

United States Senate

WASHINGTON, DC 20510

September 18, 2019

The Honorable Stephen E. Boyd
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Assistant Attorney General Boyd:

We write to renew our August 22, 2018 request for documents related to *United States v. Purdue Fredrick Company Inc. et al.*, a criminal matter settled by the Department of Justice (DOJ) in 2007 in the Western District of Virginia.¹ In your response to our letter, dated May 15, 2019, you refused to provide any documents related to this case.² Recent reporting by the *New York Times* has again highlighted a central document in our request: the 2006 prosecution memo (hereinafter “the Memo”) drafted by career DOJ attorneys recommending the prosecution of several of Purdue Pharma’s top executives for intentionally misleading the public about the health effects of their product.³ This reporting has raised additional concerns about DOJ’s decision to decline prosecution, the influence of former DOJ officials in that decision, and possible misrepresentations to Congress.

On August 16, 2019, the *New York Times* published excerpts from the Memo detailing that Purdue Pharma knew of significant abuse of OxyContin after the introduction of the drug in 1996 and concealed that information.⁴ Then-Deputy Chief of the Fraud Section of DOJ’s Criminal Division, Paul Pelletier, described the document as the “most detailed prosecution memo he had ever seen” and called the decision not to prosecute Purdue Pharma officials “a joke.”⁵ According to Pelletier, “There [was] no justification for which you shouldn’t prosecute those individuals. None.”⁶

The Memo is purported to include evidence that Purdue Pharma executives may have lied when they “told Congress that they had no knowledge of the extensive abuse and diversion of

¹ See Letter from Senator Margaret Wood Hassan and Senator Sheldon Whitehouse to Attorney General Jeff Sessions (Aug. 22, 2018), available at <https://www.hassan.senate.gov/imo/media/doc/DOJGiulianiPurduePharma.180822.pdf> [hereinafter Letter from Senators Hassan and Whitehouse].

² See Letter from Assistant Attorney General Stephen E. Boyd to Senator Margaret Wood Hassan and Senator Sheldon Whitehouse (May 15, 2019) [hereinafter Letter from Assistant Attorney General Boyd].

³ *The Weekly: Episode 10: ‘The Memo’*, N.Y. Times (Aug. 16, 2019), available at <https://www.nytimes.com/2019/08/16/the-weekly/opioid-crisis-epidemic.html> [hereinafter *The Weekly*].

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

OxyContin before it was made known to them” in 2000.⁷ Specifically, in a December 2001 hearing before the House Committee on Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Purdue Pharma’s Chief Medical Officer Paul D. Goldenheim testified:

We launched OxyContin in 1996, and for the first four years on the market, we did not hear of any particular problem. . . . February of 2000 was the first time we became aware that something different was going on. In February of 2000, we got a copy of a letter that then U.S. Attorney Jay McCloskey of Maine sent to physicians in Maine warning them of problems in OxyContin that were occurring in certain communities, and I believe it was March of that year when that was published in the Bangor Times. That was the first time we had any inclination that something different was going on that required personal attention.⁸

The Memo, however, appears to document that Purdue Pharma executives were informed in 1997 that “concerns [had been] raised about the abuse potential” of OxyContin, and, in response, had pushed “to start a campaign to focus attention on the untreated patient in severe pain who is mobilized and given his life back by our products.”⁹

We also previously outlined concerns about the role Rudy Giuliani may have played in influencing DOJ’s decision not to prosecute.¹⁰ Your May 2019 response acknowledged that “during 2002 and 2003, the Department contracted with Ernst and Young to study, review, and prepare performance measures and accountability standards for the Organized Crime Drug Enforcement Task Force (OCDETF) program. The firm of Giuliani-Kerik was listed as a subcontractor in that contract for . . . approximately \$1,000,000.”¹¹ Moreover, your letter further confirmed that, during this time, Giuliani himself attended or participated in several promotional events related to the Drug Enforcement Administration.¹² The *New York Times* now reports that two additional former DOJ officials—former United States Attorney for the Southern District of New York Mary Jo White and former General Counsel of the Federal Bureau of Investigation Howard Shapiro—also represented Purdue Pharma in negotiations with senior DOJ officials.¹³

