

OVERSIGHT OF THE
U.S. DEPARTMENT OF JUSTICE

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE

FRIDAY, FEBRUARY 8, 2019

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC

The committee met, pursuant to call, at 9:30 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Chabot, Gohmert, Jordan, Ratcliffe, Roby, Biggs, McClintock, Lesko, Reschenthaler, Cline, and Armstrong.

Staff Present: Perry Apfelbaum, Staff Director; David Greengrass, Senior Counsel; Susan Jensen, Parliamentarian; Arya Hariharan, Counsel; Aaron Hiller, Oversight Counsel; Lisette Morton, Director of Policy, Planning and Member Services; Elizabeth McElvein, Clerk; Rosalind Jackson, Professional Staff Member; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian; Carlton Davis, Minority Chief Oversight Counsel; Ashley Callen, Minority Counsel; Ryan Breitenbach, Minority Chief Counsel, National Security; Alley Adcock, Minority Chief Legislative Clerk; Ella Yates, Minority Director of Member Services and External Affairs; and Jess Andrews, Minority Communications Director.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the Chair is authorized to declare recesses of the committee at any time. We welcome everyone to this morning's hearing on Oversight of the Department of Justice, and we welcome our witness, the Acting Attorney General of the United States Matthew Whitaker.

Before we turn to the business at hand, I want to take a moment to comment on the passing of our friend and former colleague Chairman John Dingell of Michigan. Representative Dingell was elected to Congress in 1955 and went on to become the longest serving Member of Congress in the history of the United States and, by virtue of enduring accomplishment, one of the greatest. He was a presence in the hearing room, a determined investigator, and a true believer in congressional oversight. He loved the House of

Representatives. We remember him for his humor, his charm, his unshakeable integrity, and, of course, his fantastic Twitter account. Our thoughts are with our colleague Debbie Dingell and the entire Dingell family. Chairman Dingell will be missed.

Mr. COLLINS. Mr. Chairman, can I just echo that as well, and you know, for Mr. Dingell's service and also with our colleague Debbie during this time. Our thoughts and prayers are with them, and the service that he rendered, I will agree with you on that.

Chairman NADLER. I thank you. I will now recognize myself for an opening statement.

Mr. Whitaker, I want to begin my remarks by commending the tradition of independent law enforcement at the Department of Justice. As you and I both know, it is the career officials at the Department, the FBI, and the U.S. attorneys' offices whose commitment to the rule of law protects our democracy. Given the focus of this hearing, I therefore feel compelled to single out for praise the career ethics officials who helped you transition into your role as Acting Attorney General.

On December 20th, in a letter from the Department meant to justify some of the decisions we will examine here today, Congress learned the following, quote: In a meeting with the Acting Attorney General's senior staff, ethics officials concluded that if a recommendation were sought, they would advise that the Acting Attorney General should recuse himself from supervision of the special counsel investigation because it was their view that a reasonable person with knowledge of the relevant facts likely would question the impartiality of the Acting Attorney General, close quote.

In other words, even though you apparently did not ask for their advice on this topic, these career officials went out of their way to tell you that your many past public—many public past criticisms of the special counsel's investigation were grounds for you to step aside. They insisted that your recusal would have been right for the Department and good for the country. They gave you this advice with no guarantee that their jobs would be protected 2 years into an administration distinguished for firing officials of the Department and the FBI who offended the President. They did so knowing that Attorney General Sessions had just been removed for no reason other than following their guidance 2 years earlier. Their advice to you is an act of bravery. It is worthy of the best tradition of independence and integrity at the Department of Justice. But in my view, your conduct, including your decision to ignore important ethics advice when you became Acting Attorney General no matter the consequences, falls well short of the mark.

Before you joined the Department of Justice as chief of staff to former Attorney General Sessions, you were the sole full-time employee of the Foundation for Accountability and Civic Trust. Your organization has been described by Republicans as, quote, a chop shop for fake ethics complaints, unquote, against Democratic politicians. FACT, as it is called, also funded your appearances in print and on cable television in the years leading up to your tenure at DOJ. These media appearances—and this is why this is relevant—have become the cause of much concern. One month before you joined the administration, you wrote a column titled, quote, "Mueller's investigation of Trump is going too far," unquote. You

stated that the investigation was, quote, a lynch mob. You warned of serious consequences if the special counsel were to examine the President's personal finances. You suggested that the special counsel's budget should be squeezed until its investigation, quote, grinds to almost a halt, unquote.

Like everyone else at the Department of Justice, you are entitled to your own political opinions. This committee should not be in the business of vilifying government personnel for their private views, particularly when the Department takes steps to mitigate even the appearance of a conflict of interest in an ongoing investigation. But when career officials of the Department recommended that you take steps to mitigate your apparent conflicts of interest, when they told you that your public criticism of the special counsel was bad for the Department and bad for the administration of justice, you ignored them. You decided that your private interest in over-seeing this particular investigation and perhaps others from which you should have been recused was more important than the integrity of the Department.

The question that this committee must now ask is, why? Why did President Trump choose to replace Attorney General Sessions with an outspoken critic of the special counsel instead of with any number of qualified individuals who had already received Senate confirmation? Why did you ignore the career officials who went to extraordinary lengths to tell you that your continued involvement in the special counsel's work would undermine the credibility of the Department of Justice? Why did you choose to comment at length on the substance of the special counsel's investigation at a January 29th press conference? Is it true that you have been, quote, fully briefed, unquote, on the investigation and that the special counsel's work is, quote, close to being completed, unquote? And why did President Trump leave you running the Department in an acting capacity as long as he did? What did he hope to get out of it? What did you provide?

The committee is determined to find the answers to these questions today. To that end, we have taken certain steps to ensure your cooperation with members on both sides of the aisle. First, although I am pleased you eventually agreed to appear here voluntarily, the committee has authorized me to issue a subpoena to compel your testimony if necessary.

The Ranking Member will no doubt argue that the subpoena threat was a mistake, but as you know, I gave you no assurances until after you agreed to appear today. Given our concerns about your attendance until late last night, our taking steps to ensure your appearance seems perfectly appropriate.

Now that you are here and prepared to testify, I agree there is no need for us to resort to that measure for now.

I nonetheless am concerned by some of the arguments the Department raised in a lengthy letter we received late yesterday. I very much doubt, for example, that any privilege attaches to communications about criminal investigations where the President, his campaign, his business, and his close associates are subjects and, in some cases, targets of the investigation.

I also take issue with your written testimony, which we did not receive until almost midnight last night, when you suggest that

you, quote, will continue the longstanding executive branch policy and practice of not disclosing information that may be subject to executive privilege, close quote. In other words, you reserve the right to refuse to answer the question forever. That is not how it works.

Nearly 3 weeks ago, I provided you with a list of questions related to communications you may have had with the White House about the circumstances of your hiring, the termination of Mr. Sessions, and any insight you may have into the special counsel's investigation, among other topics. I gave those questions in advance so that you would have time to consult with the White House on any possible question of executive privilege.

I understand that you may disagree with the committee about your responsibility to undertake that review and, as a consequence, you may not fully respond to every question we ask today.

As we discussed, I am willing to work with the Department on those disagreements on a case-by-case basis, but I take your reluctance to answer questions about these communications as a deeply troubling sign. When our members ask if you conveyed sensitive information to the President or ignored ethics advice at the direction of the President or worked with the White House to orchestrate the firing of your predecessor, the answer should be no.

Your failure to respond fully to our questions here today in no way limits the ability of this committee to get the answers in the longer run, even if you are a private citizen when we finally learn the truth, and although I am willing to work with the Department to obtain this information, I will now allow that process to drag out for weeks and months. The time for this administration to postpone accountability is over.

It is my intent that there be no surprises today. We have laid all of the groundwork for this hearing out in the open. We have given you months to prepare. We have publicly documented every request we have made. We have provided our Republican colleagues with a meaningful opportunity to weigh in on the process. We have nothing to hide from you or anyone else. We hope you have nothing to hide from us. Despite the ethics advice you were given, Mr. Whitaker, you insisted on remaining in charge of the special counsel's investigation, a job that comes with the responsibility to protect the special counsel until his work is complete. Your testimony here today is vital to that responsibility and to our shared responsibility to find the truth, to protect the Department, and to follow the facts and the law to their conclusion. Thank you.

It is now my pleasure to recognize the Ranking Member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

[The statement of Chairman Nadler follows:]

CHAIRMAN NADLER FOR THE RECORD

JERROLD NADLER, New York
CHAIRMAN

DOUG COLLINS, Georgia
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Sixteenth Congress

January 22, 2019

The Honorable Matthew Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Whitaker:

Thank you for agreeing to appear before the House Judiciary Committee on February 8, 2019. Your testimony is vital—not only to our general oversight of the Department of Justice, but also to our efforts to protect the work of Special Counsel Robert Mueller from undue influence or interference by the President of the United States.

To that end, when you appear before the Committee, I expect to ask you about certain communications you may have had with the White House. As I stated in my January 15 letter, we will expect you to provide direct answers to these questions. My hope is that you will answer these questions voluntarily so that the Committee can avoid resorting to compulsory process.

Because some of these questions may conceivably implicate executive privilege, I am providing them to you in advance. If President Trump plans to invoke executive privilege to prevent you from answering any of these questions, I ask that you notify the Committee in writing no later than 48 hours in advance of the hearing:

- President Trump fired former Attorney General Jeff Sessions November 7, 2018. On or before that date, did you have any communication with any White House official, including but not limited to President Trump, about the possibility of your appointment as Acting Attorney General? If so, when and with whom? Did any of those communications discuss the possibility of your recusal from oversight of the Special Counsel's investigation?
- You announced your decision not to recuse yourself from the Special Counsel's investigation on December 19, 2018. Did you consult with the White House about that decision, before or after it was announced? If so, with whom?

- My understanding is that you consulted with a four-person team of advisors for guidance on the question of your recusal. Who are these four individuals? Did any of them consult with the White House about your decision not to recuse yourself from the Special Counsel's investigation?
- Have you ever received a briefing on the status of the Special Counsel's investigation? If so, have you communicated any information you learned in that briefing to any White House official, including but not limited to President Trump, or any member of President Trump's private legal team?
- It has been reported that President Trump "lashed out" at you on at least two occasions: after Michael Cohen pleaded guilty on November 29, 2018, and after federal prosecutors identified President Trump as "Individual 1" in a court filing on December 8, 2018.¹
 - Did President Trump contact you after Michael Cohen pleaded guilty? What did he say? Did you take any action as a result of that conversation?
 - Did President Trump contact you after he was identified as "Individual 1" in documents related to the criminal sentencing of Michael Cohen? What did he say? Did you take any action as a result of that conversation?
 - In any of these conversations, did President Trump express concern, anger, or similar frustration with the actions of the Office of the U.S. Attorney for the Southern District of New York?
 - In any of these conversations, did President Trump discuss the possibility of firing or reassigning certain personnel who work for the Office of the U.S. Attorney for the Southern District of New York?
 - In any of these conversations, did the President discuss the recusal of Geoffrey Berman, the current U.S. Attorney for the Southern District of New York, from the Michael Cohen case and other matters related to the work of the Special Counsel?
- Former Attorney General Jeff Sessions tasked John Huber, the U.S. Attorney for the District of Utah, with reviewing a wide range of issues related to former Secretary of State Hillary Clinton. Have you ever received a briefing on the status of Mr. Huber's work? If so, have you communicated any information you learned in such a briefing to any White House official, including but not limited to President Trump, or any member of President Trump's private legal team?

¹ Laura Jarrett and Pamela Brown, *Trump lashed out at Whitaker after explosive Cohen revelations*, CNN, Dec. 21, 2018; see also *U.S. v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018).

- On January 17, 2018, *BuzzFeed News* reported that federal prosecutors have evidence, in the form of witness interviews and internal communications, suggesting that President Trump had directed Michael Cohen to lie to Congress. On January 18, the Special Counsel issued a rare statement describing some aspects of the *BuzzFeed* story as inaccurate. Did you have any communication with the White House about the *BuzzFeed* report or the decision of the Special Counsel's office to issue its subsequent statement? If so, with whom? What was discussed?


Again, I am providing these questions to you in advance because your responses may implicate communications with the President of the United States. Please take any steps that may be necessary for the White House to consider these communications and for the President to determine whether he will invoke executive privilege.

The Committee will not accept your declining to answer any question on the theory that the President may want to invoke his privileges in the future. The President should consider any matter involving assertion of privilege prior to your testimony. Short of a direct and appropriate invocation of executive privilege, I will expect you to answer these questions fully and to the best of your knowledge.

Similarly, I would view with considerable skepticism any effort to decline to answer on the basis that the inquiry is related to an ongoing criminal investigation. Although we both recognize the Department's longstanding practice of refusing to comment on open investigations—a practice that protects both the privacy of criminal suspects and the independence of career investigators—the questions that I have provided relate to whether there has been interference with the Special Counsel's work. They do not relate to the underlying substance of the investigation. Indeed, these questions and the Department's policy align. I intend to ask you about these conversations with the White House because I believe that the independence of the Department has been placed at risk.

Thank you, and I look forward to your testimony.

Sincerely,


 Jerrold Nadler
 Chairman
 House Committee on the Judiciary

cc: The Hon. Doug Collins
 Ranking Member, House Committee on the Judiciary

Mr. COLLINS. Thank you, Mr. Chairman.

And thank you, Acting Attorney General, for being here.

But I would like to thank—I will start off this way—and I would like to thank the Chairman for a show of honesty. We now have the reason for this hearing. It has nothing to do with the oversight of DOJ. It has everything to do as we found out this morning in a document dump from the Democratic side of this committee and also another committee that this is nothing more than a character assassination, and we are going to also decide to see if we can just do something and get at the President while we have the chance.

Yesterday—I want to tell you a story. My kids are now grown. They are 26 and down to 20, and I used to always love the Easter season and the time of the especially hide and seek and going to find, you know, eggs and that look on their face when they found that last egg they were looking for and just that look of surprise. And yesterday was that for me again. I was back being a father again because yesterday was nothing but pure political theater. It was wonderful. It was a time for hide and seek.

The Chairman had a hearing: Let's do a subpoena; we are going to stand tough.

And let's just do the timeline real quick. We get through with it, and as I had warned this committee, a preemptive subpoena was not a good idea. It chills all other witnesses coming before this committee and will probably have a detrimental effect to the Acting Attorney General. But, hey, I am the minority; who cares?

So, we do it. And the Acting Attorney General's Office responded. And at about 5 o'clock, the Chairman sent a letter saying: We know we will examine it on a case-by-case basis.

The Acting Attorney General said: No, we need assurances that you are not going to issue a subpoena today or yesterday or today.

So okay. We are back and forth. DOJ, as is our understanding, said: No, that is not enough assurance.

And we were informed around a certain time last night, about 7 o'clock last night, that an agreement had been made, and it was a full cave by the Committee Chairman: no subpoenas today.

So everything that we did earlier in the day was a complete waste of time.

Now, what was even worse about this—and let's talk about, you know, Twitter accounts—last night around 8 o'clock, the Chairman's Twitter account said the Acting Attorney General is going to show up today at 9:30.

The interesting thing about that is they linked to the 5 o'clock letter, not this letter, which I ask now to be admitted to the record, which by the way, I was cc'd on but never—you know, I guess we are going to put this into the record now, the letter to the Acting Attorney General in which the Chairman of this Committee says there will be no subpoena tomorrow, and any differences we have we will work on later. And I ask unanimous consent that be entered into the record.

Chairman NADLER. Without objection.

[The information follows:]

**MR. COLLINS, RANKING MEMBER FOR THE
OFFICIAL RECORD**

Congress of the United States
House of Representatives
Washington, DC 20515

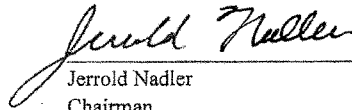
February 7, 2019

The Honorable Matthew Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Whitaker:

I am glad that as a result of our communications you have agreed to testify at our oversight hearing tomorrow at 9:30 AM. As a result, I have agreed there is no need to issue a subpoena tomorrow. As we have discussed, if there is any difference in views regarding the treatment of your communications involving the President, we will work with the Department to resolve those matters going forward.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary

cc: The Hon. Doug Collins
Ranking Member, House Committee on the Judiciary

Mr. COLLINS. So, at 8 o'clock, we decide to send out a tweet to the world, which many in the media, by the way, picked up on, and they were running stories today saying the reason the Judiciary chairman wins: The Attorney General is coming; he doesn't have assurance.

No, he does. Right here. There is going to be no subpoena today.

So, when we talk about transparency, which was so evident yesterday, now we get to the real meat of the issue. It is also amazing to me, as I said yesterday, when you come here and you put an issue of this hearing, yet, on Thursday, Bill Barr was approved out of the Senate Judiciary Committee. By next Thursday, he will be the Attorney General. This gentleman right here is finishing up the last term of Acting Attorney General. He is willingly—was willing to come, but yet we had the charade yesterday. This hearing is pointless and basically was made even more pointless by the Chairman's opening statement.

This is not about what the good men and women at the Department of Justice are doing. This is not about FBI agents are doing their job. It could be about the FBI agents that we on our side have talked about that didn't do their job, and we will probably hear a lot about that today. There is plenty of frustration of issues of DOJ oversight.

But, sir, I am not sure, frankly, that the oversight of your financial situation from 2014 to 2016 has anything to do with this hearing. It is beyond the scope of this hearing.

So, if this is what we are going to do, if this is where we are going, then I want to remind everyone that this is not the Senate. If my friends on the other side of the aisle of this committee wanted to do a confirmation hearing, they just ought to said it up front, and if they want to do a confirmation hearing as Senators, run for Senate. This is not a confirmation hearing. This is a Department of Justice oversight hearing, supposedly. Oops, oops, I am sorry. Back to theatrics again. The curtain opened up, and we found out what was really going on. No, we want to damage the President. We want to talk about your private conversations. We want to talk about what you did and why the President—the most amazing quote I just heard a moment ago: We want to know why the President may have put you there for what—that is offensive.

When we look at this and we go through this, Mr. Whitaker, there are a lot of issues that we have discussed personally and also as far as knowing this and discussing things that we could do as oversight, that frankly, on our side, we are frustrated with, and that is going to come out today. But for the chairman to do what we did yesterday, to have this hide-and-seek game, to play it all, and then to willingly mislead the press and everybody else to think you are coming here today because of a partial assurance, not a full-blown cave, which is exactly what happened in this letter, is a travesty not only to this committee but to the people watching and the reporters who thought it was real.

When we look forward into this hearing today, it is time on this one, if this is the way we are going to go, then we will have plenty of stunts. We are going to have plenty of theatrics. Bring your popcorn. I am thinking about maybe we just set up a popcorn machine

in the back because that is what this is becoming. It is becoming a show.

When your presence was here, you were coming voluntarily. You have always said you are coming voluntarily. So we had the show yesterday. We now have had the curtain dropped down, and, Mr. Whitaker, I guess your confirmation hearing is here. You only have 5 days left on the job or 6 days left on the job.

We could join together with the Chairman and say, Mr. Barr, come in here because you have been—actually the Attorney General, Mr. Barr has been the Attorney General, and he has been before this committee before. We could have had substantive hearings, but no, we are going to have a show, a dog-and-pony show. Let's get it out.

This is the most amazing thing when—you know, but I go back to something—sometimes as a father—I started this as a father; I am going to end it as a father—I would give my kids advice, and they would look at me like, “Dad, I love you,” but then they give me that sort of dog look: I don't believe you.

You know what the sad part about this is? We predicted it all yesterday. We knew what was coming. The sad part about it is, is the chairman chose to play hide and seek. He chose to cave at the end, and by the way, still not have open and transparency. I am glad we did, glad we got it now, but this is no way to run the railroad, and it is definitely no way to run one of the most prestigious committees in this House. And this is something that everyone should be concerned about.

There is enough at DOJ for us to do oversight on, but, Mr. Whitaker, this is your life, like the old TV show. They just want a piece of you.

Mr. COLLINS. And, with that, Mr. Chairman, pursuant to clause 4, rule XVI, I do now move to adjourn.

Chairman NADLER. A motion to adjourn has been made.

Motion is to adjourn and not debatable.

All in favor of the motion to adjourn, say aye.

Opposed, nay.

The noes have it.

Mr. COLLINS. Roll call.

Chairman NADLER. Roll call has been requested.

Where is the clerk? If the clerk is here, she will call the roll. We will wait a moment for the clerk. Where is the clerk?

VOICE. Mr. Chair—

Chairman NADLER. The roll call is in progress.

The clerk is prepared. The clerk will call the roll.

Ms. MCELVEIN. Mr. Chairman?

Chairman NADLER. No.

Ms. MCELVEIN. Mr. Chairman votes no.

Ms. Lofgren?

Ms. LOFGREN. No.

Ms. MCELVEIN. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. JACKSON LEE. No.

Ms. MCELVEIN. Ms. Jackson Lee votes no.

Mr. Cohen?

Mr. COHEN. No.

Ms. MCELVEIN. Mr. Cohen votes no.
 Mr. Johnson?
 Mr. JOHNSON of Georgia. No.
 Ms. MCELVEIN. Mr. Johnson votes no.
 Mr. Deutch?
 Mr. DEUTCH. No.
 Ms. MCELVEIN. Mr. Deutch votes no.
 Ms. Bass?
 Ms. BASS. No.
 Ms. MCELVEIN. Ms. Bass votes no.
 Mr. Richmond?
 Mr. RICHMOND. No.
 Ms. MCELVEIN. Mr. Richmond votes no.
 Mr. Jeffries?
 Mr. JEFFRIES. No.
 Ms. MCELVEIN. Mr. Jeffries votes no.
 Mr. Cicilline?
 Mr. CICILLINE. So we may continue to pursue the truth, I vote
 no.
 Ms. MCELVEIN. Mr. Cicilline votes no.
 Mr. Swalwell?
 Mr. SWALWELL. No.
 Ms. MCELVEIN. Mr. Swalwell votes no.
 Mr. Lieu?
 Mr. LIEU. No.
 Ms. MCELVEIN. Mr. Lieu votes no.
 Mr. Raskin?
 Mr. RASKIN. No.
 Ms. MCELVEIN. Mr. Raskin votes no.
 Ms. Jayapal?
 Ms. JAYAPAL. No.
 Ms. MCELVEIN. Ms. Jayapal votes no.
 Mrs. Demings?
 Mrs. DEMINGS. No.
 Ms. MCELVEIN. Mrs. Demings votes no.
 Mr. Correa?
 Mr. CORREA. No.
 Ms. MCELVEIN. Mr. Correa votes no.
 Ms. Scanlon?
 Ms. SCANLON. No.
 Ms. MCELVEIN. Ms. Scanlon votes no.
 Ms. Garcia?
 Ms. GARCIA. No.
 Ms. MCELVEIN. Ms. Garcia votes no.
 Mr. Neguse?
 Mr. NEGUSE. No.
 Ms. MCELVEIN. Mr. Neguse votes no.
 Mrs. McBath?
 Mrs. MCBATH. No.
 Ms. MCELVEIN. Mrs. McBath votes no.
 Mr. Stanton?
 Mr. STANTON. No.
 Ms. MCELVEIN. Mr. Stanton votes no.
 Ms. Dean?

Ms. DEAN. No.
 Ms. McELVEIN. Ms. Dean votes no.
 Ms. Mucarsel-Powell?
 Ms. MUCARSEL-POWELL. No.
 Ms. McELVEIN. Ms. Mucarsel-Powell votes no.
 Ms. Escobar?
 Ms. ESCOBAR. No.
 Ms. McELVEIN. Ms. Escobar votes no.
 Mr. Collins?
 Mr. COLLINS. Yes.
 Ms. McELVEIN. Mr. Collins votes yes.
 Mr. Sensenbrenner?
 [No response.]
 Ms. McELVEIN. Mr. Chabot?
 Mr. CHABOT. Aye.
 Ms. McELVEIN. Mr. Chabot votes aye.
 Mr. Gohmert?
 Mr. GOHMERT. Aye.
 Ms. McELVEIN. Mr. Gohmert votes aye.
 Mr. Jordan?
 Mr. JORDAN. Yes.
 Ms. McELVEIN. Mr. Jordan votes yes.
 Mr. Buck?
 [No response.]
 Ms. McELVEIN. Mr. Ratcliffe?
 [No response.]
 Ms. McELVEIN. Mrs. Roby?
 [No response.]
 Ms. McELVEIN. Mr. Gaetz?
 [No response.]
 Ms. McELVEIN. Mr. Johnson?
 [No response.]
 Ms. McELVEIN. Mr. Biggs?
 Mr. BIGGS. Aye.
 Ms. McELVEIN. Mr. Biggs votes aye.
 Mr. McClintock?
 Mr. McCLINTOCK. Aye.
 Ms. McELVEIN. Mr. McClintock votes aye.
 Mrs. Lesko?
 Mrs. LESKO. Aye.
 Ms. McELVEIN. Mrs. Lesko votes aye.
 Mr. Reschenthaler?
 [No response.]
 Ms. McELVEIN. Mr. Cline?
 Mr. CLINE. Aye.
 Ms. McELVEIN. Mr. Cline votes aye.
 Mr. Armstrong?
 Mr. ARMSTRONG. Yes.
 Ms. McELVEIN. Mr. Armstrong votes aye.
 Mr. Steube?
 [No response.]
 Ms. McELVEIN. Are there any other members wishing to vote?
 Chairman NADLER. Haven't voted? The gentleman from Texas.
 Mr. RATCLIFFE. Yes.

Chairman NADLER. Are there any other members who wish to vote who haven't voted?

Ms. McELVEIN. Mr. Ratcliffe votes aye.

Chairman NADLER. The clerk will report.

Ms. McELVEIN. Mr. Chairman, there are 24 noes and 10 ayes.

Chairman NADLER. The motion to adjourn is not approved.

I will now introduce today's witness. Matthew G. Whitaker is the Acting Attorney General of the United States. Previously, Mr. Whitaker served as Chief of Staff to Attorney General Jeff Sessions. He was appointed as the U.S. attorney for the Southern District of Iowa on June 15, 2004, by President George W. Bush. Before that, he was a managing partner of the Des Moines-based law firm Whitaker Hagenow & Gustoff LLP. He was also the executive director for FACT, the Foundation for Accountability and Civic Trust, between 2014 and 2017. Mr. Whitaker graduated with a Master of Business Administration, Juris Doctor, and Bachelor of Arts from the University of Iowa. We welcome Mr. Whitaker, and we thank him for participating in today's hearing.

Now, if you would please rise, I will begin by swearing you in.

Raise your right arm. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Mr. WHITAKER. So help me God.

Chairman NADLER. Thank you.

Let the record show that the witness answered in the affirmative.

Thank you, and please be seated. Please note that your written testimony will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals the time has expired.

Mr. Whitaker.

TESTIMONY OF MATTHEW G. WHITAKER, ACTING ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Mr. WHITAKER. Thank you, Mr. Chairman and Ranking Member Collins, for the opportunity to testify before the committee today. I am looking forward to discussing with you some of the accomplishments and priorities of the Department of Justice.

Before I start, I would also like to acknowledge the passing of former Chairman Dingell. He was a statesman and a leader, and it is a sad day on this committee, I am sure.

First of all, let me say that it is an honor to represent the 115,000 men and women of the Department of Justice. The Department is blessed with extremely talented, highly principled public servants who are dedicated to upholding our great Constitution and the laws of the United States. I saw that up close during my 5 and a half years as United States attorney for the Southern District of Iowa. Our office put criminals behind bars, and we kept the people of Iowa safe. I personally prosecuted several important criminal cases and worked with the men and women of the ATF,

DEA, FBI, and U.S. Marshals Service and our State, local, and Federal partners. It was a privilege.

In 2017, I returned to the Department and served for 13 months as chief of staff to former Attorney General Jeff Sessions, a man for whom I have great respect. He led the Department with integrity, with dedication to the rule of law, and with a commitment to carrying out the policies of the President of the United States. I am deeply honored that the President selected me to continue this work at the Department.

The Senate will soon consider the President's nomination for our next Attorney General, and let me just say this: No one is more qualified than Bill Barr. I am working to ensure that he will inherit a strong, confident, and effective Department of Justice, and I believe that he will.

For the last 3 months, I have had the privilege of serving as Acting Attorney General, and I am impressed every single day by the dedication and hard work of our agents, our attorneys, and our support staff.

Over this time, I have visited a number of our offices and met with Federal prosecutors from across the country. For example, in December, we held our Project Safe Neighborhoods conference where employees from nearly every U.S. attorney's office and hundreds of our State and local partners celebrated our successes and reductions in violent crime.

Our hard work is paying off. I firmly believe that your constituents are safer because of the work that we have done over the past 2 years. Under this administration, crime is down and police morale is up. In fiscal year 2017, the Justice Department charged the largest number of violent crime defendants since we started to track this category back when Bill Barr was Attorney General the last time. And then, in fiscal year 2018, we broke that record again by a margin of nearly 15 percent. We also charged more defendants with gun crimes than ever before. In fact, we broke that record by a margin of 17 percent.

The Department has also banned bump stocks, improved the background check system, and prosecuted those who lied to get a gun. Our work is having an impact. In 2017, after 2 years of increases under the previous administration, violent crime and homicide rates went down nationwide. We do not have official numbers yet for 2018, but one estimate projected that the murder rate in our 29 biggest cities would drop by 7.6 percent. Those are real lives being saved.

Much of the crime in this country is related to drug abuse and drug trafficking, but under this administration, prescriptions for the seven most frequently abused prescription drugs are down more than 21 percent to the lowest level in at least a decade. At the same time, the DEA has lowered the legal limits on production of the active ingredients in these prescription opioids by 47 percent since 2016.

And there is no doubt in the law enforcement community that the vast majority of the illegal drugs in this country are coming through our southern border. There is also no doubt that criminals and cartels seek to exploit weaknesses in our southern border for their own profits and purposes, including by subjecting women and

children to dangerous and unspeakable conditions in an attempt to smuggle them into the United States. And, of course, the dangers of our porous southern border become all more apparent every time an illegal alien causes harm or death to an innocent American across this country, such as what happened to an outstanding young woman from my home State, Sarah Root. For this reason and for others, we continue our efforts to restore the rule of law at the border and in our immigration system.

In fiscal year 2018, we charged more defendants with illegal entry than in any other year in American history. In fact, we charged 85 percent more defendants with illegally entering America than we did the previous year. At the same time, we increased the number of felony illegal reentry prosecutions by more than 38 percent. Whatever our views on immigration policy, we should all be opposed to illegal immigration, and we should support these efforts.

The Department is also taking decisive action against human trafficking, both domestically and internationally. Human traffickers, like other criminal enterprises, take advantage of our southern porous border to smuggle women and children into the United States to exploit them. We are bringing prosecutions to dismantle transnational trafficking networks that lure victims across our borders and traffic them for profits.

Last year, the Department of Justice secured a record of 526 human trafficking convictions, a 5-percent increase from the previous year. The Department is also doing its part to aggressively prosecute hate crimes. Under this administration, we indicted 50 hate crime defendants and obtained 30 hate crime convictions in fiscal year 2018. In November, the Department provided election monitoring at polling places around the country. Our Civil Rights Division deployed personnel to 35 districts in 19 States to monitor for compliance with Federal voting rights laws. Our public integrity section prosecutor served as subject-matter experts for Federal prosecutors and investigators nationwide working with the FBI at the strategic information and operations center.

Over my time as Acting Attorney General, I have done everything in my power to continue regular order at the Department of Justice. The Department has continued to make its law enforcement decisions based upon the facts and the law of each individual case in accordance with established Department practices and independent of any outside interference. At no time has the White House asked for, nor have I provided, any promises or commitments concerning the special counsel's investigation or any other investigation.

Since becoming Acting Attorney General, I have run the Department of Justice with fidelity to the law and to the Constitution. During my time as the leader of the Department of Justice, the Department has complied with the special counsel regulations, and there has been no change in how the Department has worked with the Special Counsel's Office.

Over the past day, the Department and the committee have exchanged letters concerning the respective prerogatives of the legislative and executive branches. I am pleased that we are able to reach an agreement that allows me to appear here voluntarily. I

am pleased also that we agreed that each branch would seek to accommodate each other and that if we have differences, we will try to work them out in good faith before resorting to subpoenas or other formal legal processes.

I will answer the committee's questions as best I can, but I will continue the longstanding executive branch practice of not disclosing information that may be subject to executive privilege, such as the contents of conversations with the President. As the Supreme Court has recognized, this executive privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.

I have spent nearly one third of my professional career at the Department of Justice, and I am personally committed to its success and integrity. I hope that today's hearing will be constructive and help us partner together to address the priorities of the American people. The men and women of this Department are proud of our accomplishments, but we know that Congress can help us to achieve even more. And as our agents and our prosecutors have shown you again and again, they deserve your support. Thank you once again for the opportunity to testify today and for your attention to the matters facing the Department of Justice.

[The statement of Mr. Whitaker follows:]



Department of Justice

STATEMENT OF

**MATTHEW G. WHITAKER
ACTING ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE

PRESENTED ON

FEBRUARY 8, 2019

Statement of
Matthew G. Whitaker
Acting Attorney General
Department of Justice

Before the
Committee on the Judiciary
House of Representatives

Entitled
Oversight of the U.S. Department of Justice

Presented on
February 8, 2019

Thank you, Mr. Chairman and Ranking Member Collins for the opportunity to testify before the Committee today. I am looking forward to discussing with you some of the accomplishments and some of the priorities of this Department of Justice (“Department”).

First of all, let me say that it is an honor to represent the 115,000 men and women of the Department of Justice. The Department is blessed with extremely talented, highly principled public servants who are dedicated to upholding our great Constitution and the laws of the United States.

I saw that up close during my five and a half years as United States Attorney for the Southern District of Iowa. Our office put drug dealers, violent criminals, and gang members behind bars—and we kept the people of Iowa safe. I personally prosecuted several of these cases and worked with men and women from the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration (“DEA”), the Federal Bureau of Investigation (“FBI”), the U.S. Marshals Service, and our State and local partners.

In 2017, I returned to the Department and served for 13 months as Chief of Staff to former Attorney General Jeff Sessions. I have the greatest respect for General Sessions, who led the Department with integrity, with dedication to the rule of law, and with a commitment to carrying out the policies of the President. I am deeply honored that the President selected me to serve as Acting Attorney General of the Department of Justice until General Sessions’ successor is confirmed by the Senate.

The Senate will soon consider the President’s nomination for our next Attorney General. And let me just say this: no one is more qualified than Bill Barr. I am working to ensure that he will inherit a strong, confident, and effective Department of Justice. And I believe that he will.

For the last three months I have had the privilege of serving as Acting Attorney General, and I am impressed every single day by the dedication and the hard work of our agents and our attorneys.

Over this time, I have visited a number of our offices and met with federal prosecutors from across America. For example, in December, we held our Project Safe Neighborhoods conference—where employees from nearly every U.S. Attorney’s office celebrated our law enforcement successes and reductions in violent crime. We were honored to be joined by the President for that conference.

Our hard work is paying off. I firmly believe that your constituents are safer because of the work that the Department has done over these past two years. Under this Administration, crime is down—and police morale is up.

In Fiscal Year (“FY”) 2017, the Justice Department charged the largest number of violent crime defendants since we started to track this category back when Bill Barr was the Attorney General. In FY 2018, we broke that record again—with a margin of nearly 15 percent.

We have taken aggressive action against gun violence. In FY 2018, the Department charged more defendants with gun crimes than ever before. In fact, the Department broke the record by a margin of 17 percent. The Department has also banned bump stocks, improved the background check system, and prosecuted those who lied to get a gun.

Our work is having an impact. In 2017—after two years of increases under the previous Administration—violent crime and homicide went down nationwide. We do not yet have official numbers for 2018, but the Brennan Center has estimated that the murder rate in our 29th biggest cities dropped by 7.6 percent.¹

A lot of crime in this country is related to drug abuse.² We are addressing the roots of these crimes by reducing the drug supply and putting drug traffickers behind bars and our efforts have been successful. We have analyzed prescriptions for the first 11 months of 2018 (January – November) and note that prescriptions dispensed continue to decline by an additional 12.9 percent when compared to the same timeframe in 2017.

These decreases in prescribing rates have allowed DEA to lower the legal limits on production of the six most abused opioids for 2019 by an average of 10 percent.³ DEA has reduced the quotas for the most frequently diverted controlled substance opioids by 44 percent from their highs in 2016.⁴

There is no doubt in the law enforcement community that the vast majority of the illegal drugs in this country is coming over our Southern border, a pattern that is true for all crimes

¹ See <https://www.brennancenter.org/analysis/crime-murder-2018>

² See <https://www.bis.gov/content/dcl/duc.cfm>

³ See <https://www.justice.gov/opa/pr/justice-department-dea-propose-significant-opioid-manufacturing-reduction-2019>

⁴ See <https://www.justice.gov/opa/press-release/file/1087641/download>

generally. And there is also no doubt that criminals and cartels seek to exploit weaknesses in our southern border.

For this reason, we continue our efforts to restore the rule of law at the border and in our immigration system. In FY 2018, we charged more aliens who illegally entered the United States with improper entry than in any year in American history. In fact, we charged 85 percent more defendants with illegally entering America than we did in the previous year. At the same time, we increased the number of felony illegal re-entry prosecutions by more than 38 percent. Whatever our views on immigration policy—we should all be opposed to illegal immigration, and we should support these efforts.

The Department is also taking decisive action against human trafficking, both domestically and internationally. Human traffickers, like other criminal enterprises take advantage of our porous Southern Border to smuggle women and children into United States to exploit them for compelled labor or sex. We are bringing prosecutions to dismantle transnational trafficking networks that lure victims across our borders and traffic them for profit. Last year, the Department of Justice secured a record of 526 human trafficking convictions—a 5 percent increase over the previous year. We are continuing to advance innovative counter-trafficking strategies, like the Anti-Trafficking Coordination Team Initiative. Through this initiative, there has been an increase in prosecutions in districts where we have convened specialized Anti-Trafficking Coordination Teams.

These are all important measures of our effectiveness—and the men and women of the Department deserve a lot of credit. In district after district across America, our agents and our attorneys are becoming more and more focused on tackling today's most pressing criminal threats.

Our attorneys are also defending the rights of the American people in court—including freedom of speech, the free exercise of religion, and the right to vote. In November, the Department provided election monitoring at polling places around the country. Our Civil Rights Division deployed personnel to 35 jurisdictions in 19 states to monitor for compliance with federal voting rights laws. The Public Integrity Section prosecutors served as subject matter experts for federal prosecutors and investigators nationwide, working with the FBI at the Strategic Information and Operations Center while the polls were open. Since the election, they have helped secure the conviction of a political consultant in Philadelphia for campaign finance crimes arising out of two separate elections.

The Department continues to civil rights by aggressively prosecuting hate crimes. In Charlottesville, we secured a 30-count indictment against the defendant who drove a car into a crowd of peaceful demonstrators, killing Heather Heyer. In Pittsburgh, we have charged the shooter accused of taking the lives of 11 worshipers at the Tree of Life Synagogue with 60 federal counts, including 13 hate crimes violations. In Jeffersontown, Kentucky, we charged the defendant for the racially motivated shooting of three African American patrons at a Kroger store. And in Garden City, Kansas, we convicted three men for conspiring to bomb an apartment complex, because it was the home of many Somali immigrants, and the mosque at which they

worshipped. These are among the 50 hate crimes defendants indicted and the 30 hate crimes defendants convicted by this Administration in FY 2018.

Over my time as Acting Attorney General, I have done everything in my power to continue regular order and to keep up our momentum in pursuing the law-and-order agenda that the American people voted for.

Finally, I would like to briefly address Mr. Chairman's letter from January 22, 2019, in which you advised that the Committee may seek to ask questions about communications I may have had with the President on a number of topics. I want to assure you that I will seek to answer the Committee's questions today, as best as I can, but I also must make clear that I will continue the longstanding Executive Branch policy and practice of not disclosing information that may be subject to executive privilege, such as the contents of deliberations or conversations with the President. The Supreme Court has recognized that the presidential communications privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution. I trust that the Members of this Committee will respect the confidentiality that is necessary to the proper functioning of the Presidency—just as we respect the confidentiality necessary to the Legislative Branch.

Although I cannot speak about my communications with the President, I do want to make clear that I am personally committed to the integrity of the Department of Justice. Since becoming Acting Attorney General, I have run the Department to the best of my ability, with fidelity to the law and to the Constitution. The Department makes its law enforcement decisions based upon the facts and law of each individual case, in accordance with established Department practices, and independent of any outside interference. There has been no change in the overall management of the Special Counsel investigation. I have and will continue to manage this investigation in a manner that is consistent with the governing regulations.

I welcome your partnership with us. We are proud of our accomplishments, but we know that Congress can help us achieve even more. And as our agents and our prosecutors have shown again and again: they deserve your support. Law enforcement is a good investment.

Thank you once again for the opportunity to testify today and for your attention to matters facing the Department of Justice.

Chairman NADLER. Thank you for your testimony.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

Now, we fully intend to examine substantive questions of Department policy, but part of our job is to make sure that core investigations at the Department have not been compromised.

So, at a press conference last week, sir, you said that you have been fully briefed on the special counsel's investigation. I would like to better understand that comment. Yes or no, since your appointment as Acting Attorney General, have you been briefed on criminal or counterintelligence matters within the special counsel's purview?

Mr. WHITAKER. Chairman, thank you for that question. As you know, I cannot talk about ongoing investigations.

Chairman NADLER. You can say whether you have been briefed or not.

Mr. WHITAKER. And as you commented about my recent press conference as it relates to the special conference—the special counsel's investigation, I have been briefed on it.

Chairman NADLER. So the answer is yes. Thank you. Were you briefed on those matters at any point while you were serving as chief of staff to Attorney General Sessions?

Mr. WHITAKER. Chairman, I know you are very interested in the special counsel's investigation, and so I want to be very clear about this: Because General Sessions was recused from the special counsel's investigation, I had no involvement in the special counsel's investigation.

Chairman NADLER. So the answer is no. So the answer is no. Thank you.

How many times were you briefed about the special council's work, and when did the briefings take place?

Mr. WHITAKER. Mr. Chairman, I have said all that I am planning on saying about the number of times or the briefings that I received on the special counsel's investigation. It is the subject matter of an ongoing investigation. I think it would be very improper for me as I sit here today to talk any more about it.

Chairman NADLER. Wait a minute. Whether you were briefed is the subject of an ongoing investigation? I didn't follow that.

Mr. WHITAKER. No, the number of times I have been briefed and my involvement in the investigation, sir.

Chairman NADLER. Well, it is our understanding that at least one briefing occurred in December before your decision not to recuse yourself on December 19th and Christmas day. Is that correct?

Mr. WHITAKER. What is the basis for that question, sir?

Chairman NADLER. Yes or no, is it correct?

Mr. WHITAKER. Well, I mean—

Chairman NADLER. It is our understanding that at least one briefing occurred between December—between your decision not to recuse yourself on December 19th and 6 days later, Christmas day. Is that correct? Simple enough question, yes or no.

Mr. WHITAKER. Mr. Chairman, I, again, what is the basis for your question? You are saying that it is your understanding—

Chairman NADLER. Sir, I am asking the questions. I only have 5 minutes, so please answer yes or no.

Mr. WHITAKER. No, Mr. Chairman. I am going to—you are asking me a question it is your understanding. Can you tell me where you get the basis?

Chairman NADLER. No, I am not going to tell you that. I don't have time to get into that. I am just asking you if that is correct or not. Is it correct? Were you briefed in that time period between December 19th and Christmas day? It is a simple question, yes or no.

Mr. WHITAKER. Congressman, if every member here today asked questions based on their mere speculation——

Chairman NADLER. All right. Never mind——

Mr. Whitaker [continuing]. Factual basis, that would be very difficult for me to answer.

Chairman NADLER. At any point—yes or no—yes or no, at any point since that briefing have you communicated any information you learned in that briefing to President Trump?

Mr. WHITAKER. Mr. Chairman, I know that there is a——

Chairman NADLER. It is a yes-or-no question.

Mr. WHITAKER [continuing]. Unique and special interest in this. I am sorry.

Chairman NADLER. It is a yes-or-no question. Have you communicated anything you learned in that briefing about the investigation to President Trump, yes or no?

Mr. WHITAKER. Mr. Chairman, as I have said earlier today in my opening remarks, I do not intend today to talk about my private conversations with the President of the United States. But to answer your question, I have not talked to the President of the United States about the special counsel's investigation.

Chairman NADLER. So the answer is no. Thank you.

To any other White House official?

Mr. WHITAKER. Again, Mr. Chairman, as I mentioned in my opening statement, I do not intend today to talk about my private conversations with the President nor White House officials, but I will tell you, consistent with what I have already said, I have not talked about the special counsel's investigation with senior White House officials.

Chairman NADLER. Okay. To any third party not already briefed about the special counsel's investigation who might have conveyed that information to the President or his legal team?

Mr. WHITAKER. Who do you consider third-party individuals?

Chairman NADLER. It is really for your consideration. To any third party not already briefed about that investigation who might have conveyed—who you think might have conveyed that information to President Trump or his legal team?

Mr. WHITAKER. Third persons who I think may have conveyed that information?

Chairman NADLER. Yes, yes.

Mr. WHITAKER. You know, as I sit here in this chair right now, Mr. Chairman, you know, that is an impossible question for me to ask. I mean, I do not believe that I have briefed third-party individuals outside of the Department of Justice. I have received the

briefings myself, and I am usually the end point of that information.

Chairman NADLER. But you won't answer the question?

Mr. WHITAKER. I just did answer your question.

Chairman NADLER. I don't think you did, but let me just say this: Your iteration of the Department's longstanding policy appears designed to delay answering these questions as long as possible. I find that unacceptable. I understand the role of executive privilege and respect its value in our system of governance. However, Congress is a coequal branch of government. We have a responsibility to conduct oversight. This is a responsibility we take very seriously.

I have repeatedly tried to work with your office first in delaying the hearing until February and then in providing you our questions in advance. I did this because the executive branch's own rules governing assertion of privilege, which were issued by President Reagan and have been followed ever since, say that ultimately it is up to the President to decide whether or not he wants to assert executive privilege. You cannot repeat forever that the President might want to assert privilege.

I have given you a fair opportunity to prepare for the hearing and to speak with the White House in advance so that we could avoid this fight in the first place, but you don't appear to have done any of that. The Department's failure to do its due diligence here to me is deeply troubling. I do not believe that issuing a subpoena here would correct the problem, but I am going to give you the opportunity to rectify the situation.

