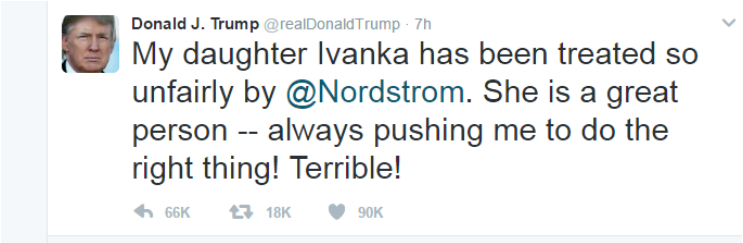
02/08/17 at approximately 4:05 p.m.
Note Saved by WMS

Walter Shaub and David Apol initiated a call with Stefan Passantino of the White House Counsel's Office regarding POTUS's tweet concerning the decision of Nordstrom to stop carrying a family member's line of products:



During the call, we reiterated OGE's recommendation that POTUS should conduct himself as though he is covered by the Standards of Conduct, including 2635.702.

(b) (5) [redacted]

Stefan responded that he understood our concerns. (b) (5) [redacted]

(b) (5) [redacted]

From: David J. Apol
To: Passantino, Stefan C. EOP/WHO
Cc: Director of OGE
Subject: Calls regarding Nordstrom statements
Date: Thursday, February 09, 2017 11:40:43 AM

Stefan,

This email is to confirm the content of the two calls we had yesterday afternoon and this morning.

Walt and I initiated the discussion yesterday regarding the President's tweet concerning the decision of Nordstrom to stop carrying his daughter's line of products. During the call, we reiterated OGE's recommendation that the President should conduct himself as though he is covered by the Standards of Conduct, including 2635.702 (Misuse of Position). (b) (5) [redacted]

After Kellyanne Conway encouraged the public to buy the products of the President's daughter this morning, you initiated a call to me. You expressed that you wanted to reassure OGE that, as the Counsel to the President for Ethics and Compliance, you will be taking appropriate action to address her conduct and that of the individuals we discussed yesterday. I thanked you initiating this call and for your reassurance. I also recommended that you counsel all White House staff regarding the misuse of position rule.

In light of the attention this issue has drawn and the volume of calls OGE is receiving, we discussed that OGE will need to be able to reassure the public that we are addressing this issue with you. You stated that you understood and did not want to interfere.

As I indicated in our phone call, we need you to follow up after you address this matter by informing OGE of whatever action you take. Please let me or Walt know as soon as possible what action is taken.

Dave

David J. Apol
General Counsel
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005-3917
(202) 482-9292

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

February 13, 2017

Stefan C. Passantino
Deputy Counsel to the President
and Designated Agency Ethics Official
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Passantino:

I write to you in your capacity as the Designated Agency Ethics Official for the White House, pursuant to written designation by President Donald J. Trump on January 24, 2017. I am following up on your conversation on February 9, 2017, with David J. Apol, General Counsel of the U.S. Office of Government Ethics (OGE) regarding Kellyanne E. Conway, Special Counselor to the President.

During the conversation on February 9, 2017, Mr. Apol requested that you notify OGE of any disciplinary or other corrective action taken by the White House in connection with Ms. Conway's public statements regarding the business interests of the President's daughter, Ivanka Trump.[1] Subsequently, OGE received a letter from Chairman Jason E. Chaffetz (R-Utah) and Ranking Member Elijah E. Cummings (D-Maryland) of the House Committee on Oversight and Government Reform asking OGE to review Ms. Conway's statements, act promptly on any findings, and report back to the Committee with a recommendation for disciplinary action if warranted.[2]

Although Press Secretary Sean Spicer stated during a press conference on February 9, 2017, that, "Kellyanne has been counseled, and that's all we're going to go with," OGE has not yet received notification of any disciplinary or other corrective action against Ms. Conway.[3] When OGE has reason to believe that an employee may have violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), OGE is authorized to recommend that the employing agency investigate the matter and consider taking disciplinary

