it would not apply to communications relating to policy, appointments, legislation, rulemaking, budgets, public relations, programmatic matters, intergovernmental relations, administrative or personnel matters, appellate litigation, or requests for legal advice. The bill would place no restriction on which personnel in either the White House or the Department may have such contacts.

The substitute amendment was accepted by a voice vote.

The Judiciary Committee then reported the Security from Political Interference in Justice Act of 2007, with an amendment in the nature of a substitute, to be reported favorably to the full Senate, with a recommendation that the bill do pass. The committee proceeded by roll call vote.

The vote record is as follows:

Tally: 14 Yeas, 2 Nays

Yeas (14): Leahy (D–VT), Specter (R–PA), Kennedy (D–MA), Hatch (R–UT), Biden (D–DE), Grassley (R–IA), Kohl (D–WI), Feinstein (D–CA), Feingold (D–WI), Schumer (D–NY), Durbin (D–NY), Cornyn (R–TX), Cardin (D–MD), Whitehouse (D–RI)

Nays (2): Kyl (R–AZ), Coburn (R–OK)

III. Section-by-Section Summary of the Bill, as Reported

Section 1. Short title

Title: "The Security from Political Interference in Justice Act of 2007"

Sec. 2. Definitions

This section defines a "covered communication" as any communication relating to an ongoing investigation conducted by the Department of Justice in any civil or criminal matter (regardless of whether a civil action or criminal indictment or information has been filed). The definition of a "covered communication" specifically excludes communications relating to policy, appointments, legislation, rulemaking, budgets, public relations, programmatic matters, intergovernmental relations, administrative or personnel matters, appellate litigation, or requests for legal advice.

This section also defines a "covered Department of Justice officer" as the Attorney General, Deputy Attorney General, and Associate Attorney General. It defines a "covered White House officer" as the President, Vice President, Counsel to the President, and Counselor to the President. The definitions of covered officers mirror the officials named in the above-referenced September 1994 letter from Attorney General Reno to White House Counsel Cutler.

Sec. 3. Reports to Congress

This section would require the Department and the White House to make separate, semi-annual reports to the House and Senate Judiciary Committees detailing which Department and which White House personnel had communications regarding ongoing Department investigations or cases. Covered Department and White

House officers, as defined in Section 2, need not be included in the reports.

IV. Congressional Budget Office Cost Estimate

The Committee on the Judiciary sets forth, with respect to the bill, S. 1845, the following estimate prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

September 27, 2007.

Hon. Patrick J. Leahy,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1845, the Security from Political Interference in Justice Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres.

Sincerely,

Peter R. Orszag,
Director.

Enclosure.

S. 1845—Security From Political Interference in Justice Act of 2007

S. 1845 would require biannual reports on communications between White House and Department of Justice (DOJ) employees regarding ongoing civil or criminal matters. Under the bill, the White House and DOJ would report to the Congress the names of its employees who engaged in those communications. The bill would provide a reporting exemption for communications between officials specified in the bill. Those officials would include the attorney general, deputy attorney general, and the associate attorney general within DOJ, and the President, Vice President, White House counsel, and counselor to the President.

CBO estimates that the cost of implementing S. 1845 would be insignificant. Any such spending would be subject to the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

S. 1845 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Leigh Angres. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

V. Regulatory Impact Evaluation

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee on the Judiciary finds that no significant regulatory impact will result from the enactment of S. 1845.

VI. Conclusion

The Security from Political Interference in Justice Act of 2007, S. 1845, applies a fundamental tool of Congressional oversight—the reporting requirement—to the issue of communications between

the Department and the White House regarding pending investigations and cases. The legislation would not regulate in any way who may have such communications. However, through its reporting mechanism, it would provide the Congress, and the public, with a clear sense of the degree to which the White House is involved in the administration of justice.

VII. Minority Views of Senator Kyl

This bill is very likely unnecessary. Members of this committee have been reliably informed that the Justice Department's policies regulating intra-executive communications about criminal investigations are currently under review. Moreover, the Senate is about to confirm a new U.S. Attorney General. Some might think it wise that, before imposing another burdensome and potentially problematic reporting requirement on the Justice Department, this committee allow the new Attorney General an opportunity to complete the current policy review and to implement new policies.