After today's hearing, we will attempt to reach an accommodation with the Department to obtain answers to these questions. As part of that process, I ask for your commitment to return for a deposition before this committee in the coming weeks under oath with an understanding that the transcript will be released to the public as soon as practicable thereafter.

Any questions that are unanswered today or require consultation with the White House will be asked again at that proceeding, and I expect either a clean answer or a proper assertion of privilege claimed by the President. I would ask members on both sides of the aisle to make those questions clear for the record so we know what must be addressed at the future proceeding.

Now, in your capacity as Acting Attorney General, have you ever been asked to approve any requests or action to be taken by the special counsel?

Mr. WHITAKER. Mr. Chairman, I see that your 5 minutes is up, and so—I am here voluntarily. We have agreed to a 5-minutes round, and—

Mr. COLLINS. I think that is a fine place to end the 5-minute rule.

Chairman NADLER. The committee will come to order. I will point out that we didn't enforce the 5-minute rule on Acting Attorney General Whitaker. We will—

Mr. COLLINS. I understand, Mr. Chairman. I was just saying that might be a good breaking point for you.

Chairman NADLER. The Attorney General was in the middle of saying something. Answer the question, please.

Mr. CHABOT. Regular order.

Chairman NADLER. Should I ask the question? Okay. In your capacity—

Mr. WHITAKER. Please ask the question.

Chairman NADLER. Let me just repeat the question so people remember what we are talking about. In your capacity as Acting Attorney General, have you ever been asked to approve any requests or action to be taken by the special counsel?

Mr. WHITAKER. Mr. Chairman, I, as the Acting Attorney General, I am—under the special counsel's rules, I am the person that is ultimately in charge of the investigation, and I have exercised that authority under the special counsel's regulations of the Department of Justice.

Chairman NADLER. So I assume the answer is yes?

Mr. CHABOT. Regular order, Mr. Chairman.

Chairman NADLER. I assume the answer is yes, you have been asked to approve a request or action, and you have said yes or no?

Mr. WHITAKER. Mr. Chairman, I want to be very clear about what you are asking me. Are you asking me if I have asked the special counsel to do something?

Mr. CHABOT. Regular order, Mr. Chairman.

Chairman NADLER. Well, I am asking if—I think my words were clear enough. Have you ever been asked to approve any requests or action to be taken by the special counsel?

Last week, you commented on the status of the investigation stating it was close to being completed, unquote. This was said despite the fact you recognized just moments before that it was ongoing stating, quote: I really am not going to talk about an open and ongoing investigation otherwise, close quote.

So all I am asking you is, have you been asked to approve or disapprove a request or action to be taken by the special counsel?

Mr. CHABOT. Point of order, Mr. Chairman.

Chairman NADLER. I have asked the question.

Mr. CHABOT. Point of order, Mr. Chairman.

Chairman NADLER. I have asked the question.

Mr. CHABOT. Point of order, Mr. Chairman.

Chairman NADLER. Point of order is not in order until the question is answered.

Mr. CHABOT. We are not operating under the 5-minute rule anymore then?

Chairman NADLER. The witness will answer the question.

Mr. WHITAKER. I want to be very specific about this, Mr. Chairman, because I think it is going to allay a lot of fears that have existed among this committee, among the legislative branch largely, and maybe amongst some American people. We have followed the special counsel's regulations to a T. There has been no event, no decision that has required me to take any action, and I have not interfered in any way with the special counsel's investigation.

Chairman NADLER. Very good. Thank you. My time has expired.

I now recognize the Ranking Member, the gentleman from Georgia, Mr. COLLINS.

Mr. COLLINS. Thank you, Mr. Chairman.

Again, it is playing out exactly as we thought. This is my colleagues across the aisle, when we had questions about the FBI's

operation and investigations, it was: Oh, stay away; we don't want to get close to Mueller.

In fact, the Chairman even said, you know, it is no longer okay to wait for Robert Mueller. Well, let's no longer wait. They have got you in front of them right now, so get ready. This is all this is going to be DOJ oversight. And it is—I am just going to say for a second there is some things interesting here that you did point out in your opening statement that do need addressing. I think there is a lot of things, whether it be voting rights issues, whether it be civil rights issues and other things, and I get that, but I am also going to deal with something that is directly under your oversight supervision, Mr. Acting Attorney General, and we are going to talk about because something I have written a letter about, and believe me, I believe that lying before this body or any body is wrong, especially under oath, and that is not the issue. But the issue is tactics.

And my question is, were you aware of Roger Stone's indictment before it became public?

Mr. WHITAKER. Congressman, that is a, as you know, an important question. It is also—Mr. Stone is part of an ongoing investigation, but I have, again, been briefed on the special counsel's investigation. That would have been—you know, that would have been considered a development that I would have been briefed on, and I was briefed on that.

Mr. COLLINS. Are you familiar from public reports or otherwise that a CNN reporter was camped out outside of Stone's house when the FBI arrested him? This wouldn't be part of the investigation.

Mr. WHITAKER. I am aware of that, and it was deeply concerning to me as to how CNN found out about that.

Mr. COLLINS. Well, that is—I am glad we are going down that road, Mr. Attorney General. Did somebody at the Department of Justice seemingly share a draft indictment with CNN prior to Stone's arrest or prior to a grand jury's finding of a true bill?

Mr. WHITAKER. Ranking Member Collins, the court had a sealed indictment that after Mr. Stone's arrest was unsealed. Consistent with all of its prior indictments, the DOJ's basic policy for transparency in criminal cases is that the indictment is posted on the DOJ web page promptly after it is unsealed, and then media outlets were notified.

We do not know of any, and I do not know of any, other Special Counsel's Office notice or DOJ notice to media outlets regarding Mr. Stone's indictment or his arrest and otherwise—you know, I really, as I sit here today, don't have any other information that I can talk about regarding Mr. Stone.

Mr. COLLINS. Well, given your answer even just then, it does seem concerning given the timing of this reporter's knowledge and other things that there seems to have been a gap in that discovery. And just another question is, if anybody was outside this, would you view this as a problem? Because this looks like this is something—I am just going to ask you, in your final days here, would this be a problem with DOJ if we are looking at the timing doesn't match up, that somebody was—it seems to appear this was given pre or prior knowledge, not going through the normal channels? Because if it was given through normal channels, every media outlet would have been there, but only one was.

Mr. WHITAKER. Mr. Collins, I share your concern with the possibility that a media outlet was tipped off to Mr. Stone's either indictment or arrest before it was made, that information was available to the public.

Mr. COLLINS. One of the other issues, and this is—you know, since we are going to go down this, the chairman wanted to have this, and this is a question that is not unfamiliar, and it should be, is Bruce Ohr still employed with the Department of Justice?

Mr. WHITAKER. To answer your question directly, Mr. Collins, Bruce Ohr is currently employed with the Department of Justice.

Mr. COLLINS. Okay. Is there any process at this point or any that you can comment on—I understand personnel issues—but are you aware of the discussions and also the implication of investigations from Congress and from others surrounding Bruce Ohr's involvement in many of the investigation problems that we have seen over the past few years at DOJ?

Mr. WHITAKER. Mr. Collins, I am generally aware of Mr. Ohr being—questions being raised about his behavior at the Department of Justice.

Mr. COLLINS. Let me tell you in a different way. Knowing what you know and seeing what you have seen and using your past experience and prior knowledge, do you believe Mr. Ohr was operating outside normal channels and appropriate channels in which he was operating under, which has been publicly reported?

Mr. WHITAKER. Mr. Collins, this is a very important question for many people both in this body and in the general public. The Office of Inspector General is currently looking at the Carter Page FISA application.

Mr. COLLINS. Which is very much a concern.

Mr. WHITAKER. And it is also being reviewed at the same time as simultaneously by Mr. John Huber, who is the U.S. attorney from Utah, who was asked by Attorney General Sessions to conduct a review of certain matters at the Department of Justice. And so, together with the fact that any situation regarding Mr. Ohr's employment would be part of a confidential human resources process, I just am unable to talk any more about Mr. Ohr, his involvement in any matters that could be subject to either an inspector general's investigation or a human resource matter.

Mr. COLLINS. Well, Acting Attorney General Whitaker, barring the now again as we had another part to our play this morning and are now finding out that you may be subpoenaed to come back and do a deposition, which, again, as we continue down this line, any way around this to continue to attack at the investigation of the President—this is again is just an amazing. I just want to say, one, in your last few days, you know, do your best, do your job, and continue to do that part, but also, at a certain point in time, there are many on this committee and many on our side of the aisle as well as the other side of the aisle that have been very concerned with what we have seen at the Department of Justice, especially in the FBI and especially over the last few years, that should turn every citizen, whether they are Republican, Democrat, Independent, could care less about politics, when there is ever a perception, and I have shared this with others that came before you to testify, whenever there is a perception that there is not an equal treatment

on either side, that is a problem. It needs to be addressed. I am hoping that when Bill Barr comes in, this will be one of his first steps that we can continue with. I know you attempted to do that, but this is going to be a long day, and it is going to be a day in which we chase a lot of rabbits. Unfortunately, when we get to the end of the day, the good men and women on the Department side, the Department of Justice, which is what you were pitched with back before the Chairman was the Chairman—this is not going to be an oversight hearing; it is going to be more of a rabbit chase down a lot of holes.

With that, I yield back.

Mr. WHITAKER. Mr. Collins, if you don't mind—Mr. Chairman, may I answer his question?

Chairman NADLER. You may.

Mr. WHITAKER. I think it is important as we sit here today that we understand that this is not a confirmation hearing, that I am probably going to be replaced by Bill Barr in the next week. This is an oversight hearing for the Department of Justice, and I am surprised, as we both had the chairman and the ranking member talk about what they want to talk about, that we haven't talked anything about the work regarding violent crime; we haven't talked about the opioid crisis; we haven't talked about religious liberty; we haven't talked about free speech on our college campuses and a whole host of other issues that I know are very important to you.

And I look forward to talking about the substance of the work at the Department of Justice, but if this—I mean, it is your 5 minutes, and you can ask the questions that are of most interest to you, but, you know, as I sit here today, I would like to talk about the incredible work that we have been doing at the Department of Justice since I was chief of staff and now Acting Attorney General.

Mr. COLLINS. I appreciate that, but if you had been glued to a TV yesterday morning, you would have found out this wasn't what this was going to be about.

Thank you, Mr. Attorney General.

Chairman NADLER. Ladies and gentlemen, there are votes on the floor. There are 11 minutes left. We are informed they are going to strictly enforce the 15-minute rule. We will see if that is true, but we will not risk it. So the committee will stand in recess until after the—immediately after the last of this series of votes.

[Recess.]

Chairman NADLER. The committee will come to order again. We will now resume questioning under the 5-minute rule.

Ms. Lofgren.

Ms. LOFGREN. I thank you, Mr. Chairman.

And thank you, Mr. Whitaker, for being here today. On January 28th, you made a statement, and I am trying to understand more about that. You mentioned, and this is a direct quote: Right now—referring to the Mueller investigation—right now the investigation is close to being completed.

What was the basis for that statement that you made, Mr. Whitaker?

Mr. WHITAKER. Thank you for that question, Congresswoman. I had a press conference announcing an important indictment related to Huawei and their stealing, alleged stealing of intellectual

property of an American company. During that course of that press conference, I was asked questions about the special counsel's investigation, and I prefaced that answer by saying I can't talk about an ongoing investigation like the special counsel's investigation. And as I sit here today, I really don't have anything to add to what I said.

Ms. LOFGREN. Well, it seems to me that you did talk about an ongoing investigation, and therefore, you can understand, I am sure, we would like to know what you meant by what you said. In that same statement, you said, quote: You were, quote, comfortable that the directions that were made will be reviewed through the various means we have, unquote. What does that mean?

Mr. WHITAKER. Congresswoman, thank you for that question. I would refer you to the special counsel regulations that, again, the question that I was—the—the answer that I gave to the inquiry was regarding the timing of the special counsel's investigation. I have nothing, as I sit here, to add to that. But I do want to mention that the special counsel's regulations by their very nature say that the Attorney General will receive a report, that that will be a confidential report, and that that will—that report will cover the decisions. And so I was talking about as Attorney General if—as Acting Attorney General, if and when I received that report, again, I only have less than a week, as you know, before Mr. Barr comes on board, that I would review those decisions pursuant to that report.

Ms. LOFGREN. So is it fair to say that really what you are saying is that the special counsel's investigation is proceeding within the scope of the authority set forth in Deputy Attorney General Rosenstein's May 2017 order? Is that what you are saying?

Mr. WHITAKER. Congresswoman, thank you for an opportunity to clarify that. I think what I just explained to you is that the special counsel's investigation is proceeding consistent with the regulations that outline why the appointment happened consistent with Mr. Rosenstein's appointment.

Ms. LOFGREN. All right. Thank you very much for that clarification. I would just like to note that, to some extent, it is hard to ignore that the willingness to discuss ongoing investigations has not been applied evenly. I mean, you have just mentioned today the Roger Stone indictment, and that is an ongoing matter, but let me get back to an opportunity you have to clear the air. Many have speculated that your appointment was based on your public appearances that harshly criticized the special counsel's investigation prior to your hiring as chief of staff to then Attorney General Jeff Sessions. I would like to know. Did you discuss or share your private opinions of the special counsel investigation with President Trump or other White House officials, such as Mr. Kelly or Trump family members or public surrogates like Mr. Giuliani? And I would note that this is not covered by executive privilege because at that time, you were a private citizen.

Mr. WHITAKER. Congresswoman, thank you for that question. I came to Washington, D.C., in October of 2017 to be Attorney General Sessions' chief of staff. I have the greatest respect, as you know, for General Sessions, and I am really, you know, honored to carry out the role of Acting Attorney General.

Ms. LOFGREN. Well, if I may, that is very nice, but that wasn't the question I asked.

Mr. WHITAKER. Well, as you know, I am, as I mentioned, honored to serve as Acting Attorney General, and I am honored that the President selected me to be the Acting Attorney General. I can assure this committee that before appointing me to this position, the President did not ask for and I did not provide any commitments, promises concerning the special counsel's investigation or any other investigation, as I mentioned in my opening statement.

Ms. LOFGREN. That is not the question I asked, sir, and I see that my time is about to expire. So, Mr. Chairman, I would like to add I know that we are going to have a followup deposition——

Chairman NADLER. I will allow you to ask the question again more specifically and ask the witness to answer the question specifically and not to continue filibustering.

Ms. LOFGREN. The question is: Whether you shared your private opinions of the special counsel investigation with President Trump; other White House officials, such as John Kelly; Trump family members; public surrogates, such as Rudy Giuliani? At the time that I am referencing, you were a private citizen. So this is before you were hired, so it is not covered by executive privilege. Did you do that?

Mr. WHITAKER. Congresswoman, just to be clear, you are asking me whether or not I talked with anybody essentially in the President's circle or at the White House about my views of the special counsel's investigation——

Ms. LOFGREN. Correct.

Mr. WHITAKER [continuing]. When I was a private citizen——

Ms. LOFGREN. Correct.

Mr. WHITAKER [continuing]. And not at the Department of Justice?

Ms. LOFGREN. Correct.

Mr. WHITAKER. No, I did not.

Chairman NADLER. Thank you.

Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Acting Attorney General, as you mentioned earlier, there are other important matters within the purview of the Justice Department and within the oversight responsibilities of this committee besides fishing expeditions, trying to get the goods on this President in an apparent effort to impeach him. For example, 70,000 Americans died from drug overdoses in 2017. I am old enough to remember back in the mid '80s when President Ronald Reagan and his wife felt so compelled to do something about the scourge of drugs in this country that the effort to just say no began and other efforts following that, and that was because back at that time, we had 10,000 deaths a year due to drug overdoses, and we now have over 70,000 deaths. So it is gotten, unfortunately, over time worse, not better. And most of the increase in deaths in 2017 were due to synthetic drugs, synthetic opioids specifically, like fentanyl, which accounted for a significant number of those deaths. This is clearly an epidemic which has been declared a state of emergency nationwide by the President and has deeply affected families in my home State of Ohio as well as families all across this Nation.

What efforts and resources has or does the Justice Department intend to use to combat this growing epidemic, and what help can Congress provide to assist you in your efforts?

Mr. WHITAKER. Congressman, I appreciate that question, and I know how Ohio has been dramatically affected by the opioid crisis. We have done a lot at the Department of Justice, and I would like to partner with this committee and I am sure General Barr would as well to combat and have additional tools to combat this opioid crisis. But some of the things that we have done is we set up in 2017 the Opioid Fraud and Detection Unit, which was a way that the Justice Department could utilize data to help combat the devastating opioid crisis. We did the largest healthcare fraud take-down in June of 2018. We set up the PIL Task Force, otherwise known as the Prescription Interdiction and Litigation Task Force, in February of 2018. We set up a really innovative way called Operation SOS, which was Synthetic Opioid Surge. General Sessions and I went down to Tampa, Florida, where we saw Manatee County had taken an AUSA and embedded them once a week into the sheriff's office in order to take every fentanyl overdose case, and they dramatically reduced the number of overdose deaths in Manatee County. And we decided to take that model and apply it to the most affected States and districts that could really make a dramatic difference in saving lives.

Mr. CHABOT. Let me just—if I could, let me stop you there. I just have a followup question—

Mr. WHITAKER. Sure.

Mr. CHABOT [continuing]. Along the same topic, and the President addressed this to a considerable degree in his State of the Union the other night. And do you have an opinion; is there a relationship between enhancing border security, particularly at our southern border, and making at least some progress in reducing the scourge of drug addiction in this country?

Mr. WHITAKER. Congressman, absolutely there is a connection between the drugs that are being imported through our southern border, which is a large majority of those drugs, and the opioid crisis we now face. In fact, I went to China in August as chief of staff for then General Sessions. He asked me to go to talk to the Chinese about what more they could do to reduce the amount of fentanyl that is being produced in China, and we had a nice dialogue with some high-level government officials. And the President, as you know, has agreed with General Xi to reduce fentanyl and eliminate fentanyl production in China. And one of the ways that China has agreed to do that was by scheduling the analogs of fentanyl. It is a very serious problem, and I know Ohio is dramatically affected by it.

Mr. CHABOT. Thank you very much.

I have only got about 30 seconds, so let me just touch on one last thing. I know you only have about a week left, so you probably won't personally—

Mr. WHITAKER. Less than a week, actually.

Mr. CHABOT. Yeah. Less than a week. Yesterday, this committee in a bipartisan manner passed the No Oil Producing and Exporting Cartels Act of 2019. This is something that I had introduced almost 20 years ago along with my Democratic colleague John Conyers,

who was chair and ranking member of this committee over the years, that would basically give the Attorney General the authorization to bring suit against oil cartels when they manipulate, artificially manipulate the prices, and we all pay for this at the gas pump time and time again. So I know we have been in contact with the Justice Department, and we look forward to working with your successor in that effort. I don't know if you have any comments you would like to make about that.

Mr. WHITAKER. Congressman, I am fully aware of that bill, and I look forward to the Department of Justice working with you to successfully not only pass it but implement it.

Mr. CHABOT. Thank you.

I would like to give Mr. Nadler and some of our Democratic colleagues as well as Mr. Collins and others a lot of credit for that as well. So thank you very much.

I yield back. Thank you.

Chairman NADLER. Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much.

These are extraordinary times, Mr. Attorney General. We know that the former Director of the FBI testified to the House Intelligence Committee in open hearing that there was an active investigation into the associates of the Trump campaign, and he was fired subsequently. Mr. Mueller was then hired. Investigations have secured numerous indictments, convictions, or guilty pleas, and, of course, a deal with perjury charges like obstruction of justice, perjury, false statements. So, at the current rate, we are seeing so many of the Trump organizations being indicted, and with the short time that I have, I want to make sure that your questions are answered in a yes-or-no manner. This is the first oversight hearing we have had in the Justice Department in almost 15 months. You did not have a confirmation hearing, and you have not yet appeared for an oversight hearing. Yes or no? Yes or no?

Mr. WHITAKER. Congresswoman—

Ms. JACKSON LEE. Yes or no?

Mr. WHITAKER. Congresswoman, I am the Acting—

Ms. JACKSON LEE. Yes or no. Have you appeared before an oversight hearing in the Congress?

Mr. WHITAKER. Congresswoman, I have not.

Ms. JACKSON LEE. It has been 10 years—

Chairman NADLER. The witness will answer the question as asked, please.

Mr. WHITAKER. Mr. Chairman?

Mr. COLLINS. Mr. Chairman, if he has—feels that a yes or no is appropriate, he will answer in a yes or no. If he does not feel it is appropriate, he should be able to answer in an appropriate, as many Democrat administration officials have done before this committee before. This is unreal.

Chairman NADLER. The member has only 5 minutes, and if she—

Mr. COLLINS. If we have just discovered—

Chairman NADLER. If she wants a yes-or-no answer, she is entitled to it. I will not allow the witness to stall and waste members' time.

Mr. COLLINS. Where were you when Mr. Holder was here?

Ms. JACKSON LEE. Chairman, may I have my time restored? I think it was at 4 minutes.

Chairman NADLER. Yes, you may.

Ms. JACKSON LEE. Thank you.

Again, Mr. Attorney General, the question is, did you have a confirmation, and has it been more than 10 years since you have testified before Congress?

Mr. WHITAKER. Congresswoman—

Ms. JACKSON LEE. Can the clock be restored?

Mr. WHITAKER. I am sorry. What was your—I don't know if your time has been restored or not.

Ms. JACKSON LEE. Mr. Attorney General, we are not joking here, and your humor is not acceptable. Now, you are here because we have a constitutional duty to ask questions, and the Congress has the right to establish government rules. The rules are that you are here. So I need to ask the question, and I need to have my time restored so that you can behave appropriately. I will behave appropriately as a member of the Judiciary Committee. I have asked a question.

Did you have a confirmation hearing, and have you not yet appeared for an oversight hearing?

Mr. WHITAKER. Congresswoman, I am an Acting Attorney General. I have been appointed according to the Vacancies Reform Act, and I have never appeared in front of Congress for any hearing, even when I was a United States attorney.

Ms. JACKSON LEE. I asked for a yes-or-no answer. Is that? Yeah. Let me—and so you have never appeared.

Let me quickly ask a question. Prior to the firing of former Attorney General Jeff Sessions, did you discuss or share your private opinions of the special counsel investigation with the chief of staff, some family members and others, yes or no?

Mr. WHITAKER. As I previously answered, Congresswoman—

Ms. JACKSON LEE. Yes or no, sir?

Mr. WHITAKER. As I previously answered, Congresswoman, I have not discussed—

Ms. JACKSON LEE. Yes or no.

Mr. WHITAKER. As I previously answered, Congresswoman, I have not discussed—

Ms. JACKSON LEE. And since you were appointed Acting Attorney General, did you discuss or share your private opinions with the special counsel?

Mr. WHITAKER. Again, the special counsel's investigation is an ongoing investigation, and I don't—I have nothing more to say than what I have already said.

Ms. JACKSON LEE. So you are denying reports that you shared many one-on-one calls with President Trump and his then Chief of Staff, John Kelly, when Jeff Sessions was still Attorney General?

Mr. WHITAKER. Again, Congresswoman, is there someone that provides you the basis for that question, or is that an anonymously sourced article?

Ms. JACKSON LEE. I am asking the question, sir. Answer the question yes or no.

Mr. WHITAKER. Could you repeat the question, please?

Ms. JACKSON LEE. So you are denying the reports that you shared many one-on-one calls with President Trump and then his chief of staff, John Kelly? Are you denying that, yes or no?

Mr. WHITAKER. Congresswoman, as I mentioned several times today, in my opening statement and otherwise——

Ms. JACKSON LEE. Yes or no.

Mr. WHITAKER [continuing]. I am not talking about the conversations that I have had with the President of the United States or senior staff.

Ms. JACKSON LEE. So that is a no?

Mr. WHITAKER. I don't think you can assume anything from that.

Ms. JACKSON LEE. Well, let me just pursue on my line of questioning.

Since the investigation secured numerous indictments, I would like to pursue the line of questioning with respect to your understanding of the Mueller investigation and the review that you have given. Have you given an extensive review?

Mr. WHITAKER. Congresswoman, I have been briefed on the special counsel's investigation.

Ms. JACKSON LEE. Do you believe the involvement of the hostile foreign entities interfering with the elections is more severe than the false representation of voter fraud in elections? Do you believe that a foreign interference with the elections is more severe?

Mr. WHITAKER. Congresswoman, I think foreign interference in our election system in the United States is a very serious and ongoing concern. I also believe that voter fraud is a serious concern.

Ms. JACKSON LEE. After you left office, you pursued a series of other political offices, one of which was the United States Senate. Yes or no, if, during the pursuit of that office, a hostile foreign power contacted you to offer dirt on your opponent which at the same time included other candidates, such as Steve King and now Senator Joni Ernst, would you have contacted the FBI?

Mr. WHITAKER. Congresswoman, I am not here to address——

Ms. JACKSON LEE. Yes or no?

Mr. WHITAKER [continuing]. Hypothetical questions and, I am here for an oversight hearing. I don't believe—you know, I was very unsuccessful in my Senate campaign——

Ms. JACKSON LEE. You have the responsibility of answering the question. Would you have contacted the FBI if you were asked to take dirt on your opponents?

Mr. WHITAKER. Congresswoman, if I was contacted by a foreign national or a foreign country when I was a candidate for the United States Senate, I would have most likely reached out to the FBI, but it didn't happen, so it is hard for me to answer your hypothetical question.

Ms. JACKSON LEE. With respect to civil rights, you have not under your jurisdiction prosecuted one voting rights case. Is that correct?

Chairman NADLER. The time of the gentlelady has expired. The witness may answer this question.

Mr. WHITAKER. Congresswoman, and just so I have a complete answer on this, we will follow up in writing as to the voting rights cases that we have done.

Chairman NADLER. Thank you.

Mr. Gohmert.

Mr. Jordan.

Mr. JORDAN. Thank you, Chairman.

Mr. Whitaker, did why did Rod Rosenstein send a memo to Bob Mueller on August 2nd, 2017, concerning the scope of the special counsel investigation?

Mr. WHITAKER. Congressman, thank you for that question, and I know this is of a great interest to you, and I hope we can have a discussion about this today. The special counsel regulations require a scoping of the special counsel's investigation that identifies the subjects and the targets of the investigation, so I am certain that it would have identified the scope of the investigation pursuant to the special counsel's—

Mr. JORDAN. Well, my question is—my question is not what—I will get to that. My question is, why? Because it was 2 and a half months after the special counsel was formed. So let's go back to the beginning document, which you told the chairman earlier you were completely briefed on the special counsel's investigation. I want to go—this is a 1-page document, Order No. 3915–2017. It says this, Mr. Whitaker: The special counsel is authorized to conduct the investigation, including any matters that arose or may arise directly from the investigation.

That is pretty broad. Do you agree?

Mr. WHITAKER. Yeah, and in my experience, it is consistent with other appointments of special counsels.

Mr. JORDAN. That is fine. I mean, I think it may be too broad, but it is as broad as you can get. One page order: Go do your investigation, and anything that arises out of it, you can investigate as well.

But then 2 and a half months later, we get this, this 3-page memo from Rod Rosenstein, Acting Attorney General, to Robert Mueller, special counsel. Title says: Scope of the Investigation and Definition of Authority. This is what confuses me, because in this memo, that only Mr. Mueller and my guess is you and Mr. Rosenstein and a few people at the Justice Department have seen, most of it is blacked out, in this memo, it says this: The following allegations were within the scope of the investigation at the time of your appointment and are within the scope of the order.

Well, if that is true, why do you have to say it? If you could do it all along, why do you have to put it in a memo?

Mr. WHITAKER. Congressman Jordan, first of all, I was—because of General Sessions' recusal from the special counsel's investigation, I was also recused from that investigation, and so I was not at the Department of Justice—

Mr. JORDAN. I am not asking that. I am asking—you said you were fully briefed.

Mr. WHITAKER. You are asking me why at the time Rod Rosenstein—

Mr. JORDAN. I am asking you why 2 and a half months after the broadest order you can have, why did Rod Rosenstein say, "Hey, you could do this all along, but now I am putting it in a memo"? And I will tell you what really troubles me, Mr. Whitaker, is right after that statement, the following allegations were within the scope of the investigation at the time of your appointment and are

within the scope of the order. Right after that, you know what? You know what happens? Everything is redacted. Look at this. The whole darn thing. So, if you could do it all along and you have to send a memo to them 2 and a half months later—and then you redact everything after it. Do you know what is under the redactions, Mr. Whitaker?

Mr. WHITAKER. I do, sir.

Mr. JORDAN. You do. Are there names under the redactions, Mr. Whitaker?

Mr. WHITAKER. In my experience with investigations generally, you would not have a public document identify targets or subject matter of an investigation, especially if someone is not ultimately charged with a crime.

Mr. JORDAN. Let me frame it this way. Did Rod Rosenstein give the special counsel the authority to investigate specific Americans?

Mr. WHITAKER. Congressman, Mr. Rosenstein, acting as the Attorney General because of Mr. Sessions' recusal, gave authorization and jurisdiction to the special counsel. And so, yes, under the special counsel regulations, that is the whole purpose of the special counsel.

Mr. JORDAN. So I want to make sure. So you said yes, so there are specific names 2 and a half months into the investigation that Rod Rosenstein gave the special counsel specific American names to go investigate?

Mr. WHITAKER. Congressman, as you know—

Mr. JORDAN. If that is the case, I hope you—I want to know yes or no.

Mr. WHITAKER. As you know, this is the subject of an ongoing investigation, and I spoke to you generally about investigations.

Mr. JORDAN. And I am asking you specifically, or let me ask it this way: Can you give us assurances that there are not specific names under this 70-percent-redacted memo that Rod Rosenstein sent to the special counsel?

Mr. WHITAKER. Congressman Jordan, I know this is a very important subject for you.

Mr. JORDAN. And you know why I am asking this, Mr. Attorney General, because in this country we don't investigate people; we investigate crimes. And if there are specific American citizens' names in this redacted memo—and I asked Mr. Rosenstein to see this, and he got all mad and huffy with me in his office and wouldn't show it to me, but I think the American people—if this alters, changes, and names specific Americans, the scope of the investigation of the special counsel, don't you think it is appropriate for the American citizens to know the full parameters of an investigation into the guy they made President of the United States?

Mr. WHITAKER. Congressman, let me be very specific about this because you are right: we investigate crimes, not individuals.

Mr. JORDAN. That is why I am asking you the question. I would like a yes-or-no answer. Are there names mentioned under this redacted portion of this memo?

Mr. WHITAKER. On that, as I mentioned before, that memo props up a confidential investigation, as is every Department of Justice investigation—

Mr. JORDAN. Simple question, Mr. Whitaker. Are their names, specific American names, mentioned in this redacted—70-percent-redacted memo that happens 2 and a half months after the special counsel gets his order to start his investigation where he was given the broadest latitude you can possibly have?

Chairman NADLER. The time of the gentleman has expired. The witness may answer the question.

Mr. WHITAKER. I would just refer the Congressman to the general practices of the Department of Justice, that we investigate crimes and not individuals.

Chairman NADLER. Thank you.

Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair.

Mr. Attorney General, the inspector general of the GSA had a rather scathing report on the GSA's decision not to address significant issues concerning the government's Post Office and its lease to the Trump family concerning the Emoluments Clause, and it was said that GSA attorneys said they did not refer the matter to OLC, but a senior attorney told the IG that the OLC, the Office of Legal Counsel, knew about the Old Post Office lease, and it was up to them to do something. Were you aware of anything this Justice Department did to look into violations of the Emoluments Clause at the Trump Hotel?

Mr. WHITAKER. Congressman, the Emoluments Clause as it relates to the Trump Hotel is the subject of several ongoing litigation matters.

Mr. COHEN. Right.

Mr. WHITAKER. And so, while I can acknowledge that I am aware of the—not only of the situation you described but generally the litigation surrounding the Emoluments Clause, as the Acting Attorney General sitting here today, I am unable to talk specifically about those cases.

Mr. COHEN. You can't say if there are any memos from the Office of Legal Counsel regarding Emoluments Clause violations and limitations?

Mr. WHITAKER. Congressman, as I sit here today, those—the Emoluments Clause as it relates to The Trump Organization, especially the hotel in Washington, D.C., is the subject of ongoing litigation.

Mr. COHEN. And the Justice Department is helping to represent the President in those suits, is he not? Is that appropriate when it is a violation of him making personal monies out of the Trump Hotel and being charged with violations of the Emoluments Clause by not reporting it to the Congress as he is supposed to by the Constitution? Shouldn't he have his personal lawyers and not Justice Department lawyers represent him for this nefarious conduct?

Mr. WHITAKER. Congressman, I can understand that this is an important issue to you, but as it relates to the Emoluments Clause and the Department of Justice defense of the President of the United States, it is well within our purpose to be involved in that case.

Mr. COHEN. You said that if the special counsel's investigation looked into President Trump's finances it would be crossing a red line. You said that, I think, in a television interview. The Attorney

General has made clear that Mr. Rosenstein told the special counsel he could go into any matters that arose or may arise directly from the investigation. If matters arose from the investigation directly or indirectly that the Trump family owed lots of money to Russian oligarchs and people real close to Putin and that affected the actions that they took as the President of the United States on behalf of the United States of America, would you agree that that was not crossing a red line but, in fact, was a red line from Moscow that we need to look into?

Mr. WHITAKER. Congressman, when I made that statement, I was a private citizen and had no publicly available information—I only had publicly available information, and so I made that as a commentator and not as the Acting Attorney General of the United States. I am very familiar with the responsibilities of my office as Acting Attorney General, and we make our decisions based on the law and the facts on a case-by-case basis.

Mr. COHEN. So that is no longer your opinion. It is not crossing a red line for him to look into the finances if they might have interfered with the objective judgment of the President concerning his duty of trust to the United States of America and not to his personal financial interest or his family's.

Mr. WHITAKER. Congressman, as I mentioned earlier, at the Department of Justice and as long as I am Acting Attorney General, we are going to follow the law and the facts wherever they may lead, and we are going to do our jobs with fidelity.

Mr. COHEN. Thank you, sir.

Let me ask you this: There has been a conviction in the special counsel investigation of Mr. Manafort, a jury trial conviction. There have been guilty pleas for Flynn, Manafort, Gates, Papadopoulos, and Michael Cohen and dozens of indictments including 13 Russian nationals, 3 Russian companies, and Roger Stone. Would you say the special counsel's investigation is a witch hunt? Are you over-seeing a witch hunt?

Mr. WHITAKER. Congressman, as I have mentioned previously, the special counsel's investigation is an ongoing investigation, and so I think it would be inappropriate for me to talk about—

Mr. COHEN. But you wouldn't oversee a witch hunt, would you? You would stop a witch hunt, wouldn't you?

Mr. WHITAKER. Congressman, it would be inappropriate for me to talk about an ongoing investigation.

Mr. COHEN. You said that you are not interfering with the special counsel's investigation. Have you denied him any funds he has requested at all?

Mr. WHITAKER. Congressman, I can tell this is an important issue for you, but—

Mr. COHEN. It is an important for the American public and for the whole world.

Mr. WHITAKER. Congressman, to answer your question directly, I have not denied any funds to the special counsel's investigation.

Mr. COHEN. Have you denied him the opportunity to go any areas where he wanted to investigate or any matters of investigation?

Mr. WHITAKER. Congressman, as I previously testified, I have not interfered with the special counsel's investigation.

Mr. COHEN. I yield back the balance of my time.

Chairman NADLER. Thank you. I thank the gentleman.

Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

And, Acting Attorney General, thank you for being here today.

Mr. WHITAKER. It is good to see you again, Congressman.

Mr. GOHMERT. I am amazed that you would be coming since your successor is going to apparently be confirmed next week, and you will no longer be Acting Director, so I don't know what kind of suicide wish you had or whatever, but it is good to see you.

One thing I wanted to hit first was a statement that you had made, and I want to confirm that these are your words. And I quote: There is no doubt in the law enforcement community that the vast majority of the illegal drugs in this country is coming over our southern border, a pattern that is true for all crimes generally, and there is no doubt that criminals and cartels seek to exploit weaknesses in our southern border.

Are those your words?

Mr. WHITAKER. Well, I don't know which speech or statement you are quoting. It sounds like something I would have said, yes.

Mr. GOHMERT. Yeah. And you wouldn't have said that if you didn't believe that, correct?

Mr. WHITAKER. Oh, I believe what you are saying. The drugs and the general illegality that is pouring in through our southern border is having a negative effect on our country.

Mr. GOHMERT. Now, I want to get to this issue of career officials since colleagues on the other side of the aisle have made such a big deal about it, that you have not—they accuse you of not following the advice of career officials. Do you know the backgrounds of the people that are working directly under you and directly under Rod Rosenstein?

Mr. WHITAKER. Congressman, I sit on top of an organization that has 115,000 employees.

Mr. GOHMERT. I am talking about the people directly to you and directly to Deputy Rosenstein.

Mr. WHITAKER. I am familiar with the people that report to both of us, yes.

Mr. GOHMERT. Yes.

Mr. WHITAKER. Although I will tell you, I think Rod Rosenstein as Deputy Attorney General has over 100 direct reports as Deputy Attorney General.

Mr. GOHMERT. Well, that was something I recommended to Attorney General Sessions, that he needed to reorganize and have some of those people reporting directly to him.

But one of the mistakes I think my dear friend, Jeff Sessions, for whom I have immense respect, one of the mistakes that I saw him making: he was listening to people who love Sally Yates, loved her efforts to disrupt anything that President Trump tried to do. They loved what President Obama did through the Justice Department, and in fact, I had informed Jeff that one—that his contact with the NSC was sitting on his notices, so either he developed conflicts or wasn't properly prepared, and that was Tashina Gauhar, and she reported directly to Rosenstein. The AG should have somebody—the liaison with the NSC should report directly to the AG and not

go through Rod Rosenstein and especially when they were setting the Attorney General up to be harmed. But this—and then Anthony Ferrante, I know currently apparently he is the senior managing director of FTI Consulting. He was another one that some considered a career position at the DOJ. Let's see. He had Jordan Kelly there. She is currently Director of Cybersecurity Policy and Incident Response at the NSC through the White House. There are reports that she met routinely with the Mueller investigators. You know, between these people who, like Tashina Gauhar, just thought Yates was wonderful, I would hope that wisdom in you as acting director, wisdom in the incoming Attorney General will be to look at the backgrounds, look at the people who are political hacks, and figure out: Oh, they are giving me advice on this? This is not for my well-being. This is to hurt the President of the United States.

And I know you may just have another week, but I would encourage you that, as people make a big deal about career, look beyond career. Look where their loyalties are because even though they may be in a career position, if their loyalties are not to the Attorney General and not to the President of the United States and are more political than they are constitutional, disregard what they say.

I yield back.

Chairman NADLER. The time of the gentleman has expired. Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you.

General Whitaker, do you agree with the President's statement that the Russian investigation is a witch hunt?

Mr. WHITAKER. As I mentioned previously, Congressman, I think it would be inappropriate for me to comment about an ongoing investigation.

Mr. JOHNSON of Georgia. Well, you commented about the Roger Stone investigation, which is ongoing, did you not?

Mr. WHITAKER. Congressman, just to be clear about this—

Mr. JOHNSON of Georgia. You did comment. I mean, we heard you comment on the Roger Stone investigation. Why would you comment on the Roger Stone investigation, but you are reluctant to answer our questions about the Mueller investigation?

Mr. WHITAKER. Well, that is a good question, Congressman, and my comments about the Roger Stone investigation were merely to acknowledge that I was aware that CNN had appeared to receive or was at the residence on location—

Mr. JOHNSON of Georgia. Well, you don't know whether or not the CNN reporter was camped out with no advance knowledge or whether or not he was tipped off or not. Isn't that true?

Mr. WHITAKER. Congressman, that is true, but I am very concerned that an operation of the FBI—

Mr. JOHNSON of Georgia. Let me move on. Let me move on that, sir. I am controlling the time. Let me move on.

I would like to take a moment to better understand your decision not to recuse yourself from the supervision of the special counsel's investigation. Isn't it a fact, sir, that you received your final ethics guidance on this matter on December 19th, 2018?

Mr. WHITAKER. I appreciate this question, and I am glad this is an opportunity——

Mr. JOHNSON of Georgia. It is a pretty direct question. Did you receive your final guidance on that question on December 19th——

Mr. WHITAKER. As you know, we have communicated with Congress the entire process that I went to—went through to address any recusal questions that I might have, and I had no conflict of interest. I had no financial——

Mr. JOHNSON of Georgia. Well, let me just ask you: I understand you take that position, but my simple question is, isn't it a fact that you received your final ethics guidance on that question on December 19th, 2018?

Mr. WHITAKER. Congressman, we laid out very explicitly the process that we went through, and ultimately the decision whether or not to recuse was my decision.

Chairman NADLER. Mr. Whitaker, you were asked a direct question. Mr. Whitaker, you were asked a direct question, and it is getting a little tiresome hearing you stall and wasting the member's time. The member only has 5 minutes. He asked you a specific question. Did you last receive advice on that on December 18th? The answer ought to be yes or no or some other date or "I don't remember," but we don't need a speech. The gentleman may repeat his question.

Mr. COLLINS. Mr. Chairman, if we are going to counsel the witness and act as his attorney on how he should answer, are you answering the question, or is the witness answering the question?

Chairman NADLER. I am asking the witness not to stall.

Mr. COLLINS. And we have endured that many times here were when he is trying to ask the question in the way that he is asked.

Mr. COHEN. Point of order. Point of order.

Chairman NADLER. The gentleman is out of order. Mr. Johnson has the floor. Your time will be restored.

Mr. JOHNSON of Georgia. Thank you, sir.

Sir, isn't it a fact that career officials at DOJ recommended to you that you recuse yourself to avoid an appearance of a conflict of interest or bias? That was the guidance that you got from career DOJ officials about your participation or oversight of the Mueller investigation. Isn't that correct?

Mr. WHITAKER. Congressman, I made my recusal decision by myself after consulting with——

Mr. JOHNSON of Georgia. But there were career DOJ officials who advised you that you should not touch that investigation. Isn't that correct?

Mr. WHITAKER. Congressman——

Mr. JOHNSON of Georgia. Yes or no.

Mr. WHITAKER [continuing]. I consulted with career ethics officials. I consulted with my senior staff. I consulted with the Office of Legal Counsel. It was my decision to make. I decided not to recuse. I am happy to walk through the step-by-step advice that I received. And I consulted——

Mr. JOHNSON of Georgia. There were four individuals who you consulted who advised you that you had the ability to not recuse yourself from this investigation. Isn't that correct?

Mr. WHITAKER. Congressman, the regulations actually say I have——

Mr. JOHNSON of Georgia. Four individuals advised you that you did not have to recuse yourself. Is that correct?

Mr. WHITAKER. Congressman, let me be clear. It was my decision——

Mr. JOHNSON of Georgia. You are not being clear sir, other than in your obstruction and refusal to answer the question.

Mr. WHITAKER. I am not obstructing anything. I am answering your question.

Mr. JOHNSON of Georgia. Well, you are obstructing——

Mr. WHITAKER. I consulted with a lot of people regarding my recusal, but it was my decision to make.

Mr. JOHNSON of Georgia. But you are not telling me who it was. Who did you consult with?

Mr. WHITAKER. As I mentioned, I consulted with career officials——

Mr. JOHNSON of Georgia. Name me some names.

Mr. WHITAKER. I consulted with my senior staff, and I consulted with the Office of Legal Counsel.

Mr. JOHNSON of Georgia. Name me some names, sir.

Mr. WHITAKER. Well, one person would be the Assistant Attorney General for our Office of Legal Counsel.

Mr. JOHNSON of Georgia. What is his name or her name?

Mr. WHITAKER. Steve Engel. He is a Senate-confirmed——

Mr. JOHNSON. And who else? Who else did you consult with?

Mr. WHITAKER. I also consulted with his principal deputy.

Mr. JOHNSON of Georgia. And that person's name is?

Mr. WHITAKER. His name is Curtis Gannon.

Mr. JOHNSON of Georgia. And who else did you consult with, sir?

Mr. WHITAKER. Congressman——

Mr. JOHNSON of Georgia. I am asking you a pretty clear question, sir. Who else did you consult with about whether or not you should recuse yourself from the Mueller investigation?

Mr. WHITAKER. Generally who did I consult with?

Mr. JOHNSON of Georgia. I want to know specifically who you talked to.

Mr. WHITAKER. Okay. Well, I talked to Brad Weinsheimer, who is the senior career official at the Department of Justice.

Mr. JOHNSON of Georgia. And he advised that your recusal was unnecessary, or did he advise you to recuse?

Mr. WHITAKER. He actually could not identify any precedent for me to recuse. He said it was a close call. He said—I am sorry. Did you have a question?

Mr. JOHNSON of Georgia. Go ahead.

Mr. WHITAKER. Okay. He said that my other public statements did recognize the professionalism and competence of the special counsel. He said that, out of an abundance of caution, that he would—that, if asked, he would recommend a certain course, but again, it was—he also said——

Mr. JOHNSON of Georgia. Did he recommend that you recuse yourself?

Chairman NADLER. The time of the gentleman has expired.

Mr. WHITAKER. Can I finish?

Chairman NADLER. The witness may finish his answer.

Mr. WHITAKER. Okay. He also said, Congressman, that the decision was mine to make based on the regulations of the Department of Justice, and I made that decision, and I stand by that decision.

Chairman NADLER. Mr. Ratcliffe.

Mr. RATCLIFFE. Mr. Attorney General, I spent a number of years as a Federal prosecutor and because of that service, I have literally hundreds of friends at the Department of Justice right now and at its component agencies like the FBI, folks that I have tremendous respect for. And so I appreciate your stated desire earlier today to want to highlight their good work.

And for the new members of the Judiciary Committee, an oversight hearing is typically where that would take place, where an Attorney General would give an accounting of the work of 115,000 men and women in the Justice Department and provide some idea of the vision with respect to the Department's priorities, priorities like drug and human trafficking, preventing terrorism, reducing gun and gang violence.

Now, earlier this week, my colleagues on the other side of the aisle indicated that they had a great desire to reduce gun violence in this country. In fact, we had an 8-hour hearing with six witnesses that talked about the need to reduce gun violence in this country. We started this hearing at 9:30 this morning. It is now 12:30 in the afternoon, and I haven't seen you field a single question from the other side of the aisle about any of the enforcement priorities of the Department of Justice, despite the fact that you are the head of an organization that has greater ability to impact and reduce gun violence than anyone or anything in the country. So I may be the only person today that wants to ask you a question about that, but I am going to use the remainder of my time for that purpose.