[1] *See* 5 C.F.R. § 2635.702.
[2] OGE received a similar letter from Representative Ted W. Lieu, as well as one signed by 42 Members of Congress.
[3] *White House: Conway has been 'counseled' for urging people to buy Ivanka's products*, POLITICO, Feb. 9, 2017, *available at* http://www.politico.com/video/2017/02/white-house-conway-has-been-counseled-for-urging-people-to-buy-ivankas-products-062202 (video). *See also* Louis Nelson, *White House: Conway has been 'counseled' for urging people to buy Ivanka's products*, POLITICO, Feb. 9, 2017, *available at* http://www.politico.com/story/2017/02/kellyanne-conway-ivanka-nordstrom-white-house-react-234856; Drew Harwell, Tom Hamburger and Rosalind S. Helderman, *White House says Conway has been "counseled" after touting Ivanka Trump's products*, The Washington Post, Feb. 9, 2017, *available at* https://www.washingtonpost.com/politics/conway-may-have-broken-key-ethics-rule-by-touting-ivanka-trumps-products-experts-say/2017/02/09/fd1cc64a-eeda-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.5cd0f41fd54c.

action against the employee.[4] Under the present circumstances, there is strong reason to believe that Ms. Conway has violated the Standards of Conduct and that disciplinary action is warranted.

At issue is the section of the Standards of Conduct prohibiting employees from misusing their official positions.[5] The misuse of position prohibition is rooted in the first principle of the government ethics program.[6] Established by Executive Order of President George H. W. Bush and codified in OGE's government-wide regulations, this principle holds that, "Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain."[7] Executive branch officials should use the authority entrusted to them for the benefit of the American people and not for private profit.

The facts as OGE understands them are as follows. You previously advised OGE that all new senior White House appointees received their required initial ethics training. OGE's regulations require that initial ethics training must cover the misuse of position prohibition, as one of four mandatory subjects.[8] On the morning of Thursday, February 9, 2017, the hosts of a news program interviewed Ms. Conway from the White House's James S. Brady Briefing Room.[9] She was unquestionably appearing in her official capacity.[10] She used that interview, however, as an opportunity to market Ms. Trump's products, stating, "*Go buy Ivanka's stuff, is what I would tell you. I hate shopping, I'm going to go get some myself today.*"[11] Shortly thereafter, she added: "*This is just a wonderful line. I own some of it, I fully – I'm going to give a free commercial here. Go buy it today everybody, you can find it online.*"[12] As Ms. Conway made these statements, she appeared on screen in a tight frame between the official seal of the White House and the American flag.[13]

These facts, if true, would establish a clear violation of the prohibition against misuse of position. I note that OGE's regulation on misuse of position offers as an example the hypothetical case of a Presidential appointee appearing in a television commercial to promote a product.[14] Ms. Conway's actions track that example almost exactly. Therefore, I recommend that the White House investigate Ms. Conway's actions and consider taking disciplinary action against her.