Recognizing, however, that the absence of a need for legislation is rarely regarded as grounds for delaying its progress, I will emphasize one change that must be made to this bill before it is allowed to proceed to the floor. The bill requires reporting on some potentially very sensitive communications—communications whose public disclosure could compromise very important national-security and criminal investigations. For example, if a United States Attorney in a rural district is investigating a potential crime of terrorism and communicates with the NSA, public disclosure of the fact of that communication may very well alert those who are the subject of the investigation that they are under surveillance. Similarly, public disclosure of the existence of communications between the Justice Department's public-integrity section and the staff of one of the smaller components of the Executive Office of the President also poses a serious risk of compromising an ongoing investigation.

This bill at the very least needs to be amended to mandate that the reports that it requires to be submitted to Congress be made confidential. It is not enough that the relevant committees can choose not to disclose the contents of the reports. Whether to reveal the facts of these communications and to potentially compromise ongoing investigations should not be a matter of legislative discretion. If Congress is to receive reports about these communications, it must not make the contents of those reports public.

I would reiterate, however, that this bill is very unlikely unnecessary. This committee has in recent years required a large number of new reports to be prepared by the Justice Department. The recent reauthorization of the USA Patriot Act, Public Law 109–177, for example, has probably set the record for the greatest number of new reports required in a single bill. It is no secret that a large number of these reports are never read by the committees who mandate their production. And it should be obvious that the more resources that the Justice Department is forced to devote to these reports, the fewer that it may allocate to its core mission of investigating acts of terrorism and prosecuting federal offenses. I would propose that before we unnecessarily add to this reporting burden

through this bill, we at least allow the new Attorney General an opportunity to review and revise the current policies.

JON KYL.

VIII. APPENDIX A

SEPTEMBER 29, 1994.

LLOYD N. CUTLER, Esq.
Special Counsel to the President, The White House,
Washington, DC.

DEAR MR. CUTLER: You have asked for my views on the subject of communications between the Department of Justice and the White House concerning matters pending in the Department. These are the principles and procedures I think we should follow.

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 civil or criminal law enforcement matters, where important for the performance of the President's duties and where appropriate from a law enforcement perspective. Consistent with this principle, since May 1993 the Department has followed procedural rules governing communications with the White House concerning pending Department investigations or criminal or civil cases. Initial communications between the White House and the Justice Department regarding any pending Department investigation or criminal or civil case should involve only the White House Counselor, Deputy Counsel (or the President or Vice President), and the Attorney General or Deputy or Associate Attorney General. If continuing contact is required on a particular matter, the White House Counsel's Office and the senior Department official with whom it is dealing design and monitor that continuing contact.

This process does not apply to communications regarding matters of policy, appointments, legislation, budgets, public relations and other similar matters, as to which the White House staff should deal with whomever is appropriate in the Department. In addition, from time to time the Department establishes specific procedures for communications between particular entities. For example, the White House Counsel's Office deals directly with the Office of Legal Counsel on matters in which it is seeking the opinion of the Department, and directly with the Office of the Solicitor General regarding the status of supreme court cases. Particularized procedures have also been applied to communications with the Pardon Attorney and the National Security Council.

Sincerely,

JANET RENO.

IX. APPENDIX B

APRIL 15, 2002.

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS AND UNITED STATES ATTORNEYS

From: The Attorney General
Subject: Department of Justice Communications with the White House

It is imperative that there be public confidence that the laws of the United States are administered and enforced in an impartial manner. To that end, all components of the Department of Justice, including United States Attorneys' Offices, shall abide by the following procedures governing communication between the Department of Justice and the White House.

1. PENDING CRIMINAL INVESTIGATIONS AND CASES

The Department shall provide the White House with information about pending criminal investigations or cases only when doing so is important for the performance of the President's duties and appropriate from a law enforcement perspective. Except with respect to national security matters, all initial communications that concern or may concern a pending criminal investigation or a criminal case pending at the trial level should take place only between the Office of the Deputy Attorney General and the Office of the Counsel to the President, and all initial communications that concern or may concern a criminal case pending at the appellate level should take place only between the Office of the Counsel to the President and either the Office of the Deputy Attorney General or the Office of the Solicitor General. If appropriate with regard to a particular case or investigation, the Office of the Counsel to the President and the senior Justice Department official with whom the White House is dealing will design and monitor a process for ongoing contact between the White House and Justice Department concerning that particular matter.