When I was at the Department of Justice, we had a very successful initiative called Project Safe Neighborhood. It was a program that took guns out of the hands of criminal offenders. It was a successful program that was killed by the Obama administration. The Obama Justice Department ended it. I understand that it has been reinstated during the Trump administration. I would like you to inform us about its progress as well as any other measures or programs or enforcement priorities of the Department of Justice with respect to reducing gun violence in this country.

Mr. WHITAKER. Thank you, Congressman. As you know, we served as United States attorneys together, until you went into politics, and I went into private practice. I want to talk specifically, and this is a really good question, about Project Safe Neighborhoods.

In 2017, the Attorney General Sessions announced the expansion of Project Safe Neighborhoods, which encourages U.S. attorneys' offices to work specifically with their unique communities they serve to develop a customized crime-reduction strategy. One study showed that, when you and I were doing PSN, it reduced crime over all by 4.1 percent and with case studies showing reductions up to 42 percent of violent crime. We had the Project Safe Neighborhoods national conference, as I mentioned in my opening statement, and I can tell you that especially in our largest cities, our

29 major cities, we are seeing a reduction of violent crime because of U.S. attorneys specifically working with their sheriffs and police chiefs and their Federal and State and local partners in reducing gun violence. You know, some other things that we have done is the Attorney General is one of the four Cabinet positions that were part of the School Safety Commission that came out with a report in the last several months that gave a practical outline as to how States especially could work to reduce gun violence, including the idea of ERPOs. And there is, you know, Congressman, I really—I appreciate your tone that this oversight hearing is not a hearing about the types of things that we are talking about, but to—you know, the Chairman sent me a letter specifically outlining things that he wanted to talk about, and I don't feel like we have talked about many of those things. So I am glad that you offered that opportunity to talk about the Department of Justice's efforts to reduce gun violence.

Mr. RATCLIFFE. Thank you, Attorney General.

I would like to yield the remainder of my time to Congressman Jordan.

Mr. JORDAN. I appreciate the gentleman yielding.

Mr. Whitaker, are there any other memos, any other memos that Mr. Rosenstein has sent to Mr. Mueller that we don't know about, and if we did, would be redacted like the one that happened on August 2, 2017?

Mr. WHITAKER. Congressman, as you know, the special counsel's investigation is ongoing, and it would be inappropriate for me to talk about any other memos related to that.

Mr. JORDAN. Well, Mr. Whitaker, we already know that there has been some modification of the broadest order I think you could have with this August 2, 2017, memo. And all I am asking is, are there any other modifications, any other changes to the parameters of an investigation into the President of the United States?

Chairman NADLER. The time of the gentleman has expired.

The witness may answer the question.

Mr. WHITAKER. Congressman, just to be clear, the special counsel understands the scope of its investigation and is complying with all the regulations and orders related to that.

Chairman NADLER. Thank you.

Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman.

General Whitaker, you and I are both lawyers. My first day of crim law, my professor came in and said: If someone asks you a yes-or-no question, don't just repeat the question; answer yes or no. Otherwise, during your career, people will think you are not a good lawyer. We know you are a good lawyer. Let's heed that advice going forward.

In November—

Mr. WHITAKER. We did not go to the same law school.

Mr. DEUTCH. We did not. The advice is good nonetheless. In November 2018, Chris Wallace asked the President a question. He said: Did you know before you appointed him that he—meaning you—had a record that was so critical of Robert Mueller?

And the President said: I didn't know that. I didn't know that he took views on the Mueller investigation.

Do you believe President Trump was telling the truth when he said that he just did not know that you were critical of Mueller before your appointment?

Mr. WHITAKER. Congressman, the President——

Mr. DEUTCH. No. I understand how it all worked. I am just asking you. Do you believe the President was telling the truth when he said he did not know that you had been critical of Robert Mueller before making your appointment?

Mr. WHITAKER. Congressman, I have no reason to believe when I sit here today that the President wasn't saying what he believed.

Mr. DEUTCH. Who did you interview with for this—for the Chief of Staff job? Not for this job, for the chief of staff job?

Mr. WHITAKER. It was General Sessions' decision to make. I interviewed with him, and he offered me the job.

Mr. DEUTCH. And before you got the job, did you ever—before you took this job, did you ever speak with the President about the Mueller probe from May 17th, 2017 to September 22nd, 2017?

Mr. WHITAKER. Are you saying about before I was actually the chief of staff?

Mr. DEUTCH. I am saying between May 17, 2017——

Mr. WHITAKER. Well, Congressman, I had never met the President until after I joined the Department of Justice in 2017.

Mr. DEUTCH. So have you—let me just ask you another question. If you didn't communicate with him, did you communicate with anyone at the White House about the special counsel investigation before September 22, 2018?

Mr. WHITAKER. I assume you are excluding my appearances on CNN because I don't think anybody at the White House was watching——

Mr. DEUTCH. If you talked to anybody at the White House—I mean, you have told me that the President wasn't watching those. Otherwise, he would have been aware of your position. So I assume the President wasn't watching. Did you talk about those appearances with anyone at the White House?

Mr. WHITAKER. I did not talk about my experiences on CNN with——

Mr. DEUTCH. Did you talk about your views of the Mueller investigation with anyone at the White House?

Mr. WHITAKER. I did not talk about my views of the Mueller investigation with any of the White House during—in this time period, essentially May of 2017, until I joined the Department of Justice in October of 2017.

Mr. DEUTCH. And throughout that process, did you ever communicate with anyone—here is the question. By my count, you made six comments in op-eds, talk radio, or on cable news critical of the special counsel between the time you interviewed in June 2017 and the time you were hired as Chief of Staff to the Attorney General. Did you ever use any intermediaries? Did you have anyone—since the President didn't know, did you have anyone communicate with the White House or anyone at the White House, either staff members, friends, or others, to let them know exactly where you stood as expressed in at least those six public statements?

Mr. WHITAKER. Congressman, I had—at the time you describe, May of '17 until I joined the Department on October 4th of 2017, I didn't have a relationship with the White House.

Mr. DEUTCH. Did you talk to any White House personnel before you were hired, anyone at the White House?

Mr. WHITAKER. Congressman, I—

Mr. DEUTCH. That is an easy one. Did you talk to anyone at the White House? Is the answer no?

Mr. WHITAKER. Congressman, I had previously been at the White House when I was a private citizen to talk about a different position.

Mr. DEUTCH. No. I understand. But did you talk to anyone at the White House about your views on Mueller, any personnel at the White House at all before you assumed the position? Let me just ask—

Mr. WHITAKER. In May—

Mr. DEUTCH. Let me just go forward because here is the issue. When you became the Attorney General—since becoming the Attorney General, you said that you had been briefed on the special counsel. Did you use anyone else to have communications? Did you do anything to make sure that the White House might have learned some of what you learned in those briefings? Could it be that someone else on your staff might have spoken to someone at the White House since you told us you didn't?

Mr. WHITAKER. Congressman, I am not aware of that happening.

Mr. DEUTCH. Who else—how many people were in those briefings with you when you were briefed about the Mueller investigation?

Mr. WHITAKER. Congressman, I am not going to go into the specifics of the briefing, but it was a very limited group. There was only one member of my staff who was present with me.

Mr. DEUTCH. And have there been—have you ever attempted to use any intermediaries to get information to the President or others on his staff?

Mr. WHITAKER. No. I have not attempted to use any intermediaries to get information to the President or his staff.

Mr. DEUTCH. So I will close, Mr. Chairman, by saying this is going to be a long hearing. We have been going on for a while. The concern that we have, Mr. Whitaker, is that there was no Senate confirmation here. We are not the Senate, but the administration justified their decision in picking you under the Vacancies Reform Act. There was a law on the books for the Attorney General succession and the authority to oversee the special counsel's work. It goes from one Senate confirming official to another, from the AG, Deputy AG, Associate Attorney AG, Solicitor General, Assistant Attorney General, the Attorney General in charge of the Office of Legal Counsel, Assistant AG for National Security, Assistant AG in charge of the Criminal Division, and on and on and on. None of them, none of them are the Chief of Staff to the Attorney General. I think what we are trying to figure out is why is it exactly—

Mr. COLLINS. Point of order.

Mr. DEUTCH [continuing]. That the President chose to go beyond the statute and choose you, and I hope over the balance of this hearing, that will become clear.

I yield back.

Chairman NADLER. The time of the gentleman has expired. The witness may answer.

Mr. WHITAKER. Thank you, Congressman. I believe the President chose me to be the Acting Attorney General for a couple reasons. First, I had served previously in the Department as a United States attorney, which is a very important position, as Mr. Ratcliffe previously stated, in the administration of justice, and for 13 months, I was the Chief of Staff for Attorney General Sessions, and I had done the full year with him, side by side. Obviously, he made the decisions, but I gave him advice and counsel, and I was aware of everything that was going on at the Department of Justice that I—obviously that General Sessions wasn't recused from, and so I think the President was comfortable that to continue the momentum at the Department of Justice that we had established in addressing these important priority issues, like reducing violent crime, combating the opioid crisis, and others that the President felt I was best positioned to do the duties of Attorney General.

Chairman NADLER. Mr. Biggs.

Mr. BIGGS. Thank you, Mr. Chairman.

I will just say to Mr. Whitaker: My questions normally—in a normal oversight committee would be vastly different than the direction I am going to go because we have kind of wandered into this other stream over here, so I am going to ask you some questions.

The longstanding constitutionally based Department of Justice policy holds that a sitting President cannot be indicted. Is that—and that is based on the last review, which happened under the Clinton administration. Is that still in effect, or has it changed?

Mr. WHITAKER. That is still the policy of the Department of Justice.

Mr. BIGGS. Have you spoken to Deputy Attorney General Rosenstein about his statements on invoking the 25th Amendment and wiretapping President Trump?

Mr. WHITAKER. I have seen the statements by Deputy Rosenstein that he made to the press regarding those statements, and I have no reason to believe that he did not—that those statements, you know, were consistent with what he believed at the time.

Mr. BIGGS. Okay. I am not sure I understood that. You said you have no reason to believe that they were not consistent, so there are a couple of negatives there. Do you believe they were consistent with what he believed at the time?

Mr. WHITAKER. I do. I believe what Deputy Attorney General Rosenstein said to the press when it was first reported about his decision.

Mr. BIGGS. Oh. You are talking about his comments, not—his comments to the press, not the ones about him wearing a wire?

Mr. WHITAKER. I am talking about Deputy Attorney General Rosenstein's comments to the press after it was reported that he had considered wearing a wire and invoking the 25th Amendment.

Mr. BIGGS. And his response—I didn't mean to interrupt, but his responses you think are consistent. So did you talk to him about this issue at all?

Mr. WHITAKER. Again, I am not here to talk about the internal discussions that I had with—

Mr. BIGGS. This is really critical. With all due respect, this is not an ongoing—this has nothing to do with an ongoing investigation. What it has got to do with is Mr. Rosenstein and his role as an unbiased overseer of the Mueller investigation. So it is not directly dealing with the investigation but deals with his capacity to be unbiased. So I am not asking whether—I am not trying to get into the substance or even the periphery. I want to know, though, did you have a conversation with Mr. Rosenstein about his comments as reported?

Mr. WHITAKER. Congressman, this is an important question to you, but I am not going to answer my conversations with Deputy Attorney General Rosenstein. I believe that they are deliberative. Obviously, I am exercising the full responsibilities of the Acting Attorney General position.

Mr. BIGGS. I appreciate that. I appreciate that. I know that that answer is important to you. I know that is important to you, but answering in a way that we as the American people can understand it, that is important to us.

So let's get to June 21, 2017, where you said: The truth is there was no collusion with the Russians in the Trump campaign. There was interference by the Russians into the election, but there was not collusion with the campaign. That is where the left seems to be combining those two issues. The last thing they want right now is the truth to come out, and the fact that there is not a single piece of evidence that demonstrates that the Trump campaign had any illegal or even improper relationships with the Russians, it is that simple.

Do you still adhere to that statement? Is that still true in your mind today?

Mr. WHITAKER. Congressman, as I have mentioned before in a previous questioning about my statements, as a private citizen before I joined the Department of Justice, those were made based on publicly available information, and I had no inside information. I did not know the details of the investigation. I obviously know the traditions of the Department of Justice, the rules and regulations, and I will continue to follow those as I exercise the duties of Acting Attorney General.

Mr. BIGGS. I remember the answer that you gave to a similar question but not this question here, and so that is not what I am asking. What I am asking is, as we sit here today, a year and a half later, has your opinion changed from what you stated June 21, 2017? Has it changed? That is a simple question. That is not hard.

Mr. WHITAKER. Congressman, the special counsel's investigation is an ongoing investigation, and I am not going to characterize that investigation or give you my opinion of that investigation as I sit here today.

Mr. BIGGS. So the scope memo indicates that the scope of the Mueller investigation was any links and/or coordination between the Russian Government and individuals associated with the campaign of President Donald Trump and, two, any matters that arose or may arise directly from that investigation. Has that scope been expanded in any way?

Mr. WHITAKER. Congressman, as I was discussing with Representative Jordan, I am not going to talk about the scope—

Mr. BIGGS. Okay.

Mr. WHITAKER [continuing]. Of the special counsel——

Mr. BIGGS. Then I will go forward, then, and say the indictments and the relation to the scope: One, Papadopoulos for false statements occurring after Mueller was appointed; Manafort for acts unrelated to the election or campaign; Gates, acts unrelated to the election or the campaign; Flynn, false statements about post-election conversations; Richard Pinedo, unrelated to the campaign or election; Cohen, referred by Mueller to Southern District of New York because it was out of his scope; Sam Patten, not related to the 2016 election or campaign; and Stone for false statements occurring after Mueller was appointed. Not one indictment alleged an illegal relationship between a member of the Trump campaign and Russia, and that is consistent with what we have seen so far.

And I thank you, Mr. Chairman.

Chairman NADLER. The time of the gentleman has expired.

Ms. Bass.

Ms. BASS. Thank you, Mr. Chair.

Mr. Acting AG, I actually wanted to ask you some questions regarding what you did prior to being Acting AG. It is my understanding that before you moved to the Department of Justice, that you were the Executive Director of the Foundation for Accountability——

Mr. COLLINS. Mr. Chairman. Mr. Chairman. I have a point of order. Mr. Chairman, a point of order.

Ms. BASS. FACT is a conservative ethics watchdog——

Mr. COLLINS. I have a point of order.

Ms. BASS [continuing]. He made full use of the opportunity to call for investigations of multiple Democrats.

Chairman NADLER. The gentleman will state his point of order.

Mr. COLLINS. My point of order about the statement from the gentlelady is outside of the scope of an oversight investigative hearing of the Department of Justice.

Ms. BASS. It is not. You need to let me finish my question, and you will see what I was asking.

Chairman NADLER. The gentlelady will suspend.

That is not a valid point of order. The gentlelady will continue.

Ms. BASS. Thank you.

Mr. COLLINS. Mr. Chairman, I make a point of order rule pursuant to the House rules that the question is outside the scope of——

Chairman NADLER. The gentlelady has the floor.

Mr. COLLINS. Are you just going to override a point of order?

Ms. BASS. Yeah, because your point of order is not valid.

Chairman NADLER. The gentlelady will suspend. I ruled that it was not a valid point of order, and the gentlelady has the floor.

The gentlelady will continue.

Ms. BASS. Thank you.

Mr. COLLINS. I was not through with my point of order.

Chairman NADLER. The gentlelady will continue.

Mr. COLLINS. Appeal the ruling of the chair.

Mr. CICILLINE. Move to table.

Ms. JACKSON LEE. I move to table.

Chairman NADLER. The motion to table the appeal of the ruling of the Chair is before the committee. Motion to table is not debatable.

The clerk will call the roll.

One moment while we set up the clerk.

Mr. CICILLINE. Mr. Chairman, may I make a unanimous consent request while we are waiting for this vote?

Chairman NADLER. The clerk will call the roll.

Ms. MCELVEIN. Mr. Chairman?

Chairman NADLER. Aye.

Ms. MCELVEIN. Mr. Chairman votes aye.

Ms. Lofgren?

[No response.]

Ms. MCELVEIN. Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

Ms. MCELVEIN. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. COHEN. Aye.

Ms. MCELVEIN. Mr. Cohen votes aye.

Mr. Johnson?

[No response.]

Ms. MCELVEIN. Mr. Deutch?

Mr. DEUTCH. Aye.

Ms. MCELVEIN. Mr. Deutch votes aye.

Ms. Bass?

Ms. BASS. Aye.

Ms. MCELVEIN. Ms. Bass votes aye.

Mr. Richmond?

Mr. RICHMOND. Aye.

Ms. MCELVEIN. Mr. Richmond votes aye.

Mr. Jeffries?

Mr. JEFFRIES. Aye.

Ms. MCELVEIN. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. CICILLINE. Aye.

Ms. MCELVEIN. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. SWALWELL. Aye.

Ms. MCELVEIN. Mr. Swalwell votes aye.

Mr. Lieu?

[No response.]

Ms. MCELVEIN. Mr. Raskin?

Mr. RASKIN. Aye.

Ms. MCELVEIN. Mr. Raskin votes aye.

Ms. Jayapal?

[No response.]

Ms. MCELVEIN. Mrs. Demings?

Mrs. DEMINGS. Aye.

Ms. MCELVEIN. Mrs. Demings votes aye.

Mr. Correa?

Mr. CORREA. Aye.

Ms. MCELVEIN. Mr. Correa votes aye.

Ms. Scanlon?

Ms. SCANLON. Aye.

Ms. McELVEIN. Ms. Scanlon votes aye.
 Ms. Garcia?
 Ms. GARCIA. Aye.
 Ms. McELVEIN. Ms. Garcia votes aye.
 Mr. Neguse?
 Mr. NEGUSE. Aye.
 Ms. McELVEIN. Mr. Neguse votes aye.
 Mrs. McBath?
 Mrs. MCBATH. Aye.
 Ms. McELVEIN. Mrs. McBath votes aye.
 Mr. Stanton?
 Mr. STANTON. Aye.
 Ms. McELVEIN. Mr. Stanton votes aye.
 Ms. Dean?
 Ms. DEAN. Aye.
 Ms. McELVEIN. Ms. Dean votes aye.
 Ms. Mucarsel-Powell?
 Ms. MUCARSEL-POWELL. Aye.
 Ms. McELVEIN. Ms. Mucarsel-Powell votes aye.
 Ms. Escobar?
 Ms. ESCOBAR. Aye.
 Ms. McELVEIN. Ms. Escobar votes aye.
 Mr. Collins?
 Mr. COLLINS. No.
 Ms. McELVEIN. Mr. Collins votes no.
 Mr. Sensenbrenner?
 [No response.]
 Ms. McELVEIN. Mr. Chabot?
 [No response.]
 Ms. McELVEIN. Mr. Gohmert?
 [No response.]
 Ms. McELVEIN. Mr. Jordan?
 [No response.]
 Ms. McELVEIN. Mr. Buck?
 [No response.]
 Ms. McELVEIN. Mr. Ratcliffe?
 [No response.]
 Ms. McELVEIN. Mrs. Roby?
 Mrs. ROBY. Nay.
 Ms. McELVEIN. Mrs. Roby votes nay.
 Mr. Gaetz?
 [No response.]
 Ms. McELVEIN. Mr. Johnson?
 [No response.]
 Ms. McELVEIN. Mr. Biggs?
 Mr. BIGGS. No.
 Ms. McELVEIN. Mr. Biggs votes no.
 Mr. McClintock?
 Mr. McCLINTOCK. No.
 Ms. McELVEIN. Mr. McClintock votes no.
 Mrs. Lesko?
 Mrs. LESKO. No.
 Ms. McELVEIN. Mrs. Lesko votes no.
 Mr. Reschenthaler?

Mr. RESCHENTHALER. No.

Ms. MCELVEIN. Mr. Reschenthaler votes no.

Mr. Cline?

Mr. CLINE. No.

Ms. MCELVEIN. Mr. Cline votes no.

Mr. Armstrong?

Mr. ARMSTRONG. No.

Ms. MCELVEIN. Mr. Armstrong votes no.

Mr. Steube?

[No response.]

Chairman NADLER. Is there any member of the committee who hasn't voted who wishes to vote?

Ms. LOFGREN. Mr. Chairman?

Chairman NADLER. Ms. Lofgren.

Ms. MCELVEIN. Ms. Lofgren?

Ms. LOFGREN. Aye.

Ms. MCELVEIN. Ms. Lofgren votes aye.

Chairman NADLER. Is there any other member who hasn't voted who wishes to vote?

The clerk will report.

Ms. MCELVEIN. Mr. Chairman, the ayes are 21, the noes are 8.

Chairman NADLER. In that case, the motion to table is adopted.

We return to Ms. Bass.

Ms. BASS. Thank you, Mr. Chair.

Mr. Whitaker, during the time that you were the executive director of the Foundation for Accountability and Civic Trust, you recommended that—FACT called for ethics investigations into, or filed complaints about, the following Democratic politicians, officials, and organizations: the Democratic National Committee, Hillary Clinton, John Kerry, Speaker Pelosi, Representatives Ami Bera, Huffman, Lewis. In fact, the organization actually called for an investigation into a member of this committee, Representative Hank Johnson.

So that is a total of about 46 individuals or organizations that over the time period when you were the executive director of FACT you called for either ethics investigations or filed complaints.

So, since you have joined the AG's office, I want to know whether or not any investigations have been initiated into those people and—well, just answer that. Yes or no, have there been investigations initiated into the people that you suggested be investigated during the time you were the ED of FACT?

Mr. WHITAKER. Congresswoman, I was the Executive Director of the Foundation for Accountability and Civic Trust. We were an independent, nonpartisan ethics watchdog group. We did file ethics complaints against Members of both parties.

Ms. BASS. You filed ethics complaints against Republicans? Can you tell me which Republicans you filed ethics complaints against?

Mr. WHITAKER. All of—again, you know, I am here for an oversight hearing, and I cannot imagine—

Ms. BASS. Yes, you are, and so my questions are leading to that. So can you answer that? Which Republicans did you file or ask for ethics investigations of?

Mr. WHITAKER. The nice thing about being an ethics watchdog group is that FACT filed all of its complaints on its website, and I would refer you to that.

Ms. BASS. I don't have time to look into the website. I am asking you a question now. You were the Executive Director. Which Republicans did you file?

Mr. WHITAKER. Congresswoman, again, I—as I sit here today, all I can do is refer you to the website—

Ms. BASS. Okay. So, let me just ask this. Since you have been at the—

Mr. WHITAKER [continuing]. Of the Foundation for Accountability and Civic Trust.

Ms. BASS. Since you have been in the DOJ, have any complaints been initiated against the 46 Democrats, either individuals or organizations, in the time that you have been the Acting AG?

Mr. WHITAKER. Congresswoman, as I sit here today, I am not aware of any, but, obviously, if I had recommended as the executive director of FACT that someone be investigated, I would—and my recommendation was adopted by the Department of Justice, I am certain that I could not be involved in that investigation.

Ms. BASS. You are certain, but you don't know whether you—did you recuse yourself of any?

Mr. WHITAKER. You know, recusal decisions—I think this is important for everyone to understand, is recusal decisions are made based on a matter—

Ms. BASS. Let me move on. I wanted to ask questions about ethics guidance that you received in December. Did they recommend that you recuse yourself from any involvement in the criminal investigation into the World Patent Marketing, the fraudulent patent promotion scam to which you still owe almost \$10,000 to the court? Did they provide an ethics opinion, or did you not seek one related to the World Patent Marketing matter?

Mr. WHITAKER. Just to be clear, Congresswoman, who do you mean by “they”? Do you mean the ethics officials?

Ms. BASS. I am asking you, what guidance—did they recommend that you recuse yourself? So that is a question to you. Did they recommend that you recuse yourself from any involvement in the criminal investigation into the World Patent Marketing?

Mr. WHITAKER. I am recused from the investigation into that company.

Ms. BASS. What about any matter involving Hillary Clinton? It has been well documented of your public calls for renewed investigations into matters related to Mrs. Clinton.

Mr. WHITAKER. Again, any investigations into former Secretary Clinton, if they are open—confirmation or denial of a recusal would suggest that there is or is not an investigation regarding that person.

Ms. BASS. You know, I actually believe I have more time on the clock since I was interrupted.

Chairman NADLER. I am informed we paused the time.

Ms. BASS. Okay.

Go ahead. Continue.

Mr. WHITAKER. What I am saying is your inquiry about whether or not I am recused from any matter concerning former Secretary

Clinton would, by its very nature, suggest that there is an open matter regarding Secretary Clinton.

Any recusal decision that I would make would be based on what the matter was, and we would go through the exact same analysis that I went through in the case of the special counsel's investigation.

Ms. BASS. Thank you.

Chairman NADLER. At the request of a number of people, the Committee will stand in recess for 5 minutes.

[Recess.]

Chairman NADLER. The Committee will come to order. We will resume questioning the witness under the 5-minute rule.

Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Mr. Whitaker, I am sure you would agree that the appearance of favoritism or partisanship by law enforcement agencies is absolutely deadly to a Nation that is founded upon the principle of equal justice under law. If law enforcement agencies are perceived to be biased or partisan, I think faith in them and in our system of justice can quickly collapse. And I am concerned about many alarming developments in the conduct of the FBI and the Department of Justice that call its impartiality into question.

I have been reading Gregg Jarrett's book on the Comey investigation into the Clinton emails and the Uranium One deal and the Mueller investigation into the Trump campaign. And in it, Mr. Jarrett meticulously documents case after case of political bias by the FBI, of illegal conduct at the highest levels of the Department of Justice, destruction of evidence, possible obstruction of justice by Mr. Comey himself, perjury by top DOJ officials, prosecutorial misconduct and political bias throughout Mueller's team.

Now, if the Russia investigation was initiated because of a patently false dossier, why aren't we seeing an equally aggressive investigation into these very meticulously documented charges?

Mr. WHITAKER. Congressman, as you mentioned at the beginning, we do conduct our investigations independent of political interference at the Department of Justice. The——

Mr. MCCLINTOCK. That is not what——

Mr. WHITAKER. Let me finish. Let me finish.

Mr. MCCLINTOCK [continuing]. The preponderance of the evidence is telling me from sources such as this one.

Mr. WHITAKER. Well, and specifically related to the document you just described, that is the subject of an Inspector General's review, investigation, together with the U.S. attorney from the District of Utah, that was appointed by General Sessions to look into and review certain matters that this Committee had asked be reviewed.

Mr. MCCLINTOCK. Can we expect a full, complete, and aggressive investigation of charges of wrongdoing by officials in the FBI and the Department of Justice on these matters?

Mr. WHITAKER. Congressman, I can assure you that any allegation of misconduct by an employee of the Department of Justice will be looked into thoroughly.

Mr. MCCLINTOCK. Well, I think back to the Lois Lerner scandal, and that never was addressed. Why should I be more confident in your assurances now?

Mr. WHITAKER. Congressman, I was a private citizen when the Lois Lerner situation occurred. In fact, it occurred mostly under the previous administration. I know that General Sessions did a review of that matter before I was chief of staff. So I really don't have any visibility, as I sit here today as Acting Attorney General, as to what happened in that situation.

Mr. MCCLINTOCK. Let me talk about the apparent double standard and disproportionate show of force in cases like the arrest of Roger Stone.

As I understand it, Stone's attorneys were in constant contact with the Department of Justice. He is 66 years old, doesn't own any firearms, and yet he was the subject of a pre-dawn raid by 29 combat-armed officers.

And as Mr. Jordan has pointed out, CNN was obviously tipped off to have cameras there. And, in fact, they arrived to set up before the raid began. They were allowed to stay to film the entire spectacle, despite the fact the public was kept out, ostensibly because the FBI was so concerned of violence by this 66-year-old unarmed man in this pre-dawn raid.

You compare that to cases like Bob Menendez, who was allowed to quietly turn himself in. The obvious explanation is that this was a political act whose purpose was to terrify anyone thinking of working in the Trump campaign in the future. Again, it harkens back to the conduct of the IRS, terrifying rank-and-file Tea Party members with tax audits because of their political views.

How do you explain this, and what are you doing about it?

Mr. WHITAKER. Congressman, this is a very serious situation that you raise, but just know that the FBI makes arrests in a manner most likely to ensure the safety of its agents and of the person being arrested. The FBI must also consider—

Mr. MCCLINTOCK. Well—

Mr. WHITAKER [continuing]. The safety of the surrounding community.

Mr. MCCLINTOCK [continuing]. I mean, how do you explain the discrepancy between the way Roger Stone was treated and the way Bob Menendez was treated?

Mr. WHITAKER. Again, the arrest team has to consider numerous factors in making the judgment as to how to conduct the operation.

Mr. MCCLINTOCK. Do you at least understand the appearance of impropriety that that projects to the country and undermines the faith that the American people have in their justice system and in its detachment from politics?

Mr. WHITAKER. Congressman, I cannot provide the details in this open hearing without revealing what factors the FBI considers in those decisions. And, obviously, that information could be used to put other FBI agents conducting other operations in harm's way.

What I can assure you, Congressman, is that the FBI is prepared to brief this matter, on the decisions that were made in that particular arrest, in a closed session of this committee.

Chairman NADLER. Time of the gentleman has expired.

Mr. Richmond?

Mr. RICHMOND. Thank you, Mr. Chairman.

Mr. Whitaker, the DOJ was created in 1957 under the Civil Rights Act, correct?

Mr. WHITAKER. Congressman, I believe——

Mr. RICHMOND. It was.

Mr. WHITAKER [continuing]. Grant signed the Department of Justice——

Mr. RICHMOND. No, no, no, no, no. It was. We are just not going to do all this delay stuff. It was.

And it was created to protect against discrimination based on race, color, sex, disability, religion, familial status, and national origin. Wouldn't you agree?

Mr. WHITAKER. You are talking about the Civil Rights Division specifically?

Mr. RICHMOND. No. DOJ.

Mr. WHITAKER. The Department of Justice was set up to——

Mr. RICHMOND. You know what? Never mind. Let's keep going.

You were Chief of Staff when Jeff Sessions testified in this committee in 2017, correct? November.

Mr. WHITAKER. I was. And, in fact, I sat right behind him——

Mr. RICHMOND. Right. That is exactly where I am going. Because do you remember me asking him a question about diversity in leadership in DOJ and the fact that they had no African Americans in leadership at DOJ?

Do you have any African Americans at the top leadership in the Department of Justice?

Mr. WHITAKER. If the Senate confirms my friend Don Washington to be head of the U.S. Marshals, which I believe is pending on the floor of the Senate currently, then the answer to that question would be yes.

But as we sit here today, I do not believe—but what do you consider the leadership of the Department of Justice?

Mr. RICHMOND. The hierarchy with people responding to them, head of a division, Deputy Attorney Generals. If you look at the flowchart, the upper echelon.

So think about the image to me. DOJ created to protect civil rights and advocate for all. We have had the last two Attorney Generals come here; not one of them thought they could find, or did find, an African American at DOJ to bring with them. And you are charged with enforcing civil rights and making people feel that you are fighting for equality.

You mentioned Charlottesville and charging the person with 30 counts, and I applaud you for that. Do you believe that in Charlottesville there were good people on both sides?

Mr. WHITAKER. Congressman, I think the act, while it is, you know, again, part of an ongoing prosecution, I can tell you——

Mr. RICHMOND. Let me just say this.

Mr. WHITAKER [continuing]. The act was charged as a hate crime——

Mr. RICHMOND. I agree with you, and I applaud you——

Mr. WHITAKER [continuing]. Heinous act.

Mr. RICHMOND. I applaud you for that. But that is one individual. I am asking you, in general, do you believe that there were

good people that were protesting and there were good people that were anti-protesters? So I am talking about the people——

Mr. WHITAKER. Congressman——

Mr. RICHMOND [continuing]. Marching with lights—I mean, the tiki torches and the chants. Do you think that some of them were good people, is the short question.

Mr. WHITAKER. Congressman, there is no place in a civil society for hate, for white supremacy, or for white nationalism.

Mr. RICHMOND. Thank you.

Also, out of the 115,000 employees that you have at DOJ, are any of them transgender?

Mr. WHITAKER. Congressman, as I sit here today, I don't know the answer to that question. I could imagine that generally, based on the way the population is distributed, that we would. I would also be happy to get back to you with that answer if those people identify that way.

Mr. RICHMOND. Would you have a problem with a transgender person being from a clerk to an agent in the field for any of your law enforcement agencies?

Mr. WHITAKER. No.

Mr. RICHMOND. Thank you.

You mentioned also that voter fraud is of a serious concern. How many voter fraud cases have you all initiated?

Mr. WHITAKER. Congressman, as I mentioned in previous questioning, I am happy to get those specific details back to you. As I sit here today, I don't know off the top of my head.

Mr. RICHMOND. Is it a lot? Is it a few? I mean, we are talking about a serious concern in the United States of America. I would think we are talking over 100. Are we talking less than 25? Just—but if you don't know a ballpark, I am fine with that.

What about North Carolina? Because that is the only congressional seat that has not been determined because of widespread voter suppression in that race. Has the DOJ—have they opened an investigation in that? And if they have, I guess you can't talk about it.

Mr. WHITAKER. Congressman——

Mr. RICHMOND. But are you looking at that?

Mr. WHITAKER [continuing]. While I can't talk about open investigations—and I appreciate your acknowledging that there might be open investigations—I am very aware of what is happening in North Carolina. We have previously done voting rights cases in North Carolina. And we are watching that situation very carefully.

Mr. RICHMOND. Well, I don't want to go over my time, and I guess in the last 12 seconds I would just implore you to implore which will now be the third Attorney General during this term that after 2 years we should be doing better with diversity in the Department of Justice. And I am talking, more specifically, black and brown people and women. I applaud you for having one woman with you, but the DOJ should look like the country. And you all have been here twice, and it is not a fair representation of what makes this country great.

With that, I yield back the balance of my time.

Chairman NADLER. I thank the gentleman.

Mr. Cline?

Oh, I am sorry. I am sorry.

Mrs. Lesko?

Mrs. LESKO. Thank you.

You know, I have to say that I am very disappointed in this hearing. You know, I ran for Congress to get things done. And at the beginning of this, you know, we were told that this is about asking about DOJ oversight and some legitimate questions. And here we are. It is nothing but character assassination, harassment of our witness. And it is really disappointing.

At first, I was mad. I have to tell you, when this thing started hours ago, I went outside, and a reporter asked me, "What do you think of the hearing?", and I said, "It is a joke."

But now I am just sad. I am sad. Because we were on the floor just a little while ago talking about how we were honoring our late Representative Dingell and talking about bipartisanship and how we need to get things done. And yet here we are with a blatant political show that doesn't help anything. I imagine if American people are watching this right now, they would be shaking their heads, like, what are you doing there? We need to work together to get things done.

And so that is my statement, but I do have a question for Mr. Whitaker about DOJ oversight.

Following the New York Governor Cuomo's support of abortion up to the moment of birth and Governor Northam of Virginia's comments indicating support of an action which, in my opinion, relates to infanticide, are you concerned about some of these actions of late that implicate the Federal Partial-Birth Abortion Act that criminalizes gruesome procedures? I mean, I am getting really concerned that this is violating the law. And has DOJ looked into this?

Mr. WHITAKER. Yes, as an American citizen, I am very concerned.

Mrs. LESKO. And can you also tell me—I read recently a Wall Street Journal opinion piece. It was from 2018. And in that, it said, in New York City, thousands of more black babies are aborted than born alive each year. And my grandkids are African American.

And so, you know, if there was a crime occurring in this country that exceeded the number of deaths from cancer, heart disease, AIDS, accidents combined, which abortions do, is that something that the DOJ would get involved in and be concerned about and try to stop?

Mr. WHITAKER. Congresswoman, every life is valuable. And while I can't wade into the political issue that you raise, the members of this committee have a lot of power as to how we value life and how we enforce the laws at the Department of Justice.

And this is an issue that I know there is a lot of passion about, and I appreciate your passion, and it is something that we actually share together. And if you look at my statements previous to joining the Department of Justice, especially during the 2014 campaign for the United States Senate, I was very outspoken in this regard.

But as I sit here as Acting Attorney General, I think it would be inappropriate for me to comment more fulsomely on this issue. But we are going to enforce the laws that Congress passes, and we are going to hold those accountable that violate the law.

Mrs. LESKO. Thank you.

I yield back my time.

Chairman NADLER. Thank you.

Mr. Jeffries?

Mr. JEFFRIES. Mr. Whitaker, thank you for your presence here today.

This hearing is important because there are many Americans throughout the country who are confused. I am confused. I really am. We are all trying to figure out: Who are you, where did you come from, and how the heck did you become the head of the Department of Justice? So hopefully you can help me work through this confusion.

Mr. WHITAKER. All right, well, I mean, Congressman——

Mr. JEFFRIES. Mr. Whitaker, that was a statement, not a question.

Mr. WHITAKER. Okay.

Mr. JEFFRIES. I assume you know the difference.

The investigation into possible Trump-Russia collusion in the 2016 election has resulted in 37 indictments. Is that correct?

Mr. WHITAKER. I believe that number is correct, but most of those folks were Russian citizens.

Mr. JEFFRIES. Thirty-four individuals have been indicted, true?

Mr. WHITAKER. While I haven't counted those as I prepared for my hearing preparation, I believe those are consistent with the numbers as I know them.

Mr. JEFFRIES. Three corporate entities have been indicted, correct?

Mr. WHITAKER. I believe so. Correct.

Mr. JEFFRIES. The investigation has identified 199 different criminal acts. True?

Mr. WHITAKER. I haven't counted every indictment, but that sounds consistent with what I understand.

Mr. JEFFRIES. There have been seven guilty pleas, correct?

Mr. WHITAKER. Yes, there have been seven guilty pleas.

Mr. JEFFRIES. Four people have already been sentenced to prison. True?

Mr. WHITAKER. I believe so, but, again, I do not have this information in front of me. So, to the extent that I disagree with you, it is because these are facts——

Mr. JEFFRIES. Understood. Thank you.

Trump's best friend, Roger Stone, was recently indicted for lying to Congress in connection with his possible involvement with WikiLeaks and Russian interference with the 2016 election, correct?

Mr. WHITAKER. Yes. And I mentioned Mr. Stone's indictment and arrest.

Mr. JEFFRIES. Trump's Campaign Chairman, Paul Manafort, pled guilty to conspiracy to defraud the United States. True?

Mr. WHITAKER. Mr. Manafort did plead guilty, yes.

Mr. JEFFRIES. Trump's Deputy Campaign Manager, Rick Gates, has pled guilty to lying to the FBI, correct?

Mr. WHITAKER. While I don't have the indictment in front of me, I have no reason to disagree with you.

Mr. JEFFRIES. Trump's former National Security Advisor, Michael Flynn, has been guilty to lying to the FBI, correct?

Mr. WHITAKER. That is a true fact, yes.

Mr. JEFFRIES. Trump's longtime personal attorney and consigliere, Michael Cohen, pled guilty to lying to Congress about the Trump real estate organization's Moscow project. Is that true?

Mr. WHITAKER. I believe that was one of the bases for his plea agreement. I actually—there were several other reasons that Mr. Cohen pled guilty.

Mr. JEFFRIES. Trump's campaign foreign policy advisor, George Papadopoulos, has pled guilty to lying to Federal investigators about his contacts with Russian agents during the 2016 campaign. True?

Mr. WHITAKER. While I am sure there are many who would disagree with the title that you put on Mr. Papadopoulos, it is true that he has pled guilty, yes.

Mr. JEFFRIES. So, despite all of the evidence of criminal wrongdoing that has been uncovered, do you still believe that the Mueller investigation is a lynch mob?

Mr. WHITAKER. Congressman, can you tell me specifically where I said that?

Mr. JEFFRIES. I would be happy to. So, in a tweet that you issued on August 6 of 2017, you made reference to "Note to Trump's lawyer: Do not cooperate with Mueller's lynch mob." Do you recall that?

Mr. WHITAKER. I recall that I said—that I retweeted an article that was titled that. I did not necessarily agree with that position, but my point was that it was an interesting read for those that want to understand the situation.

Mr. JEFFRIES. Okay. Reclaiming my time.

Manafort, Gates, Flynn, Cohen, Papadopoulos, and Stone are all in deep trouble. One by one, all of the President's men are going down in flames. It is often said, where there is smoke, there is fire. There is a lot of smoke emanating from 1600 Pennsylvania Avenue right now.

Yet you decided not to recuse yourself. Is that right?

Mr. WHITAKER. Congressman, the decision to recuse was my decision to make. I looked at all of the information, I consulted with many people that I have discussed today, and I determined that it was not necessary for me to recuse.

Mr. JEFFRIES. And Donald Trump considered the Sessions recusal to be a betrayal. Is that right?

Mr. WHITAKER. Congressman, I have no idea, as I sit here today, what the President believed about General Sessions' recusal.

Mr. JEFFRIES. Okay, so let's be clear. The investigation into Russia's attack on our democracy is not a witch hunt, it is not a fishing expedition, it is not a hoax, it is not a lynch mob. It is a national security imperative. The fact that people suggest otherwise comes dangerously close to providing aid and comfort to the enemy.

In your final week, keep your hands off the Mueller investigation.

I yield back.

Chairman NADLER. I thank the gentleman.

I now recognize the gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman.

Thank you, Mr. Acting Attorney General.

I was hopeful that we would get into some oversight over the array of areas of the Department of Justice that are so critical and so important to addressing the problems that are facing my community. Drugs, crime—all of these issues are of top concern to my constituents.

And one of the most important things that I hear about when I get back to my district is, are you going to keep the government operating? Can you reach an agreement on immigration issues?

So when we talk about immigration, I can ask you a couple of questions that would probably help get to an immigration agreement.

The backlog of pending cases in immigration courts nationwide have been growing exponentially since 2008, from fewer than 200,000 cases in 2008 to more than 800,000. And Border Patrol is currently apprehending almost 50,000 aliens each month, a certain percentage of which ends up in that same pending-case backlog.

And in the face of this backlog, what steps is DOJ taking to ensure that its immigration judges can efficiently and effectively adjudicate cases and reduce this backlog of pending cases in a fair and efficient manner?

Mr. WHITAKER. Thank you, Congressman. This is an important issue to the Department of Justice, and our immigration judges work hard every day to adjudicate those cases. But, quite frankly, the number of immigration judges we have have been overwhelmed by the number of asylum seekers.

Over 80 percent, and really over 90 percent, of those that are encountered at the border and detained and arrested claim some form of asylum. Ultimately, that causes those folks to be put into the immigration court system and then requires that a hearing be held by an immigration judge.

And, meanwhile, most of these folks, those 800,000 that are pending, are not part of the detained docket; they are part of the released docket. And those cases take longer, the ones that are not detained, the nondetained docket. And they have caused since 2008 that number to go dramatically up.

What we have done about that situation is General Sessions and I have issued Attorney General orders changing some of the specifics as to how those cases are adjudicated. And, in addition, we have, together with the help of Congress—which you have authorized and funded more immigration judges—we have put a dramatic number of more judges especially to the areas where it is needed, which is oftentimes at the border.

Mr. CLINE. So you have also put in place an additional performance metric to gauge the performance of judges working to complete cases and reduce the backlog. Are those working?

And you have gotten pushback from groups who are concerned that they amount to case quotas. And if they are working, are you aware of any organization in which productivity of its workers isn't assessed as one part of a multidimensional performance review?

Mr. WHITAKER. Yes. In fact, government-wide, where there are administrative law judges, similar to our immigration judges, there are typically performance metrics that are in place to not only evaluate their productivity but also to budget and manage that workforce.

Mr. CLINE. And what are you doing to ensure that continuances in immigration cases are not abused and are granted solely for good cause?

Mr. WHITAKER. We issued an Attorney General order which set the standard, which had been different based on what the immigration appeals board, which is an internal—the Board of Immigration Appeals, which is an internal DOJ body that the Attorney General sits over. We have passed rules and regulations and a new standard for issuing those continuances for good cause, as you mentioned.

Mr. CLINE. All right. Thank you.

I yield back.

Chairman NADLER. I thank the gentleman.

I will now yield to the gentleman from Rhode Island for the purpose of a unanimous consent request.

Mr. CICILLINE. Thank you, Mr. Chairman.

I would ask unanimous consent that the following articles be placed in the record.

The first is an article entitled “Exclusive: Trump Loyalist Matthew Whitaker Was Counseling the White House on Investigating Clinton.”

The second article, “Sessions Replacement Matthew Whitaker Called Mueller’s Appointment ‘Ridiculous’ and ‘a Little Fishy.’”

The third article, All the Times Robert Mueller’s New Boss Railed Against the Russia Probe.” “Trump’s Pick to Replace Jeff Sessions Once Said Mueller Investigation Risked Becoming a ‘Witch Hunt.’”

And, finally, an article entitled “Trump’s New Acting Attorney General Once Mused About Defunding Robert Mueller.”

Chairman NADLER. Without objection, these documents will be placed in the record.

[The information follows:]

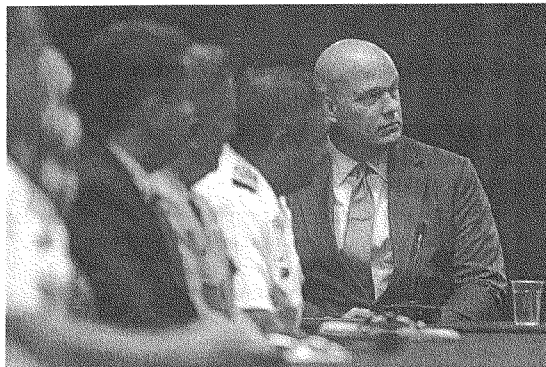
MR. CICILLINE FOR THE OFFICIAL RECORD



Exclusive: Trump loyalist Matthew Whitaker was counseling the White House on investigating Clinton

Whitaker advised the president on launching a new special counsel while working as chief of staff for Attorney General Jeff Sessions.

By Murray Waas | Nov 9, 2018, 5:50pm EST



Matthew Whitaker in August. | Chip Somodevilla/Getty Images

Matthew Whitaker, whom President Donald Trump named as his acting attorney general on Wednesday, privately provided advice to the president last year on how the White House might be able to pressure the Justice Department to investigate the president's political adversaries, Vox has learned.

suggested to me that the then-chief of staff was only attempting to diffuse the tension between the president and his attorney general and deputy attorney general, and facilitate an agreement between the two sides.