Oversight over the executive branch, including its exercise of its prosecutorial powers, is one of Congress’s core constitutional functions. As the Supreme Court of the United States has emphasized,

The power of the Congress to conduct investigations is inherent in the legislative process. . . . It includes surveys of defects in our . . . political system for the

⁷ *Id.*

⁸ *Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations for 2002: Hearing on OxyContin Before the Subcomm. on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies of the H. Comm. on Appropriations, 107th Cong. (2001)* (statement of Dr. Paul D. Goldenheim, Executive Vice President for Research, Development, and Regulatory and Medical Affairs, Purdue Pharma), available at <https://www.govinfo.gov/content/pkg/CHRG-107hhrg77734/html/CHRG-107hhrg77734.htm>.

⁹ *The Weekly, supra* note 3.

¹⁰ See Letter from Senators Hassan and Whitehouse, *supra* note 1.

¹¹ See Letter from Assistant Attorney General Boyd, *supra* note 2.

¹² *Id.*

¹³ *The Weekly, supra* note 3.

purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption.¹⁴

This oversight authority includes a duty to examine whether former DOJ officials working on the behalf of the targets of an investigation exercised improper influence over the DOJ's decision-making.

The partial release of the Memo by the *New York Times* brings to light information about the role of Purdue Pharma in the origins of the opioid epidemic, but leaves important questions unanswered. In addition to documenting possible perjury before Congress by Purdue Pharma officials, the Memo and associated documents about DOJ's decision-making process would help us assess DOJ's conduct, whether it was inappropriately influenced by the targets of an investigation, and what effect decisions made between 2003 and 2007 had on the crisis our country faces today. That DOJ is taking steps today to help address the opioid epidemic is beside the point.

You have provided no convincing reasons that compel you to withhold the Memo and other documents related to DOJ's decision-making from Congress. As DOJ demonstrated with its release of Special Counsel Robert Mueller's report on election interference, a memo explaining DOJ's prosecutorial decisions can be released to the public with redactions protecting any materials that may not be disclosed under applicable laws and court rules. DOJ has also demonstrated that it is able to provide a less-redacted version of such a document to Congress to assist in our constitutional oversight responsibilities.

DOJ has also cooperated with prior congressional inquiries related to its prosecution or declination decisions. For example, the House Committee on Oversight and Government Reform and the House Committee on the Judiciary conducted an investigation of DOJ's decision in 2012 to decline to intervene in a *qui tam* case.¹⁵ DOJ produced 269 pages of documents, including, among other things, decision and briefing memos, internal and deliberative staff emails, and handwritten notes by DOJ attorneys.¹⁶ These documents were then attached to the majority staff report of that investigation.¹⁷ It is thus not true, as you wrote, that "the Department does not share documents and communications related to its internal pre-decisional deliberations regarding the exercise of its enforcement authorities and prosecutorial discretion."¹⁸ DOJ has shared exactly that kind of information with Congress before and could do so again now.

To that end, we respectfully renew our August 2018 request for the Memo and for additional information and documents related to DOJ's decision to settle this matter for misdemeanor charges. In addition, we specifically request any communications between DOJ, Rudy Giuliani

¹⁴ *Watkins v. United States*, 354 U.S. 178, 187 (1957).

¹⁵ *DOJ's Quid Pro Quo with St. Paul: A Whistleblower's Perspective: Joint Hearing Before the Subcomm. on Economic Growth, Job Creation and Regulatory Affairs of the H. Comm. on Oversight and Government Reform and the Subcomm. on the Constitution and Civil Justice of the H. Comm. on the Judiciary*, 113th Cong. (2013), available at <https://www.govinfo.gov/content/pkg/CHRG-113hhrg81282/pdf/CHRG-113hhrg81282.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Letter from Assistant Attorney General Boyd, *supra* note 2.

and Giuliani Partners, Mary Jo White, and Howard Shapiro in their capacity as representatives of the Defendants in United States v. Purdue Frederick Company Inc.

Sincerely,



Margaret Wood Hassan
United States Senator



Sheldon Whitehouse
United States Senator