exchange for not using the witness’ act of production against the witness in a
Alternatively, the prosecutor can enter into a letter agreement with the individuals.
In either situation, the act of production immunity does not provide any protection
for the witness from a future prosecution.

II. Department Policies and Practices Governing Investigative Activities
in Advance of an Election

Department policies require all Department officials to “enforce the laws...in
a neutral and impartial manner” and to remain “particularly sensitive to
safeguarding the Department’s reputation for fairness, neutrality, and
nonpartisanship.” Various policies also address investigative activities timed to
affect an election and require that prosecutors and agents consult with the Criminal
Division’s Public Integrity Section (PIN) before taking overt investigative steps in
advance of a primary or general election. No Department policy contains a specific
prohibition on overt investigative steps within a particular period before an election.
Nevertheless, various witnesses testified that the Department has a longstanding
unwritten practice to avoid overt law enforcement and prosecutorial activities close
to an election, typically within 60 or 90 days of Election Day. We discuss relevant
Department policies and practices below.

A. Election Year Sensitivities Policy

In 2008, 2012, and 2016, the then Attorney General issued a memorandum
“to remind [all Department employees] of the Department’s existing policies with
respect to political activities.” These memoranda are substantially similar. Each
memorandum contains two sections, one addressing the investigation and
prosecution of election crimes and the other describing restrictions imposed on
Department employees by the Hatch Act. In its election crimes section, the 2016
memorandum requires consultation with PIN at “various stages of all criminal
matters that focus on violations of federal and state campaign-finance laws, federal
patronage laws and corruption of the election process.” However, the
memorandum also states the following:

Simply put, politics must play no role in the decisions of federal
investigators or prosecutors regarding any investigations or criminal

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6 See Loretta Lynch, Attorney General, U.S. Department of Justice, Memorandum for all
Department employees, Election Year Sensitivities, April 11, 2016, 1.

7 Lynch, Memorandum for Department Employees, 1; Eric Holder, Attorney General, U.S.
Department of Justice, Memorandum for all Department Employees, Election Year Sensitivities, March
9, 2012, 1; Michael Mukasey, Attorney General, U.S. Department of Justice, Memorandum for all
Department Employees, Election Year Sensitivities, March 5, 2008, 1.

8 The Hatch Act prohibits Department employees from engaging in partisan political activity
while on duty, in a federal facility, or using federal property, including using the Internet at work for

9 Lynch, Memorandum for Department Employees, 1.
charges. Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department’s mission and with the Principles of Federal Prosecution.

Likewise, the 2016 memorandum recommends that all Department employees consult with PIN whenever an employee is “faced with a question regarding the timing of charges or overt investigative steps near the time of a primary or general election,” without regard to the type or category of crime at issue. Ray Hulser, the former Section Chief of PIN who currently is a DAAG in the Criminal Division, told us that this policy does not impose a “mandatory consult” with PIN, but rather encourages prosecutors to call if they have questions about investigative steps or criminal charges before an election.

B. The Unwritten 60-Day Rule

After the FBI released its October 28, 2016 letter to Congress informing them that the FBI had learned of the existence of additional emails and planned to take investigative steps to review them, contemporaneous emails between Department personnel highlighted editorials authored by former Department officials discussing a longstanding Department practice of delaying overt investigative steps or disclosures that could impact an election. These former officials cited the so-called “60-Day Rule,” under which prosecutors avoid public disclosure of investigative steps related to electoral matters or the return of indictments against a candidate for office within 60 days of a primary or general election.

The 60-Day Rule is not written or described in any Department policy or regulation. Nevertheless, high-ranking Department and FBI officials acknowledged the existence of a general practice that informs Department decisions. Former Director Comey characterized the practice during his OIG testimony as “a very important norm which is...we avoid taking any action in the run up to an election, if we can avoid it.” Preet Bharara, the former U.S. Attorney for the Southern District of New York, told us that the Department’s most explicit policy is about crimes that affect the integrity of an election, such as voter fraud, but that there is generalized, unwritten guidance that prosecutors do not indict political candidates or use overt investigative methods in the weeks before an election.

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10 During late 2016, Department personnel also considered guidance in The Federal Prosecution of Election Offenses prohibiting overt investigative steps before an election. U.S. Department of Justice, The Federal Prosecution of Election Offenses, 7th edition (May 2007). However, this publication explicitly applies to election crimes, not to criminal investigations that involve candidates in an election. See id. at 91-93.

Several Department officials described a general principle of avoiding interference in elections rather than a specific time period before an election during which overt investigative steps are prohibited. Former AG Lynch told the OIG, “[I]n general, the practice has been not to take actions that might have an impact on an election, even if it’s not an election case or something like that.” Former DAG Yates stated, “I look at it sort of differently than 60 days. To me if it were 90 days off, and you think it has a significant chance of impacting an election, unless there’s a reason you need to take that action now you don’t do it.” Former Principal Associate Deputy Attorney General Matt Axelrod stated, “…DOJ has policies and procedures on…how you’re supposed to handle this. And remember…those policies and procedures apply to…every election at whatever level… They apply, you know, months before… [P]eople sometimes have a misimpression there’s a magic 60-day rule or 90-day rule. There isn’t. But…the closer you get to the election the more fraught it is.”

Hulser told the OIG that there was “a sense, there still is, that there is a rule out there, that there is some specific place where it says 60 days or 90 days back from a primary or general [election], that you can’t indict or do specific investigative steps.” He said that there is not any such specific rule, and there never has been, but that there is a general admonition that politics should play no role in investigative decisions, and that taking investigative steps to impact an election is inconsistent with the Department’s mission and violates the principles of federal prosecution.

Hulser said that while working on the Election Year Sensitivities memorandum, they considered codifying the substance of the 60-Day Rule, but that they rejected that approach as unworkable, and instead included the general admonition described above. Citing PIN guidance, Hulser told OIG that a prosecutor should look to the needs of the case and significant investigative steps should be taken “when the case is ready, not earlier or later.”

III. Public Allegations of Wrongdoing Against Uncharged Individuals and Disclosure of Information in a Criminal Investigation

The USAM instructs prosecutors that “[i]n all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties” and that there is ordinarily no legitimate governmental interest in the public allegation of wrongdoing by an uncharged party. USAM 9-27.760. Accordingly, even where prosecutors have concluded that an uncharged individual committed a crime, Department policies generally prohibit the naming of unindicted individuals (as well as co-conspirators) because their privacy and reputational interests merit significant consideration and protection. See USAM 9-11.130, 9-16.500, 9-27.760.

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12 Hulser produced an excerpt of a publication, written by a former Deputy Chief of PIN, discussing the issues involved in choosing the timing for charging a public corruption case. U.S. Department of Justice, Prosecution of Public Corruption Cases (February 1988), 214-15.