But two other people with firsthand information about the matter told me that Whitaker, in his conversations with the president, presented himself as a vigorous supporter of Trump's position and "committed to extract as much as he could from the Justice Department on the president's behalf."

One administration official with knowledge of the matter told me: "Whitaker let it be known [in the White House] that he was on a team, and that was the president's team."

Whitaker's open sympathizing with Trump's frequent complaints about the Mueller investigation resulted in an unusually close relationship between a president and a staffer of his level. The president met with Whitaker in the White House, often in the Oval Office, at least 10 times, a former senior administration official told me. On most of those occasions, Sessions was also present, but it's unclear if that was always the case.

During this period, Whitaker frequently spoke by phone with both Trump and Chief of Staff John Kelly, this same official told me. On many of those phone calls, nobody else was on the phone except for the president and Whitaker, or only Kelly and Whitaker. As one senior law enforcement official told me, "Nobody else knew what was said on those calls except what Whitaker decided to tell others, and if he did, whether he was telling the truth. Who ever heard of a president barely speaking to his attorney general but on the phone constantly with a staff-level person?"

Despite this being the case, on Friday as he was leaving on a trip to Paris, Trump **told reporters**, "I don't know Matt Whitaker." He also claimed that he never spoke to the then-DOJ chief of staff about the Mueller investigation: "I didn't speak to Matt Whitaker about it," he said.

Whitaker was a White House ally in building the case to investigate Hillary Clinton

Before he became Sessions's chief of staff, Whitaker was one of the staunchest critics of Mueller's investigation. In a July 2017 appearance on CNN, for example, Whitaker spoke of various ways the White House might sabotage Mueller's probe. **Whitaker suggested** that if Sessions were to resign or be fired, his replacement might be able to curtail the investigation by simply refusing to fund it further.

"I could see a scenario where Jeff Sessions is replaced with a recess appointment and that attorney general doesn't fire Bob Mueller, but he just reduces his budget to so low that his investigation grinds to almost a halt," Whitaker said.

The previous month, Whitaker, **appearing on a conservative radio show**, said he was sure that the president and his men did nothing wrong: "The truth is there was no collusion with the Russians and the Trump campaign," he declared.

John Q. Barrett, a professor at St. John's Law School and a former associate Iran-Contra prosecutor, **tweeted** after the president named Whitaker acting attorney general: "Whitaker told me in June 2017 that he was flying out from Iowa to NYC to be on CNN regularly because he was hoping to be noticed as a Trump defender, and through that to get a Trump judicial appointment back in Iowa."

In August 2017, as a CNN legal commentator, Whitaker authored an op-ed titled **"Mueller's investigation of Trump is going too far."** He wrote: "It is time for Rosenstein, who is the acting attorney general for the purposes of this investigation, to order Mueller to limit the scope of his investigation." The following month, Whitaker was named Sessions's chief of staff.

The president's relationship with Sessions and Rosenstein has famously been largely one of animosity and disdain. But in Whitaker, the president found a reliable and compliant friend. As the New York Times **reported**, "The president has long regarded Mr. Whitaker as his eyes and ears inside a department that he considers an enemy institution." The Washington Post similarly **reported**, "As Sessions's chief of staff, Whitaker met with the president in the Oval Office more than a dozen times, normally accompanying the attorney general. ... When Trump complained about the Mueller investigation, Whitaker often smiled knowingly and nodded in assent."

As the **New York Times reported** at the time, Rosenstein's supporters saw his response to Trump as a "deft deflection" that achieved three immediate needs: "It neutered a troubling request, appeared responsive to the president's demands and allowed Mr. Rosenstein to keep his job."

But critics — among them senior current and former Justice Department officials — argued that by acceding, Rosenstein did irreparable damage to the department. Matthew Miller, who served as the Justice Department's spokesperson during the Obama administration, told me, "The inspector general does not exist to disprove presidential conspiracy theories, or even legitimize them by investigating them in the first place. And the deputy attorney general should not be participating in a presidential attempt to conduct an investigation based on no evidence — and sought only to discredit the lawful investigations of the president and his campaign aides."

The fig leaf comes off

To placate the president's demand that a special counsel be named to investigate Hillary Clinton's role in the uranium deal, Rosenstein and other Justice Department officials came up with a similar compromise: Instead of naming a special counsel, Sessions agreed to appoint John Huber, the US attorney for Utah, to review the department's earlier investigation. If he found evidence of any serious wrongdoing, Huber could then recommend the opening of a formal criminal investigation or even the appointment of a special counsel.

A long-time Justice Department trial attorney told me, "This is the first time, perhaps since Watergate, that the department has been asked to review old, closed files about a president's political opponents. It's not right that it should have been done at all. Yet you can argue that Sessions did this in the most benign way possible. He did refuse to open a criminal investigation without cause, and he stood firm by refusing to appoint a special counsel."

Sessions **wrote** to several Republican members of Congress in March to say that Huber's review was a top priority: "I receive regular updates from Mr. Huber and upon the conclusion of his review," so as to consider "whether any matters merit the appointment of a special counsel." At the highest levels of the Justice

2/8/2019

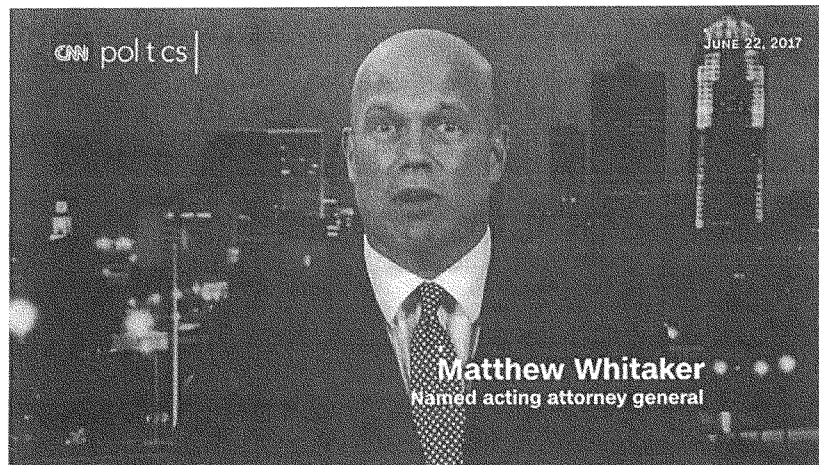
Sessions replacement Matthew Whitaker called Mueller's appointment 'ridiculous' and 'a little fishy' - CNNPolitics

KFILE

Sessions replacement Matthew Whitaker called Mueller's appointment 'ridiculous' and 'a little fishy'

By Andrew Kaczynski, CNN

Updated 1:18 PM ET, Thu November 8, 2018



Source: CNN

Whitaker likes to talk about Mueller 02:08

(CNN) — The new acting attorney general who is expected to have oversight over special counsel Robert Mueller's Russia investigation has expressed deep skepticism of the probe, including calling Mueller's appointment "ridiculous" and "a little fishy."

President Donald Trump announced Matthew Whitaker as acting attorney general on Wednesday after he fired Jeff Sessions.

Whitaker, formerly Sessions' chief of staff, made the comments on the radio in 2017 before his appointment at the Justice Department. In those appearances, he also said the President did not obstruct justice when he allegedly asked then-FBI Director James Comey to drop the investigation into Trump's former national security adviser Michael Flynn.

<https://www.cnn.com/2018/11/08/politics/kfile-matthew-whitaker-mueller-comments/index.html>

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2/6/2015

Sessions replacement Matthew Whitaker called Mueller's appointment 'ridiculous' and 'a little fishy' - CNNPolitics

In other radio comments, Whitaker questioned if the investigation into former Trump campaign chairman Paul Manafort was within the scope of the Mueller investigation, said investigating Trump's finances would be outside the Mueller probe's authority, argued there was a case to be made that Mueller's team committed prosecutorial misconduct if they went outside the bounds of the investigation into Russian election meddling, and said Mueller's probe was taking resources away from other investigations.

Prior to joining the Justice Department, Whitaker served as CNN legal commentator for several months in 2017. A US attorney during the Bush administration, he was executive director of the conservative watchdog group the Foundation for Accountability and Civic Trust. He lost a bid for the Republican Senate nomination in Iowa in 2014 to now-Sen. Joni Ernst.

Here's what Whitaker said in those 2017 radio interviews:

On the appointment of Mueller:

Speaking on the "Rose Unplugged" radio program in August 2017, Whitaker said the appointment of Mueller was "ridiculous" and it "smells a little fishy."

"For whatever reason, Rod Rosenstein determined that the Department of Justice couldn't handle this in their ordinary course of work, which I think was ridiculous," Whitaker said about the deputy attorney general. "An effort by Jim Comey to get this put in place and have somebody that he's very familiar with in Bob Mueller conducting investigations. So I think it smells a little fishy, but I just hope it doesn't turn into a fishing expedition, because I will be one of them ones jumping up and down making sure the limitations on this investigation continue because that's the way it's supposed to be."

Whitaker added that Rosenstein felt "political pressure" to appoint Mueller, and that he was "certain" the deputy attorney general now regrets it.

On the possibility Trump committed obstruction of justice:

Speaking on "The Sean Hannity Show" in May 2017, Whitaker said even if the President asked Comey not investigate Flynn, it would not rise to the level of obstruction of justice.

"Let's assume that the President asked him to stop investigating Flynn," Whitaker said. "That doesn't rise to the level of obstruction of justice and it doesn't sound to me, based on what's been reported, that Jim Comey, as he sat there, believed that the President was telling him to stop the investigation. As you know in the law and in these types of situations, the words and whatever the president did or didn't say is going to be very important. And, if all he did was make a mere suggestion and not an outright command, I don't think that rises to the level of obstruction of justice."

On the investigation into Manafort:

Speaking on conservative commentator David Webb's radio show in August 2017, Whitaker questioned if investigating Manafort was within the special counsel's scope.

"What we do know is Paul Manafort's finances are being looked at," he said. "They conducted an early morning raid of his house. It sounds like unannounced, which again, you know, I could riff on this all day about why no-knock warrants are a really bad idea. And they're looking at his foreign bank accounts and his tax records. And you know, that I think is a question of, is that within the scope of the letter that Rod Rosenstein wrote to Bob Mueller in setting up the special counsel."

On investigating Trump's finances:

Speaking with Webb, Whitaker added the Mueller investigation would be "invalid" and "fraudulent" if it expanded beyond Russian interference in the 2016 election. Whitaker said it would become a "fishing expedition" that was "very dangerous to the Republic."

2/8/2019

Sessions replacement Matthew Whitaker called Mueller's appointment 'ridiculous' and 'a little fishy' - CNNPolitics

"There is a valid argument that if somehow there is not expanded authority sought, that the prosecutor stepped out of the authority and that it's an invalid investigation and the whole basis of the investigation is essentially fraudulent," Whitaker said.

"If they are looking at unrelated to the 2016 election Trump finances, they have crossed the red line and they're outside of the scope of their investigation," he added. "And essentially they are on a fishing expedition which is very dangerous to the republic."

On the Mueller team's "prosecutorial misconduct" and the need to speed up the Mueller investigation:

Speaking with Webb, Whitaker added if the Mueller team didn't handle "bias" or what he considered conflicts of interest, it raised the question of if there was prosecutorial misconduct.

"You could have things like prosecutorial misconduct," said Whitaker. "If they don't handle these conflicts well, especially on the special counsel's team. And that there is a real bias or if they do kind of run away and just start investigating whatever they damn well feel like investigating. I think there is a real risk of not only a legal blowback and cases making its way to the Supreme Court on prosecutorial misconduct or whether or not somebody was supposed to recuse based on conflicts."

"I also think there was an interesting comment yesterday from the President on this investigation and that is why don't these folks hurry up," he said. "I mean it is not helping this administration and really not helping the federal government generally to have the president and his associates under the cloud of a federal investigation. I mean it is. It is very hard."

On the "political" Mueller investigation:

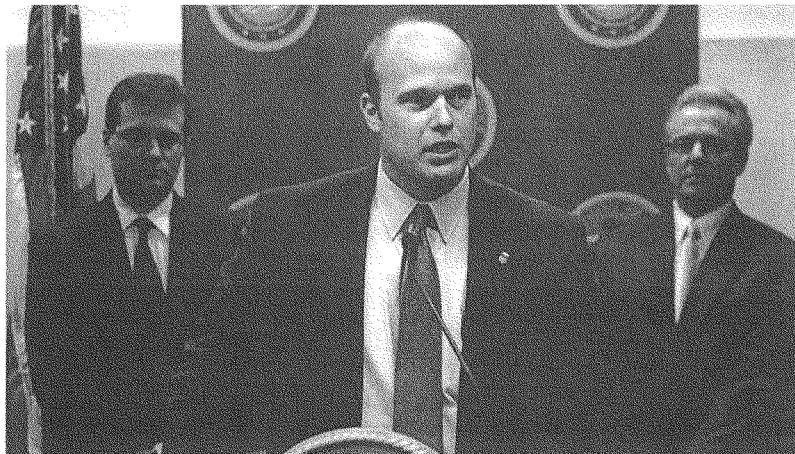
Speaking on Iowa talk radio in August 2017, Whitaker, comparing the Russia investigation to Ken Starr's investigation into President Bill Clinton, called Mueller's probe "equally political" and said it was taking resources away from other FBI investigations.

"A lot of the resources of the FBI is being focused on the Russian investigation -- even though we still haven't seen any real evidence that there was any coordination between the campaign and the Russian government," he said. "I still continue to believe that investigation, an equally political investigation, is taking a lot of resources away from the FBI where they can focus it on other areas."

"LYNCH MOB"

All the times Robert Mueller's new boss railed against the Russia probe

By Max de Haldevang & Adam Pasick · November 7, 2018



Matthew Whitaker has a long history of criticizing the Mueller probe into Trump-Russia

Donald Trump wasted no time ousting attorney general Jeff Sessions, a longtime thorn in his side, after the midterm elections. His replacement, Matthew Whitaker has said he has “a lot of respect” for special counsel Robert Mueller, but he also has a long history of criticizing Mueller’s investigation into the Trump campaign’s ties to Russia.

Here is a collection of Whitaker’s long list of writings, tweets, and statements criticizing the probe.

Opposing Mueller before he was appointed



QUARTZ



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All Matthew Whitaker's criticisms of Robert Mueller's Russia investigation — Quartz

After Trump fired FBI director James Comey, Whitaker wrote an May 2017 op-ed in the Hill calling the move “the right decision.” He took a firm stance against appointing a special counsel to investigate Trump’s campaign ties to Russia, writing, “Hollow calls for independent prosecutors are just craven attempts to score cheap political points and serve the public in no measurable way.”

No obstruction of justice case

In a June 2017 radio interview discussing former FBI director James Comey’s Congressional testimony on his firing by Trump, Whitaker said “there is no criminal obstruction of justice charge to be had here [against Trump].” Obstruction of justice is one of the charges Mueller is believed to be pursuing.

Defunding Mueller’s investigation

Whitaker, former chief of staff to Sessions, sketched out a scenario in which Sessions was fired and his replacement doesn’t fire Mueller but undercuts the investigation, speaking on CNN in July 2017.

“I could see a scenario where Jeff Sessions is replaced, it would [be a] recess appointment and that attorney general doesn’t fire Bob Mueller but he just reduces his budget to so low that his investigations grinds to almost a halt.”

Becoming a “witch hunt”

In an Aug. 2017 CNN op-ed, Whitaker wrote that Mueller’s investigation was at risk of becoming a “witch hunt.” It would be “dangerously close to crossing” a “red line” if he looked into Trump’s finances, he wrote. In contrast to many other experts, Whitaker argued that Mueller does not have “broad, far-reaching powers” in the probe.

“You always take the meeting”

Whitaker has also reportedly defended Donald Trump Jr.’s decision to meet a Russian lawyer offering dirt on Hillary Clinton, saying on CNN that “You would always take the meeting.”



QUARTZ



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All Matthew Whitaker's criticisms of Robert Mueller's Russia investigation — Quartz

The “lynch mob” tweet

<https://twitter.com/MattWhitaker46/status/894363989962100736>

A month later, Whitaker joined the Department of Justice as Sessions’ chief of staff.



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<https://qz.com/1454952/all-matthew-whitakers-criticisms-of-robert-muellers-russia-investigation/>

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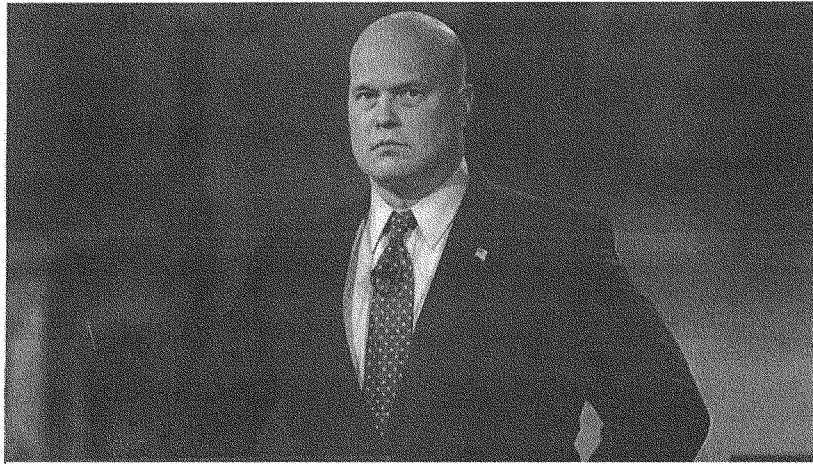
Trump's Pick to Replace Jeff Sessions Once Said Mueller Investigation Risked Becoming a "Witch Hunt" — Mother Jones

Mother Jones

Trump's Pick to Replace Jeff Sessions Once Said Mueller Investigation Risked Becoming a "Witch Hunt"

Matthew Whitaker also wrote that investigating Trump's personal finances would be "a red line" Mueller is "dangerously close to crossing."

DAN SPINELLI SEPTEMBER 24, 2018 12:32 PM



Matthew Whitaker, pictured during an Iowa Republican Senate primary debate, could replace Rod Rosenstein as deputy attorney general. **Charlie Neibergall/AP**

Update (11/07/18): On Wednesday, President Donald Trump accepted Jeff Sessions' resignation as attorney general and tapped Matthew Whitaker, a former US Attorney, as his replacement.

The man expected to replace Rod Rosenstein as deputy attorney general if Rosenstein is fired or resigns said last year that special counsel Robert Mueller's probe into Russian election meddling risked becoming a "witch hunt."

ADVERTISING

Matthew Whitaker, chief of staff to Attorney General Jeff Sessions and a former US attorney for the Southern District of Iowa, is expected to succeed Rosenstein as the Justice Department's No. 2, the *New York Times* reported Monday. Rosenstein, who oversees the Russia investigation following Sessions' recusal, was summoned to the White House and is expected to resign or be fired, several outlets have reported.

"If [Mueller] were to continue to investigate the financial relationships without a broadened scope in his appointment, then this would raise serious concerns that the special counsel's investigation was a mere witch hunt," Whitaker wrote on CNN.com last August. Before entering government as Sessions' chief of staff last September, Whitaker was a legal commentator for CNN and appeared several times on network programs to opine on Mueller's probe and the investigation into Trump's former campaign chairman Paul Manafort.

In an appearance on Don Lemon's show last summer, Whitaker predicted Trump would put pressure on Rosenstein and "try to get Rod to maybe even cut the budget of Bob Mueller."

"I think what ultimately the president is going to start doing is putting pressure on Rod Rosenstein, who is in charge of this investigation," Whitaker said, "and really try to get Rod to maybe even cut the budget of Bob Mueller and do something a little more stage-crafty than the blunderbuss of firing the attorney general and trying to replace him."

A month later, Whitaker wrote in his op-ed for CNN that any investigation into Trump's personal finances would constitute "a red line" that Mueller is "dangerously close to crossing."

"It does not take a lawyer or even a former federal prosecutor like myself to conclude that investigating Donald Trump's finances or his family's finances falls completely outside of the realm of his 2016 campaign," he wrote. "That goes beyond the scope of the appointment of the special counsel."

Whitaker went on to urge Rosenstein "to order Mueller to limit the scope of his investigation to the four corners of the order appointing him special counsel."

After news broke that Trump's son, Donald Jr., and senior campaign officials had attended a meeting in Trump Tower with a Russian lawyer offering dirt on Hillary Clinton, Whitaker said on CNN that "you would always take the meeting" and "you certainly want to have any advantage, any legal advantage you can" as a political candidate.

As deputy attorney general, Whitaker would be in a position to influence the course of Mueller's investigation. Though Mueller currently reports to Rosenstein, the *New York Times* reported Monday that Noel Francisco, the US solicitor general and third in line at the Justice Department, would oversee the Russia probe directly if Rosenstein is ousted.

On August 6, 2017, Whitaker retweeted a *Philadelphia Inquirer* article titled "Note to Trump's lawyer: Do not cooperate with Mueller lynch mob." Whitaker added, "Worth a read."

Worth a read. "Note to Trump's lawyer: Do not cooperate with Mueller lynch mob" <https://t.co/arYY9H94Ma> via @phillydotcom

— Matt Whitaker (@MattWhitaker46) August 7, 2017

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Trump's Pick to Replace Jeff Sessions Once Said Mueller Investigation Risked Becoming a "Witch Hunt" — Mother Jones

Published three months after Mueller was appointed as special counsel, the article by ex-federal prosecutor George Parry urged Trump's lawyers not to cooperate with the special counsel's investigation. "The absolute last thing someone in your client's position should do is cooperate with Mueller," Parry wrote. "For the target of a grand jury investigation, cooperation is a sucker play guaranteed to result in disaster. If your client is a so-called person of interest or potential target, never, ever allow him to testify before the grand jury. Same thing for giving a statement to an investigator. It's a trap, plain and simple."

But during a CNN appearance last summer, Whitaker praised Mueller's integrity. "There is no honest person that sits in the world of politics, in the world of law, that can find anything wrong with Bob Mueller," he said, adding that if "something's wrong with Bob Mueller," then "our republic is in more trouble than we might imagine." Whitaker also told the *Hill* newspaper, "Nobody has a reputation like Bob Mueller," and he sought to dispel claims that the special counsel would be biased in favor of former FBI Director James Comey. "If you're assuming his judgment will be skewed because of it, that's just wrong," Whitaker said. "He's a pro."

Before entering government, Whitaker ran for Senate in Iowa but lost the Republican primary to Joni Ernst. He has also served as executive director of the Foundation for Accountability and Trust, a conservative nonprofit.

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DAN SPINELLI

Dan Spinelli is an editorial fellow in *Mother Jones'* DC bureau who covers environmental policy and national politics. You can email him tips at dspinelli@motherjones.com and follow him on Twitter at [@dspin3](https://twitter.com/dspin3).

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Trump's new acting attorney general once mused about defunding Robert Mueller



By [Aaron Blake](#)
November 7, 2018

This post was originally published in October and has been updated with Whitaker's installment.

Matthew Whitaker has been appointed acting attorney General after [Jeff Sessions resigned Wednesday](#) at President Trump's request. And suddenly, Whitaker's past skepticism about the Russia investigation has taken on new significance.

Whitaker's Russia commentary first cropped up when he was reported to be a likely replacement for Sessions's No. 2, Deputy Attorney General Rod J. Rosenstein, several weeks ago. Installing him as the temporary No. 1, though, gives Whitaker even more power. The Justice Department has indicated [he will take oversight of the Russia investigation](#), replacing Rosenstein in that role.

One exchange in particular shows almost exactly what Whitaker thinks someone in such a position could do to rein in special counsel Robert S. Mueller III.

Appearing on CNN in July 2017 — before he became Sessions's chief of staff, the position he occupied before Wednesday — Whitaker mused about a scenario in which Trump might fire Sessions and replace him with a temporary attorney general. Whitaker noted that federal regulations still gave the attorney general power over the budget for a special counsel. That temporary replacement, he then said, [could move to choke off Mueller's funding](#).

"So I could see a scenario where Jeff Sessions is replaced with a recess appointment," Whitaker said, "and that attorney general doesn't fire Bob Mueller, but he just reduces his budget to so low that his investigation grinds to almost a halt."

Homeland Security Secretary Kirstjen Nielsen was a loyal soldier for President Trump and often repeated his falsehoods, but it wasn't enough to save her job. (Video: JM Rieger/Photo: Jabin Botsford/The Washington Post)

It was the second time in the same interview, in fact, that Whitaker brought up the defunding idea. He said Rosenstein could also be pressured to do it.

"I think what ultimately the president is going to start doing is putting pressure on Rod J. Rosenstein, who is in charge of this investigation, is acting attorney general, and really try to get

Rod to maybe even cut the budget of Bob Mueller and do something a little more stage crafty than the blunt instrument of firing the attorney general and trying to replace him,” Whitaker said.

Whitaker’s comments to CNN were first flagged by a group called Law Works.

The question from there is whether this is just something Whitaker *thought* Trump and a new attorney general might do, or whether it’s something he would *advocate for and do*. (A Justice Department spokeswoman declined to comment.) Whitaker doesn’t explicitly say he would prefer this outcome, but it’s not difficult to see how Trump might see those comments and view Whitaker as a strong candidate to do his bidding.

Whitaker has also made it clear he doesn’t particularly like how far Mueller has gone. He wrote an op-ed in August 2017 titled, “Mueller’s investigation of Trump is going too far” that urged Rosenstein to “limit the scope of this investigation.”

“The President is absolutely correct,” Whitaker said after Trump suggested that Mueller investigating his finances would cross a red line. “Mueller has come up to a red line in the Russia 2016 election-meddling investigation that he is dangerously close to crossing.”

He has also downplayed the idea that anything illegal was done at the Trump Tower meeting, saying, “You would always take the meeting.”

Whether any of this will come to pass, we don’t know. But comments like these could now be hugely consequential.

Update: Senate Minority Leader Charles Schumer (D-N.Y.) says Whitaker should recuse himself from the Russia investigation, in light of the above commentary.

The Justice Department, meanwhile, seems to be suggesting he will take oversight of the Russia investigation.

I asked a DOJ spokesperson if Acting AG Matt Whitaker would take over supervision of the Mueller probe. Her reply: “The Acting Attorney General is in charge of all matters under the purview of the Department of Justice.”

— Betsy Woodruff (@woodruffbets) November 7, 2018

7/26/2017
The Washington Post

Trump's new acting attorney general once mused about defunding Robert Mueller - The Washington Post

to Fix Analysis

Trump's new acting attorney general once mused about defunding Robert Mueller

by Aaron Blake

Matt Whitaker Joins CNN Panel On AG Jeff Sessions And The Russia Investigation, July 26, 2017



his post was originally published in October and has been updated with Whitaker's installment.

Matthew Whitaker has been appointed acting attorney General after Jeff Sessions resigned Wednesday at President Trump's request. And suddenly, Whitaker's past skepticism about the Russia investigation has taken on new significance.



Donald J. Trump
@realDonaldTrump

We are pleased to announce that Matthew G. Whitaker, Chief of Staff to Attorney General Jeff Sessions at the Department of Justice, will become our new Acting Attorney General of the United States. He will serve our Country well....

119K · 2:44 PM · Nov 7, 2018

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Whitaker's Russia commentary first cropped up when he was reported to be a likely replacement for Sessions's No. 2, Deputy Attorney General Rod J. Rosenstein, several weeks ago. Installing him as the temporary No. 1, though, gives Whitaker even more power. The Justice Department has indicated he will take oversight of the Russia investigation, replacing Rosenstein in that role.

https://www.washingtonpost.com/news/insider/wp/2017/11/07/trump-picks-whitaker-as-acting-attorney-general/

Trump's special attorney general appointment would shut down Bob Mueller. The Washington Post

The exchange in particular shows almost exactly what Whitaker thinks someone in such a position could do to rein in special counsel Robert S. Mueller III.

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appearing on CNN in July 2017 — before he became Sessions's chief of staff, the position he occupied before Wednesday — Whitaker discussed about a scenario in which Trump might fire Sessions and replace him with a temporary attorney general. Whitaker noted that federal regulations still gave the attorney general power over the budget for a special counsel. That temporary replacement, he then said, could move to choke off Mueller's funding.

So I could see a scenario where Jeff Sessions is replaced with a recess appointment," Whitaker said, "and that attorney general doesn't fire Bob Mueller, but he just reduces his budget to so low that his investigation grinds to almost a halt."

It was the second time in the same interview, in fact, that Whitaker brought up the defunding idea. He said Rosenstein could also be reassured to do it.

I think what ultimately the president is going to start doing is putting pressure on Rod J. Rosenstein, who is in charge of this investigation, is acting attorney general, and really try to get Rod to maybe even cut the budget of Bob Mueller and do something a little more stage crafty than the blunt instrument of firing the attorney general and trying to replace him," Whitaker said.

Whitaker's comments to CNN were first flagged by a group called Law Works.

The question from there is whether this is just something Whitaker *thought* Trump and a new attorney general might do, or whether it's something he would *advocate for and do*. (A Justice Department spokeswoman declined to comment.) Whitaker doesn't explicitly say he would prefer this outcome, but it's not difficult to see how Trump might see those comments and view Whitaker as a strong candidate to do his bidding.

Whitaker has also made it clear he doesn't particularly like how far Mueller has gone. He wrote an op-ed in August 2017 titled, "Mueller's investigation of Trump is going too far" that urged Rosenstein to "limit the scope of this investigation."


"The President is absolutely correct," Whitaker said after Trump suggested that Mueller investigating his finances would cross a red line. "Mueller has come up to a red line in the Russia 2016 election-meddling investigation that he is dangerously close to crossing."


He has also downplayed the idea that anything illegal was done at the Trump Tower meeting, saying, "You would always take the meeting."

Whether any of this will come to pass, we don't know. But comments like these could now be hugely consequential.

<https://www.washingtonpost.com/news/energy-environment/wp/2017/08/16/whitaker-says-attorney-general-would-shut-down-bob-mueller-the-washington-post/>

update: Senate Minority Leader Charles Schumer (D-N.Y.) says Whitaker should recuse himself from the Russia investigation, in light of the above commentary.

 **Chuck Schumer** @SenSchumer · Nov 7, 2018
Clearly, the President has something to hide.

 **Chuck Schumer** @SenSchumer

Given his previous comments advocating defunding and imposing limitations on the Mueller investigation, Mr. Whitaker should recuse himself from its oversight for the duration of his time as acting attorney general.

14.2K · 3:28 PM · Nov 7, 2018

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he Justice Department, meanwhile, seems to be suggesting he will take oversight of the Russia investigation.


 **Betsy Woodruff** @woodruffbets

I asked a DOJ spokesperson if Acting AG Matt Whitaker would take over supervision of the Mueller probe. Her reply: "The Acting Attorney General is in charge of all matters under the purview of the Department of Justice."

592 · 3:22 PM · Nov 7, 2018

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aron Blake

aron Blake is senior political reporter, writing for The Fix. A Minnesota native, he has also written about politics for the Minneapolis Star Tribune and the Hill newspaper. Follow 

Chairman NADLER. I now recognize the gentleman for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

Mr. WHITAKER, I am going to be really straight with you up front. I am going to cut you off if you make long speeches. We have very limited time. You do not need to thank me for asking the question or compliment me that it is a good one. I will assume they are all good questions and you are grateful.

One, you were briefed by the special counsel. You have acknowledged that. Did you share that information with any members of your staff, the information you learned in that briefing from the special counsel or his team?

Mr. WHITAKER. Congressman, as I previously testified, there was one other individual in that briefing with—

Mr. CICILLINE. And who was that individual?

Mr. WHITAKER. It is the U.S. attorney from the Eastern District of California who I brought on—

Mr. CICILLINE. What is the name of the individual, Mr. Whitaker?

Mr. WHITAKER. His name is Gregg Scott.

Mr. CICILLINE. Did you communicate any information you learned in those briefings to other members of your staff?

Mr. WHITAKER. I don't believe so, no.

Mr. CICILLINE. Do you know whether any information that you learned in those briefings were communicated to anyone at the White House?

Mr. WHITAKER. As I mentioned previously, Congressman, we have kept a very close—

Mr. CICILLINE. Mr. Whitaker, it is a "yes" or a "no." Do you know whether it was communicated to anybody at the White House?

Mr. WHITAKER. As I sit here today? I don't know whether it was communicated, but I do not believe Mr. Scott or I—

Mr. CICILLINE. Did you put into place any restrictions or limitations or instructions to your staff not to share this information with anyone at the White House or the President's legal team?

Mr. WHITAKER. Yes, together with the general standard that investigative information and materials are need-to-know and law enforcement—

Mr. CICILLINE. Thank you, Mr. Whitaker.

Did the President lash out at you after Michael Cohen's guilty plea for lying to Congress about a Trump Organization project to build a tower in Moscow?

Mr. WHITAKER. The President specifically tweeted that he had not lashed out.

Mr. CICILLINE. I am asking you, Mr. Whitaker, did the President lash out at you? I am not asking what he tweeted. I don't have a lot of confidence in the veracity of his tweets. I am asking you under oath.

Mr. WHITAKER. Congressman, that is based on an unsubstantiated—

Mr. CICILLINE. Sir, answer the question "yes" or "no." Did the President lash out to you about Mr. Cohen's guilty plea?

Mr. WHITAKER. No, he did not.

Mr. CICILLINE. And did anyone from the White House or anyone on the President's behalf lash out at you?

Mr. WHITAKER. No.

Mr. CICILLINE. Mr. Whitaker, did the President lash out to you on or about December 8th, 2018, to discuss a case before the Southern District of New York where he was identified as Individual One?

Mr. WHITAKER. No, Congressman.

Mr. CICILLINE. Did anyone on the President's behalf, either inside the White House or outside the White House, contact you to lash out or express dissatisfaction?

Mr. WHITAKER. Did they contact me to lash out?

Mr. CICILLINE. Yes. Did they reach out to you in some way to express dissatisfaction?

Mr. WHITAKER. No.

Mr. CICILLINE. Okay.

Did you ever share the questions that Mr. Nadler forwarded to you prior to this hearing with anyone at the White House or the President's legal counsel?

Mr. WHITAKER. Congressman, I did not.

Mr. CICILLINE. So when you claimed earlier that you were going to invoke a privilege, you were invoking a privilege about questions the President hasn't even seen.

Mr. WHITAKER. Congressman, to be clear, I am not invoking any privilege.

Mr. CICILLINE. Well, you said earlier in your written testimony that you would not answer questions about your conversations with the President, did you not?

Mr. WHITAKER. Yes, I did.

Mr. CICILLINE. So you are not sitting here today saying the President has instructed you not to answer a question, correct?

Mr. WHITAKER. I am not sitting here today saying that the President has instructed—

Mr. CICILLINE. So then you are prepared to answer all these questions?

Mr. WHITAKER. Congressman, I think I was pretty explicit in my opening statement—

Mr. CICILLINE. So have you spoken to the President, Mr. Whitaker, about the Mueller investigation?

Mr. WHITAKER. Congressman, as I previously testified, I did not talk to the President about the Mueller investigation.

Mr. CICILLINE. Have you ever spoken to the President or parts of his legal team about information that you learned in your capacity as Acting Attorney General related to the Mueller investigation or any other criminal investigation involving the President?

Mr. WHITAKER. Congressman, while I have specifically been saying that I am not going to comment about my conversations with the President or his senior staff, I have also been very clear that the President has not instructed me to do anything—

Mr. CICILLINE. That wasn't my question. My question is, have you had conversations about what you learned? That is a "yes" or a "no."

Mr. WHITAKER. Congressman, I have—I spend all day every day talking—

Mr. CICILLINE. Mr. Whitaker, my question is very specific. Have you spoken to the President or his legal team about what you have

learned in the Mueller investigation or the related criminal investigations that may involve the President? Yes or no?

Mr. WHITAKER. Congressman, as I specifically answered earlier to a question—

Mr. CICILLINE. Mr. Whitaker, you are clearly not going to answer the question, so I am going to move on.

You know Professor John Barrett, correct?

Well, anyway, this is a law school professor who tweeted that you told him in June of 2017 that you were flying out from Iowa to New York City to be on CNN regularly because you were hoping to be noticed as a Trump defender and, through that, to get a Trump judicial appointment back in Iowa.

You then went on to describe the Mueller appointment of the special counsel as ridiculous and a little fishy, that Mueller investigating Trump's finances would be going too far, that there was no criminal obstruction of justice charge to be had against President Trump, that there was no collusion with the Russians in the Trump campaign, that any candidate would have taken the same meeting as Donald Trump Jr. with the Russian lawyer; and, finally, that a replacement for Sessions could have reduced Mueller's budget so low that his investigation grinds to almost a halt.

You said all those things, and they are all in print. And it answers Mr. Deutch's question. The American people wonder, just how is it that Mr. Whitaker becomes the Acting Attorney General of the United States in violation of existing statutes? Was he put there for a particular purpose?

That wasn't a question. It is a statement.

I yield back.

Chairman NADLER. I observe that the time of the gentleman has expired. Who is next?

Mr. Reschenthaler is recognized.

Mr. RESCHENTHALER. Thank you, Mr. Chairman.

And thank you, Mr. Whitaker, for being here today.

I just want to quickly reference the letter that was sent to you from the chair on January 9th. In this letter, in the Chairman's own words, it said that this committee was here to, quote/unquote, "conduct oversight of the Department."

In this letter, there are also important other topics that were supposed to be discussed here today, like immigration, gun violence, the Violence Against Women Act, ObamaCare, national security. And that is not even the complete list. I know you read the letter.

I was excited to be here. I thought these were critically important issues that affected constituents in my district and millions of Americans. And, frankly, a lot of these issues are life-and-death.

So I am really confused as I sit here today in this hearing with my Democrat colleagues focused solely on one topic, and that is the Mueller investigation. I really hoped that my friends across the aisle would have used this opportunity for more bipartisanship and less showmanship, but clearly I was wrong.

With that said, I want to get to some of the important topics that we were supposed to have focused on today. One of those is sanctuary cities.

In my home State of Pennsylvania, the sanctuary city of Philadelphia has released at least three child molesters back onto the streets. And everyone knows the tragic story of 32-year-old Kate Steinle, who was murdered by an illegal immigrant who was convicted of seven felonies and deported five times.

Now, those child molesters in Philadelphia, the murderer of Kate Steinle, they were all released because some city wanted to score cheap political points. And that is why I am focused on ending sanctuary cities.

Mr. Whitaker, what steps is the DOJ taking to end the dangerous practice of sanctuary cities?

Mr. WHITAKER. Well, first of all, we are ending taxpayer-funded grants to sanctuary jurisdictions.

Attorney General Sessions announced new conditions for our Byrne/JAG grants that will increase information-sharing between Federal, State, and local law enforcement to ensure public safety.

I don't know if the Congressman knows this, but one of the challenges we have is, in a sanctuary jurisdiction, jails will release convicted criminals back into the community instead of informing Immigration and Customs Enforcement that the person is available to be picked up at the jail.

It is an incredibly dangerous situation to make an ICE officer go into a community to try to arrest somebody that is here illegally and has been convicted of a crime, oftentimes crimes like you mentioned. And I cannot imagine a situation where a mayor or a city council or a county executive or otherwise would put law enforcement officers in harm's way.

It is, quite frankly, bad policy, and we are going to work very hard to end it. And one of the ways we are ending it is by taking away the resources to those jurisdictions that have that policy.

Mr. RESCHENTHALER. Thank you, Mr. Whitaker.

Mr. Whitaker, I have one more question regarding the opioid crisis. This crisis is striking our country hard, particularly southwestern Pennsylvania. Data from 2017 shows that it is more likely now that someone is going to die of a drug overdose than a car crash. My district has been hit really hard. In particular, Fayette County saw an 88-percent increase in overdose deaths from 2015 to 2017.

What steps has the DOJ taken to address this shift? And do you think that a lot of the problems that we are seeing in these stats comes from a porous southern border?

Mr. WHITAKER. I will address your second question first. I do believe that most illegal opioids, like fentanyl—nonprescription illegal opioids, like fentanyl, heroin, and their derivatives, are imported through our southern border. Some, not a majority, but some are also imported via direct mail—for example, an order off the dark net.

I went through a list of things that the Department of Justice is doing to combat this opioid epidemic. I hope that this committee, while, you know, it is something I was prepared and wanted to talk about—and I appreciate the question—will look at other ways that we can put resources into the opioid crisis.

Seventy-thousand people, as you mentioned, have died of drug overdoses. A majority of those are from some form of opioids.

And we also, quite frankly—and I mentioned my trip to China last August. We have to work together with the Chinese Government to reduce the inflow of fentanyl. And we also have to—you know, we have emergency scheduled right now the fentanyl analogs, but we need an act of Congress—and I hope that we can get that—to make that permanent, that these fentanyl derivatives and creative chemists that change the chemical makeup of fentanyl do not continue to try to evolve their drug to avoid our regulation.

Mr. RESCHENTHALER. Thank you, Mr. Whitaker.

I yield back my time.

Chairman NADLER. Mr. Swalwell is recognized.

Mr. SWALWELL. Thank you.

Mr. Whitaker, does your watchdog organization ever receive contributions from foreign donors?

Mr. COLLINS. Mr. Chairman, point of order.

Mr. SWALWELL. I would ask to stop the clock.

Chairman NADLER. The gentleman will suspend.

The gentleman will state his point of order.

Mr. COLLINS. My point of order—and I am going to go back to this, and, again, undoubtedly, that majority does not care, but this is outside the scope of this hearing. This was not while he was employed here. And whether he outside had donors or not during the time he was not employed, making no connection either way, is not inside the scope of this hearing. And that is not the call of this committee.

Now, you know, look, I am outgunned over here. I have no votes. This is not part of the call of the hearing.

Mr. Swalwell, there are plenty of things to do.

And, Mr. Cicilline, you—

Mr. CICILLINE. Will the gentleman yield?

Mr. SWALWELL. Mr. Collins, if you want to sit down there with his lawyers, you can go sit down there—

Chairman NADLER. The gentleman—

Mr. SWALWELL [continuing]. But you are not his lawyer.

Chairman NADLER. The gentleman will suspend.

Mr. COLLINS. And neither are you, Mr. Swalwell.

Chairman NADLER. The gentleman will—

Mr. COLLINS. And if you have any questions that are actually part of this, instead of running for President, damn near we could get this done.

Mr. SWALWELL. You can sit down there. There is room.

Chairman NADLER. Both gentlemen will suspend.

Mr. CICILLINE. Mr. Chairman?

Chairman NADLER. The gentleman has stated a point of order. The Chair will rule the point of order is not well-taken. The scope of people's questioning, we afford a wide latitude. And we don't even know where it is going at this point. The gentleman—so the gentleman's point of order is not well-taken.

The gentleman will resume.

Mr. COLLINS. Appeal the ruling of the chair.

Ms. JACKSON LEE. Move to table.

Chairman NADLER. The gentleman appealed the Ruling of the Chair. The gentlelady moved to table. A move to table is not debatable.

The clerk will call the roll on the motion to table.

STAFF. Voice vote.

Mr. COLLINS. Mr. Chairman?

Chairman NADLER. Oh, let's—call the roll—all in favor of tabling the resolution—I am sorry. All in favor of tabling the appeal of the ruling of the chair will say aye.

Nay?

The ayes have it. The appeal of the—the motion is tabled.

The gentleman will continue.

Mr. SWALWELL. Mr. Whitaker, does your organization have foreign contributions?

Mr. WHITAKER. Just to be clear, are you talking about—

Mr. SWALWELL. Yes or no?

Mr. WHITAKER. What do you mean by my organization?

Mr. SWALWELL. You led an organization called FACT. Did it receive foreign contributions while you were there?

Mr. WHITAKER. I don't actually know the answer to that. I do not believe, as I sit here today, that it did. But our main donor was a group that was a U.S. entity.

Mr. SWALWELL. Did you interview with Don McGahn in July 2017 to have the job that Ty Cobb would ultimately get?

Mr. WHITAKER. I ultimately did not meet with Mr. McGahn, so—I met with his staff.

Mr. SWALWELL. Did you talk with him on the phone?

Mr. WHITAKER. You know, we actually never did end up talking on the phone either.

Mr. SWALWELL. Who do you meet with on his staff?

Mr. WHITAKER. I talked to Annie Donaldson from his staff, who was his Chief of Staff at the time.

Mr. SWALWELL. And when you talked to Mr. McGahn's Chief of Staff, did you express in that conversation your prior views about the Mueller investigation?

Mr. WHITAKER. No, I did not. In fact—

Mr. SWALWELL. Was it brought up by the Chief of Staff?

Mr. WHITAKER. In fact, at the time, Congressman, everyone at the White House did not want to talk about the special counsel's investigation—

Mr. SWALWELL. But you were interviewing for a job that would respond to the special counsel's investigation. Is that right?

Mr. WHITAKER. At the time I was interviewing for the position that was ultimately occupied by Ty Cobb—

Mr. SWALWELL. But I want to understand how you could interview for a job that would respond to the special counsel investigation but you were not to talk at all about the special counsel investigation. How would they know—

Mr. WHITAKER. Well, I said we didn't talk about it. They did not want to talk about the investigation because the folks were dealing with that investigation. And that is why they wanted to bring in someone that had been unrelated to the investigation and the campaign—

Mr. SWALWELL. Did they talk to you about your prior opinions about the Mueller investigation?

Mr. WHITAKER. No, we did not discuss it.

Mr. SWALWELL. Has there been—

Mr. WHITAKER. We discussed about my background as a United States attorney and my legal practice.

Mr. SWALWELL. Has there been discussion at the Department about keeping the Mueller report from going to Congress?

Mr. WHITAKER. No. In fact, we are continuing to follow the special counsel regulations as it relates to the report. We haven't received the report, but—

Mr. SWALWELL. Has there been a draft opinion about keeping it from going to Congress?

Mr. WHITAKER. You know, Congressman, I am not going to talk about the, kind of, ongoing investigation that is the special counsel. I will share with you that—

Mr. SWALWELL. Mr. Whitaker, did Donald Trump ask you if you would recuse before you became Acting Attorney General? If that question came up, did he ask you what you would do?

Mr. WHITAKER. Congressman, I have already answered that question in my opening statement.

Mr. SWALWELL. Do you believe Attorney General Sessions should have recused?

Mr. WHITAKER. As I mentioned in my answers previously, the recusal decision—

Mr. SWALWELL. No. Do you believe, yes or no, that he should have recused?