2. PENDING CIVIL INVESTIGATIONS AND CASES

The Department shall provide the White House with information about pending civil investigations or cases only when doing so is important for the performance of the President's duties and appropriate from a law enforcement or litigation perspective. Except with respect to national security matters, all initial communications that concern or may concern a pending civil investigation or a case pending at the trial level should take place only between the Office of the Counsel to the President and either the Office of the Deputy Attorney General or the Office of the Associate Attorney General. All initial communications that concern or may concern a civil case

pending at the appellate level should take place only between the Office of the Counsel to the President and the Office of the Deputy Attorney General, the Office of the Associate Attorney General, or the Office of the Solicitor General. If appropriate with regard to a particular case or investigation, the Office of the Counsel to the President and the senior Justice Department official with whom the White House is dealing will design and monitor a process for ongoing contact between the White House and the Justice Department concerning that particular matter.

3. NATIONAL SECURITY MATTERS

The Office of the Deputy Attorney General may communicate directly with the National Security Council and the Office of Homeland Security concerning investigations and cases involving national security issues. Pursuant to Department of Justice policies and procedures, the Criminal Division and the FBI also may communicate directly with the National Security Council and the Office of Homeland Security concerning investigations and cases involving national security issues. Such communications should be limited to those aspects of the matter that implicate national security or homeland security.

4. WHITE HOUSE REQUESTS FOR LEGAL ADVICE

The Office of Legal Counsel and the Office of the Counsel to the President may communicate directly concerning requests from the White House for legal advice. All requests for formal legal opinions from the Department of Justice shall be directed to the Assistant Attorney General for the Office of Legal Counsel or the Attorney General.

5. PRESIDENTIAL CLEMENCY MATTERS

The Office of the Pardon Attorney and the Office of the Counsel to the President may communicate directly concerning Presidential clemency matters.

6. OTHER COMMUNICATIONS NOT RELATING TO PENDING INVESTIGATIONS OR CRIMINAL OR CIVIL CASES

All communications between the Department of Justice and the White House that are limited to policy, legislation, budgeting, appointments, public affairs, intergovernmental relations, administrative or personnel matters or similar matters that do not relate to a pending investigation or a criminal or civil case, may be handled directly by the parties concerned. As a general matter, such communications should take place with the knowledge of the Department's lead contact regarding the subject under discussion.

* * * * * * *

Notwithstanding any procedures or limitations set forth above, the Attorney General may communicate directly with the President, Vice President, Counsel to the President, Assistant to the President for National Security Affairs, or Assistant to the President for Homeland Security regarding any matters within the jurisdiction of the Department of Justice. Staff members of the Office of the Attorney General, if so designated by the Attorney General,

may communicate directly with officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security.

X. APPENDIX C

MAY 4, 2006.

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS AND UNITED STATES ATTORNEYS

From: The Attorney General
Subject: Communications with the Executive Office of the President

Four years ago, Attorney General Ashcroft issued a memorandum outlining the procedures that govern communications between the Department of Justice and the White House. I write today to reiterate those procedures (with some minor revisions and clarifications) in order to ensure that new personnel are aware of these rules and to remind everyone of their importance. It is imperative that there be public confidence that the laws of the United States are administered and enforced in an impartial manner. I ask that all components of the Department of Justice, including Federal Law enforcement agencies and the United States Attorneys' Offices, abide by the following procedures on communications between the Department and the Executive Office of the President (EOP).*

1. CRIMINAL INVESTIGATIONS AND CASES

The Department shall provide EOP officials and staff with information about a criminal investigation or case only when doing so is important for the performance of the President's duties and appropriate from a law enforcement perspective. Except with respect to national security matters, all initial communications that concern or may concern such an investigation or case pending at the trial level should take place only between the Office of the Counsel to the President and the Office of the Deputy Attorney General (ODAG), and all initial communications that concern or may concern a criminal case pending at the appellate level should take place only between the Office of the Counsel to the President and either ODAG or the Office of the Solicitor General (OSG). If appropriate with regard to a particular case or investigation, the Office of the Counsel to the President and the senior Justice Department official with whom the EOP is dealing will design and monitor a

*As used in this memorandum, the term "EOP" means the White House Office, the Office of Policy Development, the Executive Residence, the Office of Administration, the National Security Council staff: the Homeland Security Council Staff, the Council of Economic Advisers, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology Policy, the Office of the U.S. Trade Representative, the Council on Environmental Quality, the President's Foreign Intelligence Advisory Board, and the Privacy and Civil Liberties Oversight Board. For convenience, the executive functions of the Vice Presidency are referred to in this document as the "Office of the Vice President" or "OVP," and the provisions of this memorandum that apply with respect to communications with the EOP will apply in parallel fashion to communications with the OVP.

process for ongoing contact between staff at the EOP and the Justice Department concerning that particular matter.