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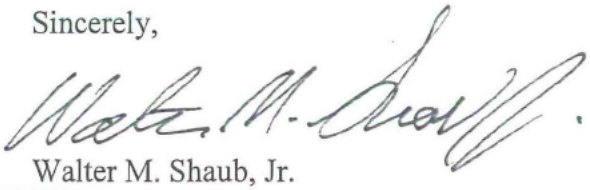
[4] 5 U.S.C. app. § 402(f)(2)(A)(ii); 5 C.F.R. § 2638.503.
[5] *See* 5 C.F.R. § 2635.702.
[6] *See* 5 C.F.R. part 2635, subpart G.
[7] E.O. 12,674, sec. 101(g) (Apr. 12, 1989) (as modified by Executive Order 12731); 5 C.F.R. § 2635.101(b)(1).
[8] 5 C.F.R. § 2638.304(e)(1)(iii).
[9] Richard Pérez-Peña and Rachel Abrams, *Kellyanne Conway Promotes Ivanka Trump Brand, Raising Ethics Concerns*, The New York Times, Feb. 9, 2017, available at https://www.nytimes.com/2017/02/09/us/politics/kellyanne-conway-ivanka-trump-ethics.html.
[10] One of the program's hosts introduced her to viewers as "Kellyanne Conway, Special Counselor to the President of the United States." *Kellyanne Conway addresses rumors about Sean Spicer's job, Fox & Friends*, Feb. 9, 2017, available at http://video.foxnews.com/v/5316971350001/?playlist_id=930909787001#sp=show-clips (video: relevant portion begins at approximately 0:08) ("Fox Video Clip").
[11] *See* Fox Video Clip (beginning at approximately 8:40).
[12] *See id.* (beginning at approximately 9:25).
[13] *See id.*
[14] 5 C.F.R. § 2635.702(c), example 1.

I request that you notify OGE in writing of the findings of your investigation and any disciplinary or other corrective taken in connection with this matter by February 28, 2017.[15] Please be advised that OGE will share a copy of that written notification with Representatives Chaffetz and Cummings.

Sincerely,



Walter M. Shaub, Jr.
Director

cc. Mr. Donald F. McGahn II
Counsel to the President

Rep. Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives

Rep. Elijah E. Cummings
Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives

[15] *See* 5 U.S.C. app. § 403(a)(2).

From:	Walter M. Shaub
To:	(b) (6) [redacted] b) (6) [redacted] "Passantino, Stefan C. EOP/WHO"
Cc:	David J. Apol
Subject:	Letter from OGE Director W. Shaub to S. Passantino
Date:	Monday, February 13, 2017 5:49:48 PM
Attachments:	Letter from OGE Director to White House DAEO 2-13-17.pdf

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Don and Stefan,

Attached is a letter regarding Kellyanne Conway, as a follow up to Stefan's conversation with Dave Apol on Thursday. The original will follow via United States mail. Please contact us if you have any questions.

Walt

Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917
Telephone: 202.482.9292
Email: walter.shaub@oge.gov

Brandon A. Steele

From: Walter M. Shaub
Sent: Monday, February 13, 2017 5:50 PM
To: Shelley K. Finlayson
Subject: FW: Letter from OGE Director W. Shaub to S. Passantino
Attachments: Letter from OGE Director to White House DAEO 2-13-17.pdf

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From: Walter M. Shaub
Sent: Monday, February 13, 2017 5:50 PM
To: (b) (6) [redacted] (b) (6) [redacted] 'Passantino, Stefan C. EOP/WHO'
Cc: David J. Apol
Subject: Letter from OGE Director W. Shaub to S. Passantino

Don and Stefan,

Attached is a letter regarding Kellyanne Conway, as a follow up to Stefan's conversation with Dave Apol on Thursday. The original will follow via United States mail. Please contact us if you have any questions.

Walt

Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

Telephone: 202.482.9292
Email: walter.shaub@oge.gov

From:	Passantino, Stefan C. EOP/WHO
To:	David J. Apol
Cc:	Director of OGE
Subject:	RE: Time for a call
Date:	Wednesday, February 08, 2017 4:01:00 PM

Calling now.

STEFAN C. PASSANTINO
Deputy Counsel to the President, Compliance & Ethics
Office of the White House Counsel
(b) (6) [redacted]

From: David J. Apol [mailto:djapol@oge.gov]
Sent: Wednesday, February 8, 2017 3:56 PM
To: Passantino, Stefan C. EOP/WHO (b) (6) [redacted]
Cc: Director of OGE <director@oge.gov>
Subject: Time for a call

We need to discuss on an issue that has come up. Can we talk soon?

David J. Apol
General Counsel
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005-3917
(202) 482-9292

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