Mr. WHITAKER. I actually, as I sit here today, I do not have an opinion. I believe he determined it was the right decision for him to make, and so I agree that he made the right decision for him.

Mr. SWALWELL. Have there been any discussions at the Department about pardons for Paul Manafort, Roger Stone, Michael Flynn, or Michael Cohen?

Mr. WHITAKER. Congressman, we have a very well-worn system for—

Mr. SWALWELL. That the President doesn't follow. But have there been discussions about pardons for those individuals that you are aware of, yes or no?

Mr. WHITAKER. Congressman, as I have been Acting Attorney General, I have not been involved in any discussions of any pardons, even—and including the ones you are discussing.

Mr. SWALWELL. You made a public statement last week that the investigation was nearly complete. Is that your characterization, or is that Bob Mueller's characterization?

Mr. WHITAKER. Congressman, that position that I mentioned last week in a press conference was my position as Acting Attorney General.

Mr. SWALWELL. Would Bob Mueller, if sitting before us right now, agree with you?

Mr. WHITAKER. You know, Congressman, Bob Mueller is going to finish his investigation when he wants to finish his investigation.

Mr. SWALWELL. Is Mr. Mueller honest?

Mr. WHITAKER. Congressman, I have been on the record about my respect for Bob Mueller and his ability to conduct this investigation.

Mr. SWALWELL. Do you believe he is honest, yes or no?

Mr. WHITAKER. I have no reason to believe he is not honest, so, yes, I do believe he is honest.

Mr. SWALWELL. Do you believe he is conflicted, yes or no?

Mr. WHITAKER. Congressman, as I mentioned regarding recusals, you know, sort of, the conflict analysis is for the individual lawyer to make once a matter is before them. And I am sure that whether it is Bob Mueller, whether it is Rod Rosenstein—

Mr. SWALWELL. But the President has called him conflicted.

Mr. WHITAKER [continuing]. Or anybody else at the Department of Justice—

Mr. SWALWELL. The President has called him conflicted, and you oversee the investigation. Do you believe that Mr. Mueller is conflicted?

Mr. WHITAKER. Congressman, as Acting Attorney General, I have followed regular order at the Department of Justice, and I have expected that the lawyers and the support staff and the agents that work for me follow regular order. And as I sit here today, I don't have any reason to believe that.

Mr. SWALWELL. So you don't believe—you believe he is honest; you don't believe he is conflicted. Can you say right now, "Mr. President, Bob Mueller is honest and not conflicted"?

Mr. WHITAKER. Congressman, I am not a puppet to repeat what you are saying. I—

Mr. SWALWELL. Are you able to say it, or do you not believe it?

Mr. WHITAKER. I have answered your question as to what I believe about the special counsel. I stand by my prior statement.

Mr. SWALWELL. Can you say it to the President, though?

Mr. WHITAKER. Congressman, I am not here to be a puppet to repeat terms and words that you say that I should say.

Mr. SWALWELL. Can you say that to the President?

Mr. COLLINS. Regular order.

Mr. SWALWELL. Mr. Chair, he hasn't answered that question.

Chairman NADLER. Sorry?

Mr. SWALWELL. He has not answered the question, if he would say that Mr. Mueller is honest and not conflicted to the President.

Chairman NADLER. The time of the gentleman has expired.

The witness may answer the question.

Mr. WHITAKER. I don't have anything further to add. I think I have answered the Congressman's question.

Chairman NADLER. That is a question for observers.

The gentleman from North Dakota, Mr. ARMSTRONG.

Mr. ARMSTRONG. Mr. Whitaker, you have obviously been Acting Attorney General during some fairly interesting times, and we have heard a lot about that today. But I also want to commend the Department of Justice, the FBI, the White House, and all other law enforcement who was involved in the FIRST STEP Act.

This is a tremendous shift not just for the Department of Justice, not just for Republicans, and not just for Democrats. And it is the way government is supposed to work. It is supposed to show redemption; tough on traffickers, organized crime; and also work towards a smarter way to deliver criminal justice, particularly with addiction-related crimes.

So my only hope is that, because it is called the FIRST STEP Act, there will be a second step. And if you ever—unfortunately, I have some other questions for you, so any time on your way out,

if you have any advice on something Congress can do to continue this momentum, I would be very, very appreciative.

Mr. WHITAKER. Well, you know, Congressman, I was involved on behalf of the Department of Justice in the FIRST STEP Act. And I just want to commend everyone on this committee that worked on the FIRST STEP Act. To successfully get that passed and to get it through both the House and the Senate, I actually know how difficult that is.

I think one of the things that we could use your help on is to make sure you fund the FIRST STEP Act and you have requested the Department of Justice to do. You know, we continue to implement the FIRST STEP Act consistent with the law that you passed. And, in fact, just last night, we sent out guidance to our U.S. attorneys offices on how to implement the FIRST STEP Act. And I know that the Bureau of Prisons, as well, is implementing the act.

Mr. ARMSTRONG. And I would hope to work towards having a Federal-level pretrial release program to be available to every State and county courthouse across the country. Because one of the great ironies I have always found about your pretrial release program is it is incredibly effective and then you get a 10-year minimum mandatory.

So the pretrial release program at the Department of Justice and U.S. attorneys offices across this country is phenomenal, and they deserve to be credited for that.

Mr. WHITAKER. And as a former United States attorney for 5½ years in Des Moines, Iowa, I understand uniquely how pretrial release works. And so, you know, we would be interested in your proposal, and we will look at that and work with you carefully to try to implement something like that.

Mr. ARMSTRONG. Now, in our role as oversight, I do actually have a question about something that has come up in the past and that, given the nature of the testimony today, very possibly could come up in the future.

And I think, often, when we have names like Clinton and Comey and Rosenstein and Trump and Mueller and Russia, we forget that the law is the law. You testified earlier to Representative Jordan that we prosecute crimes, not people. And I think, often, across this country, we think laws apply differently to people depending on their status.

And one of the areas where this came up—and it was something that concerned me before I was involved in this—is when we started talking about the difference between gross negligence and intent. And it was in a very particular statute, and we were dealing with it, and there were members of the FBI and the DOJ that were concerned about vagueness.

But as far as I understand, in the Federal Code, particularly the Federal Criminal Code, gross negligence has the same definition approximately everywhere in the Criminal Code, right?

Mr. WHITAKER. In my experience, your statement is generally correct, yes.

Mr. ARMSTRONG. So, if gross negligence would be vague under one particular statute of the Criminal Code, then we should be concerned that it is vague under every other criminal—other section of the Criminal Code.

Mr. WHITAKER. That is correct. And there is, for example, jury instructions that would, say, inform a jury as to how to evaluate a gross negligence standard to convict someone of a crime.

Mr. ARMSTRONG. And assuming that it wasn't political in nature as to why gross negligence wasn't looked forward in any particular case has—under your leadership under the DOJ, has anybody reviewed this, looked at it, and made any proposals to Congress particularly regarding whether or not we need to tighten up gross negligence language, not just let's say in the Espionage Act but in any section of the Federal Criminal Code?

Mr. WHITAKER. As I sit here right now, I don't know the answer to your question, but I would be happy to get back to you on that.

Mr. ARMSTRONG. I would appreciate that. And just, again, under normal course of order, I am assuming it works the same as everywhere. Law enforcement agents—and I know a lot of FBI agents do have law degrees, but FBI agents investigate crimes, and then it goes up the food chain to the U.S. attorney's office.

Mr. WHITAKER. Remember, you need a predication to even open investigation, and that is the step that I think a lot of people forget. I mean, there are many steps along the way and when you conduct a criminal investigation—first, you have to predicate the investigation. Then it is investigated by the special agents that investigate the crimes. Typically an AUSA works with them to get, you know, search warrants and the like, and then, ultimately, a case is developed and presented to a grand jury, and that is charged. So, I mean, that is, you know—and then, again, there is a discovery process and a trial process.

It is very well worn, and to, you know, go back to something you mentioned earlier, Congressman, all of that is done at the Department of Justice without interference, improper interference or interference based on a political nature.

Mr. ARMSTRONG. Well, I am just concerned moving forward that we have this—I mean, everybody knows—and obviously this is hypertension and hyperpolitical, but I am very concerned moving forward that everybody knows what the rules of the game are as far as statutes are and that the law is actually applied in the way the law should be applied because I do believe in the past it has not been, and obviously this is continuing to go on. This hearing today is noticeable of that. So, on your way out, maybe it is the best time to deal with some of those things because sometimes that is when we have the courage to do it, but this could very much come up again in the future.

Chairman NADLER. The time of the gentleman has expired. The committee will stand in recess for 2 minutes. I would ask that the members remain here if they can.

[Recess.]

Chairman NADLER. The hearing will come to order, and we will resume questioning under the 5-minute rule with Mr. Lieu.

Mr. LIEU. Thank you Chairman Nadler.

Mr. WHITAKER, thank you for being here today. Last year, FBI Director Christopher Wray came before this committee and stated that no one is above the law. You would agree with that statement, wouldn't you?

Mr. WHITAKER. I would, and, in fact, there is a Time Magazine that is——

Mr. LIEU. Thank you, we are good.

Mr. WHITAKER [continuing]. Framed in my office that says the same thing.

Mr. LIEU. Thank you. You don't have to keep saying, but thank you. You haven't taken any sort of a loyalty oath to Donald Trump, have you?

Mr. WHITAKER. No, I have not taken a loyalty oath.

Mr. LIEU. Have you signed any nondisclosure agreement with the White House or Donald Trump?

Mr. WHITAKER. We signed our ethics pledge, which was the most robust ethics pledge, but I haven't signed any other documents other than the normal DOJ employment documents.

Mr. LIEU. And there was no nondisclosure agreement with anything you signed, correct?

Mr. WHITAKER. I don't believe so, but I don't know what the standard DOJ forms are.

Mr. LIEU. In fact, the only thing you really had to do before you could assume your current position was take an oath to the United States Constitution. Isn't that right?

Mr. WHITAKER. I probably took the oath for the second time when I came back to the Department of Justice.

Mr. LIEU. Thank you. So let me ask you a series of questions about the U.S. Constitution that you can easily answer yes or no. And the first question is: There is no sentence in the Constitution that states that the President's National Security Advisor can't be indicted, correct?

Mr. WHITAKER. Congressman, as is consistent with the practice of the Department of Justice, we investigate crimes, and we prosecute individuals that commit crimes.

Mr. LIEU. I am just asking a simple question. I will go on. There is no sentence in the U.S. Constitution that states the President's former Campaign Chairman can't be indicted, correct?

Mr. WHITAKER. Same answer to your previous question.

Mr. LIEU. Does that sentence exist in the Constitution?

Mr. WHITAKER. Of course it does, Congressman. You know that, and I know that.

Mr. LIEU. Right. Because Paul Manafort was indicted. There is no sentence in the Constitution that says the President's children can't be indicted, correct?

Mr. WHITAKER. Congressman, you know, you can give me the whole list, I mean, you know, sort of——

Mr. LIEU. No, I will give you three more.

Mr. WHITAKER. Okay.

Mr. LIEU. Yes. Right?

Mr. WHITAKER. There is no sentence in the United States Constitution that says that the President's children cannot be indicted.

Mr. LIEU. There is no sentence in the U.S. Constitution that says the Vice President can't be indicted, correct?

Mr. WHITAKER. That is correct.

Mr. LIEU. Right. There is no sentence in the U.S. Constitution—this is my last one—there is no sentence in the U.S. Constitution

that says the sitting President of the United States cannot be indicted, correct?

Mr. WHITAKER. Congressman, because that is the opinion of the Office of the Legal Counsel at the Department of Justice——

Mr. LIEU. I don't actually care what the DOJ policy is. I am asking about the Constitution.

Mr. WHITAKER [continuing]. Consistent with the practices of the Department of Justice for years.

Mr. LIEU. Mr. Whitaker, it is a yes-or-no question. Mr. Whitaker——

Mr. WHITAKER. Under both administrations.

Mr. LIEU. After this hearing, you can spin the Constitution all you want. As you sit here today——

Mr. WHITAKER. I am not spinning the Constitution.

Mr. LIEU. You just have to answer a factual yes-or-no question. I am going to make it even easier for you: There is no sentence in the Constitution that says, quote, "The sitting President of the United States cannot be indicted," unquote, correct?

Mr. WHITAKER. Congressman——

Mr. LIEU. It is a yes or no?

Mr. WHITAKER. You know——

Mr. LIEU. I have it right here. Is that——

Mr. WHITAKER. I have a copy myself, Congressman.

Mr. LIEU. Is that sentence in this Constitution? It is not, correct? I am not trying to trick you. It is not a hard question.

Mr. WHITAKER. Again——

Mr. LIEU. It is a founding document of our Federal Government. Is that sentence in this Constitution?

Mr. WHITAKER. Congressman, you and I both know that the way that the OLC opinion is written is that——

Mr. LIEU. I am asking about the Constitution——

Mr. WHITAKER [continuing]. Lays out a very clear question as to why the President of the United States, sitting President of the United States, cannot be indicted.

Mr. LIEU. I am just going to——Mr. Chair, I am just going to submit the U.S. Constitution for the record and say: No, that sentence is not in there.

Now I am going to move on.

Chairman NADLER.—Record.

[The information follows:]

<https://CONSTITUTIONUS.COM>

Mr. LIEU. Earlier today, you had testified that you did not communicate to Donald Trump or senior White House advisers about the special counsel's investigation. So I am going to ask you a related question. Did you communicate to Donald Trump or any senior White House advisors about investigations from the Southern District of New York concerning The Trump Organization, the Trump inaugural committee, Michael Cohen, or the investigations that relate to Trump entities or potentially the President?

Mr. WHITAKER. Congressman, I mentioned that I said other investigations in my opening statement, and I really don't have anything further to add to that answer.

Mr. LIEU. And when you said “other investigations,” you mean you communicated to the President about other investigations?

Mr. WHITAKER. No. That is not what I said in my opening statement. I will refer you back to my opening statement. I was very clear about that.

Mr. LIEU. Did you communicate to the President or any senior White House advisers about investigations from the Southern District of New York related to Trump entities—

Mr. WHITAKER. Again, I was very explicit in my opening statement as to that not only about my communications regarding the special counsel’s office, and I said “other investigations,” and the Southern District of New York would be included in other investigations.

Mr. LIEU. Okay. Thank you. So I want to move to another subject. The President has talked about a national emergency. Under the latest FBI data, it is correct, isn’t it, that violent crime across the United States has gone down?

Mr. WHITAKER. Yeah, we celebrate actually that violent crime has gone down in the last 2 years.

Mr. LIEU. In fact, property crime has gone down as well, isn’t that right?

Mr. WHITAKER. Congressman, as I sit here right now, I believe generally all crime is down over the last 2 years since President Trump was elected.

Mr. LIEU. My last question to you is: You would agree with Donald Trump when last year he tweeted out that border crossings are at a 45-year low?

Mr. WHITAKER. We saw a precipitous decline in border crossings after the President was elected and sworn into office. Unfortunately, we haven’t been able to retain those gains, and we have seen an absolute dramatic surge in family units.

Mr. LIEU. Thank you.

Chairman NADLER. The time of the gentleman has expired.

Mr. Raskin.

Mr. RASKIN. Mr. Whitaker, before you took the call from President Trump, you had a fascinating career: owned a daycare center, a concrete supply business, trailer of sales, GOP activist, U.S. attorney who unsuccessfully prosecuted Iowa’s first openly gay State legislator on trumped-up Hobbs Act charges that were dismissed by the jury in about an hour, Senate candidate.

There have been some scandals, too. Here is one: “Trump’s Acting Attorney General involved in firm that scammed veterans out of life savings.” Veteran says: I spent the money on a dream. I lost everything.

But the newspapers say you struck gold when you arrived in Washington, which the President calls the swamp. Here is one that tells the story: “Conservative nonprofit with obscure roots in undisclosed funders paid Matthew Whitaker \$1.2 million.” According to The Washington Post, in the 3 years after he arrived in Washington, Whitaker received more than \$1.2 million as the leader of a charity that reported having no other employees. That is a pretty good deal.

Now what was the name of the charity that you ran, Mr. Whitaker?

Mr. WHITAKER. Congressman, you have mentioned a lot in your—

Mr. RASKIN. No, but I am asking you a very specific question.

Mr. WHITAKER. You have challenged my character, and I have the ability to answer.

Mr. RASKIN. No, no. I am asking you a question. I control this time, Mr. Whitaker. If you want to ask the Chairman for time of your own, you can do it. This is my time. Mr. Whitaker, you don't run this Committee. You don't run the Congress of the United States, and you don't run the Judiciary.

Chairman NADLER. The gentleman will suspend. The gentleman is correct. The witness will answer the questions, and it is up to the gentleman to decide what questions. The gentleman will continue. We will resume.

Mr. RASKIN. What was the title of the not-for-profit that you ran?

Mr. WHITAKER. What time period, sir?

Mr. RASKIN. What was the last title? I know it changed its name three different times, right? What was the final name?

Mr. WHITAKER. While I was employed as the executive director, it was called the Foundation for Accountability and Civic Trust.

Mr. RASKIN. Did you name it?

Mr. WHITAKER. I did. Actually—

Mr. RASKIN. Those are highly noble goals: accountability and civic trust. So let's talk about some accountability.

Mr. WHITAKER. He asked me a question. I would like to answer.

Mr. RASKIN. Mr. Whitaker, I have got a question for you.

Mr. WHITAKER. No, you asked me a question.

Mr. RASKIN. I asked you a question. I control the floor, Mr. Whitaker. You don't understand.

Chairman NADLER. The gentleman is correct. The gentleman controls the time, and if he wishes, as many members have done on occasion, they make a statement and they don't even ask a question, but if he wishes to proceed to another question, it is his time.

Mr. WHITAKER. But Congressman—I mean, Mr. Chairman, I do not feel—I do not feel like my answer would be complete on the record to the question he asked.

Mr. RASKIN. Okay. Mr. Whitaker, see if you can get into this. Tell us where the money came from that you were paid, the \$1.2 million that you were paid before you went to the Department of Justice?

Mr. COLLINS. Mr. Chairman, point of order.

Mr. RASKIN. I am asking my question.

Mr. COLLINS. Mr. Chairman, point of order, which overrules your question. Point of order.

Chairman NADLER. The gentleman will suspend. The gentleman will state his point of order.

Mr. COLLINS. Look, we are going to go down this probably many more times, but again, if he wanted to do a confirmation hearing, this is not within the scope of this hearing. This is not a confirmation hearing, and he has not shown—

Chairman NADLER. The gentleman's point of order is not well taken.

The gentleman from Maryland has the discretion to ask the questions. The gentleman will proceed.

Mr. COLLINS. Appeal the ruling of the chair.

Chairman NADLER. The gentleman has appealed the Ruling of the Chair. The gentelady has moved to table. All in favor of the Motion to Table the Appeal of the Ruling of the Chair will vote aye.

Opposed, nay.

The ayes have it. The ruling—the motion is tabled.

Mr. COLLINS. Mr. Chairman, can you and I engage in a colloquy? Suspend the clock. Can we suspend the clock and you and I can engage in a colloquy? It may solve some—

Mr. CICILLINE. Point of order, Mr. Chairman. Is the Ranking Member just going to continue to interrupt when he doesn't like the flow of questions?

Mr. COLLINS. I will probably make a point of order when it needs to be made.

Mr. CICILLINE. It would be useful it was actually a point of order.

Chairman NADLER. Everyone will please suspend. The gentleman made a point of order. It was ruled out of order. Right now, the gentleman has the time. If the Ranking Member wants to make a point, I will recognize him after the gentleman is completed. The gentleman will resume.

Mr. RASKIN. Thank you, Mr. Chairman.

It has been reported publicly that there was one donor, and as we understand it, I think you are testifying today that you were the sole employee of the group. So there was one donor and one employee. Do you know who the donor was to the group that funded your salary for \$1.3 million?

Mr. WHITAKER. Yes, I do.

Mr. RASKIN. Who was the donor?

Mr. WHITAKER. The donor was another nonprofit 509(c)(3) organization called the Donors Trust.

Mr. RASKIN. Okay. Now that was the passthrough vehicle, but who reached into their pocket and wrote the check to go through that to pay your salary?

Mr. WHITAKER. Congressman, as you know, because you have looked at this issue, the Donors Trust is much bigger than the Foundation for Accountability and Civic Trust and raises millions if not hundreds of millions of dollars every year. I actually, as I sit here today, have no idea who the donors to Donors Trust then funded the foundation—

Mr. RASKIN. I have got a theory that I want to float with you, and it goes to something very strange that has been happening in the Department of Justice really recently. Casino billionaire and magnate Sheldon Adelson hates online gambling for obvious reasons: it is competition for him. He wants people in the casinos not online. And he spent more than a million dollars lobbying Congress to override the 2000 opinion by the Office of Legal Counsel at DOJ saying that the Wire Act plainly prohibits only sports gambling online, not gambling in the States, which was why Florida, Pennsylvania, New Jersey, lots of States have built important businesses for themselves online. But Congress wouldn't change the law according to the demands of Mr. Adelson, so rather than change the law, he decided to try to get the Department of Justice to change

the interpretation of the law, and he threw millions into a campaign to remake the DOJ and get the Office of Legal Counsel to perform a complete reversal and say that the Wire Act bans the kinds of lotteries that States run online, even though its language plainly prohibits only sports betting.

And when Donald Trump won and Mr. Sessions became AG and you became chief of staff, DOJ leadership ordered a reevaluation of this legal question, and what do you know? The Office of Legal Counsel found some subtle and invisible points of law that apparently escaped the Department of Justice back in 2011, and it reversed the plain reading of the interpretation, which talked specifically about sports betting.

Now, were you involved in that decision?

Mr. WHITAKER. Congressman, General Sessions was recused at the time that that decision came out.

Mr. RASKIN. So you were recused, too?

Mr. WHITAKER. Therefore I was recused, and so I was not involved in that decision.

Mr. RASKIN. Did you ever talk to Sheldon Adelson about it?

Mr. WHITAKER. No. I have actually never met Sheldon Adelson.

Mr. RASKIN. Did you talk to any of his lobbyists about it?

Mr. WHITAKER. No, I did not.

Mr. RASKIN. Did you talk to Charles Cooper about it?

Mr. WHITAKER. No, but I do know Charles Cooper. And I would point out: One of the things, Mr. Raskin, it is very important—

Mr. RASKIN. You can ask the Chairman for time, but I can't give you my time. Forgive me, we only have 5 minutes here.

Chairman NADLER. The gentleman controls the time. At the conclusion of his statement—at the conclusion of his 5 minutes, I will afford the witness some time, but the gentleman controls the time.

Mr. WHITAKER. Okay.

Mr. RASKIN. Thank you, Mr. Chairman.

In January and February of 2018, the Chairman and Vice Chairman of Wild Rose Casino and Resort—it is a casino in Iowa—each donated \$2,600 to your Senate campaign, which was over 4 years before when you lost that campaign. How did these casino operators come to donate to your campaign several years after you lost? Did you talk to them?

Chairman NADLER. The time of the gentleman has expired.

The witness may answer the question.

Mr. WHITAKER. To answer your question specifically, no, I did not.

To go back to the other point I would like to make, Congressman, is that the first OLC opinion that preceded the one we just issued in November was done, and the State of Illinois provided a white paper regarding the position on the Wire Act. And so I think it is very consistent, and your inference that somehow that that process was corrupted or corrupt is absolutely wrong, and the premise of your question I reject.

Chairman NADLER. The gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman.

Mr. Whitaker, thank you for being with us.

Our country is still reeling from the horrors of family separation that occurred at the border. I was the first Member of Congress to talk to hundreds of women and men who had been ripped apart from their children. I went into a Federal detention—Federal prison to talk to those women. Many of them had not even been able to say goodbye to their children. They sat in the room next door as they heard their children yelling for them, and they were not able to go and speak to their children. And for weeks they didn't know where their children were.

Most of these women, most of the men were seeking asylum, and your Department, instead of allowing them their legal right to seek asylum, your Department instead imposed a zero-humanity policy to prosecute them in mass proceedings, resulting in the U.S. Government tearing thousands of children from their moms and dads, and this is still happening. And the truth is we may not know how many children were separated from their parents.

So, Mr. Whitaker, you were Attorney General—former Attorney General Jeff Sessions' chief of staff at the time. Is that correct?

Mr. WHITAKER. Of the zero-tolerance policy being implemented?

Ms. JAYAPAL. You were his chief of staff at—

Mr. WHITAKER. At what point in time?

Ms. JAYAPAL [continuing]. Of the family separation policy. Let me just tell you, you were.

Mr. WHITAKER. There was no family separation policy. There was a zero-tolerance policy in the Department of Justice.

Ms. JAYAPAL. This has been given four Pinocchios multiple times. I am just going to tell you, you were the former Attorney General's Chief of Staff at the time.

Last month, Senator Merkley released a leaked draft memo by senior officials at the Department of Justice and Homeland Security outlining policies to separate children from their families. Were you aware of this memo at the time?

Mr. WHITAKER. No.

Ms. JAYAPAL. So, as the chief of staff, you were not aware of what your boss was doing?

Mr. WHITAKER. Was the memo—I am sorry. You are talking about the leaked memo or the memo that General Sessions issued—

Ms. JAYAPAL. There was a leaked draft memo by senior officials at the Department of Justice. You were the Chief of Staff; I would think you would know—and you would be a senior official—you would know about that memo. The memo stated that a policy of criminally prosecuting parents would require close coordination between DHS and the Department of Health and Human Services, which would be tasked with housing children separated from their moms and dads. And yet a report released by the Government Accountability Office last October says that DHS and HHS were, quote, unaware that your former boss' zero-tolerance prosecution policy memo was coming. Is it correct that the Department of Justice provided no advance notice to those Departments?

Mr. WHITAKER. Congresswoman, the Department's policy—

Ms. JAYAPAL. It is just a yes or no. Did you provide advance notice to the—

Mr. WHITAKER. We conducted a press conference in San Diego with the head of the Immigration Customs Enforcement when we announced the zero-tolerance policy, and all the zero-tolerance policy does is it says we will take all referrals from DHS.

Ms. JAYAPAL. I am going to stop you right there because it is my time.

According to the GAO report, the GAO, the Government Accountability Office, report on family separation: DHS and HHS officials told us the agencies did not take specific planning steps because they did not have advance notice of the Attorney General's April 2018 memo.

It went on to say specifically: CBP, ICE and ORR officials stated that they became aware of the April 2018 memo when it was announced publicly. So, before or after the zero—and actually let me go back. Are you saying that CBP, ICE, and OOR lied to the GAO and that they were somehow aware and given advance notice?

Mr. WHITAKER. No, I am not going to suggest that anybody was not telling the truth. I am saying that when we publicly announced the zero-tolerance policy, it was pursuant to a public event in San Diego—

Ms. JAYAPAL. And so, prior to the public event—Mr. Whitaker, prior to the public event, these ICE, CBP, and ORR officials told the GAO that they had not gotten any notice—I am not talking about once it was public; I am talking about whether there was advance notice.

Let me go on. Before or after the zero-tolerance policy was put into place, and I call it the zero-humanity policy, did the U.S. attorneys track when they were prosecuting a parent or legal guardian who had been separated from their child? There is only one answer to this. It has gone through the courts.

Mr. WHITAKER. You know, did we track it?

Ms. JAYAPAL. Did you track when you were prosecuting a parent or legal guardian who had been separated from a child?

Mr. WHITAKER. I don't believe we were tracking that.

Ms. JAYAPAL. You were not tracking it. That is the correct answer. And when parents are prosecuted and sentenced, they are in DOJ custody, correct?

Mr. WHITAKER. Correct, their custody is transferred to the U.S. Marshals.

Ms. JAYAPAL. So these parents were in your custody. Your attorneys are prosecuting them, and your Department was not tracking parents who were separated from their children. Do you know what kind of damage has been done to children and families across this country, children who will never get to see their parents again? Do you understand the magnitude of that?

Mr. WHITAKER. I understand that the policy of zero-tolerance—

Ms. JAYAPAL. Has the Justice Department started tracking parents and legal guardians who were separated from their children at the border?

Chairman NADLER. The time of the gentlelady has expired.

The witness may answer the question.

Mr. WHITAKER. Congresswoman, I appreciate your passion for this issue, and I know that you have been very involved on the front lines of this.

Ms. JAYAPAL. This is about more than my passion. This is about the children's future, Mr. Whitaker. Please answer. Go ahead, please.

Chairman NADLER. The witness may answer.

Mr. WHITAKER. Congresswoman, the responsibility for the arrest and the detention and together with the custody of the children was handled by DHS and HHS before those people were ever transferred to DOJ custody through the U.S. Marshals.

Chairman NADLER. Thank you. The time of the gentlelady has expired.

Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

Mr. Whitaker, I spent 27 years in law enforcement. I served as the Chief of Police. I took an oath just like you did, and I took that oath very, very seriously to uphold the Constitution and to protect this country from all enemies foreign and domestic. I hope you took the oath that you took very, very seriously.

But today, as I have sat through—and my colleague is right. This has been painful because I believe that you have worked to make our criminal justice system to make a mockery out of it, and it is painful for me for you to do that and anybody up to and including the President of the United States. But let me ask you this, and it really has been painful for someone who has been given so much responsibility representing the men and women who have dedicated their lives to public service. That really means a lot to me. I hope it means a lot to you.

Mr. WHITAKER. It does.

Mrs. DEMINGS. Mr. Lieu asked you if you had ever proven—Mr. Lieu asked you if you ever communicated with President Trump about investigations in the Southern District of New York. Instead of answering, you referred him back to your statement, referred him back to what was written for you. But all you said is that you didn't make—in your statement—that you didn't make any promises or commitments to President Trump. I want to know whether you talked to President Trump at all about the Southern District of New York's case involving Michael Cohen.

Mr. WHITAKER. Congresswoman, as I have mentioned several times today, I am not going to discuss my private conversations with the President of the United States.

Mrs. DEMINGS. So yes or no, did you—

Mr. WHITAKER. No matter what the question is.

Mrs. DEMINGS. Yes or no, did you discuss with President Trump anything about Michael Cohen?

Mr. WHITAKER. Congresswoman, as I have expressed several times today, I am not going—

Mrs. DEMINGS. Did you ever have any conversations with the President about firing or reassigning any personnel, U.S. attorneys or others, who work with the Southern District of New York, with the President or anybody, anybody at all? Did you ever have any conversations with anybody about reassigning or firing any personnel, including U.S. attorneys with the Southern District of New York?

Mr. WHITAKER. Congresswoman, I sit on top of the Department of Justice, as you mentioned—

Mrs. DEMINGS. Did you ever have any conversations about anybody who worked with the district of Virginia firing or reassigning, with anybody, not just the President, anybody at all?

Mr. WHITAKER. Congresswoman, I am not going to talk today—

Mrs. DEMINGS. Okay. So let's talk about the great 115,000 men and women who work for the Department of Justice, because I agree that they, as your words, are extremely talented, highly principled public servants, who are dedicated to upholding our great Constitution and the laws of the United States. I am sure you are familiar with this because you keep up—at a rally last fall the President said: Look what is being exposed at the Department of Justice and the FBI. You have some real bad ones. You see what has happened at the FBI. They are all gone. They are all gone, but there is a lingering stench, and we are going to get rid of that, too.

Do you agree with the President's characterization of the Department of Justice and the FBI? As the Attorney General, please tell me why you would agree or why you would not agree with that statement?

Mr. WHITAKER. Congresswoman, since I have become the Acting Attorney General I have reestablished a positive relationship between the Department of Justice and the White House—

Mrs. DEMINGS. Before you became—established that positive relationship, what was your opinion of the 115,000 men and women who dedicate their life to public service? Before you had your current position, what was your opinion of them?

Mr. WHITAKER. I have actually a very high estimation of the men and women at the Department of Justice. They are the most exceptional, hardworking people that I have ever—

Mrs. DEMINGS. So you disagree with the President's characterization, because they don't deserve it, Mr. Whitaker. And you are here—you supervise; you manage them. You don't—then you don't agree with the President's characterization of them. Is that correct?

Mr. WHITAKER. Listen, before—Congresswoman, in all due respect, I feel very strongly that, as the Acting Attorney General of the United States, that I have to set the tone for the entire Department of Justice, and what is so important—

Mrs. DEMINGS. If I worked for you, Mr. Whitaker, and you thought I was highly principled and very talented and that was your answer when I was asked or you are asked about how do you view the people who work for you, that is your answer; that is pretty pitiful.

Let me ask you this: You have only mentioned drugs coming through the southern border, the problem at the southern border as characterized by you and the President. Could you please paint a picture of drugs flowing through our ports of entry? Because I am told the overwhelming number of percentage of drugs that flow into our country come through the ports of entry. Do you agree or disagree with that statement? And if so, yes or no, why not?

Chairman NADLER. The time of the gentlelady has expired.

The witness may answer the question.

Mr. WHITAKER. Congresswoman, we actually both agree the ports of entry at our southern border are most trafficked with drugs and illegality. It also comes in between ports—

Mrs. DEMINGS. Overwhelming of drugs come through the ports of entry—

Mr. WHITAKER. On our southern border, yes.

Mrs. DEMINGS. Do you agree or disagree with that?

Mr. WHITAKER. I believe that a tremendous amount of drugs come through our ports of entry on the southern border, yes.

Chairman NADLER. The gentlelady—I am sorry.

Mr. Correa.

Mr. CORREA. Thank you, Mr. Chairman.

Good afternoon, sir. I wanted to ask you about your enforcement priorities. One of my jobs here in Congress is to serve on the Department of Homeland Security, and within that job, one of my most important critical jobs is to make sure our citizens are safe to protect our Nation against terrorist threats.

In May of 2017, a joint FBI-DHS bulletin warned of a growing threat of violence posed by white supremacists, neo-Nazis, right-wing extremists, and other white nationalist groups. An extensive study of terrorist plots between '08 and '16 found that plots and attacks by white nationalist groups in the U.S. outnumbered the threats by Islamic extremists 2 to 1. White supremacist groups have been aggressively recruiting on our college campuses, and violent incidents involving these groups have more than tripled since 2017. More than 100 people have been killed or injured since 2014, and more than 60 in 2017 alone by these alt-right groups.

Sir, just a very basic question, do you believe that white nationalism, white supremacists, extremists or right-wing groups in this country pose a threat?

Mr. WHITAKER. Yes, I do.

Mr. CORREA. Is it growing?

Mr. WHITAKER. Based on that report issued by the FBI, I have no reason, as I sit here today, to disagree with it.

Mr. CORREA. Do you believe that the administration is placing enough of an emphasis, enough resources allocated dedicated to stopping these kinds of homegrown terrorist attacks?

Mr. WHITAKER. I believe that we are dedicating resources to the appropriate threats. That is done obviously below my role. It is done mostly at the line and the management level at the FBI and our other agencies, including our partners at DHS, as you mentioned. And I really, as I sit here today, I think we are adequately addressing the threats that we face, but we are always reallocating resources based on how those threats evolve.

Mr. CORREA. Adequately addressing the threat, and you mentioned earlier in your opening statement 30 convictions—hate crime convictions, yet in 2017, an increase of 17 percent hate crimes reported, which they are usually underreported in this country. More than 7,000 hate crimes in 2017, and you have 30 convictions. Do you think you are allocating adequate resources towards prosecuting hate crimes?

Mr. WHITAKER. I do. And if you look at some of the high-profile cases we have done, like the synagogue shooting in Pittsburgh or the Charlottesville situation that we previously discussed or even the case where we sent a prosecutor to my home State of Iowa to help prosecute a State hate crime, I think we have addressed the hate crime.

Mr. CORREA. Again, sir, if you look at the number: 7,000 reported, almost 20 percent increase in 2017, 30 convictions. Adequate?

Mr. WHITAKER. Congressman, we always work with our State partners and the local police to determine where is the best place and the most effective place to prosecute a crime, and so to suggest that somehow that those victims of those crimes don't receive the proper justice I think would be——

Mr. CORREA. I think I am looking at it from relative—we are looking at foreign terrorism, and yet are we ignoring domestic terrorism?

Mr. WHITAKER. No, we are not ignoring that.

Mr. CORREA. Are we allocating the equal or more resources to domestic versus foreign, yes or no?

Mr. WHITAKER. Congressman, we allocate our resources based upon the threats and where the Federal Government should deploy those resources. And, again, it is a very dynamic daily evaluation as to where the threats are, and I believe that we are adequately resourcing all of the threats including the ones you described.

Mr. CORREA. Do you think domestic terrorism from white extremist groups is on the rise, and do you think we should allocate additional resources to combatting these kinds of terrorist attacks in this country?

Mr. WHITAKER. Congressman, I believe I already answered this question, but I just want to be clear: I agree with the FBI's assessment——

Mr. CORREA. I am sorry. I didn't hear your answer.

Mr. WHITAKER. Okay. Well, I believe, with the FBI's statement, that those crimes are on the rise. I also believe that we have adequately deployed our resources on a daily basis dynamically as required by those threats, and I have seen it based on my intelligence briefings that I participate on almost a daily basis, and I know that the FBI and the other Federal law enforcement agencies are adequately resourcing these threats in addition to all the other threats we face. It is a target-rich environment when it comes to law enforcement and making sure that——

Mr. CORREA. Sir, I am running out of time. I will say we are going to continue to look at this on Homeland Security because I believe that we are missing the ball here. In 2017, DHS terminated granted funding to look at some of these issues of domestic terrorism. We have to keep addressing this issue. Lives, the safety of our citizens is at stake.

Mr. Chairman, I yield.

Chairman NADLER. The gentleman has yielded.

Ms. Scanlon.

Ms. SCANLON. Good afternoon, Mr. Whitaker.

Mr. WHITAKER. Good afternoon.

Ms. SCANLON. In response to a question from my Pennsylvania colleague, you mention that the Department of Justice has been attempting to withhold Federal dollars from so-called sanctuary cities. Is that right?

Mr. WHITAKER. Well, yes, I talked about the Byrne JAG grants.

Ms. SCANLON. Thank you. And one of those cities is Philadelphia, right?

Mr. WHITAKER. I believe so, yes.

Ms. SCANLON. I happen to represent Philadelphia. Isn't it true that Judge Mike Baylson of the Eastern District of Pennsylvania ruled that the Department of Justice's attempt to withhold this money was illegal and unconstitutional?

Mr. WHITAKER. Congresswoman that is——

Ms. SCANLON. Isn't it correct that that was the ruling of the Federal court?

Mr. WHITAKER. Congresswoman——

Ms. SCANLON. Isn't it correct——

Mr. WHITAKER. I am not going to discuss ongoing litigation.

Ms. SCANLON. Isn't it correct that the Federal court ruled that the Department of Justice's action was illegal and unconstitutional? That is a matter of public record, sir.

Mr. WHITAKER. Congresswoman——

Ms. SCANLON. Is that correct?

Mr. WHITAKER. Congresswoman, I don't disagree——

Ms. SCANLON. Mr. Whitaker, you may be confused here. This may appear to be a contact sport, but it is not a gridiron, and I am not letting you run out the time, okay? Isn't it true the Federal court ruled that that was illegal and unconstitutional?

Mr. WHITAKER. Congresswoman, again——

Ms. SCANLON. Okay. I will take that as a yes.

Mr. WHITAKER. This is the subject of ongoing litigation, and——

Ms. SCANLON. Isn't it also true, Mr. Whitaker—Mr. Whitaker, I am asking the question. Isn't it also true that the court found that the Department of Justice had not produced any credible evidence that undocumented immigrants committed crime at a higher rate than any other group?

Mr. WHITAKER. Congresswoman, this is the subject of ongoing litigation——

Ms. SCANLON. Isn't it true that the Federal court found that in a public opinion?

Mr. WHITAKER. Congresswoman, I am not going comment on ongoing litigation.

Ms. SCANLON. Okay. I will take that as a yes as well. Let's move on to some other questions. And just to be clear I am asking oversight questions about your enforcement priorities during your tenure, okay, at the Department of Justice. I want to make sure we are clear on when that tenure began. I have a date of September 22, 2017, that you became chief of staff. Is that correct?

Mr. WHITAKER. That is incorrect.

Ms. SCANLON. Okay. When is your first working date as chief of staff for Attorney General Sessions?

Mr. WHITAKER. I started at the Department of Justice on October 4th of 2017.

Ms. SCANLON. Okay. And then you became Acting Attorney General as of November 7, 2018?

Mr. WHITAKER. The President tweeted that I was going to be the next Acting Attorney General on November 7th of 2018. The order that I have received from the President has the date of November 8th of—I am sorry, 2018.

Ms. SCANLON. Okay. Do you have a copy of that order?

Mr. WHITAKER. I do have a copy of that order.

Ms. SCANLON. Can you provide it to the committee please?

Mr. WHITAKER. I would be happy to. I don't have it with me, though, if that is your question.

Ms. SCANLON. Okay. That would be wonderful. Turning to some other enforcement priorities. On December 22, 2017, the Department of Justice sent a formal request to the Census Bureau asking for an addition to the Census of a question asking about citizenship status. Did Attorney General Sessions direct the Department lawyers to draft that request?

Mr. WHITAKER. Congresswoman, the Department is currently defending the Census Bureau in litigation on this issue across the country.

Ms. SCANLON. Did Attorney General Sessions ask or are you refusing to answer the question?

Mr. WHITAKER. I think it is inappropriate for me to comment about the subject of ongoing litigation.

Ms. SCANLON. Okay.

Mr. Chairman, I would like to reflect Mr. Whitaker hasn't answered the question, and I would ask this matter to be addressed in the upcoming deposition.

Do you know if the President directed Department of Justice lawyers to make that request?

Mr. WHITAKER. Congresswoman, this is the subject of ongoing litigation——

Ms. SCANLON. Okay. So you are not going to answer that question either.

Mr. WHITAKER [continuing]. That we are currently defending in the United States courts.

Ms. SCANLON. Thank you. Was Acting Assistant Attorney General John Gore involved in the drafting of that request to add the Census question?

Mr. WHITAKER. Congresswoman, as I have previously stated, this is the subject of ongoing litigation that we——

Ms. SCANLON. Okay. So we will let the record reflect that again you are refusing to answer the question.

Okay. We can agree that one of the functions of the Department of Justice is to enforce the Voting Rights Act, correct?

Mr. WHITAKER. Correct. One of the jobs of the——

Ms. SCANLON. Okay. Thank you. Isn't it also true that the most recent Voting Rights Act enforcement action was filed on January 10, 2017?

Mr. WHITAKER. As I have mentioned previously, the Department is——

Ms. SCANLON. Is it correct that the most recent voting rights enforcement action filed by your Department was in 2017, January 10?

Mr. WHITAKER. Congresswoman, I will give you an example——

Ms. SCANLON. It is a yes-or-no question.

Mr. WHITAKER. During the first term of the Obama administration, they filed, I believe, one section——

Ms. SCANLON. Okay. Reclaiming my time, no running out the clock.

Mr. WHITAKER. I am trying to answer your questions.

Ms. SCANLON. Chairman, if we can enter into the record the Department of Justice website, which reflects when the last Voting Rights Act case was filed: January 10, 2017.

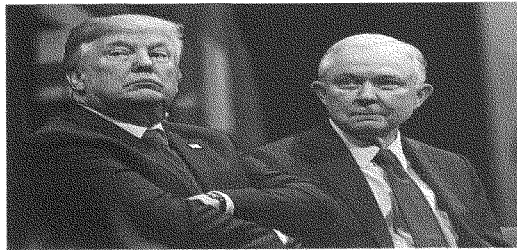
Chairman NADLER. Without objection, the fact is noted on the website and will be entered into the record.

[The information follows:]

MS. SCANLON FOR THE OFFICIAL RECORD

Judge rules that Philadelphia, a 'sanctuary city,' is entitled to federal funding

Despite resisting immigration policies enforced by the Trump administration, Philadelphia is entitled to federal funding, argues a federal judge.



President Donald Trump, left, with Attorney General Jeff Sessions during the FBI National Academy graduation ceremony in Quantico, Virginia, on Dec. 15. Evan Vucci / AP file
June 6, 2018, 3:50 PM EDT / Updated June 6, 2018, 6:30 PM EDT
By Associated Press and Phil Helsel

PHILADELPHIA — A federal judge ruled Wednesday that the Trump administration cannot cut off grants to Philadelphia over the way the city deals with immigrants who are in the country illegally.

In his ruling, Judge Michael Baylson of the Eastern District of Pennsylvania said the conditions placed on the city by the federal government in order to receive the funding are unconstitutional, "arbitrary and capricious." He also wrote that Philadelphia's policies are reasonable and appropriate.

Philadelphia has said that as a so-called sanctuary city, it will turn over immigrants to Immigration and Customs Enforcement agents only if they have a warrant signed by a judge. The city has been fighting federal efforts to block funding as a result of the policy.

Philadelphia Mayor Jim Kenney, a Democrat, called President Donald Trump a "bully" and he hailed the judge's ruling.

"It is a ruling that prevents a White House run by a bully from bullying Philadelphia into changing its policies," Kenney said at a news conference. "It is a ruling that should make clear to Attorney General [Jeff] Sessions that federal grant dollars cannot be used for political shakedowns."



Mayor: Trump can't 'bully Philadelphia into changing its policies'

Department of Justice spokesman Devin O'Malley said the department maintains it used proper authority to attach conditions to the public safety grants.

"Today's opinion from the district court in Philadelphia is a victory for criminal aliens in Philadelphia, who can continue to commit crimes in the City knowing that its leadership will protect them from federal immigration officers whose job it is to hold them accountable and remove them from the country," O'Malley wrote in an emailed statement.

Several sanctuary cities have opted to limit cooperation with government enforcement of immigration law. The Justice Department has threatened to cut off millions of dollars in federal grants to cities if they don't meet certain criteria for cooperating with immigration officials. Philadelphia's attorneys have argued that the move is unconstitutional and that it harms residents by withholding money earmarked to help buy kits to counteract opioid overdoses.

Sessions has said that cities that don't help enforce immigration law are endangering public safety, especially when it comes to sharing information about immigrants who have been accused of crimes.

A federal appeals court in April sided with Chicago in a similar dispute.



Sanctuary cities could get boost from Supreme Court's sports betting ruling

Kenney, Philadelphia's mayor, said that Philadelphia city policies do not violate any federal laws, that the city works with federal authorities and that the city's policies do not prevent Immigration and Customs Enforcement from doing its job.

He said that immigrants are "the single greatest reason that Philadelphia has reversed five years of population loss," and that police depend on information from immigrants to solve crimes without fears that those with information will be asked about their immigration status.