2. CIVIL INVESTIGATIONS AND CASES

The Department shall provide EOP officials and staff with information about a civil investigation or case only when doing so is important for the performance of the President's duties and appropriate from a law enforcement and litigation perspective. Except with respect to national security matters, all initial communications that concern or may concern such an investigation or case pending at the trial level should take place only between the Office of the Counsel to the President and either ODAG or the Office of the Associate Attorney General (OASG). All initial communications that concern or may concern a civil case pending at the appellate level should take place only between the Office of the Counsel to the President and ODAG, OASG, or OSG. If appropriate with regard to a particular case or investigation, the Office of the Counsel to the President and the senior Justice Department official with whom the EOP is dealing will design and monitor a process for ongoing contact between staff at the EOP and the Justice Department concerning that particular matter.

3. NATIONAL SECURITY AND HOMELAND SECURITY MATTERS

ODAG may communicate directly with the National Security Council (NSC) and the Homeland Security Council (HSC) concerning investigations and cases involving national security or homeland security, and OASG may do so with respect to any such investigation or case that has become the subject of civil litigation. If appropriate with regard to a particular case or investigation, ODAG will design and monitor a process for ongoing contact between staff at the NSC or HSC and the Justice Department concerning that particular matter.

4. REQUESTS FOR LEGAL ADVICE

The Office of Legal Counsel (OLC) may communicate directly with counsel for each component within the EOP (including, for example, the: Office of the Counsel to the President or the General Counsel of the Office of Management and Budget) concerning requests for legal advice. It may be advisable to copy an appropriate attorney from the Office of the Counsel to the President on communications with other EOP components. All requests for formal legal opinions from the Department of Justice shall be directed to the Attorney General or the Assistant Attorney General for OLC.

5. PRESIDENTIAL CLEMENCY MATTERS

The Office of the Pardon Attorney may communicate directly with the Counsel to the President and the Deputy Counsel to the President (and their designee) concerning Presidential clemency matters.

6. OTHER COMMUNICATIONS NOT RELATING TO INVESTIGATIONS OR CRIMINAL OR CIVIL CASES

All communications between the Department of Justice and the EOP that are limited to policy, legislation, budgeting, appointments, public affairs, intergovernmental relations, administrative or personnel matters, or similar matters that do not relate to an investigation or a criminal or civil 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 under discussion.

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Notwithstanding any procedures or limitations set forth above, the Attorney General may communicate directly with the President, Vice President, their Chiefs of Staff, Counsel to the President or Vice President, Assistant to the President for National Security Affairs, Assistant to the President and Homeland Security Advisor, or the head of any office within the EOP regarding any matter within the jurisdiction of the Department of Justice. Staff members of the Office of the Attorney General, if so designated by the Attorney General, may communicate directly with officials and staff of the White House Office, the Office of the Vice President, the National Security Council, the Homeland Security Council, and the Office of Management and Budget.

XI. Changes to Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1845, as reported, are shown as follows (new matter is printed in italic):

In the appropriate place, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Security from Political Interference in Justice Act of 2007."

SEC. 2. DEFINITIONS.

In this Act—

(1) the term "covered communication"—

(A) means any communication relating to an ongoing investigation conducted by the Department of Justice in any civil or criminal matter (regardless of whether a civil action or criminal indictment or information has been filed); and

(B) does not include any communication relating to policy, appointments, legislation, rulemaking, budgets, public relations, programmatic matters, intergovernmental relations, administrative or personnel matters, appellate litigation, or requests for legal advice;

(2) the term "covered Department of Justice officer" means—

(A) the Attorney General;

(B) the Deputy Attorney General; and

(C) the Associate Attorney General; and

(3) the term "covered White House officer" means—

(A) the President;

(B) the Vice President;

(C) the Counsel to the President; and

(D) the Counselor to the President.

SEC. 3. REPORTS TO CONGRESS.

(a) Department of Justice Report.—Not later than 30 days after each January 1 and July 1 of each calendar year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report with the name and title of each officer or employee of the Department of Justice who made a covered communication during the 6-month period preceding that January 1 or July 1 with any officer or employee of the Executive Office of the President. The report need not include any covered Department of Justice officer.

(b) White House Report.—Not later than 30 days after each January 1 and July 1 of each calendar year, the Counsel to the President shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report with the name and title of each officer or employee of the Executive Office of the President who made a covered

communication during the 6-month period preceding that January 1 or July 1 with any officer or employee of the Department of Justice. The report need not include any covered White House Officer.

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