Kenney also said that the issue hits close to home. "If this was Irish immigration now, I might be in a detention center somewhere, or my kids might have been taken away from me," he said.

"When we came here, the same know-nothings and nativists of the day which exist, are Trump people today, were saying the same things about us: We were criminals, we were

good for nothings, we were lowlifes, we were, you know, bad people and we should go back where we came from," Kenney said.

"It's the same fear, anger and vitriol that my folks experienced generations ago, that Mexicans, and Guatemalans and Hondurans and others are experiencing now — and Africans, and people who are Muslim," he said.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF EASTPOINTE; EASTPOINTE
CITY COUNCIL; SUZANNE PIXLEY, in her
official capacity as Mayor of Eastpointe;
CARDI DEMONACO JR., MICHAEL
KLINEFELT, SARAH LUCIDO, and JOHN
MARION, in their official capacities as
members of the Eastpointe City Council; and
STEVE DUCHANE, in his official capacity as
Eastpointe City Clerk,

Defendants.

Civil Action No. 2:17-cv-10079

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. The Attorney General files this action pursuant to Section 2 and Section 12(d) of the Voting Rights Act, 52 U.S.C. §§ 10301 and 10308(d).
2. Section 2 of the Voting Rights Act prohibits enforcement of any voting qualification, prerequisite to voting, standard, practice, or procedure that results in the denial or abridgment of the right to vote on account of race, color, or language minority status.

3. In this action, the United States challenges the at-large method of electing the city council of the City of Eastpointe as a violation of Section 2 of the Voting Rights Act.

JURISDICTION AND VENUE

4. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1331, 1345, and 2201(a) and 52 U.S.C. § 10308(f).

5. Venue is proper in this Court under 28 U.S.C. §§ 102(a)(1) and 1391(b).

PARTIES

6. The Voting Rights Act authorizes the Attorney General to file a civil action on behalf of the United States of America seeking injunctive, preventive, and permanent relief for violations of Section 2 of the Act. 52 U.S.C. § 10308(d).

7. The City of Eastpointe is a political and geographical subdivision of the State of Michigan, situated in Macomb County.

8. The Eastpointe City Council is the legislative and governing body of the City of Eastpointe. Eastpointe Charter ch. III, §§ 1-2.

9. Suzanne Pixley is the elected mayor of the City of Eastpointe, the presiding officer and executive head of the City. Eastpointe Charter ch. III, § 7. As mayor, she also serves on the Eastpointe City Council. *Id.* §§ 1-2. She is sued in her official capacity.

10. Cardi DeMonaco Jr., Michael Klinefelt, Sarah Lucido, and John Marion are elected members of the Eastpointe City Council. Eastpointe Charter ch. III, § 2. They are sued in their official capacities.

11. Steve Duchane is the Eastpointe City Clerk, the city official responsible for the administration of elections. Eastpointe Charter ch. III, § 23; Mich. Compl. Laws § 168.29. He is sued in his official capacity.

ALLEGATIONS

12. The at-large method of electing the Eastpointe City Council dilutes the voting strength of black citizens, in violation of Section 2 of the Voting Rights Act.

13. Five individuals serve on the Eastpointe City Council: the mayor and the four members of the city council. Eastpointe Charter ch. III, § 2.

14. Members of the city council are each elected at-large by all voters in Eastpointe and serve staggered, four-year terms. Eastpointe Charter ch. III, § 3.

15. Michigan law does not mandate the current at-large method to elect the Eastpointe City Council. *See* Mich. Comp. Laws §§ 117.3(e), 117.27a.

16. According to the 2010 census, Eastpointe had a population of 32,442, of whom 20,898 were white (64.4%), 9,837 were black (30.3%), and 1,707 were members of other racial groups (5.3%). The City of Eastpointe had a voting-age

population of 24,103, of whom 16,885 were white (70.0%), 6,154 were black (25.5%), and 1,064 were members of other racial groups (4.4%).

17. The black community of Eastpointe has continued to grow since the 2010 Census. The 2010-2014 American Community Survey estimated that black residents made up approximately 39% of the total population of Eastpointe and approximately 34% of the citizen voting-age population.

18. The black community of Eastpointe is sufficiently numerous and geographically compact to constitute a majority of the citizen voting-age population in one single-member district under an illustrative four-district plan.

19. Review of elections establish that the black population of Eastpointe is politically cohesive and that the white population votes sufficiently as a bloc to usually defeat the preferred candidate of black voters.

20. Black voters consistently vote for black candidates who actively campaign for the Eastpointe City Council, East Detroit Board of Education, and other county and state positions.

21. In nearly all contested contests between black candidates and white candidates for the Eastpointe City Council, the East Detroit Board of Education, and other county and state positions, white voters cast their ballots sufficiently as a bloc to defeat the minority's preferred candidate.

22. No black individual has ever won a contested election for the Eastpointe City Council; the East Detroit School Board; or a legislative district (county, state, or federal) that includes the City of Eastpointe.

23. No black individual has ever been successfully appointed to the Eastpointe City Council.

24. Eastpointe has a history of official discrimination—including race-based residency restrictions—that effectively excluded black residents from Eastpointe for decades.

25. More broadly, Macomb County has a history of discrimination against black residents in areas including housing and public employment.

26. The black population of Eastpointe continues to suffer from the effects of discrimination in education, policing, and employment, particularly municipal employment.

27. Significant socioeconomic disparities exist between white and black residents of Eastpointe.

28. Eastpointe elections are characterized by the use of practices and procedures that impair black electoral success. These include, but are not limited to, staggered terms and off-year elections.

29. Eastpointe elections have been marked by subtle and overt racial appeals, including a proposal to close streets connecting Eastpointe to the predominantly black City of Detroit.

30. Social, civic, and political life in the City of Eastpointe remains divided along racial lines. This racial separation results in black candidates for city office having less opportunity than white candidates to solicit the votes of the majority of voters.

CAUSE OF ACTION

31. Under the totality of circumstances, the current at-large method of electing the Eastpointe City Council results in black citizens in Eastpointe having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

32. Unless enjoined by order of this Court, Defendants will continue violating Section 2 of the Voting Rights Act by administering, implementing, and conducting future elections for the Eastpointe City Council using an at-large method of election.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order:

(1) Declaring that the at-large method of electing the Eastpointe City

Council violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;

- (2) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing, or conducting any future elections for the Eastpointe City Council under the at-large method of election;
- (3) Ordering Defendants to devise and implement an election system for the Eastpointe City Council that complies with Section 2 of the Voting Rights Act; and
- (4) Granting such additional relief as the interests of justice may require.

Date: January 10, 2017

Respectfully submitted,

BARBARA L. MCQUADE
United States Attorney
Eastern District of Michigan

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Luttrell Levingston
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Washington, DC 20530

Ms. SCANLON. Thank you.

Isn't it true that, under the Trump administration, the Department of Justice has reversed its position on at least three important Voting Rights Act cases?

Mr. WHITAKER. May I answer the question? I see my time has expired.

Ms. SCANLON. I think there is a yes or a no.

Chairman NADLER. The gentlelady's time has expired.

The witness may answer the question.

Mr. WHITAKER. Thank you. The Department of Justice has changed positions only in one voting case, and that is the Husted case, and the Supreme Court agreed with our new reading of the statute.

Chairman NADLER. Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Chairman.

I have about four documents I ask unanimous consent be entered into the record. The first one is titled "Crime and Murder in 2018: A Preliminary Analysis." The second one reads, "Border Communities Have Lower Crime Rates." The third one reads, "Amid 'crisis' rhetoric, local leaders defend border region from misconceptions," and this is a report from the Rio Grande Valley in Texas. And then the last one is Progress Times, Mission, Texas, "Sheriff: Crime dropped 10 percent in rural Hidalgo in the last year."

Chairman NADLER. Without objection, these documents will be entered into the record.

[The information follows:]

MS. GARCIA FOR THE OFFICIAL RECORD

BRENNAN CENTER FOR JUSTICE

OF NEW YORK

Crime and Murder in 2018: A Preliminary Analysis

by Ames C. Grawert, Adureh Onyekwere, and Cameron Kimble

This report analyzes available crime data from police departments in the 30 largest U.S. cities.¹ It finds that across the cities where data is available, the overall murder and crime rates are projected to decline in 2018, continuing similar decreases from the previous year. This report is based on preliminary data and is intended to provide an early snapshot of crime in 2018 in the 30 largest cities. This data will be updated in later reports.

Declines in homicide rates appear especially pronounced in cities that saw the most significant spikes during 2015 and 2016. These findings directly undercut claims that American cities are experiencing a crime wave. Instead, they suggest that increases in the murder rate in 2015 and 2016 were temporary, rather than signaling a reversal in the long-term downward trend.

This report's main findings are explained below and detailed in Figure 1, and Tables 1 and 2:

- **Murder:** The 2018 murder rate in these cities is projected to be 7.6 percent lower than last year. This estimate is based on data from 29 of the nation's 30 largest cities. This murder rate is expected to be approximately equal to 2015's rate, near the bottom of the historic post-1990 decline.² Especially sharp de-

clines appear in San Francisco (-35.0 percent), Chicago (-23.2 percent), and Baltimore (-20.9 percent). These estimates are based on preliminary data, but if they hold, the number of murders in Chicago could fall by year's end to the lowest since 2015. In Baltimore, homicides could drop to the lowest since 2014. While the city's murder rate remains high, this would mark a significant reversal of the past two years' increases.

- While the overall murder rate is estimated to decline this year in these cities, a few cities are projected to experience increases. For example, Washington, D.C.'s murder rate is expected to rise 34.9 percent. Several cities with relatively low murder rates are also seeing increases, such as Austin (rising by roughly 30 percent). Since the city has relatively few murders, any increase may appear large in percentage terms.
- **Overall Crime:** At the time of publication, full crime data—covering all Part I index crimes tracked by the FBI—were only available from 19 of the 30 largest cities. (Past Brennan Center reports included, on average, 21 cities.) In these cities, the overall crime rate for 2018 is projected to decrease by 2.9 percent, essentially holding stable. If this estimate holds, this group of cities will experience the lowest crime rate this year since at least 1990. These findings will be updated with new data when available.

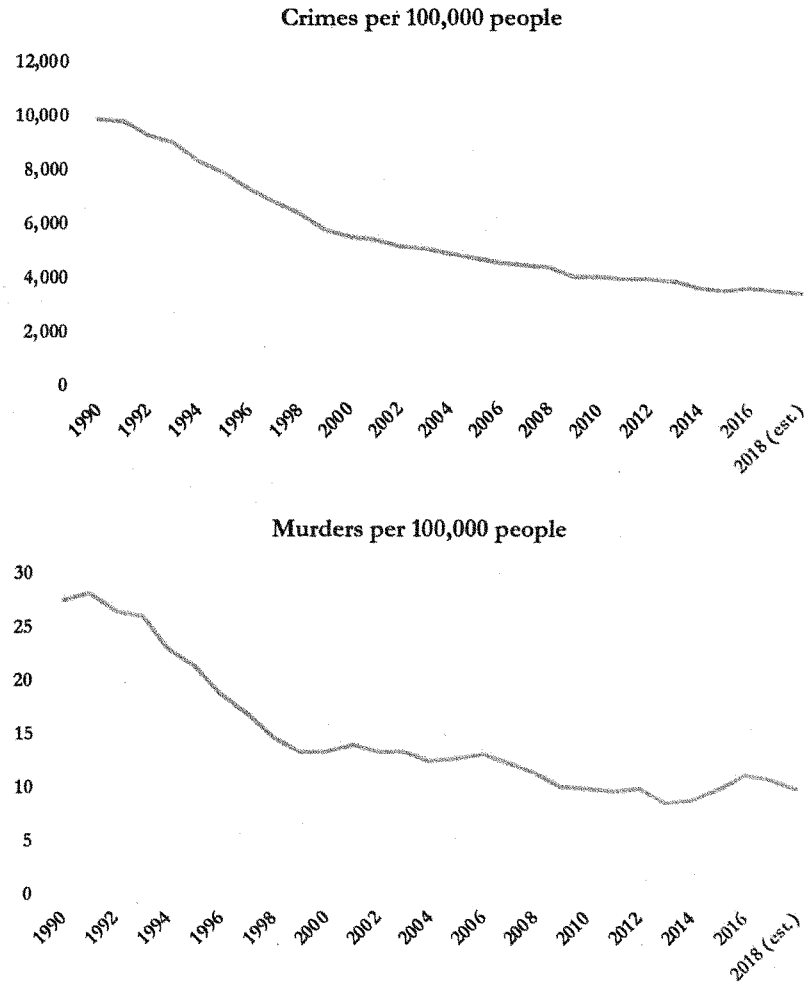
This report does not present violent crime data because the authors could not collect sufficient data by the time of publication.

While the estimates in this report are based on early data, previous Brennan Center reports have correctly estimated the direction and magnitude of changes in major-city crime rates.³ The Brennan Center's final report analyzing crime data in 2017 is available [here](#).

¹ This report collected data on six Part I index crimes tracked by the FBI in the Uniform Crime Reports: murder, robbery, and aggravated assault (collectively, "violent crime"), and burglary, larceny, and motor vehicle theft (collectively, "property crime"). "Overall crime" includes all six offenses.

² Year-end 2018 estimates are based on year-to-date crime data projected over the full year to simulate past years' month-to-month variation for each city. As noted in Tables 1 and 2, the authors were unable to secure data from some cities. As the FBI's Uniform Crime Report for 2017 has not been released yet, our 2018 estimates are compared to the Brennan Center's final 2017 estimates. An updated version of this report will be released after the release of the Uniform Crime Report for 2017. Notably, the Center's 2015, 2016, and 2017 preliminary estimates accurately predicted whether crime and murder were increasing or decreasing based on the same methodology.

FIGURE 1: CRIME IN MAJOR AMERICAN CITIES (1990-2018 EST.)



Source: Brennan Center analysis.³ The crime graph represents the trendline for the 19 cities with available data, and the murder graph for 29 cities.

I. DATA TABLES

TABLE 1: CRIME IN THE 30 LARGEST CITIES (2017-2018 EST.)

City	1990 Crime Rate (per 100,000)	2017 Crime Rate Est. (per 100,000)	2018 Crime Rate Est. (per 100,000)	Percent Change in Crime Rate Est. [*] (2017-2018)
New York ⁴	9,656.4	1,922.9	1,899.2	-1.2%
Los Angeles ⁵	9,167.4	3,153.7	3,033.8	-3.8%
Chicago ⁶	11,062.3	4,308.1	4,162.3	-3.4%
Houston ^{7†}	11,255.9	5,011.7	Unavailable	Unavailable
Philadelphia ⁸	7,145.5	3,942.6	3,970.0	0.7%
Las Vegas ⁹	7,070.7	Unavailable	Unavailable	Unavailable
Phoenix ¹⁰	10,704.4	4,439.0	Unavailable	Unavailable
San Antonio ¹¹	12,430.8	5,424.5	6,278.2	15.7%
San Diego ¹²	9,105.9	2,153.2	1,626.0	-24.5%
Dallas ^{13‡}	15,386.5	3,869.8	Unavailable	Unavailable
San Jose ¹⁴	4,816.1	2,732.8	2,822.9	3.3%
Austin ¹⁵	11,653.9	3,485.6	3,306.7	-5.1%
Charlotte ¹⁶	12,496.5	4,440.9	Unavailable	Unavailable
Jacksonville ¹⁷	10,352.8	Unavailable	Unavailable	Unavailable
San Francisco ¹⁸	9,604.3	6,820.4	6,006.2	-11.9%
Indianapolis ¹⁹	6,637.2	Unavailable	Unavailable	Unavailable
Columbus ²⁰	9,804.9	Unavailable	Unavailable	Unavailable
Fort Worth ²¹	14,880.5	3,281.3	2,993.0	-8.8%
El Paso ²²	11,189.7	Unavailable	Unavailable	Unavailable
Seattle ²³	12,507.7	5,925.9	6,067.8	2.4%
Denver ²⁴	7,676.1	4,210.8	3,914.3	-7.0%
Louisville ²⁵	Unavailable	4,711.0	4,361.3	-7.4%
Detroit ²⁶	12,030.3	6,354.7	5,989.1	-5.8%
Washington, D.C. ²⁷	10,724.3	4,938.0	4,778.2	-3.2%
Boston ²⁸	11,756.9	2,684.8	2,559.4	-4.7%
Nashville ²⁹	7,768.2	4,883.1	4,906.6	0.5%
Memphis ³⁰	9,736.3	Unavailable	Unavailable	Unavailable
Oklahoma City ³¹	10,516.3	4,397.4	Unavailable	Unavailable
Baltimore ³²	10,502.8	6,660.8	5,492.9	-17.5%
Portland ³³	11,003.6	6,385.3	6,304.6	-1.3%
TOTAL				-2.9%

Source: Police department and city reports. See endnotes for specific sources. Data from 1990 are from the UCR Data Tool.³⁴ The authors were unable to obtain complete data from cities marked "Unavailable." Cities are ordered by estimated 2017 population size.³⁶

* Rates of change in Tables 1 and 2 are calculated based on raw, unrounded estimates, whereas estimates for rates are presented as rounded in the Tables. For example, in Table 2, San Jose's murder rate appears the same in 2017 and 2018 but unrounded numbers yield a slight percent change.

† Houston is currently updating its crime data reporting system and had not finished by the time of publication. Accordingly, crime data could not be obtained for the city, though homicide data were obtained from other sources.

‡ The authors initially collected crime data from the Dallas Police Department, but the site was inaccessible during the final round of fact-checking and the data could not be verified. The authors obtained murder data from other sources.

TABLE 2: MURDER IN THE 30 LARGEST CITIES (2017-2018 EST.)

City	2017 Total Murders	2018 Total Murders	Percent Change in Murder	1990 Murder Rate (per 100,000)	2017 Murder Rate Est. (per 100,000)	2018 Murder Rate Est. (per 100,000)	Percent Change in Murder Rate Est. (2017-18)
New York	292	307	5.1%	30.7	3.4	3.5	4.5%
Los Angeles	282	267	-5.3%	28.2	7.0	6.5	-6.4%
Chicago	671	515	-23.2%	30.5	24.6	18.9	-23.2%
Houston	256	289	13.0%	34.8	10.7	11.8	10.3%
Philadelphia	310	313	0.9%	31.7	19.7	19.8	0.6%
Las Vegas*	199	143	-28.2%	12.8	12.3	8.6	-29.6%
Phoenix	161	195	20.8%	13.0	10.0	11.8	18.7%
San Antonio	125	137	9.8%	22.2	8.2	8.7	7.3%
San Diego	34	26	-25.0%	12.2	2.4	1.7	-26.2%
Dallas	168	184	9.6%	44.4	12.5	13.4	7.7%
San Jose	32	32	0.0%	4.5	3.0	3.0	-1.6%
Austin	27	36	33.3%	9.9	2.7	3.5	29.3%
Charlotte	85	47	-44.7%	23.5	9.3	5.0	-45.9%
Jacksonville	119	Unavail.	Unavail.	27.6	13.4	Unavail.	Unavail.
San Francisco	56	37	-34.1%	14.0	6.3	4.1	-35.0%
Indianapolis	153	194	26.8%	12.0	17.5	22.1	26.1%
Columbus	123	111	-9.8%	14.1	14.0	12.4	-11.5%
Fort Worth	69	57	-17.9%	29.0	7.9	6.3	-20.2%
El Paso	16	17	7.7%	6.6	2.3	2.5	7.2%
Seattle	27	33	23.1%	10.3	3.7	4.5	19.7%
Denver	58	65	12.8%	14.3	8.1	8.9	10.1%
Louisville	107	79	-26.1%	Unavail.	15.5	11.4	-26.5%
Detroit	261	241	-7.6%	56.6	39.6	37.0	-6.5%
Washington, D.C.	116	159	37.2%	77.8	16.7	22.6	34.9%
Boston	57	59	3.0%	24.9	8.3	8.5	1.5%
Nashville	112	81	-27.5%	13.4	16.5	11.7	-28.7%
Memphis	177	166	-6.0%	31.9	27.0	25.3	-6.1%
Oklahoma City	81	49	-40.0%	15.3	12.4	7.3	-41.1%
Baltimore	342	270	-21.2%	41.4	55.4	43.8	-20.9%
Portland	22	24	9.1%	7.5	3.5	3.8	9.1%
TOTAL							-7.8%

Source: Police department and city reports. See Table 1 endnotes for specific sources. Data from 1990 are from the UCR Data Tool.²⁸ Cities are ordered by estimated 2017 population size.

*Las Vegas's 2017 homicide count includes deaths due to the October 1, 2017 mass shooting outside of the Mandalay Bay Resort and Casino. Because this shooting was an isolated, tragic, and unanticipated occurrence, 2018 projections were calculated using 2017's baseline homicides excluding the mass shooting deaths.

II. CONSEQUENCES FOR NATIONAL CRIME TRENDS

Murder trends in major cities can offer some insights into nationwide trends, though they do not mirror them exactly. For example, in 2015 and 2016, Brennan Center final analyses showed murder rates in major cities rising by around 13 percent each year.³⁷ As shown in Figure 2, similar increases occurred nationally — the murder rate rose by roughly 11 percent and 8 percent in those years, respectively.

In 2017 and 2018, Brennan Center estimates show the murder rate in major cities with available data declining slightly in 2017 and declining even more in 2018.³⁸ The 2018 estimates presented here represent a sizeable share of the population: The 29 cities included in the major-city murder rate are home to more than 40 million people, or

more than 12 percent of the population.³⁹ While it is too early to say for sure, declines in major cities could signal a reversal of the previous two years' increases in the national homicide rate.

If final FBI data show that the murder rate declined in 2017 — and if 2018 estimates are borne out — it is likely that the increases in homicides observed in 2015 and 2016 were momentary upticks amidst the broader downward trend, similar to the shallower increases observed in the early 2000s. While the causes of the previous years' increases require further study, this reversal would definitively reject any claims of the country being in a "crime wave."

FIGURE 2: NATIONAL MURDER RATE (1990-2017 EST.)



Source: Federal Bureau of Investigation, Uniform Crime Reports.⁴⁰

METHODOLOGY

Sources for Crime Data

Annual data on crime through 2016 are from the Federal Bureau of Investigation's Uniform Crime Reports (UCR).⁴⁰ Final UCR data for 2017 and 2018 have not yet been released. For both years, the authors collected crime data directly from police departments in the 30 largest American cities and used that data to compile year-end estimates as described below.

Some cities did not respond to the authors' data requests in time for publication. Complete data on crime was obtained for 19 cities, and murder data from 29 cities. One city is missing entirely. As the overall crime finding in this report is based on 19 out of 30 cities, it is slightly less predictive of the 30-city overall crime rate than past reports (which on average included 21 cities). This finding still offers insight into this year's overall crime rate for the 30 largest cities. As in past years, the updated and final 2018 Brennan Center reports will include data from more cities, resulting in more predictive estimates. For example, *Crime in 2017: A Preliminary Analysis* included overall crime data from 20 cities and *Crime in 2017: Final*

Analysis included overall crime data for 23 cities.⁴¹

Offense data was categorized according to UCR definitions. Violent crime includes: murder, robbery, and aggravated assault. Property crime includes: burglary, larceny-theft, and motor vehicle theft. Murder included only murder. Overall crime includes all of the above. Rape was excluded from this analysis because its UCR definition has changed over time, creating inaccuracies when data over time is compared. While most city crime reports use UCR definitions of offenses, some variation between cities may exist based on state or local laws.

Notably, crime rates and murder rates often move in different directions in the same city. This is because the "crime rate" is the sum of 6 different offenses compared to population. Since property crimes are much more common than murders, a surge up or down in property crime can make the crime rate move in a different direction than the murder rate.

2018 Projections and 2017 Comparisons

To estimate year-end crime data for 2018, the authors started with raw data from cities on crimes that have occurred so far this year. Where cities offered incident-level data, this raw material was interpreted so as to ensure consistencies between years and with each city's previous UCR reports. Next, the authors assumed that the ratio of crimes committed year-to-date last year and crimes committed by year-end last year would be the same for

the current year and used the number of crimes committed year-to-date this year to solve for a year-end estimate. For example, if a city had 100 murders through July 2017 and 200 by the end of 2017, then if the same city had 150 murders by July 2018, the authors would project a year-end total of 300 murders this year. While this method is empirically accepted as a method to calculate rough estimates, it is based on the assumption that month-to-month variation does not differ significantly year-to-year and cannot account for unique events.

Brennan Center projections in the second and third annual report of each year are based on comparisons to UCR data from the immediately preceding year. That was not possible here, since the FBI had not yet released its final 2017 analysis by the time of publication. To minimize assumptions and ensure the most accurate possible comparison, the authors instead used raw data reported by cities for both 2017 year-end numbers and 2018 projections. Toward that end, 2017 crime data in Tables 1 and 2 of this report are reproduced from *Crime in 2017: Final Analysis*. Detailed information on that report's methodology is available on page 4 of that report.⁴²

Each year, the authors attempt to collect crime data from the 30 largest cities. Due to changes in data availability, the precise group of cities presented changes from report to report. Each report in this series, however, presents a sample of the 30 largest cities. Additionally, to eliminate cohort bias, inter-year comparisons are calculated using only cities where data is available for both years. For example, if San Francisco reported murder data for 2017 but not 2018, and Houston reported murder data for 2018 but not 2017, both cities would be excluded when reporting the overall, major city murder rate. These year-to-year comparisons of samples are able to estimate whether crime is going up or down in the 30 largest cities.

For rate calculations, the authors projected city population assuming the average rate of population growth for the past three years remained constant through 2018.

Endnotes

- 1 For the 29 cities where data were available for this report, the total murder rate in 2015 was 9.9 killings per 100,000 people. The estimated murder rate for 2018 is 9.8. For information on the decline in crime and murder rates since 1990, see Matthew Friedman, Ames Grawert, and James Cullen, *Crime Trends: 1990-2016*, Brennan Center for Justice, 2017, <https://www.brennancenter.org/publication/crime-trends1990-2016>.
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- 3 To ensure consistent comparisons through the present day, cities were only included in each graph if data were available for 2017 and 2018. Where the UCR lacks a single year of pre-2017 data for a city — such as Baltimore in 1999, and Portland in 2015 — the city was excluded from that year.
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- 7 The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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- 10 The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
- 11 "Uniform Crime Reports," San Antonio Police Department, last updated Sep. 12, 2018, last accessed Sep. 12, 2018, <https://www.sanantonio.gov/SAPD/Uniform-Crime-Reports#30263041-2018>.
- 12 "Crime and Statistics," Automated Regional Justice Information System, last accessed Sep. 11, 2018, <http://crimestats.arjis.org/default.aspx> (from the drop-down boxes, select "Jan / 2017" for "Begin Date," "Aug / 2017" for "End Date," and "San Diego" for "Agency"; then repeat for 2018).
- 13 The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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- 17 The authors were not able to obtain complete, reliable

- data from this city or other sources.
- 18 "Compstat: Citywide Profile," San Francisco Police Department, last accessed Sep. 12, 2018, http://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/CompStat/July_CompStat_AllDistrict%281%29.pdf.
 - 19 The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
 - 20 The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
 - 21 "2nd Quarter Crime Report; April-June 2018," Fort Worth Police Department, last accessed Sep. 12, 2018, <https://online.flippingbook.com/view/1012029/8/>.
 - 22 The authors are in the process of obtaining complete, reliable data for this city but had not finished by the time of publication. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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 - 24 "Crime in the City and County of Denver by Month Based on UCR Standards," Denver Police Department, last accessed Sep. 12, 2018, https://www.denvergov.org/content/dam/denvergov/Portals/220/documents/statistics/2018/Xcitywide_Reported_Offenses_2018.pdf.
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 - 26 "DPD: All Crime Incidents, December 6, 2016 — Present," City of Detroit, last accessed Sep. 11, 2018, <https://data.detroitmi.gov/Public-Safety/DPD-All-Crime-Incidents-December-6-2016-Present/6gdg-y3kf>. For cities where data was collected from a data portal, the authors build in a three-month "lag time" to ensure the portals were fully updated. Therefore, for this city, the authors compiled their estimates by comparing June 2017 year-to-date figures to June 2018 year-to-date figures.
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 - 31 The authors are in the process of obtaining complete, reliable data for this city but had not finished by the time of publication. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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 - 37 Ames Grawert and James Cullen, *Crime in 2016: Final Year-End Data*, Brennan Center for Justice, 2017, <https://www.brennancenter.org/analysis/crime-2016-final-year-end-data>. Ames Grawert and James Cullen, *Crime in 2015: A Final Analysis*, Brennan Center for Justice, 2016, <https://www.brennancenter.org/analysis/crime-2015-final-analysis>.
 - 38 Ames Grawert, James Cullen, and Vienna Thompkins, *Crime in 2017: Final Analysis*, Brennan Center for Justice, 2018, <https://www.brennancenter.org/analysis/crime-2017-final-analysis>.
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The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center's work ranges from voting rights to campaign finance reform, from ending mass incarceration to preserving Constitutional protection in the fight against terrorism. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, the courts, and in the court of public opinion.

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CRIME AND MURDER IN 2018: A Preliminary Analysis (Updated)

Ames C. Grawert, Adureh Onyekwere, and Cameron Kimble

This analysis updates the Brennan Center's September 20, 2018, report, *Crime in 2018: A Preliminary Analysis*, with new data from the Federal Bureau of Investigation.¹

That report compared Brennan Center final estimates of crime in 2017 to preliminary estimates of crime in 2018 in the nation's 30 largest cities. This update now incorporates official 2017 crime data released through the FBI's Uniform Crime Reporting Program (UCR) on September 24, allowing for more precise comparisons.²

Because the Brennan Center's 2017 estimate closely matched final FBI data, changes in this update are minor.³ This analysis continues to find that in the 30 largest cities where data is available, the murder and overall crime rates are projected to decline in 2018, continuing decreases found in 2017. For more, please see updated Tables I and II.⁴

- *Murder:* The 2018 murder rate in these cities is projected to be 7.3 percent lower than last year. This estimate is based on data from 29 of the nation's 30 largest cities. This murder rate is expected to be approximately equal to 2015's rate, near the bottom of the historic post-1990 decline.⁴ Especially sharp declines appear in San Francisco (-34.9 percent), Chicago (-23.0 percent), and Baltimore (-20.7 percent). These estimates are based on preliminary data, but if they hold, the number of murders in Chicago could fall by year's end to the lowest since 2015. In Baltimore, homicides could drop to the lowest since 2014. While Baltimore's murder rate remains high, this would mark a significant reversal of the past two years' increases.
- While the overall murder rate is estimated to decline this year in Chicago and Baltimore, a few cities are projected to experience increases. For example, the murder rate in Washington, D.C., is expected to rise 34.8 percent. Several cities with relatively low murder rates are also seeing increases, such as Austin (rising by roughly 30 percent). Since the city has relatively few murders, any increase may appear large in percentage terms.
- *Overall Crime:* At the time of publication, full crime data — covering all Part I index crimes tracked by the FBI — were only available from 19 of the 30 largest cities. (Past Brennan Center reports included, on average, data from 21 cities.) In these cities, the overall crime rate for 2018 is projected to decrease by 2.5 percent, essentially holding stable. If this estimate holds, this group of cities will experience the lowest crime rate this year since at least 1990. These findings will be updated with new data when available.

This report does not include violent crime data because the authors could not collect sufficient data for 2018 by the time of publication. While the estimates in this report are based on early data, previous Brennan Center reports have correctly estimated the direction and magnitude of changes in major-city crime rates.⁵

¹ This report collected data on six Part I index crimes tracked by the FBI in the Uniform Crime Reports: murder, robbery, and aggravated assault (collectively, "violent crime"), and burglary, larceny, and motor vehicle theft (collectively, "property crime"). "Overall crime" includes all six offenses.

² Year-end 2018 estimates are based on year-to-date crime data projected over the full year to simulate past years' month-to-month variation for each city. As noted in Tables 1 and 2, the authors were unable to secure data from some cities.

I. DATA TABLES

Table 1: Crime in the 30 Largest Cities (2017-2018 Est.)

	1990 Crime Rate (per 100,000)	2017 Crime Rate (per 100,000)	2018 Crime Rate Est. (per 100,000)	Percent Change in Crime Rate Est. (2017-2018)
New York ⁶	9,656.4	1959.9	1,937.1	-1.2%
Los Angeles ⁷	9,167.4	3,236.0	3,124.7	-3.4%
Chicago ⁸	11,062.3	4,297.5	4,159.3	-3.2%
Houston ^{9†}	11,255.9	5165.2	Unavailable	Unavailable
Philadelphia ¹⁰	7,145.5	3,936.0	3,963.4	0.7%
Las Vegas ¹¹	7,070.7	Unavailable	Unavailable	Unavailable
Phoenix ¹²	10,704.4	4,362.2	Unavailable	Unavailable
San Antonio ¹³	12,430.8	5,468.8	6,346.6	16.1%
San Diego ¹⁴	9,105.9	2,170.3	1,643.3	-24.3%
Dallas ^{15‡}	15,386.5	3,897.6	Unavailable	Unavailable
San Jose ¹⁶	4,816.1	2,789.9	2,900.8	4.0%
Austin ¹⁷	11,653.9	3,518.6	3,362.2	-4.4%
Charlotte ¹⁸	12,496.5	4,478.6	Unavailable	Unavailable
Jacksonville ¹⁹	10,352.8	Unavailable	Unavailable	Unavailable
San Francisco ²⁰	9,604.3	6,841.4	6,030.9	-11.8%
Indianapolis ²¹	6,637.2	Unavailable	Unavailable	Unavailable
Columbus ²²	9,804.9	Unavailable	Unavailable	Unavailable
Fort Worth ²³	14,880.5	3,710.4	3,378.8	-8.9%
El Paso ²⁴	11,189.7	Unavailable	Unavailable	Unavailable
Seattle ²⁵	12,507.7	5,854.5	5,993.7	2.4%
Denver ²⁶	7,676.1	4,243.7	3,964.6	-6.6%
Louisville ²⁷	Unavailable	4,743.7	4,396.6	-7.3%
Detroit ²⁸	12,030.3	6,493.4	6,115.8	-5.8%
Washington, D.C. ²⁹	10,724.3	5,041.1	4,867.8	-3.4%
Boston ³⁰	11,756.9	2,715.8	2,591.9	-4.6%
Nashville ³¹	7,768.2	4,883.2	4,915.9	0.7%
Memphis ³²	9,736.3	Unavailable	Unavailable	Unavailable
Oklahoma City ³³	10,516.3	4,466.7	Unavailable	Unavailable
Baltimore ³⁴	10,502.8	6,892.8	5,707.5	-17.2%
Portland ³⁵	11,003.6	6,125.3	6,274.7	2.4%
TOTAL				-2.5%

Source: Police department and city reports. See endnotes for specific sources. Data from 1990 are from the UCR Data Tool.³⁶ The authors were unable to obtain complete data from cities marked "Unavailable." Cities are ordered by estimated 2017 population size.³⁷

* Rates of change in Tables I and II are calculated based on raw, unrounded estimates, whereas estimates for rates are presented as rounded in the Tables. For example, in Table II, San Jose's murder rate appears the same in 2017 and 2018 but unrounded numbers yield a slight percent change.

† Houston is currently updating its crime data reporting system and had not finished by the time of publication. Accordingly, crime data could not be obtained for the city, though homicide data were obtained from other sources.

‡ The authors initially collected crime data from the Dallas Police Department, but the site was inaccessible during the final round of fact-checking and the data could not be verified. The authors obtained murder data from other sources.

Table 2: Murder in the 30 Largest Cities (2017-2018 Est.)

	2017 Total Murders	2018 Total Murders	Percent Change in Murder	1990 Murder Rate (per 100,000)	2017 Murder Rate (per 100,000)	2018 Murder Rate Est. (per 100,000)	Percent Change in Murder Rate Est. (2017-18)
New York	292	307	5.1%	30.7	3.4	3.5	4.5%
Los Angeles	281	266	-5.3%	28.2	7.0	6.6	-6.1%
Chicago	653	501	-23.2%	30.5	24.1	18.6	-23.0%
Houston	269	304	13.0%	34.8	11.5	12.8	11.1%
Philadelphia	316	319	0.9%	31.7	20.1	20.2	0.6%
Las Vegas*	205	149	-27.4%	12.8	12.6	9.0	-28.8%
Phoenix	157	190	20.8%	13.0	9.5	11.3	18.0%
San Antonio	124	136	9.8%	22.2	8.2	8.8	7.6%
San Diego	35	26	-25.0%	12.2	2.5	1.8	-26.0%
Dallas	167	183	9.6%	44.4	12.5	13.4	7.8%
San Jose	32	32	0.0%	4.5	3.1	3.1	-0.9%
Austin	25	33	33.3%	9.9	2.6	3.3	30.1%
Charlotte	86	48	-44.7%	23.5	9.4	5.1	-45.9%
Jacksonville	109	Unavail.	Unavail.	27.6	13.4	Unavail.	Unavail.
San Francisco	56	37	-34.1%	14.0	6.4	4.1	-34.9%
Indianapolis	156	198	26.8%	12.0	17.9	22.6	26.2%
Columbus	142	128	-9.8%	14.1	14.0	12.4	-11.5%
Fort Worth	70	57	-17.9%	29.0	8.0	6.4	-20.1%
El Paso	19	20	7.7%	6.6	2.8	3.0	7.3%
Seattle	27	33	23.1%	10.3	3.7	4.5	19.7%
Denver	59	67	12.8%	14.3	8.3	9.2	10.6%
Louisville	109	81	-26.1%	Unavail.	15.9	11.7	-26.3%
Detroit	267	247	-7.6%	56.6	39.8	37.0	-7.0%
Washington, D.C.	116	159	37.2%	77.8	16.7	22.5	34.8%
Boston	57	59	3.0%	24.9	8.3	8.5	1.6%
Nashville	110	80	-27.5%	13.4	16.3	11.6	-28.5%
Memphis	181	170	-6.0%	31.9	27.7	26.1	-5.9%
Oklahoma City	81	49	-40.0%	15.3	12.5	7.4	-40.9%
Baltimore	342	270	-21.2%	41.4	55.8	44.2	-20.7%
Portland	24	26	9.1%	7.5	3.7	4.2	13.2%
TOTAL							-7.3%

Source: Police department and city reports. See Table 1 endnotes for specific sources. Data from 1990 are from the UCR Data Tool.³⁸ Cities are ordered by estimated 2017 population size.

* Las Vegas's 2017 homicide count includes deaths due to the October 1, 2017 mass shooting outside of the Mandalay Bay Resort and Casino. Because this shooting was an isolated, tragic, and unanticipated occurrence, 2018 projections were calculated using 2017's baseline homicides excluding the 58 mass shooting deaths.

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- ⁹ The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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- ¹¹ Email from Public Information Office, Las Vegas Metropolitan Police Department, to author (Aug. 22, 2018, 13:42 EST). Lacking 2017 year-end data, the authors cannot estimate 2018's year-end crime rate.
- ¹² The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.
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¹⁸ The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See “American Violence,” AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.

¹⁹ The authors were not able to obtain complete, reliable data from this city or other sources.

²⁰ “Compstat: Citywide Profile,” San Francisco Police Department, last accessed Sep. 12, 2018, http://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/CompStat/July_CompStat_AllDistricts%281%29.pdf.

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²² The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See “American Violence,” AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.

²³ “2nd Quarter Crime Report; April-June 2018,” Fort Worth Police Department, last accessed Sep. 12, 2018, <https://online.flippingbook.com/view/1012029/8/>.

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³² The authors were not able to obtain complete, reliable data from this city. However, the authors were able to obtain homicide data from other sources. See “American Violence,” AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page,

the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.

³³ The authors are in the process of obtaining complete, reliable data for this city but had not finished by the time of publication. However, the authors were able to obtain homicide data from other sources. *See* "American Violence," AmericanViolence.org, Marron Institute of Urban Management, New York University, updated September 2018, <http://www.americanviolence.org>. From the main page, the authors selected a custom time interval, from January 2017 through June 2018, and compared year-to-date figures from January to June 2017 to the same period in 2018.

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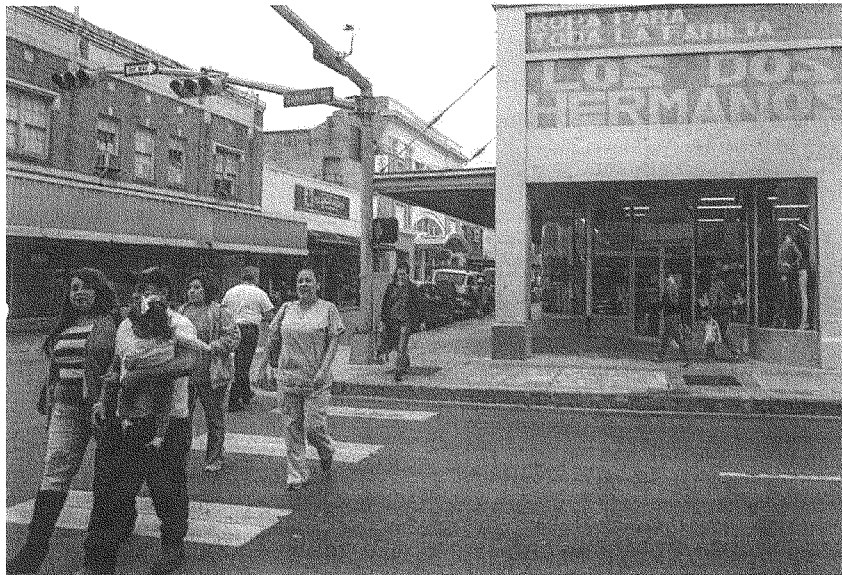
³⁷ Population estimates were created using the same methodology as previous reports. For more information, and detailed explanation of how data was compiled and analyzed, please see the methodology.


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Border Communities Have Lower Crime Rates

Texas counties along the Rio Grande are relatively safe, state and federal crime statistics show, and they seem to be getting even safer as more law enforcement resources pour into the area.

BY JULIÁN AGUILAR AND ALEXA URA FEB. 23, 2016 6 AM



There are many busy retailers near the international bridge where pedestrians may cross in and out of the United States, in historic downtown Laredo, Tx.  Spencer Selvidge



**BORDERING ON
INSECURITY**

The Texas Tribune is taking a yearlong look at the issues of border security and immigration, reporting on the reality and rhetoric around these topics. [Sign up to get story alerts.](#)

LAREDO — It's a scene repeated often in Texas towns along the Rio Grande: a white U.S. Border Patrol van sporting the agency's trademark green stripe

competing with a Laredo Police Department car at a busy Stripes convenience store.

Just two miles away, a nondescript orange building tucked between a bus stop and the Mariscos El Pescador restaurant houses divisions of the FBI and the Drug Enforcement Agency. Across the street, dozens of Border Patrol SUVs and trucks fill a block-long parking lot.

If nothing else, the money and manpower being deployed to keep unauthorized immigrants, terrorists and drugs out of the country have flooded Texas border counties with law enforcement. Crime has dropped, and the Texas side of the border apparently is now safer than the state's larger cities. But a political tug-of-war about the security needs of the region remains full of fiery rhetoric and competing views about how safe border communities really are.

"It's much safer than say San Antonio, Houston or Dallas," said Democratic state Sen. Juan "Chuy" Hinojosa, who represents a McAllen-based district. "It's certainly much safer than Washington D.C. or Chicago."

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State and federal crime data backs those claims: Violent crime rates have remained the same or dropped in many border cities in the last five years for which data is available.

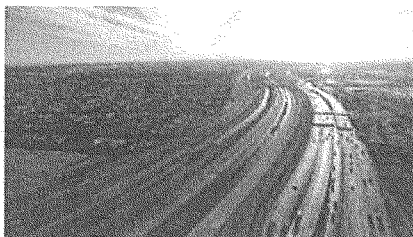
In 2014, Houston's violent crime rate — counting murder, non-negligent manslaughter, rape, robbery and aggravated assault — stood at 991 crimes for every 100,000 residents, according to the FBI's annual Uniform Crime Report. The violent crime rate in Dallas was 665 crimes for every 100,000 residents.

Border communities like Laredo, El Paso, Edinburg and Brownsville all saw fewer than 400 crimes for every 100,000 residents.

Brownsville is one of the few cities where crime rates, though relatively low, have increased recently, rising from 253 crimes for every 100,000 residents in 2009 to 304 in 2014.

Meanwhile, the violent crime in El Paso, the most populous border town, has dropped from 457 crimes for every 100,000 residents in 2009 to 393 in 2014. For years, the West Texas city has been declared the safest of its size, according to Congressional Quarterly.

The FBI report includes crimes voluntarily reported by local law enforcement agencies across the country, and the agency warns against using the data to directly compare cities. Rankings of cities by crime rates “ignore the uniqueness of each locale” and the local factors that influence crime, the bureau says.



Enlargephoto by: Ivan Pierre Aguirre
Seen is an aerial photo of the Rio Grande between El Paso and Ciudad Juarez on Monday, February 8, 2016, in Juarez, Chihuahua.

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But to some on the ground, the influx of agents, troopers, deputies and guardsmen to the border has had a noticeable impact.

“You’ve got to understand, we’re a border city so we have a lot of local law enforcement,” said Ponce Treviño, Webb County Jail commander. “You have Laredo [Police Department]. You have Webb County Sheriff’s Office. You’ve got the constables. Then you have the federal government here. You’ve got customs. You’ve got border patrol. You’ve got ICE. You have a big influx of law enforcement and there’s officer presence, so that makes the crime rate a lot lower.”

And it’s quite a law enforcement stew — local police and sheriff’s departments, Border Patrol agents, DPS troopers, U.S. Immigration and Customs Enforcement officials, the FBI, DEA and the Texas National Guard, among others.

Border Patrol staffing in the Southwest Border section — which includes Arizona, California, New Mexico and Texas — grew from 17,408 in federal fiscal year 2009 to 18,127 in fiscal year 2014. The count of agents in the region has more than doubled since 2001.

At least 100 more DPS troopers have been sent recently to patrol the Rio Grande Valley after graduating from an abbreviated trooper academy — part of an effort to permanently add 250 more troopers to the area by the end of the year.

Approximately 5,600 peace officers work at county sheriff and constable offices and local police departments along the border. More than half of those officers work for police departments in four counties: Hidalgo, El Paso, Cameron and Webb.

Home to Edinburg and McAllen, Hidalgo County alone has 1,566 pairs of boots on the ground even without federal and state law enforcement assigned to patrol the area. There are also about 100 Texas National Guard soldiers that remain as part of Texas' 2014 deployment. And federal agencies — ICE, DEA and the FBI — have long had their own agents sprinkled along the border.

Much of the recent law enforcement surge has been pushed by Republicans and opposed by Democrats, prompting some curious political anomalies. Republicans have fought for — and largely succeeded in obtaining — record expenditures for border security, but they continue to argue the border is unsafe.

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Democrats argue against "militarizing" the border but acknowledge the influx of law enforcement has made it a safer place.

"When you have more and more visibility, there's obviously a deterrent for those who commit crimes," Hinojosa said. "We're dealing with some serious problems on the border ... that's why this last [legislative] session we focused on law enforcement that will be effective."



[Enlarge](#)

An influx of state and federal law enforcement is credited with lowering crime along the Texas border.

Despite the crime statistics, border officials say they must continually push back against widespread perceptions that their communities are caught up in the violence wracking towns across the Rio Grande in Mexico.

Republicans don't help when they argue for more resources by portraying the area as a hotbed of narco terrorism and immigrant crime. But they contend the border is

an entry point from which crime spreads throughout the state.

Gov. Greg Abbott signed a sweeping, multimillion-dollar border security measure last June flanked by Republican lawmakers at a Texas DPS office in Houston. Abbott said the ceremony's location was appropriate because a porous border means the entire state — not just the stretch of cities hugging the Rio Grande — is in peril.

For others, perceptions of unsafe conditions in border communities are driven by the incorrect assumption that undocumented immigrants are more likely to commit crimes than the general population.

"If people connect undocumented immigration with safety, they would be wrong saying that because they pass through the border the border communities are less safe," said Guadalupe Correa-Cabrera, a public affairs and security studies professor at the University of Texas-Rio Grande Valley.

A Texas Tribune analysis of incarceration and immigration records found there is little evidence that undocumented immigrants commit crimes at higher rates than the general population and they appear to be underrepresented in both Texas prisons and Texas' death row.

"I really believe that the people that make it to our community from other countries including Mexico — and in El Paso's case primarily Mexico — are here to get ahead, to work hard, to do well," said Congressman Robert "Beto" O'Rourke, D-El Paso. "They want to see their kids succeed, they want to integrate. Part and parcel with that is staying out of trouble."

For many border residents, concerns in Austin about the area's safety don't reflect their daily reality. But many accept that perceptions weigh heavily into the rhetoric condemning the area.

Jim Ward, a fifth-generation El Pasoan and local business owner, said that he thinks his hometown is safe. But he fears what would happen if one person entered the United States through Mexico with the intent of doing serious and widespread harm.

"I think everybody can see how quickly our border would change if one person comes through and does something," Ward said. "Then it's not going to be about farm workers anymore, it's not going to be about maids. It's going to be about terrorists. I have a real fear that this will turn into a police state pretty quickly."

This story is part of The Texas Tribune's yearlong Bordering on Insecurity project.

Editor's note: A photo that originally accompanied this story inadvertently depicted a Border Patrol agent whose status with the agency has changed since the photo was taken.

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Amid 'crisis' rhetoric, local leaders defend border region from misconceptions

Staff Reports - January 10, 2019



A sign that reads "Welcome to McAllen 7th safest city in America" is seen on the Cine El Rey marquee on Wednesday, Jan. 9, 2019, in McAllen. (Joel Martinez | jmartinez@themonitor.com)

MOLLY SMITH AND CRISTINA M. GARCIA | STAFF WRITERS

In preparation for President Donald Trump's first visit to the Rio Grande Valley, Cine El Rey, the historic theater located in downtown McAllen, wanted to send a message.

"Welcome To McAllen 7th Safest City in America," the theater's marquee reads, citing a 2015 ranking by the financial technology website SmartAsset.

While the website assessed both crime rate and air quality when ranking U.S. cities in terms of safety, it reflects a point local leaders, law enforcement agencies and residents believe is overlooked in the president's rhetoric about a "security crisis" on the border: the U.S. side is quite safe.

"You're almost more than eight or nine times likely to get murdered in Houston than you are along the border," McAllen Police Chief Victor Rodriguez said Wednesday as he reviewed a spreadsheet of violent crime rates for Texas cities.

The 2017 rates, compiled by Texas Department of Public Safety data, calculate the number of offenses per 100,000 people.

McAllen, Rodriguez said, experienced its lowest crime rate in 34 years in 2018, and the city's crime rate decreased for the ninth consecutive year — detailed data the police department plans to release late next week. The Hidalgo County Sheriff's Office, which investigated three murders in 2018, also saw violent crime decrease.

The chief emphasized that the increased law enforcement presence along the border has aided in the region's low crime rate, which is contrary to public misconception that the heightened presence resulted from increased levels of crime.

"The (state and federal) responses have been in part responsible for crime decreases in our community here," Rodriguez said of efforts to secure the border since Sept. 11, 2001, which include elevated levels of state troopers and U.S. Border Patrol agents in the Valley.

"Having people understand that McAllen, USA is not Mexico ... that the corruption and the criminal justice system in Mexico is not what happens on the U.S. side" is key to changing national and international perspectives of border communities, Rodriguez said.

The police chief's sentiment is shared by mayors of Hidalgo County cities who routinely grapple with correcting false understandings of the border.

"Hidalgo is one of the safest cities in the county (and) these do not have a lot of criminal activity; in fact, we don't have criminal activity whatsoever," said Hidalgo Mayor Sergio Coronado.

The city of Hidalgo shares a border with Reynosa, Mexico.

Donna Mayor Rick Morales agrees the city he represents remains safe.

The president, ahead of November's midterm election, deployed the U.S. Army to the border, stationing them near the Donna-Rio Bravo International Bridge and inside a building previously housing Craig's furniture in neighboring Weslaco. While it's not unusual for residents to maneuver around U.S. Border Patrol vehicles, the Humvees driven by troops added to traffic on roads and Interstate 2, the region's main thoroughfare.

"At first, people were kind of wondering, 'What are the troops doing here,'" Morales, a self-identified conservative independent, said. "The people of Donna understand that they have a job to do (while deployed to the border)."

Though mayors of border cities in the heavily Democratic region have not been invited to meet with the president, U.S. Sen. John Cornyn, R-Texas, will host a roundtable with a handful — including those of McAllen, Hidalgo and Donna — to update them on the border security debate in Congress.

Morales, though, said it would benefit the area to have a discussion with the president, "and put all that on the table; put the border wall as one of the things to discuss, trade, border security," Morales said, stopping short of addressing "political issues going on in Washington."

Staff Reports

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Sheriff: Crime dropped 10 percent in rural Hidalgo County last year

Category: Local News

Published: Saturday, 02 February 2019 20:00

Written by Dave Hendricks



Crime dropped nearly 10 percent last year in rural parts of Hidalgo County.

Every category of crime tracked by the FBI Uniform Crime Reporting Program dropped in 2018, according to Hidalgo County Sheriff's Office data. Deputies handled just four murder cases, the lowest number during the past decade.

"Hidalgo County is one of the fastest growing areas of the state of Texas," said Sheriff J.E. "Eddie" Guerra, adding that more people often correlates with more crime. "But yet with more population we not only kept the crime in check, we also lowered the crime rate."

Guerra summarized the crime statistics Tuesday during the Hidalgo County Commissioners Court meeting in Edinburg.

Aggravated assault cases dropped nearly 16 percent from 2017 to 2018, according to Sheriff's Office data. Rape dropped nearly 13 percent. And robbery dropped nearly 1 percent — from 103 cases in 2017 to 102 cases in 2018.



Rural parts of Hidalgo County served by the Sheriff's Office had four murders last year, down from 23 in 2017.

Most murder cases result from domestic violence and street-level drug activity, Guerra said. The Sheriff's Office aggressively targets street-level dealers. Addressing domestic violence is more difficult.

The Sheriff's Office, though, plans to tackle the problem with a \$260,000 grant. Hidalgo County will provide an additional \$106,000 from forfeiture funds.

Grant money will pay four deputies and a victims assistance coordinator. They'll conduct follow-up visits after every domestic violence call, assisting victims with protective orders and referring them to appropriate resources.

"And just try to break that chain of domestic violence," Guerra said.

The Sheriff's Office also reported a significant decrease in property crime.

Auto theft cases dropped 19 percent. Burglary dropped nearly 13 percent. And theft, which accounted for more than half the total crimes tracked by the Uniform Crime Reporting Program, dropped nearly 6 percent.

Information sharing is key to reducing property crime, Guerra said. Deputies assigned to specialized units share information with patrol deputies, which allows them to quickly identify and arrest criminals.

"I think this past year we probably caught more burglars in progress than we've ever had," Guerra said. The 2018 crime statistics aren't an anomaly.

From 2010 to 2017, when the population of Hidalgo County increased from about 775,000 to nearly 861,000, according to the U.S. Census Bureau, the number of property crimes dropped every year.

The number of violent crimes also gradually decreased.

Despite the long-term drop in crime, border security rhetoric often paints the Rio Grande Valley as a dangerous place.

"I get frustrated," Guerra said, adding that some descriptions make Hidalgo County sound like the Wild West. "I'm the sheriff, and I'm going 'Well, where? What community are you talking about?' It's definitely not happening in our community. In any of our communities."

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Chairman NADLER. The gentlelady is now recognized for 5 minutes.

Ms. GARCIA. So, Acting Attorney General, what is it in your mind that leads you to conclude that the border region is crime-ridden when these documents that I just entered into the record clearly show that Del Rio, Brownsville, El Paso, all the areas in the border region—and, in fact, even El Paso is listed in the top 29 cities where crime has gone down that you quoted in your written testimony—if all of these stats show differently, why are you still insistent that this is a crime-ridden area? And just, please, a short answer because I have only got 5 minutes.

Mr. WHITAKER. I don't recall saying today that the border region is crime-ridden, but I will answer your question as fulsomely as I can, and that is that illegal immigration through our southern border is dramatically and negatively impacting the crime rate in our cities. It would be lower if we didn't have illegal immigration. I point to the example of Mollie Tibbetts, for example—

Ms. GARCIA. You are talking about other cities, not the cities that are, in fact, in the border areas.

Mr. WHITAKER. Well, I think you would agree with me that most illegal immigrants that come into our southern border don't reside at the border regions, that they transit through there and then make their way to other parts of our country.

Ms. GARCIA. Well, I know many come to Houston because we have got good jobs, and we are an open city. But I heard you say earlier, and maybe the word crime-ridden was not the exact word you used, but it was alluding to the fact that the border areas had a lot of crime, and I just simply don't agree with you.

But let me move on to another topic and following up some questions about the family separation policy or the zero-tolerance policy. You said earlier in answer to a question about some of your background that you were by General Sessions' side for 4 years side-by-side, and you were aware of everything in the Justice Department's separation policy. Is that true?

Mr. WHITAKER. I served as chief of staff for 13 months, and I am familiar with the zero-tolerance policy, yes.

Ms. GARCIA. But you said you were with him side-by-side, so can you tell us if you were in the room when it happened when the actual zero-tolerance policy was hatched?

Mr. WHITAKER. I participated in discussions about the zero-tolerance policy internally, but, again, I am not going to talk about the internal deliberations. The decision was to issue a zero-tolerance policy.

Ms. GARCIA. But who is the brain child of the policy? Who hatched it? I mean, where did it come from? We have never had it before to the level it is being executed now.

Mr. WHITAKER. It was General Sessions' decision to implement, and he signed the memo implementing it and distributed that to our border district U.S. attorneys.

Ms. GARCIA. All right. So let me go on and ask this question: How many children are still separated from their families as we sit here today?

Mr. WHITAKER. That is a number that only DHS and HHS would know. As I sit here, the Department of Justice isn't involved in

handling children that are encountered at the border, whether as a family unit or as unaccompanied minors.

Ms. GARCIA. So you have no idea how many children might be—you have not seen any documents cross your desk from DHS or OOR or anybody else?

Mr. WHITAKER. Again, those are different departments within the—

Ms. GARCIA. I know that, sir, but I know that you are the Acting Attorney General and you get a lot of reports, a lot of documents, a lot of data. You have not seen anything to give us any idea just how many children have been torn away from the arms of their mothers?

Mr. WHITAKER. No, I would have to refer you to HHS and DHS. Again, when—

Ms. GARCIA. Do you know how many have been reunited with their families?

Mr. WHITAKER. Again, Congresswoman, those are not statistics that I am involved in because those cases—

Ms. GARCIA. Again, you don't have to be the one to write the little finger sticks counting the children. I just want to know if you have seen anything cross your desk or any member of your staff so that Americans who are—just find this policy to be abhorrent and inhumane, they have an idea as to when the children will ever be reunited with their families; you cannot tell us that today?

Mr. WHITAKER. No, I would have to refer you to HHS and DHS, which would be responsible for the parts of the process because once we have received individuals for prosecution under the zero-tolerance policy, we only deal with the adults, and we don't keep track—

Ms. GARCIA. One last question because I am running out of time. At the State of the Union, the President said he was going to make, and I am paraphrasing, it a priority to make sure that people with preexisting conditions were protected. Does that mean that you are going to drop all the ACA litigation that you are involved in?

Mr. WHITAKER. As you know, Congresswoman, the Affordable Care Act litigation is ongoing.

Ms. GARCIA. The question is, are you going to be willing to settle it? Are you going to be able to drop some of that since the President is changing priorities and direction for his Department of Justice?

Chairman NADLER. The time of the gentlelady has expired.

The witness may answer the question.

Mr. WHITAKER. We have a unitary executive, and if the President sets a policy and issues a policy directive, we will follow that policy.

Ms. GARCIA. Thank you.

Chairman NADLER. Mr. Neguse.

Mr. NEGUSE. Mr. Attorney General, thank you for being here.

I also want to thank my colleague, the distinguished gentleman from South Dakota, for his support of criminal justice reform and looking forward to working with him.

Mr. ARMSTRONG. North Dakota.

Mr. NEGUSE. North Dakota. My apologies. I look forward to working with him on criminal justice reform.

I want to talk about another policy matter with respect to cannabis. I represent the State of Colorado. In Colorado, recreational use of marijuana was legalized in 2014. Today, more than half the States have legalized either the recreational or medical use of marijuana.

Researchers at the University of Colorado, which I am proud to represent, are working hard to understand the health effects. They are studying promising approaches that use marijuana to relieve chronic pain and the symptoms of Parkinson's disease.

In August of 2016, I understand this is before you were at the Department of Justice, Mr. Attorney General, the DEA took a big step towards improving scientific research on marijuana when it submitted a request in the Federal Register for applications to produce federally approved research-grade marijuana. Several institutions have submitted an application but have yet to receive a response. What is the status of those applications, if you might know, and do you know if the Department of Justice and the DEA intend to support legitimate cannabis research that could help protect the health and safety of our citizens?

Mr. WHITAKER. For the 3 months that I have been the Acting Attorney General, this is an issue that I have been aware of, and I have actually tried to get the expansion and the applications out. We have run into a very complicated matter regarding a treaty that we are trying to work around. We have some international treaty obligations that may not allow the way the marijuana has to be handled from the research facilities to the researchers—or the grow facility to the researchers. So it is something that I am very aware of. It is something I am trying to push. Unfortunately, I have 6 days left in this chair at the most. I don't know if I am going to successfully get to it, but I understand the concern and know that we are trying to make it work.

Mr. NEGUSE. I appreciate that and applaud that. And if I could get your assurances that, within the 6 days, if you could just follow up with the Department staff to follow up with our office in writing, it would be incredibly helpful for us as folks reach out.

Mr. WHITAKER. We will try to get an answer as to the current status, but my recollection where I last found it is that—

Mr. NEGUSE. That is sufficient. Thank you, Mr. Attorney General.

You mentioned earlier that the public essentially learned that Attorney General Sessions was fired on November 7, 2018, by tweet. And you were appointed via that same tweet. When did you first learn that Mr. Sessions was fired, would be fired?

Mr. WHITAKER. I learned on November 7th, if that is your question. I mean, I, you know—

Mr. NEGUSE. It is.

Mr. WHITAKER. Yeah, okay.

Mr. NEGUSE. So you learned by virtue of that same tweet that we all learned.

Mr. WHITAKER. Yes. I would suggest—the only point I would put on that, Congressman—I am sorry to interrupt—is that Mr. Sessions resigned, you know, sent in his resignation letter.

Mr. NEGUSE. Understand. Did you have any conversations with folks at the White House prior to November 7, 2018, about Attor-

ney General Sessions resigning or being fired, however you would characterize that?

Mr. WHITAKER. As is the longstanding practice of the Department of Justice and the executive branch generally, the President is entitled to confidential communications, and while I am not confirming or denying the existence of any conversation, I am not going to talk about my private conversations with the President of the United States.

Mr. NEGUSE. We will follow up on that front—or I would ask the chairman to take that up in a deposition to the extent one is noticed.

All right. A question around—you mentioned earlier in some of your testimony around the reasoning behind your appointment that one of the reasons you believed in your view that you were appointed was—to the position of Acting Attorney General—was your experience as a former U.S. attorney, correct?

Mr. WHITAKER. Yes, correct. I spent 5 and a half years as a United States attorney for the Southern District of Iowa.

Mr. NEGUSE. Yes, sir. And you also mentioned that one of the reasons in your view that you believed you were appointed Acting Attorney General was that you have been at the Department of Justice for the last year or so working as the chief of staff to Attorney General Sessions, side-by-side I think you mentioned.

Mr. WHITAKER. Yes. I knew all of the active matters that we weren't recused from, obviously. I knew all the policies that we had not only implemented but that were in progress. I knew all the people and the individuals both inside the Department of Justice and the interagency.

Mr. NEGUSE. I understand. I want to reclaim my time here. So I appreciate that, and I guess the question I have is I am sure you are aware that Deputy Attorney General Rod Rosenstein is a former U.S. attorney, that he also has been at the Department of Justice, that he knows the people, he knows the matters and that, under the Vacancies Act, he was next in line in succession to be appointed Attorney General in the occasion in which that office was vacant occasioned by Mr. Sessions' termination or resignation or what have you. And so I am trying to understand—were you surprised that you were appointed rather than Deputy Attorney General Rosenstein, that the ordinary rules of succession weren't followed?

Mr. WHITAKER. It has been an honor of a lifetime to serve as the Acting Attorney General, and I have, as I mentioned, 6 days left, and I am going to take full advantage of that, including enjoying this hearing, but, you know, there are two different statutes that applied to the vacancy that was created by General Sessions' letter of resignation, and one was the succession statute by the Department of Justice, and as you know, the other one is the vacancy reform act, which has been passed by Congress. And so my appointment, as is outlined in the 20-page OLC opinion, is legitimate and has precedent.

Mr. NEGUSE. And I am not, with respect to the Attorney General, I was not referencing the legitimacy. The point of what I was saying is, under the Vacancies Act, 28 U.S.C. 508, the Deputy Attorney General is the first assistant to the Attorney General, and so,

therefore, would be the appropriate designee to fill that role, but with that, I yield back the time.

Chairman NADLER. The gentleman has yielded back and——

Mr. WHITAKER. Mr. Chairman? Mr. Chairman? Mr. Chairman, I am sorry.

Chairman NADLER. Yes.

Mr. WHITAKER. I just wanted to address that issue really quickly just so we are all on the same page. The first assistant together with any other Senate-confirmed individual together with anyone that served 90 days or less, 365 days at a senior position is eligible to be, and there is really no ranking or hierarchy of those three positions. Obviously, I am in the third bucket as chief of staff. I just wanted to make sure we were clear on that.

Chairman NADLER. Thank you.

Mrs. MCBATH.

Mrs. MCBATH. Thank you, Mr. Chairman.

Mr. WHITAKER, I am completely aware that North Carolina and Georgia were dealing with similar problems with voter suppression, and I can actually tell you I witnessed voter suppression firsthand in Georgia even as I was running in my own election.

Is it fair to say that the Department was not remotely interested in securing the elections in North Carolina, rather that its intent was abusing its subpoena powers and wielding its mandate to protect our elections in a thinly veiled effort to suppress minority elections and populations?

Mr. WHITAKER. The Department of Justice is committed to upholding the voting rights of all Americans.

Mrs. MCBATH. I understand that. But what I need you to clarify for me is what actions were taken for all of the voting rights to be upheld, because you have stated earlier—your statement earlier was that you were side-by-side with Attorney General Sessions advising him on all aspects of the Department, yet you don't know—but at this point, you are saying you don't appear—you do not suspect that there was any voter suppression. So what I am asking is that, do you not know of any voter suppression, or do you not know whether or not those laws are being enforced?

Mr. WHITAKER. I don't believe I said that I am not aware that there might have been voter suppression. Did I—that is something you heard me say?

Mrs. MCBATH. I am just asking you, might it be the case that you were not aware of any voter suppression?

Mr. WHITAKER. Well, at the Department of Justice, I sit atop a massive organization, as you can imagine, and cases regarding voter suppression, voter fraud, or really any enforcement of the Voting Rights Act or other statutes is done by U.S. attorneys and FBI agents that are in the district doing those cases. And so it would be unusual that I would have specific knowledge about any of the evidence in those cases. So, you know, obviously, we do our cases free of political interference, and if there is evidence of, as you suggest, voter suppression, and we can predicate investigation, that is something we will seriously look at.

Mrs. MCBATH. So did the Department assess the need for election monitors in the 2019 elections?

Mr. WHITAKER. I think I—I mentioned in my opening statement that we sent out 35 Civil Rights Divisions teams to I believe 19 States, if I remember right. I might be wrong, and I would refer you back to my statement, but I—we did send out election monitors from the Civil Rights Division.

Mrs. MCBATH. Okay. Because I was in Georgia, and I can tell you, I saw the problems, but I didn't see the election monitors. Did you send any that you are aware of?

Mr. WHITAKER. As I sit here today, I do not know if Georgia received what I am describing. Obviously, we would have—we would have—the Civil Rights Division would have determined where those assets could be deployed. I know in the 2004 election when I was U.S. attorney, the Civil Rights Division sent, I think, three or four lawyers to my office to monitor the elections in Des Moines, so I wouldn't be surprised that they did send election monitors to Georgia.

Mrs. MCBATH. Well, I can tell you, I—I really think that we needed them, and I am very disappointed in the numbers that we received. We needed far more help than we—than we got.

But also, on February 1, the committee sent you a letter asking again for information on the Department's voting rights enforcement, and these questions were asked by members during the 115th Congress but were never answered. Will you commit to providing this information for this committee?

Mr. WHITAKER. We try to respond to all the letters we receive from Congress. Obviously, February 1 was I believe only a—a week or so ago. I have kind of lost track of what day it is, but yeah. I mean, we will—we will look at that letter and we will respond consistent with the way we respond to requests from Congress. But I mean, these are important issues, and I—and I share your concern about some of these places where there is alleged voter suppression. And I know that we are going to enforce the voters rights, the Voting Rights Act robustly, and we will continue—again, if—if there is evidence, we should get that to our FBI and the people that enforce these laws so we can properly predicate an investigation.

Mrs. MCBATH. Okay. Well, thank you for that, because if we don't get answers, I promise you, we will keep asking.

Another question that I have is what steps did the Department take to support election security efforts during the 2018 election, specific efforts?

Mr. WHITAKER. Are you talking about the actual voting devices—

Mrs. MCBATH. Yes.

Mr. WHITAKER [continuing]. Or—the responsibility for the security of the voting devices, the machines, is actually the responsibility of the Department of Homeland Security.

Mrs. MCBATH. Uh-huh. Can you tell this committee what those—what those responsibilities were, those steps that were actually taken? Because I can tell you, there were many, many instances in Georgia we saw over and over again where people were not allowed to vote.

Chairman NADLER. The time of the gentlelady has expired. The gentleman—the witness may answer the question.

Mr. WHITAKER. Again, if there is specific evidence that crimes have been committed, we would be very interested in that at the Department of Justice.

Mrs. MCBATH. Thank you.

Chairman NADLER. Thank you.

Ms. Stanton—Mr. Stanton.

Mr. STANTON. Thank you very much, Mr. Chair.

Mr. Whitaker, thank you for appearing before us here today. Your time as Acting Attorney General is near end. After that, you may or may not be working for the Department of Justice or another position within the Trump administration, but there are, of course, several congressional investigations that involve yourself. And I want you here today to pledge that you will answer any Inspector General questions and cooperate fully with his investigations even after you depart from your current position.

Mr. WHITAKER. Are you talking about the DOJ Office of Inspector General?

Mr. STANTON. Yes, sir. The Justice Department's Inspector General is currently considering several congressional requests for information and investigations that involve you. Since you will be leaving this position soon, I want you to commit here today in front of this committee that you will answer the IG's questions and cooperate fully with those investigations.

Mr. WHITAKER. I am happy to commit to that. I will cooperate with the Inspector General. Michael Horowitz is a fine DOJ career employee. I have the utmost respect for him. I think he has done exceptional work.

Mr. STANTON. Excellent. Thank you so much.

The impact of the government shutdown on the functioning of the Department of Justice, the law enforcement functions, is it fair to say that the shutdown was devastating on the ability of the Department to do their work?

Mr. WHITAKER. The shutdown really was a difficult time at the Department of Justice, because most of our employees are law enforcement and are—you know, are expected in their performance of their duties, and so they showed up every day like dedicated public servants and did their job knowing that you here in Congress would ultimately pay them and come to some resolution of the shutdown.

Mr. STANTON. We appreciate your recognition of that. I think every person up here, in a bipartisan way, would agree that the work of the rank-and-file members of the Department of Justice, FBI, the other law enforcement officials is outstanding. It seems appropriate, then, that the Department did issue a memorandum saying that, during the time of the shutdown, ancillary functions of the Department that involve travel would be not allowed. Is that accurate?

Mr. WHITAKER. I don't have that memo in front of me, but that is consistent with my understanding of our guidance in that regard.

Mr. STANTON. On January 13, 2019, in the middle of the government shutdown, did you travel to give a speech to The Heritage Foundation?

Mr. WHITAKER. Congressman, this is an important question, but I want to be very clear. I have 24/7 security detail that—that drives me everywhere, and so the term “travel,” I am not sure what you mean. I went to Capitol Hill to give a speech to The Heritage Foundation, yes.

Mr. STANTON. Okay. Would you consider that activity, a speech to The Heritage Foundation, to be an ancillary function of the Department?

Mr. WHITAKER. You know, Congressman, again, I had no other way to get to a speech that I had committed to give before the shutdown.

Mr. STANTON. Thank you. The speech involved the topic of RFRA and the Commemorate RFRA. In October 2017, during the time that you were Chief of Staff to the Attorney General, the Attorney General's office did issue guidance on the—on Federal law for religious liberty. The guidance involved expansion of exemptions to RFRA at a religious liberty summit held in the summer of 2018. Attorney General Sessions announced the formation of the Religious Liberty Task Force to further coordinate implementation of the guidance across the Federal departments at agencies. It is fair to say that there has been limited public information on the task force and its work. The only public documentation is a 2-page memorandum issued establishing the task force. Are you aware of any additional documents or guidance that further explain the task force's mandate and processes?

Mr. WHITAKER. No, I am not familiar with any additional—

Mr. STANTON. Do you know what the budget is of the task force?

Mr. WHITAKER. I do not believe, as I sit here today, that we have actually effectuated the task force yet, and so I don't—you know, again, it is going to be an internal task force that would come—that would have no specific separate budget.

Mr. STANTON. Will you commit that during the remaining time that you are attorney—Acting Attorney General to provide to this committee any additional details regarding that task force, which has been in place now for, I guess, 7 months or more?

Mr. WHITAKER. Yes. Congressman, I will be happy to follow up in writing with you or someone from the Office of Legislative Affairs about that religious liberty task force.

Mr. STANTON. Recently, HHS interpreted RFRA to allow a Christian-based foster care—foster care agency that does receive Federal tax dollars to discriminate against a potential foster parent because they happened to be Jewish. Do you know if the Justice Department stands behind this HHS determination that a taxpayer subsidized organization can discriminate against a Jewish individual?

Mr. WHITAKER. I am certain that the Department of Justice will defend that—that position of a—of a sister agency.

Mr. STANTON. Thank you very much.

Chairman NADLER. The time of the gentleman has expired.

Ms. Dean.

Ms. DEAN. Thank you, Mr. Chairman, and thank you, Mr. Whitaker, for agreeing to appear before us today. And I am delighted to hear of your Department's focus on the scourge of gun violence, and so I look forward to your full endorsement and support for H.R. 8, the universal background check bill.

Today you said a couple of things that really touched me. You said that you have to set the tone of the Department, and you said that the job you are doing now is the honor of a lifetime. All of us here can quite imagine that. I believe that actually you do, as the head, as the Acting AG, set the tone for the Department.

Tell me—and this is not a negative question. It is just a factual question—how many positions did you interview for with this administration prior to you going to the Department of Justice?

Mr. WHITAKER. As we previously explored with one of your colleagues, I had interviewed preliminarily for the position that ultimately Ty Cobb occupied and then Emmett Flood I think currently occupies, and then I interviewed with General Sessions and some of his staff for the chief of staff job. So in fact, I—I had never—after the election of 2016, I had never intended to come into the administration, but I was—you know, I was—I was happy to be asked, and I explored opportunities. And those are the two that I interviewed for.

Ms. DEAN. And in the meantime, in your private life, you became a commentator on CNN and other places, and you disparaged the Mueller investigation. Is that true?

Mr. WHITAKER. I used my experience as a United States attorney—

Ms. DEAN. Is it true? Yes or no?

Mr. WHITAKER. No. I wouldn't characterize it as disparagement, no. I—I think I tried to explain to the American people, when I was on CNN and—and other outlets, how the process worked, how the process for appointment, how the process for—

Ms. DEAN. No, I am not asking you about process. I am asking you about the subject and the investigation and—and the validity of the investigation. We know—the record is public—that you did say very negative things in your private life, and you have said today you are not willing to take those back, so they stand. Your thoughts on the Mueller investigation are fully public and they stand because you did not take them back today.

How did you learn of the extraordinary honor that was bestowed upon you? How did you learn you got the job?

Mr. WHITAKER. You know, I can't remember if it was—which preceded which, but I—I believe I received a phone call from the President of the United States asking me to be the Acting Attorney General.

Ms. DEAN. A moment ago you said you learned by tweet. Did I misunderstand you?

Mr. WHITAKER. Yeah, I think you did.

Ms. DEAN. Okay. So it was—you learned first by a phone call from the President?

Mr. WHITAKER. I believe so, but they were very close in time, and so I—actually as I sit here right now, I can't remember which preceded which.

Ms. DEAN. Okay. And how long was that phone call? Was it just simply, I am letting you know of this, or was there substantive conversation about your role?

Mr. WHITAKER. Well, I am not going to discuss the private conversations I have had with the President. I think it is important

that he is entitled to that confidentiality from a Cabinet secretary, even acting like I am.

Ms. DEAN. Okay. Tell me your——

Mr. WHITAKER. I will tell you that it was not a substantive phone call.

Ms. DEAN. It was an honorary—an honor phone call, probably.

And following that and the tweet, when did you next meet with the President about your job? Because it is during this time you have to decide——

Mr. WHITAKER. Congresswoman, I don't remember.

Ms. DEAN. It was during this time, in that month or more, that you have to decide whether or not to recuse. Am I right? So how many times did you meet with the President prior to your decision not to recuse?

Mr. WHITAKER. Congresswoman, while I am not going to discuss any meetings that I have had with the President nor conversations, I will tell you that I—I—I interact with the President on a regular basis, including after I was appointed Acting Attorney General.

Ms. DEAN. You said you set the tone for the entire Department, and so you had to carefully consider whether or not to recuse yourself from any dealings with Robert Mueller——

Mr. WHITAKER. Yeah. I spent 5 weeks—I spent 5 weeks considering that question.

Ms. DEAN [continuing]. Five weeks determining that. And you got information from two sources, that we know of. Career officials at the Justice Department recommended you recuse yourself to avoid the appearance of a conflict or bias. Is that correct? And that was on December 19. To avoid even the appearance of a conflict or bias, based on your previous statements. Is that correct? Is that the advice you got?

Mr. WHITAKER. Congresswoman——

Ms. DEAN. It is a yes or no, please. My time is running out.

Mr. WHITAKER. Congresswoman, I would just point you to the letter——

Ms. DEAN. And I have waited a long time. Please. It is a yes or no.

Chairman NADLER. Answer the question.

Mr. WHITAKER. This—this question is not a yes or no because it is—it—you have to understand how it was my decision to make.

Ms. DEAN. I am not talking about your decision. I am talking about the guidance that you received, not your decision.

Mr. WHITAKER. It was not their decision to make.

Ms. DEAN. No, no, no. I am asking you factually about the guidance you received. Career officials told you you should recuse to avoid even the appearance of an impropriety of bias, and you set the tone for your Department. Am I correct?

Mr. WHITAKER. Congresswoman, they told me it was a close call. They said it could go either way, and they said——

Ms. DEAN. So to set the tone, you think on a close call, you go the other way?

Mr. WHITAKER. As the Attorney General, and not to bind my successors, yes, I believe on a close call as the Attorney General of the United States that I made the right decision. It was my decision to make.

Ms. DEAN. And yet you had—have I lost my time, Mr. Chairman?
Chairman NADLER. Get this question out, and I will let him answer it, and that will be that.

Ms. DEAN. Would you be able to provide us the written guidance that you got from the career professionals in terms of recusal? They recommended recusal. Would you please provide this committee that written document?

Mr. WHITAKER. Congresswoman, that would require me to provide you internal deliberations that are not typically provided in this relationship, but I can tell you, as we sit here today, I did not receive any written advice from the career ethics officials.

Chairman NADLER. The time of the gentlelady has expired.

Ms. DEAN. Thank you, Mr. Chairman.

Chairman NADLER. You are welcome.

Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Mr. Chairman.

Mr. Whitaker, I want to go back to your time when you worked for the Foundation for Accountability and Civil Trust. I worked for many, many years for various 501(c)(3)s, so I—it is very interesting to me, when I look at the board, is this a private or a public foundation? FACT, is that—the 501(c)(3). Is it a private or a public?

Mr. WHITAKER. It is a 501(c)(3). I don't know.

Ms. MUCARSEL-POWELL. There are two separate types.

Mr. WHITAKER. Congresswoman, I don't have the 990 filings or—

Ms. MUCARSEL-POWELL. But you worked there from 2014 to 2017?

Mr. WHITAKER. I was.

Ms. MUCARSEL-POWELL. And you were the executive director for the foundation.

Mr. WHITAKER. Yes, I was.

Ms. MUCARSEL-POWELL. But you don't know if it is a private or a public?

Mr. WHITAKER. I haven't worked for FACT in 16 months and I—in my preparation for this oversight hearing—

Ms. MUCARSEL-POWELL. Okay. Thank you. Thank you, Mr. Whitaker.

Mr. WHITAKER [continuing]. I didn't review the filings, so I don't know which—

Ms. MUCARSEL-POWELL. So were there only—thank you, Mr. Whitaker. Thank you.

Were there only three board members in this 501(c)(3)?

Mr. WHITAKER. I believe there were—yes, there were three board members.

Ms. MUCARSEL-POWELL. William Gustoff, Neil Corkery, Matthew Whitaker, correct?

Mr. WHITAKER. Yeah.

Ms. MUCARSEL-POWELL. Okay. So it is also my understanding that you filed numerous FEC complaints while working there?

Mr. WHITAKER. All of our complaints were posted online.

Ms. MUCARSEL-POWELL. Were they FEC complaints, Mr. Whitaker? You filed FEC complaints.

Mr. WHITAKER. We filed all—we filed many different types of complaints that were—that were very similar to—

Ms. MUCARSEL-POWELL. Were—did you file FEC complaints? I am just—this is very—you worked as the executive director of this 501(c)(3). Did you file FEC complaints? Very—

Mr. WHITAKER. Yes.

Ms. MUCARSEL-POWELL. Very easy—

Mr. WHITAKER. Yes. Yes. We filed FEC complaints, in addition to others.

Ms. MUCARSEL-POWELL. And—and who made the decision to file these complaints?

Mr. WHITAKER. I was the executive director. I believe I signed all, if not all of those—

Ms. MUCARSEL-POWELL. Did you make the sole decision to file these complaints or were you directed—

Mr. WHITAKER. No.

Ms. MUCARSEL-POWELL [continuing]. By any—

Mr. WHITAKER. I was not directed. I—I was the executive—

Ms. MUCARSEL-POWELL. You did that on your own?

Mr. WHITAKER. Yes. We were an independent nonpartisan—

Ms. MUCARSEL-POWELL. 501(c)(3). Nonpartisan.

Mr. WHITAKER. Ethics watchdog, yes.

Ms. MUCARSEL-POWELL. It is a nonpartisan.

Did you file any FEC complaints against any Republicans?

Mr. WHITAKER. As I sit here today, I don't recall, but I mean, all of our complaints—

Ms. MUCARSEL-POWELL. Okay.

Mr. WHITAKER [continuing]. Are posted online.

Ms. MUCARSEL-POWELL. Thank you. Thank you, Mr. Whitaker.

I would like to ask for unanimous consent to make part of the record the restriction of political campaign intervention by section 501(c)(3) tax-exempt organizations, and it reads: Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for elected public office.

Chairman NADLER. Without objection.

[The information follows:]

**MS. MUCARSEL-POWELL FOR THE
OFFICIAL RECORD**

2/8/2019

The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations | Internal Revenue Service



The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

Page Last Reviewed or Updated: 30-Nov-2018

This exemption requires that any political activity be non-partisan

Ms. MUCARSEL-POWELL. Thank you.

I have some other questions here, if you give me some time. All this time I am waiting, and I can't find the—the questions. No. No. Thank you.

This pertains to also an issue that is very close and dear to my heart, LGBTQ issues. In October 2017, the Department of Justice withdrew a 2014 memo which stated that the best reading of the Title VIII—Title VII prohibition on sexual discrimination in the workplace encompasses antitransgender discrimination. The new memo instructs the Department of Justice attorneys to now argue that Federal law does not protect transgender workers from discrimination.

Are you familiar with both memos?

Mr. WHITAKER. Yes, I am familiar with those memos that do not extend Title VII to LGBTQ.

Ms. MUCARSEL-POWELL. Thank you. And at the time of the reversal, were you serving as the chief of staff for Attorney General Sessions, correct?

Mr. WHITAKER. I served as chief of staff from October 4 of 2017 until I was appointed Acting Attorney General in 2018.

Ms. MUCARSEL-POWELL. So who ordered the reversal of this policy?

Mr. WHITAKER. I am—I am certain it was Attorney General Sessions who sets the entire policy for the Department of Justice.

Ms. MUCARSEL-POWELL. And who drafted the new memo?

Mr. WHITAKER. I don't have—as I sit here today, I—I don't have any idea. That would be deliberative work done by, I am sure, many people at the Department of Justice.

Ms. MUCARSEL-POWELL. Any outside groups that were involved in the process?

Mr. WHITAKER. Not that I am aware of, but again, I wasn't—I wasn't directly——

Ms. MUCARSEL-POWELL. And do you stand by the Department's decision to reserve its position that Title VII protects transgender people from discrimination?

Mr. WHITAKER. Congresswoman, I think a plain reading——

Ms. MUCARSEL-POWELL. Please just answer the question. Do you stand by the Department's decision to reverse its position that Title VII protects transgender people from discrimination?

Mr. WHITAKER. If Congress wants Title VII to extend to transgender people, you can change the law. We cannot read into something that is not the law.

Ms. MUCARSEL-POWELL. So I take that as yes. Okay.

Do you believe that members of the LGBTQ community should not be protected under Federal discrimination laws?

Mr. WHITAKER. Again, Congresswoman, I personally believe that discrimination of any kind shouldn't happen, but I will tell you that Title VII——

Ms. MUCARSEL-POWELL. Mr. Whitaker, yes or no, please. I don't have much time. Do you believe that members of the LGBTQ community should not be protected under Federal discrimination laws?

Mr. WHITAKER. The plain reading——

Ms. MUCARSEL-POWELL. Yes or no.

Mr. WHITAKER. The plain reading——

Ms. MUCARSEL-POWELL. Yes or no.

Mr. WHITAKER [continuing]. Of Title VII—

Ms. MUCARSEL-POWELL. Yes or no.

Mr. WHITAKER [continuing]. Does not extend—

Ms. MUCARSEL-POWELL. Okay. Thank you.

Mr. WHITAKER [continuing]. To transgender, and you uniquely control what is the law. We merely enforce the law.

Ms. MUCARSEL-POWELL. Do I still have time, Mr. Chairman?

Chairman NADLER. The gentlelady's time has expired.

Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chairman.

Mr. Whitaker, this hearing began this morning at 9:30. I have been waiting almost 6 hours. It is nearly 3:30 in the afternoon. I have been waiting nearly 6 hours to ask my questions. I am going to ask you for a favor. Out of respect for this committee, out of respect for me as a Member of Congress, I am going to ask that you try not to run out the clock and that you please answer my questions with a yes or a no, and if I have a followup, that you please answer the followup as succinctly as possible.

Mr. WHITAKER. Congresswoman, with all due respect—

Ms. ESCOBAR. I am sorry. Excuse me. If I could please get my statement out, sir.

Mr. WHITAKER. With all due respect, I am going to answer your questions.

Ms. ESCOBAR. I have watched you do that to every member on this committee. I am asking that you please—

Mr. WHITAKER. Because a lot of questions don't have yes no answers.

Chairman NADLER. The time belongs to the member.

Ms. ESCOBAR. Thank you.

I represent El Paso, Texas. I live on the safe, secure, vibrant U.S.-Mexico border. Unfortunately, my community, one of tremendous goodwill and generosity, has been ground zero for many of this administration's cruel anti-immigrant, anti-American policies, including family separation, child detention in tents, the ongoing prevention of asylum seekers from stepping foot on American soil at our ports of entry, and in December, the death of two immigrant children in U.S. custody.

Earlier, you said you believed every life is valuable, and I would hope and assume that that includes the lives of the most vulnerable among us.

There is a new policy that is about to unfortunately be rolled out in my community called the Migrant Protection Protocol, which I believe is a misnomer for a dangerous and, in some cases, deadly and I believe also an illegal policy that allows our government to return migrants and asylum seekers back to Mexico while they await their asylum hearing.

Here is my question. Because the Department of Justice oversees the Executive Office for Immigration Review, will the Department of Justice ensure that asylum seekers have access to counsel in Mexico in order to allow them to prepare for their hearings? Yes or no.

Mr. WHITAKER. We are going to continue to follow the policies at EOIR that are currently in place.

Ms. ESCOBAR. Will you facilitate, assist, help ensure that asylum seekers have access to legal counsel in Mexico? Yes or no.

Mr. WHITAKER. Congresswoman, there is a very well-defined process for asylum seekers to obtain counsel and we are going to continue to follow that. I—

Ms. ESCOBAR. Mr. Whitaker, even while they are in Mexico?

Mr. WHITAKER. As the Acting Attorney General, I—I cannot make an assurance, especially regarding what happens in a foreign country. I mean, I—I know you understand that.

Ms. ESCOBAR. And this is part of the reason why this is such a terrible policy.

Another question. About a week after the policy was announced, reports surfaced that immigrant rights advocates and attorneys were denied entry into Mexico. The attorneys said their passports had been flagged, and reports also indicated that this was not an issue on the Mexican side, but it was on the U.S. side. Did the Department of Justice have anything to do with flagging these passports?

Mr. WHITAKER. Congresswoman, I am not familiar with the situation you are describing, but I am happy to look into it and get back to you.

Ms. ESCOBAR. Thank you.

Another question related to this issue. Does the Department of Justice have an immigrant advocate watch list?

Mr. WHITAKER. Congresswoman, I am not aware of the question you are asking me, the answer to it, so I am happy to look into it and get back to you, but I just—

Ms. ESCOBAR. Thank you. I appreciate that.

Mr. WHITAKER. That is not something that sounds familiar and that I prepared for today.

Ms. ESCOBAR. I look forward to the answers to those questions.

Now, switching gears a little bit. At the President's State of the Union address, he claimed that my community, El Paso, Texas, quote, used to have extremely high rates of violent crime, one of the highest in the entire country, end quote, and he claimed that we became one of the safest communities in America because of the wall.

Data from the FBI's Uniform Crime Reporting Program shows that El Paso has historically been one of the safest communities in the—in the Nation and that we were such long before a wall was constructed. Do you have any reason to disagree with the FBI's Uniform Crime Reporting data?

Mr. WHITAKER. Congresswoman, we use the UCR on a regular, ongoing basis to not only know where our crime hot spots are, but to also put our resources at the Department of Justice.

Ms. ESCOBAR. Sir, that is not my question. Let me repeat my question.

Mr. WHITAKER. Okay.

Ms. ESCOBAR. Do you have any reason to disagree with the FBI's Uniform Crime Reporting data?

Mr. WHITAKER. Congresswoman, I think the UCR—

Ms. ESCOBAR. Do you have any reason, sir, to disagree with your FBI's data?

Mr. WHITAKER. As I sit here today—

Ms. ESCOBAR. Yes or no.

Mr. WHITAKER [continuing]. I do not have any reason to disagree—

Ms. ESCOBAR. Okay. Great. Perfect.

Mr. WHITAKER [continuing]. With the FBI's data.

Ms. ESCOBAR. Thank you very much.

Switching gears again. Did you ever create—

Chairman NADLER. The gentlelady's time has expired. I will let her finish this one question.

Ms. ESCOBAR. Thank you, Chairman.

Did you ever create, direct the creation of, see, or become aware of the existence of any documents relating to pardons of any individual?

Mr. WHITAKER. I am aware of documents relating to pardons of individuals, yes.

Chairman NADLER. The gentlelady's time as expired.

I am going to ask one question to follow up on the gentlelady's. Sir, since it is, well, black letter law that someone in the United States may apply for asylum, that any person who applies for asylum and states a reason therefore is entitled to have that claim adjudicated, that that person is entitled to legal assistance as that claim is adjudicated, doesn't it strike you that a policy that says that people who set foot on American soil and claim asylum will be sent to a foreign country where they may not have access to legal help which they are constitutionally guaranteed for their asylum adjudication may have a constitutional problem?

Mr. WHITAKER. Congressman, I am sure you are aware that Federal law allows asylum seekers to be returned to a safe third country.

Chairman NADLER. I am not aware, though, that it allows people not to—that it allows the government to do something that effectively eliminates their right to counsel for their asylum claim.

This concludes today's hearing. I want to thank all the members who are still here for their patience and their fortitude. I want to thank Attorney General Whitaker for appearing today.

Ms. JACKSON LEE. Mr. Chairman?

Chairman NADLER. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you. I am not asking—I am putting these questions on the record.

Chairman NADLER. Excuse me. Submit them for the record.

Without objection, the questions are admitted.

[The information follows:]

Congress of the United States
House of Representatives
Washington, DC 20515

CONSTITUTIONAL
JUDICIARY
INDEPENDENT
GOVERNMENT AND DEMOCRACY POLICY
PARLIAMENTS, CONGRESS, MAYORAL, REGIONAL
DELEGATES, AND INTERNATIONAL LAW
ECONOMY, FINANCIAL AND INVESTMENT SECURITY
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POLITICS AND
NATIONAL SECURITY
JUDICIAL REVIEW
CIVIL
TRANSPORTATION SECURITY AND INTERNATIONAL
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SECURITY, MARITIME, AND OTHER CONSTITUTIONAL
POLITICS
FOREIGN AFFAIRS
CONSTITUTIONAL
AMERICAN AND FOREIGN HISTORY
MILITARY, CIVIL AND SOCIAL POLICY
SUPPORTING, SUPPORTING, SUPPORTING AND TOWNS
CIVIL SERVICE
DEMOCRATIC CAUSALITY

9

Mr. Whitaker: can you tell which is considered by you and the DOJ to be the **greater threat to our democracy and national security: active measures by hostile foreign actors to subvert American elections, or widespread voting fraud, which exists only in the minds of conspiracy theorists** like Kris Kobach, Alex Jones or Donald Trump?

- 1 -

As you may know, there has been considerable and justified outrage about the conditions in which prisoners at the Metropolitan Detention Center in Brooklyn. During the most recent cold spell, referred to in the press and by scientists as a “polar vortex,” temperatures plunged to well below freezing, when considering wind chills. Yet, **inmates at MDC were left with no food, water, or heat for days in a prison managed by the Bureau of Prisons. Families were pleading for help, but no help came for days.**

- When did you learn about the conditions at MDC?
- What were your first action items that you undertook as a result?
- When did you undertake those actions?
- What is your plan going forward to ensure this never happens again?

It has been reported that President Trump lashed out at you on at least two occasions after Michael Cohen pleaded guilty on November 29, 2018, and after federal prosecutors identified President Trump as Individual 1 in a court filing on December 8, 2018.

Did President Trump contact you after Michael Cohen pleaded guilty? What did he say? Did you take any action as a result of that conversation?

Did President Trump contact you after he was identified as Individual 1 in documents related to the criminal sentencing of Michael Cohen? What did he say? Did you take any action as a result of that conversation?

In any of these conversations, did President Trump express concern, anger, or similar frustration with the actions of the U.S. Attorney for the S.D.N.Y.?

In any of these conversations, did the President discuss the recusal of Geoffrey Berman, the current US Attorney for the SDNY, from the Michael Cohen case and other matters related to the work of the Special Counsel?

- The Special Counsel’s **investigation has secured numerous indictments, convictions or guilty pleas from the:**

President's campaign manager, his deputy campaign manager, his campaign's foreign policy advisor, his former personal attorney, his longtime confidante, and many others, including Russian agents

- The president has **attempted to dismiss these crimes and other charges brought—like obstruction of justice, perjury, making false statements, etc—as “process crimes,” when in actuality they are crimes designed to safeguard the integrity of the criminal justice system and the rule of law**
- ***Do you think it is appropriate to minimize crimes like perjury, obstruction of justice, making false statements as “process crimes?”***
- Isn't it true that after your departure from the U.S. Attorney's office you were on the Board of Directors of a company targeted by the **Federal Trade Commission with charges that it was an Invention promotion scam, and regarding which you still owe \$10,000 to the court. Isn't that correct?**

Ms. JACKSON LEE. And the article—and two articles, articles—three articles, for the record, GQ, Washington Post, New York Times, and also an article by Shane Crouch.

Chairman NADLER. Without objection, the articles are admitted.
[The information follows:]

MS. JACKSON LEE FOR THE OFFICIAL RECORD

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Congress of the United States
House of Representatives
Washington, DC 20515

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MIDDLE EAST AND SOUTH ASIA
TERRORISM, NONPROLIFERATION, AND TRADE

SENATE
DEMOCRATIC CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE
SCRIPT ACCOMPANYING ITEMS FOR THE RECORD
COMMITTEE ON THE JUDICIARY
IN CONSIDERATION OF:

Oversight of Justice Department
Testimony of Matthew Whitaker, Acting Attorney General

9

February 8, 2019

Mr. Chairman –I would like to place **three items in the record.**

The **first is an article from GQ Magazine**, entitled “*Trump’s New Attorney General Has A Long History of Absurd Scams*” – this article is dated November 15, 2018

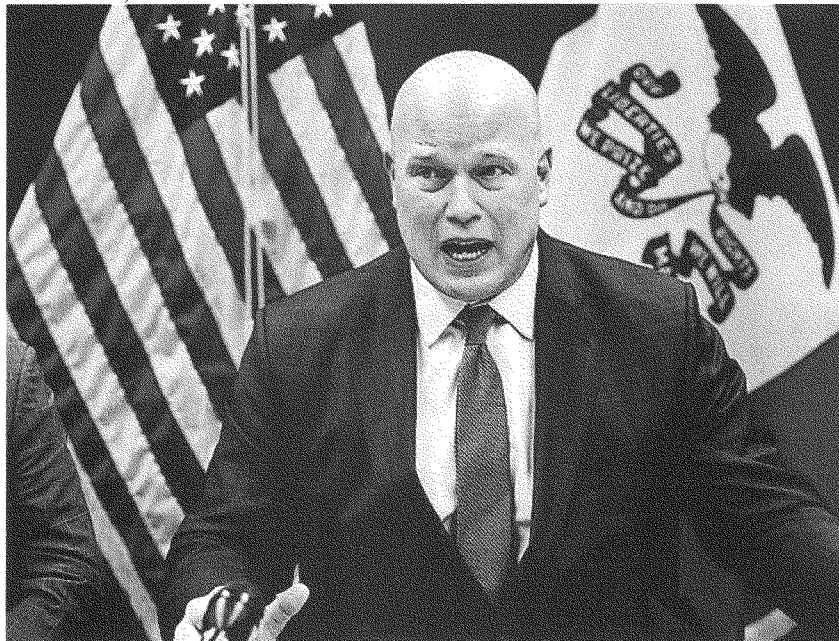
The **second article is from Washington Post** from February 5, 2019: “*Virtually every organization Trump has run in recent years has been under investigation. Here’s where these probes stand.*”

The **third article is from the New York Times** “*Matthew Whitaker, a Trump Loyalist, is seen as Ascendant Amid Rosenstein Chaos*” from the dated September 26, 2018, six weeks before his appointment.

Trump's New "Attorney General" Has a Long History of Absurd Scams



BY
JAY WILLIS
November 15, 2018



STEVE POPE/STINGER

Matthew Whitaker served on the board of a company that courted investors in time-travel cryptocurrencies, Bigfoot dolls, and toilets designed for “well-endowed men.”

Matthew Whitaker, who replaced the now-fired Jeff Sessions as acting attorney general fewer than 24 hours after last week's midterm elections, is an uncompromising Trump loyalist and longtime Robert Mueller critic, installed in the position for the specific purpose of undermining the special counsel's investigation and, if necessary, bringing it to a swift, dramatic, and premature conclusion. His presence in the Department of Justice is now perhaps the single greatest threat to the rule of law in this country, other than the continued presence in the White House of his crimes-happy benefactor.

In a pitch-perfect Trumpian twist, it turns out that before ascending to his current role, Matthew Whitaker was also a cartoonish, grifting dope who shilled for a company that hawked time-travel cryptocurrencies, Bigfoot dolls, and toilets specially designed for men with big dicks—and that was shut down for good and paid a \$26 million fine to the Federal Trade Commission earlier this year for its alleged wrongdoing.

In 2014, according to *Mother Jones*, Whitaker became a board member of an outfit called World Patent Marketing, which cajoled investors into backing an array of patent-pending products that some might charitably describe as “questionable.” And although board membership does not always indicate active involvement with a given enterprise, he was an enthusiastic supporter of WPM's three-o'clock-in-the-morning-infomercial-type garbage and happily invoked his status as a former U.S. attorney in order to defend business practices that some might charitably describe as “fraud.”

From *Mother Jones*:

[P]ublic records show he had substantial involvement with the company and its aggressive response to disgruntled customers and critics of its questionable practices. Whitaker joined the

firm's advisory board a month after it was attacked on a website called ripoffreport.com, which posts consumer complaints. In a report on the site, a writer claimed to have duped the firm into offering to help him get a patent for a fake idea: a fried chicken and waffle sandwich. "You cannot make a patent on a sandwich, yet they approved it," the person wrote.

The WPM press release introducing the novelty bathroom fixture, dubbed the "MASCULINE TOILET"—all caps in original, of course—explains the problem the invention purports to solve in vivid, hilarious fashion:

The narrower curvature at the front of the toilet creates limited space for male genitalia when a man sits on the toilet seat. This limited space can cause contact from male genitalia with portions of the toilet, which is undesirable as those portions may be contaminated from human waste.

...

The distance between the rim and the water surface needs to be long enough to ensure there is no risk of contact. The average male genitalia is between 5" and 6". However, this invention is designed for those of us who measure longer than that. I estimate that a 12" distance is adequate enough for most well-endowed men, though I would not be surprised if there are cases who need a greater distance. Nevertheless, for the time being, this is a good starting point. An "extra long" [XL] version can always be created if needed.

Good to know! *The Washington Post* notes that Whitaker also seems to have dabbled in providing legal representation for the company, threatening disgruntled customers using tactics borrowed from a straight-to-Redbox *Billions* knockoff. An exhaustive 2017 *Miami New Times* investigation into the Florida company yielded e-mails from Whitaker in which he, among other things, accuses a complainant of engaging in "possible blackmail or extortion" attempts. "There could be serious civil and criminal consequences for you," he wrote. The reply e-mail he received from one "A Rudsky" is a masterpiece of the go-fuck-yourself genre.

Virtually every organization Trump has run in recent years has been under investigation. Here's where those probes stand.

Federal prosecutors in New York delivered a subpoena for documents related to donations and spending by President Trump's inaugural committee on Feb. 4. (Reuters)



By **Aaron Blake**

February 5

News broke Monday night that federal prosecutors issued a subpoena in the burgeoning investigation of the Trump inaugural committee. And we can add that one to the list of serious investigations President Trump has faced, including of himself, his campaign, his conduct as president, his business, his charity and his "university."

Below, we break down the latest in each, along with how much trouble each could pose for Trump.

Trump inaugural committee

The latest: Federal prosecutors in the Justice Department's Southern District of New York issued a wide-ranging subpoena Monday seeking documents related to spending and

donations by the committee that put on Trump's 2017 inauguration — including possible foreign contributions, which would be illegal.

Trouble factor: This probe was first reported in December by the Wall Street Journal, but we didn't know much about it until Monday. The sweeping nature of the documents request suggests a serious criminal inquiry — including, according to The Washington Post's Rosalind S. Helderman and Michael Kranish, possible conspiracy to defraud the United States, mail fraud, false statements, wire fraud and money laundering.

ADVERTISING

Notably, the inaugural committee's fundraising operation was headed by Rick Gates, a former deputy Trump campaign manager who has pleaded guilty in special counsel Robert S. Mueller III's Russia investigation and is cooperating as part of a deal. It's also notable that the subpoena specifically mentions a donor, Los Angeles venture capitalist Imaad Zuberi, which suggests there is a reason for that specific interest.

Trump campaign (collusion)

The latest: Ten days ago, longtime Trump political adviser Roger Stone was indicted on a charge of obstructing an investigation of his contacts with WikiLeaks, which released Democratic emails hacked by Russia during the 2016 presidential campaign. We also learned that former Trump campaign chairman Paul Manafort allegedly lied about sending polling information and discussing a pro-Russian Ukraine "peace plan" with a business associate linked to Russian intelligence in 2016. And in December, Michael Cohen, a former personal lawyer for Trump, pleaded guilty to lying about his efforts to secure a Trump Tower in Moscow well into the 2016 campaign — including obscuring his contacts with aides in the Kremlin.

Trouble factor: None of these charges or plea deals — or any charges or plea deals in the Mueller investigation — has dealt with collusion or related crimes. But that doesn't mean Mueller isn't pursuing them. (Often prosecutors will charge small things before bigger things and keep evidence of larger crimes hidden.) And all three situations — and the fact that each man allegedly lied about election-year contacts related to Russia — suggest that this remains a significant area of interest for Mueller.

We also don't know how much interest remains in the Trump Tower meeting Donald Trump Jr. set up with a Russian lawyer in 2016, but there is no indication that Mueller has interviewed Trump Jr., which some suggest could mean trouble for him. Politico has reported Trump Jr. telling friends that he's worried about being indicted.

Trump himself (obstruction of justice)

The latest: This investigation is more difficult to grasp, given we don't know what we see in public would be of interest to Mueller. BuzzFeed reported that Cohen has told investigators that Trump asked him to lie to Congress about Trump Tower Moscow, but Mueller's team took the unprecedented step of issuing a denial. Trump has suggested investigations of Cohen's family, leading to Cohen pulling out of public testimony and allegations of witness tampering. And there have been many other examples of Trump either applying pressure to or otherwise weighing in on key figures in the Russia inquiry, starting with former FBI director James B. Comey.

Trouble factor: We simply have no idea, and it all depends on what the threshold is for obstruction of justice. Although any one action, such as firing Comey, may not rise to that level, there is a clear pattern of behavior possibly geared toward affecting the investigation. Also notably, William P. Barr, Trump's nominee to become attorney general, in his confirmation hearing affirmed statements made in a 2017 memo that a president can commit obstruction of justice just as anybody else can.

Trump himself (campaign finance violations)

The latest: In December, we learned that the National Enquirer's parent company, American Media Inc., has been given immunity in SDNY's investigation of hush-money payments made on Trump's behalf of Karen McDougal and Stormy Daniels, who said they had affairs with him. SDNY also made clear that AMI said the McDougal payment was intended "to suppress [McDougal's] story so as to prevent it from influencing the election." That's key, because that's the threshold for these payments being considered campaign finance violations. That means now both Cohen and AMI have said these payments were about the campaign.

Trouble factor: In his guilty plea last year, Cohen implicated Trump in those campaign finance violations. Now, more people are establishing these as crimes. That doesn't mean prosecutors regard Trump as having done anything illegal. Trump admits that he directed the payments but says he didn't direct Cohen to make them illegally. Cohen says Trump knew it would be illegal, but the question is whether he has proof and how much proof prosecutors require.

The unknown levels of cooperation of both AMI head David Pecker and longtime Trump Organization chief financial officer Allen Weisselberg loom very large here.

Trump Organization

The latest: The Trump Organization is the common thread that could play in several of these investigations. But as for it specifically, attorneys general in Maryland and the District of Columbia have subpoenaed financial records and documents related to Trump's business as part of the lawsuit regarding whether it violates the Constitution's emoluments clause. The new attorney general of New York, Letitia James, has also said she plans to open large inquiries into Trump's business practices, including a New York Times report that Trump's father, Fred Trump, passed hundreds of millions of dollars in wealth to his children through tax schemes.

"I will be shining a bright light into every dark corner of his real estate dealings, and every dealing, demanding truthfulness at every turn," James said.

Trouble factor: In this case, it's the states investigating Trump and the Justice Department that is defending Trump, particularly when it comes to the emoluments case. House Democrats are also promising to dig into all this. But beyond the alleged tax schemes — which are very possibly beyond the statute of limitations — we don't know a whole lot about alleged criminal activity.

Trump Foundation

The latest: Trump agreed in December to shut down his charity after years of investigations — most notably by The Post's David A. Fahrenthold and the New York attorney general's office — of his use of it for personal and political purposes.

Trouble factor: The settlement arose out of a lawsuit filed by then-New York Attorney General Barbara Underwood (whom James replaced). Underwood has urged the IRS and the Federal Election Commission to look into whether the charity broke tax laws. It's not clear whether they are investigating, but election law experts say there is cause.

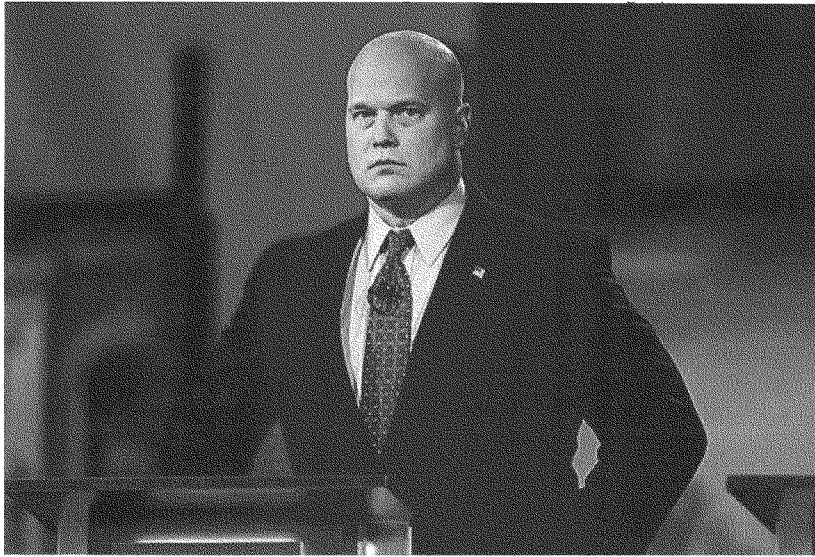
Trump University

The latest: A federal judge in April finalized a \$25 million settlement for thousands of students who claimed they were defrauded by Trump University, a for-profit real estate seminar Trump set up that was not accredited.

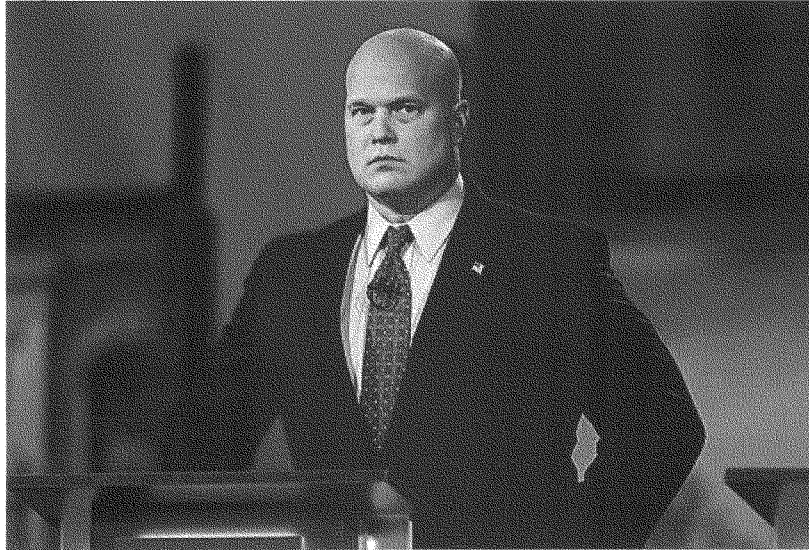
Trouble factor: It doesn't appear as though Trump faces further legal exposure. A Florida lawyer who wanted to reject the settlement so Trump could be brought to trial was unable to get an appeals court to side with her.

Matthew Whitaker, a Trump Loyalist, Is Seen as Ascendant Amid Rosenstein Chaos

Matthew G. Whitaker, the chief of staff to Attorney General Jeff Sessions, has developed an amicable rapport with President Trump. Credit Charlie Neibergall/Associated Press



Image



Matthew G. Whitaker, the chief of staff to Attorney General Jeff Sessions, has developed an amicable rapport with President Trump. Credit: Charlie Neibergall/Associated Press

By Katie Benner and Maggie Haberman

Sept. 26, 2018

Updated Nov. 7, 2018: President Trump forced out Attorney General Jeff Sessions on Wednesday and announced Matthew Whitaker, Mr. Sessions's chief of staff, will take over as acting attorney general. [Read the latest, here.](#)

WASHINGTON — Convinced that the deputy attorney general, Rod J. Rosenstein, was ready to resign after the revelation that he suggested President Trump was unfit for the job, senior White House aides got to work last weekend installing a replacement.

Matthew G. Whitaker, the chief of staff to Attorney General Jeff Sessions, would become the acting No. 2 official at the Justice Department, his White House counterpart, John

F. Kelly, told him over the phone on Saturday morning, according to two people briefed on the call. To the White House, he was an obvious choice: a confident former college football player and United States attorney whom Mr. Kelly has privately described as the West Wing's "eyes and ears" in a department the president has long considered at war with him.

By late Monday morning, the plan was moot. Mr. Rosenstein was no longer committed to resigning, at least without assurances he was doing so on amicable terms with the president. Mr. Trump told reporters on Wednesday that he was open to keeping Mr. Rosenstein in place, and two White House officials said they believed he was likely to remain in his job at least through the midterm elections.

But the arrangements to promote Mr. Whitaker show how White House aides seized on the days of uncertainty about Mr. Rosenstein to try to place a trusted loyalist at the top of a department whose traditional independence has long frustrated the president. Mr. Rosenstein has incurred Mr. Trump's wrath because he appointed a special counsel for the Russia investigation, though thanks to complex department rules, Mr. Whitaker would not assume control of the inquiry if he ever replaces Mr. Rosenstein.

By contrast, Mr. Whitaker cuts the kind of central-casting figure whom Mr. Trump prefers, and he has served as what one White House aide called a "balm" on the relationship between the president and the Justice Department. He has frequently visited the Oval Office and is said to have an easy chemistry with Mr. Trump. On Monday morning, Mr. Trump himself called Mr. Whitaker, not with an explicit job offer but a reassurance that he has faith in him.

Administration officials have also mentioned Mr. Whitaker as a possible successor to Donald F. McGahn II, the White House counsel who plans to leave in the fall.

Justice Department and White House spokespeople declined to comment. The back-and-forth between the White House and Justice Department were described by more than a half-dozen administration officials and others briefed on the discussions who spoke on the condition of anonymity to describe internal conversations.

A native of Des Moines, Mr. Whitaker earned undergraduate, business and law school degrees from the University of Iowa, where he also played tight end for a Hawkeyes team that went to the Rose Bowl and once caught a touchdown pass on a faked field goal.

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He went on to serve as United States attorney for the Southern District of Iowa from 2004 to 2009, and he ran unsuccessfully for Senate in 2014. Mr. Whitaker also has a connection to the evangelical voters who helped propel Mr. Trump to the White House — during his Senate campaign, Mr. Whitaker said at a [forum for Republican candidates](#) that if elected, he would ask judicial nominees whether they were “people of faith” who had “a biblical view of justice.”

Two months before Mr. Whitaker joined the Justice Department, he wrote in a column for CNN that the Trump family’s finances were beyond the scope of the investigation by the special counsel, Robert S. Mueller III, into whether any Trump associates conspired with Russia’s interference in the 2016 presidential election.

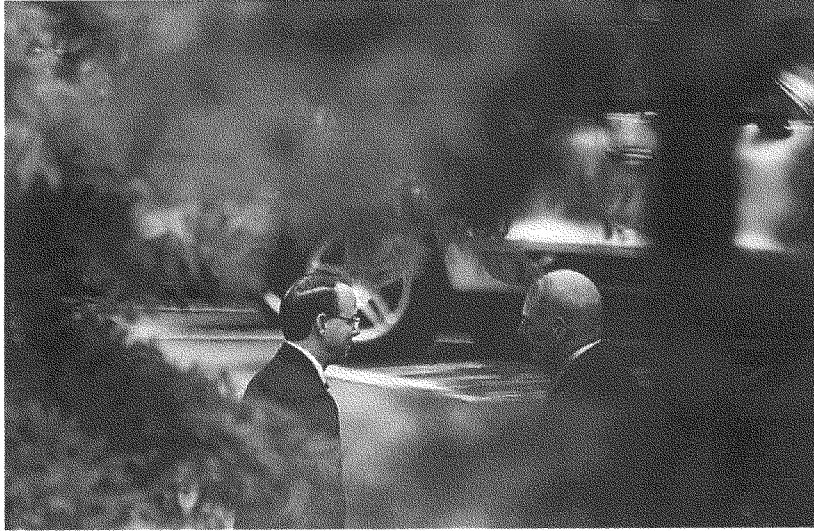
Should Mr. Mueller investigate the president or his family’s financial matters, “this would raise serious concerns that the special counsel’s investigation was a mere witch hunt,” [Mr. Whitaker wrote](#), adopting the president’s derisive term for the investigation.

Sign Up for On Politics With Lisa Lerer

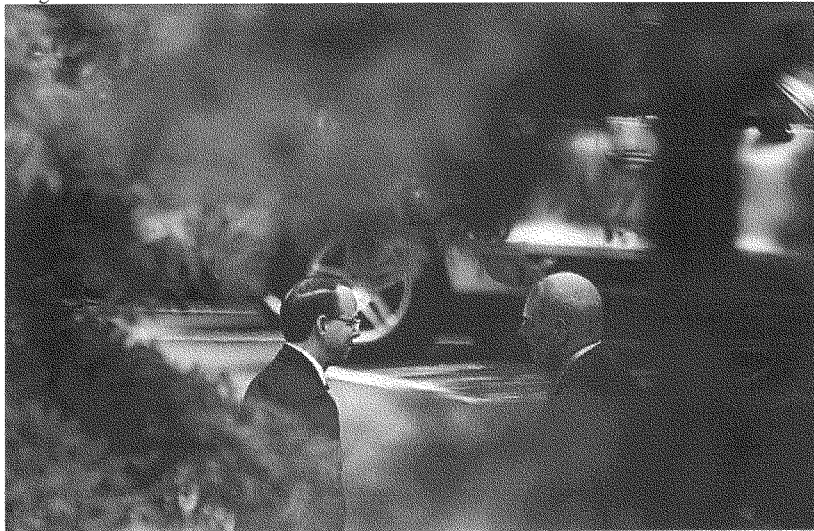
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The deputy attorney general, Rod J. Rosenstein, meeting with John F. Kelly, the president's chief of staff, on Monday at the White House. Credit Eric Thayer for The New York Times



Image



The deputy attorney general, Rod J. Rosenstein, meeting with John F. Kelly, the president's chief of staff, on Monday at the White House. Credit: Eric Thayer for The New York Times

Leonard Leo, the influential head of the conservative legal organization the Federalist Society who has taken leaves from the role to periodically advise the president since the transition, recommended Mr. Whitaker for his job with Mr. Sessions, according to a person briefed on the job search.

Chiefs of staff to attorneys general typically interact frequently with the White House, but Mr. Whitaker's assignment was particularly fraught, given the president's verbal lashings of Mr. Sessions. But according to two White House officials, Mr. Trump took a liking to Mr. Whitaker, who has the sort of commanding bearing that the president likes.

Mr. Whitaker is skilled at cultivating allies, even in difficult situations, people close to him said. After he lost to Joni Ernst in a heated five-way Senate primary in 2014, Mr. Whitaker became one of her staunchest supporters and remains friendly with his former opponents.

"Matt can be competitive and then put it aside and build positive relationships," said the Iowa state senator Jack Whitver, a Republican who worked at Mr. Whitaker's law firm. "He works well with big personalities. He's a good listener, which helps when everyone around him disagrees."

In meetings in the Oval Office, West Wing officials said, Mr. Whitaker has spoken bluntly and authoritatively about prison overhaul, an issue embraced by Mr. Trump's son-in-law and senior adviser, Jared Kushner. Mr. Whitaker has told the president that federal prosecutors would oppose some of the measures under discussion, according to a person familiar with the discussions.

Mr. Whitaker also took cues from Mr. Sessions, who has long understood where the department's mission could align with Mr. Trump's priorities, like on immigration and violent crime, according to a current Justice Department official who spoke on the condition of anonymity because he was not authorized to discuss internal deliberations.

"He has the trust and confidence of any number of people within the Justice Department and within the law enforcement community, but also the White House," Mr. Leo said of Mr. Whitaker.

Mr. Whitaker's potential ascendance came into play late on Friday, hours after a New York Times article revealed that Mr. Rosenstein had discussed secretly taping his conversations with the president and talked about using the 25th Amendment to remove him from office.

While Mr. Rosenstein disputed the report, people close to the president said that Mr. Rosenstein privately told White House officials that the account possibly hurt him.

Facing the prospect of being called to testify about the matters on Capitol Hill, he told White House aides that he would be willing to resign.

Mr. Sessions discussed the possibility of changes with associates on Sunday, according to a person who spoke to him. And Mr. Whitaker told people he was expecting to take over as the acting deputy attorney general because White House advisers had told him it would happen, according to the people briefed on the discussions.

Mr. Trump has privately told aides that he believes that Mr. Rosenstein disparaged him. But in a news conference on Wednesday after attending the United Nations General Assembly, Mr. Trump said he might delay a planned meeting with Mr. Rosenstein set for Thursday. He added that his preference was to leave Mr. Rosenstein to “finish” the job overseeing the special counsel investigation.

But if he were to choose Mr. Whitaker as a replacement over Mr. Rosenstein’s own deputy, Ed O’Callaghan, who would typically be next in line to be acting deputy attorney general, such a move would prove how much Mr. Trump has come to trust Mr. Whitaker.

As the acting deputy attorney general, Mr. Whitaker would oversee the nation’s federal prosecutors, including the investigations of Mr. Trump’s former personal lawyer, Michael D. Cohen, the Trump Organization and the business run by the father of Mr. Kushner.

The Russia investigation would be overseen by the solicitor general, Noel J. Francisco. But Mr. Whitaker could have visibility into the special counsel’s work. Officials in the deputy attorney general’s office have met regularly with Mr. Mueller’s team.

Chairman NADLER. Before we adjourn, I want to note for the record that—Mr. Whitaker, that you owe us responses on a number of issues raised here today, responses that we intend to secure, including but not limited to the times and dates you were briefed on the special counsel's investigation, your communications with the President after you received those briefings, the basis for your statement that the special counsel's investigation is reaching its conclusion, and whether you told the special counsel not to take any specific investigative or prosecutorial steps.

I would also note that your testimony was, at best, inconsistent on the topic of your communications with the White House prior to your tenure at the Department. It is not credible that you both interviewed for a job handling the President's response to the special counsel's investigation and never conveyed your opinions about that investigation to the White House.

We require answers to these questions. I ask the Department to work with the committee to provide them. As part of that work, I fully intend to call you back for an interview under subpoena, if necessary, and I expect more fulsome answers at that time.

Without objection, all members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

And with the thanks of the chairman, the hearing is adjourned.
[Whereupon, at 3:23 p.m., the committee was adjourned.]

APPENDIX

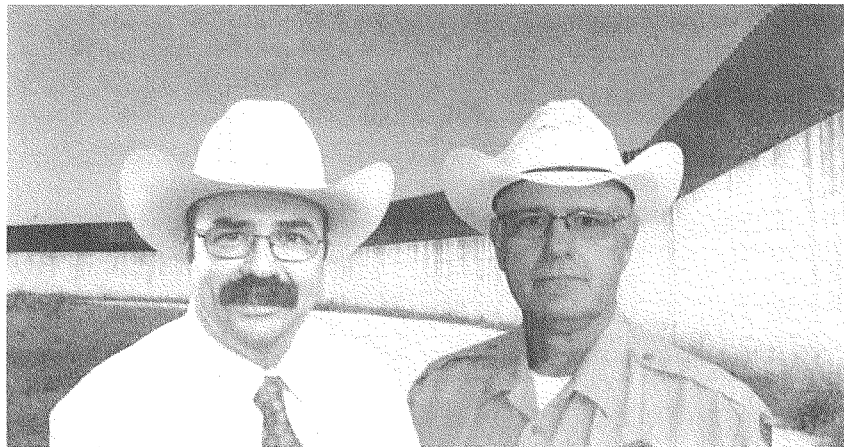


Texas Border Sheriffs: There is No Crisis and We Don't Want Trump's Wall

Despite Trump's attempt to paint the Texas-Mexico border as a war zone, border counties are safer than the president's own backyard. And local lawmen don't believe a wall will do any good.

by Kate Groetzinger (<https://www.texasobserver.org/author/kate-groetzinger/>)

Thu, Jan 24, 2019 at 2:29 pm CST



Hidalgo County Sheriff J.E. "Eddie" Guerra (left), Brewster County Sheriff Ronny Dodson

PHOTOS COURTESY/FACEBOOK, CREATIVE COMMONS, ILLUSTRATION BY SUNNY SONE

President Trump visited McAllen earlier this month to drum up support for spending \$5.5 billion to build a wall along the U.S.-Mexico border. He staged a press conference surrounded by piles of confiscated drugs, guns and cash, describing the situation at the border as “a national emergency.” With the government partially shut down over Trump’s funding dispute with Congress, the president is trying to prove that there’s a new, growing “crisis” on the border to pressure Democrats to cave. But law enforcement leaders in at least two border counties, including the sheriff who patrols McAllen, say the picture Trump is painting of the Texas borderlands is inaccurate.

Hidalgo County Sheriff J.E. “Eddie” Guerra, who is in charge of policing the largest and most populous county in the Rio Grande Valley, said that crime rates in his county are at record lows, and that illegal immigration has very little effect on the safety of residents. Meanwhile, Brewster County Sheriff Ronny Dodson, who is responsible for policing the largest county in Texas, said he doesn’t support the construction of a wall along any part of the 192-mile stretch (<http://www.brewstercountytexas.com/wp-content/uploads/2013/12/Resolution-Against-the-Executive-Order-to-build-a-border-wall-in-Brewster-County.pdf>) of border in Brewster County, which includes Big Bend National Park.

“Because we’re on the border, the perception is that there’s murders every day and there’s shootings every day. Yet here in our county, we don’t have that going on. It’s very, very safe,” Guerra told the *Observer*.



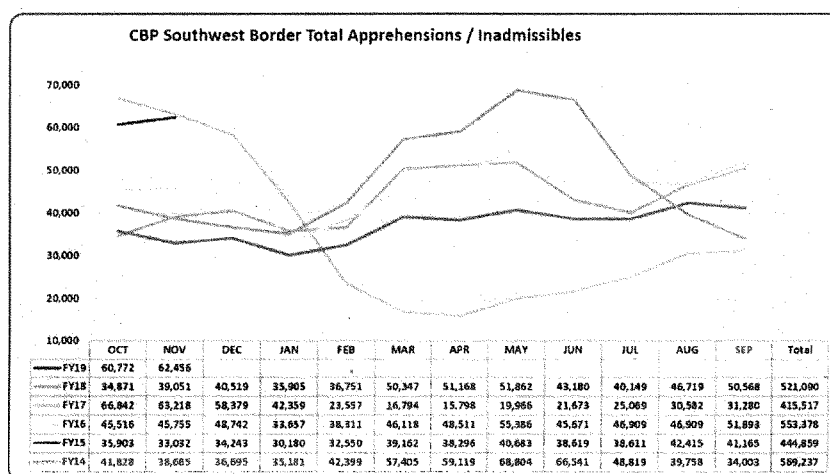
In Hidalgo County, about 20 miles of wall already exist. *GUS BOVA*

But don't take the sheriffs' word for it. In 2017 (the latest year for which data is available), there were 4.4 murders per 100,000 people (http://www.dps.texas.gov/administration/crime_records/pages/crimestatistics) in Hidalgo County — about half the rate of other metro areas in Texas and a quarter of the murder rate in Washington, D.C (<https://mpdc.dc.gov/page/district-crime-data-glance>). It's also lower than the 6.3 murders per 100,000 people in 2017 in Palm Beach County, Florida, where Trump's Mar-a-Lago resort is located.

In addition to fewer murders, the violent crime and property crime rates in Hidalgo County are less than half of what they were in 1999. Guerra, a Democrat who has lived in the RGV his entire life, said the majority of immigrants entering the county without papers are Central American asylum-seekers fleeing violence and poverty who turn themselves over to Border Patrol agents as soon as they can.

“They’re a significant portion of the Rio Grande Valley sector, about 600 apprehensions. These family units and unaccompanied children pose exactly zero security threat in the county,” Guerra said.

Guerra’s observations are reflected in Customs and Border Protection (CBP) data: Since September, families and unaccompanied children have made up more than half (<https://www.cbp.gov/newsroom/stats/sw-border-migration>) of Border Patrol apprehensions. And apprehensions across the entire U.S.-Mexico border are down significantly over the last 20 years, with the number of migrants apprehended in the Rio Grande Valley falling by 44 percent (<https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf>) from 1997 to 2017.



Since September 2018, families and unaccompanied children have made up more than half of all border apprehensions. *U.S. CUSTOMS AND BORDER PROTECTION*

“This is what’s been going on for years. I’m not going to argue that we have a secure border, because we don’t, but to say that all of the sudden we have a crisis going on is wrong,” Guerra said.

Five hundred miles north of the Big Bend County Sheriff Ronny Dodson says he's seeing a lot of migrants in the border area who have been in the post since 2001, said the migrants apprehended in his county tend to be asylum-seekers from Central America fleeing some of the most dangerous countries (https://www.brookings.edu/blog/up-front/2014/07/02/the-surge-in-unaccompanied-children-from-central-america-a-humanitarian-crisis-at-our-border/) in the world. In 2017, the number of apprehensions in the Big Bend sector, which includes Brewster County, was less than half of what it was in 2000.

"The Guatemalans and Hondurans are not carrying drugs," Dodson said. "For the most part, they just go on through."

Trump has claimed in speeches (https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-officials-ms-13/) and tweets (https://twitter.com/realDonaldTrump/status/856849388026687492) that a wall would "have a huge impact on the inflow of drugs coming across" the border. But data shows this is unlikely. The majority of hard drugs, like cocaine, fentanyl and heroin, are smuggled through the mail (https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_1-2017.pdf) or through ports of entry (https://www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf), not by individuals crossing the border illegally. The amount of marijuana seized along the U.S.-Mexico border has dropped (https://www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf) in recent years, especially in California, where voters legalized the sale of cannabis in 2016. In other words, a wall wouldn't do much to stem the trafficking of drugs into the United States; however, it would require the federal government to seize land along the border, a move Dodson vehemently opposes.

"We have a river, and we don't want to cut ourselves off from that river. I know there's a better way," said Dodson, who told (https://www.texasobserver.org/border-lawman-says-texas-politicians-pipe/)

the *Observer* in 2017. Legislators like Lieutenant Governor Dan Patrick were also critical of the wall (<https://www.texasobserver.org/>).



“These family units and unaccompanied children pose exactly zero security threat.”

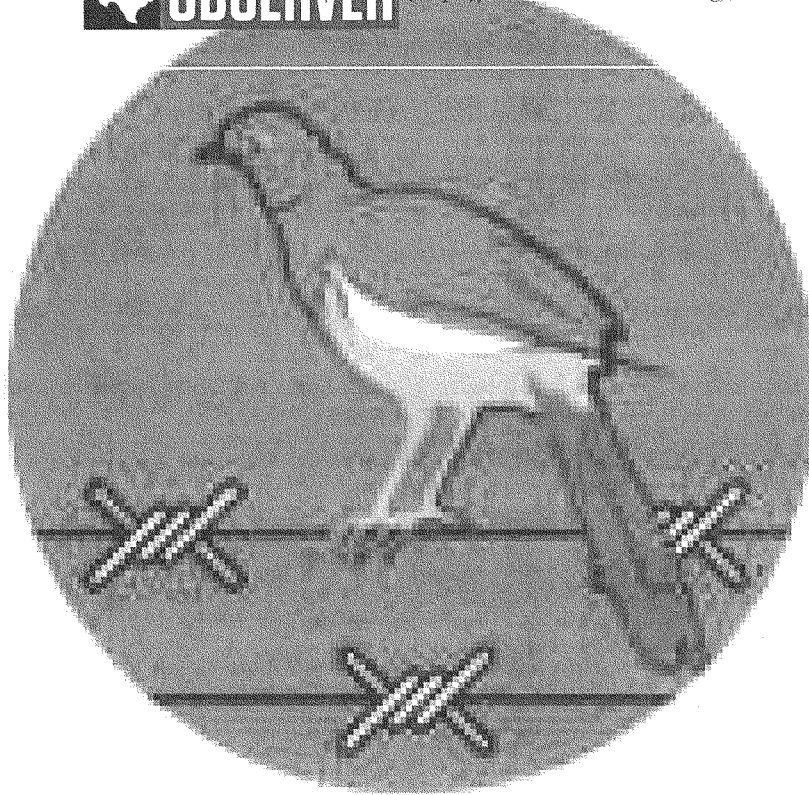
In Hidalgo County, about 20 miles of wall already exist. Funding for 33 more miles (<https://www.texasobserver.org/map-trump-border-wall-locations-texas/>) of border wall (25 of which will be in Hidalgo County) was approved by Congress in March, and construction is slated to start as early as next month (<https://www.texasobserver.org/trumps-wall-is-coming-to-texas-meet-its-first-victims/>). Guerra said that spending billions to build more border wall in his county would be a waste, partially because migrants would still find a way across.

“First of all, we already have one physical barrier, that’s the Rio Grande. To cross it, [migrants] use a raft. To cross a 22-foot-high fence, they’ll use a ladder,” Guerra said, adding that federal money would be better spent on improving technology at ports and hiring more Border Patrol agents.

Both Guerra and Dodson believe that hiring additional qualified Border Patrol agents, who work with local law enforcement, is the best way to bolster border security. The number of Border Patrol agents along the U.S.-Mexico border nearly doubled (https://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf) between 2000 and 2017, turning the area into one of the most surveilled and policed parts of the nation (<https://www.texasobserver.org/the-surge/>).

(<https://www.texasobserver.org/border-wall/>)

But recruiting new Border Patrol agents has been a challenge for CBP in recent years. Trump signed an executive order



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<https://www.whitehouse.gov/presidential-actions/executive-order-border->

Mueller's investigation of Trump is going too far

By **Matthew Whitaker**

Updated 3:46 PM ET, Wed November 7, 2018

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- Matthew Whitaker: The finances of Trump or his family are beyond Mueller's purview
- If Rod Rosenstein doesn't rein in probe it will look like a political fishing expedition

Matthew Whitaker is a CNN legal commentator and former US attorney who directs the Foundation for Accountability and Civic Trust (FACT), a conservative ethics watchdog group. He ran in the Republican primary for Iowa Senate in 2014. The views expressed in this commentary are solely those of the author.

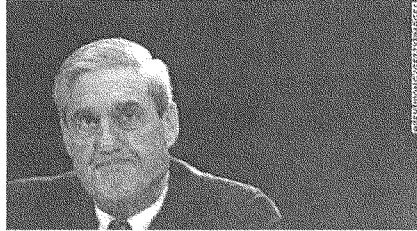
(CNN) *(This article was originally published on August 6, 2017. On November 7, 2018, President Donald Trump announced that he was naming Matthew Whitaker as acting attorney general.)*

Last month, when President Donald Trump was asked by The New York Times if special counsel Robert Mueller would be crossing a line if he started investigating the finances of Trump and his family, the President said, "I think that's a violation. Look, this is about Russia."

The President is absolutely correct. Mueller has come up to a red line in the Russia 2016 election-meddling investigation that he is dangerously close to crossing.

According to a CNN article, Mueller's investigators could be looking into financial records relating to the Trump Organization that are unrelated to the 2016 election. According to these reports, "sources described an investigation that has widened to focus on possible financial crimes, some unconnected to the 2016 election." The piece goes on to cite law enforcement sources who say non-Russia-related leads that "involve Trump associates" are being referred to the special counsel "to encourage subjects of the investigation to cooperate."

This information is deeply concerning to me. It does not take a lawyer or even a former federal prosecutor like myself to conclude that investigating Donald Trump's finances or his family's finances falls completely outside of the realm of his 2016 campaign and allegations that the campaign coordinated with the Russian government or anyone else. That goes beyond the scope of the appointment of the special counsel.



Subpoenas issued in Russia investigation 01:32

In fact, Deputy Attorney General Rod Rosenstein's letter appointing special counsel Robert Mueller does not give Mueller broad, far-reaching powers in this investigation. He is only authorized to investigate matters that involved any potential links to and coordination between two entities -- the Trump campaign and the Russian government. People are wrongly pointing to, and taking out of context, the phrase "any matters that arose or may arise directly from the investigation" to characterize special counsel's authority as broad. The word "investigation" is clearly defined directly preceding it in the same sentence specifically as coordination between individuals associated with the campaign of Donald Trump and Russia. The Trump Organization's business dealings are plainly not within the scope of the investigation, nor should they be.

Indeed, Sunday on Fox News, Rod Rosenstein acknowledged Mueller had limited authority and would need to seek his permission to expand the investigation.

Beyond the legal reading, the broad authority argument defies plain logic: If the special counsel could investigate anything he wants, why would there even need to be a letter spelling out the specific limits of the investigation?



If you're following the Mueller investigation, you need a scorecard

One of the dynamics at play here is that people are conflating this investigation and Kenneth Starr's 1994 investigation into President Bill Clinton. While partly understandable at first glance, the two investigations are not comparable -- not only have more than two decades passed since then, but a completely new law and legal framework governing separate investigations has also passed. Starr was an independent counsel and Mueller is a special counsel, the two words are different for a reason.

Any investigation into President Trump's finances or the finances of his family would require Mueller to return to Rod Rosenstein for additional authority under Mueller's appointment as special counsel.

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If he were to continue to investigate the financial relationships without a broadened scope in his appointment, then this would raise serious concerns that the special counsel's investigation was a mere witch hunt. If Mueller is indeed going down this path, Rosenstein should act to ensure the investigation is within its jurisdiction and within the authority of the original directive.

I've prosecuted several financial crimes at the federal level and I've also defended plenty in my private practice. From this unique vantage point, I can understand how a motivated prosecutor, in a broad investigation into the financial affairs of high-profile individuals, can become overzealous toward the targets of such probes -- with calamitous results. While no one is above the law, in situations such as this, any seasoned prosecutor must use discretion both judiciously and expertly.

It is time for Rosenstein, who is the acting attorney general for the purposes of this investigation, to order Mueller to limit the scope of his investigation to the four corners of the order appointing him special counsel.

If he doesn't, then Mueller's investigation will eventually start to look like a political fishing expedition. This would not only be out of character for a respected figure like Mueller, but also could be damaging to the President of the United States and his family -- and by extension, to the country.

- **PAID CONTENT**

