

Congressional Transcript

House Judiciary Committee Hearing on Justice Department Oversight

Friday, February 8, 2019

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 unshakable 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.

COLLINS:

Mr. Chairman, could I just echo that as well?

NADLER:

Mr. Collins.

COLLINS:

And for the, you know, 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.

NADLER:

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 20 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 the 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 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, two years into an administration distinguished for firing officials at 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 two 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 imprinted 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 this investigation, quote, grinds to almost a halt, unquote.

Like everyone else at the Department of Justice, you're entitled to your own political opinions. This committee should not be 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 at 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 overseeing 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 29 press conference? Is it true that you have been 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 had 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's no need for us to resort to that measure, for now.

I am nonetheless concerned by some of the arguments the department raised in the lengthy letter we received late yesterday. I very much doubt, for example, that any privilege attached 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 long-standing 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's not how it works.

Nearly three 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 you 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 reluctant stance to 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 not 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 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 responsibility to protect the special counsel until its 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.

COLLINS:

Thank you, Mr. Chairman. Thank you, acting attorney general for being here. But I would like to think--I'll start off with it this way and I also want 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're 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. I used to--my kids are now grown. They're 26 and down to 20. And I used to always love the--the Easter season and the time of especially hide and seek and going to find eggs and that look on their face when they found that--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're 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 becoming before this committee and will probably have a detrimental effect to the acting attorney general.

But hey, I'm the minority who cares. So we do it and the acting attorney general's office responded about 5 o'clock the chairman sent a letter saying we know, we'll examine it on a case by case basis. The acting attorney general said no, we need assurances that you're not going to issue a subpoena today or yesterday or today. So okay we're back and forth. The DOJ as I understand it said no, that's 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 (PH) 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 twitter accounts last night around 8 o'clock the chairman's twitter account said acting attorney general was 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 CCed on but never--you know, I guess this is it. But we're 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.

NADLER:

Without objection.

COLLINS:

So at 8 o'clock we decide to send to out a tweet to the world which many in the media, by the way, picked up on and have run stories today saying the reason the Judiciary chairman wins, the attorney general is coming, he doesn't have assurances. No, he does. Right here. There's 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 a issue of this hearing yet on Thursday Bill Barr was approved out of the Senate Judiciary Committee. By next Thursday he will be of the attorney general.

This gentleman right here is finishing up the last term of acting attorney general. He's willingly-- was willing to come but yet we had the charade yesterday. This hearing is pointless and basically, it 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 who 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's plenty of frustration of issues of DOJ oversight. But sir, I'm not sure frankly that the oversight of your financial situation from 2014--from 2014 to 2016 has anything to do with this hearing. It's beyond the scope of this hearing. So if this is what we're going to do, if this is where we're going that 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 have said it up front and if they want to do a confirmation hearing on senators run for Senate.

This is not a confirmation hearing. This is a Department of Justice oversight hearing supposedly whoops, oops, I'm 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--a most amazing quote I just heard a moment ago we want to know why the president may have put you there for what (INAUDIBLE). That's offensive.

When we look at this and we go through this Mr. Whitaker there are a lot of issues that we've discussed personally and as (INAUDIBLE) far as knowing this and discussing things that we could do at oversight that frankly on our side we're frustrated with and that's 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 along and then to willingly mislead the press and everybody else to think you're 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's time on this, if this is the way we're going to go then we'll have plenty of stunts. We're going to have plenty of theatrics. Bring your popcorn. I'm thinking about maybe we just set up a popcorn machine in the back because that's what this is becoming. It's becoming a show.

When your presence was here you were coming voluntarily. You've always said you're 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've only got five days left on the job or six days left on the job.

We could join together with the chairman and say Mr. Barr come in here because you've been the actually the attorney general--Mr. Barr has been the attorney general, he's been before this committee before we could have had substantive hearings but no, we're going to have a show. 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'm going to end it is a father. I'd give my kids advice and they 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 the sad part about this is we predicted it all yesterday. We knew what was coming. They sent part about it 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. Glad we did. Glad we've got it now.

But this is no way to run the railroad and it's 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's enough at DOJ for us to do oversight on but Mr. Whitaker, this is your life. Like the old TV show, they just won a piece of you. And with that Mr. Chairman pursuant to Clause 4 Rule 16 I do now move to adjourn.

UNKNOWN:

Mr. Chairman.

NADLER:

Motion to adjourn has been made. Motion is to adjourn and not debatable. All in favor of the motion to adjourn say aye.

COLLINS:

Aye.

NADLER:

Opposed, nay.

MEMBERS:

No.

NADLER:

The no's have it.

COLLINS:

Rollcall.

NADLER:

Rollcall has been requested. Where's the clerk?

The clerk--the clerk will--if the clerk is here, she will call the role. We will wait a moment for the clerk.

Where is the clerk? They are coming.

COHEN:

Mr. Chair?

NADLER:

A rollcall is in progress. The clerk is prepared. The clerk will call the role.

CLERK:

Mr. Chairman?

NADLER:

No.

CLERK:

Mr. Chairman votes no. Ms. Lofgren?

LOFGREN:

No.

CLERK:

Miss Lofgren votes no. Mr. Jackson Lee?

JACKSON LEE:

No.

CLERK:

Miss Jackson Lee votes no. Mr. Cohen? Mr. Cohen votes no. Mr. Johnson?

JOHNSON:

No.

CLERK:

Mr. Johnson votes no. Mr. Deutch?

DEUTCH:

No.

CLERK:

Mr. Deutsch votes no. Miss Bass?

BASS:

No.

CLERK:

Ms. Bass votes no. Mr. Richmond?

RICHMOND:

No.

CLERK:

Mr. Richmond votes no. Mr. Jeffries?

JEFFRIES:

No.

CLERK:

Mr. Jeffries votes no. Mr. Cicilline?

CICILLINE:

So that we can continue to pursue the truth, I vote no.

CLERK:

Mr. Cicilline votes no. Mr. Swalwell?

SWALWELL:

No

CLERK:

Mr. Swalwell votes no. Mr. Lieu? Mr. Lieu votes no. Mr. Raskin?

RASKIN:

No.

CLERK:

Mr. Raskin votes no. Mr. Jayapal?

JAYAPAL:

No.

CLERK:

Ms. Jayapal votes no. Ms. Demings?

DEMINGS:

No.

CLERK:

Ms. Demings votes no. Mr. Correa?

CORREA:

No.

CLERK:

Mr. Correa votes no. Ms. Scanlon?

SCANLON:

No.

CLERK:

Ms. Scanlon votes no. Ms. Garcia?

GARCIA:

No.

CLERK:

Ms. Garcia votes no. Mr. Neguse?

NEGUSE:

No.

CLERK:

Mr. Neguse votes no. Miss McBath?

MCBATH:

No.

CLERK:

Ms. McBath votes no. Mr. Stanton?

STANTON:

No.

CLERK:

Mr. Stanton votes no. Ms. Dean?

DEAN:

No

CLERK:

Miss Dean votes no. Miss Mucarsel-Powell?

MUCARSEL-POWELL:

No.

CLERK:

Ms. Mucarsel-Powell votes no. Ms. Escobar?

ESCOBAR:

No.

CLERK:

Ms. Escobar votes no. Mr. Collins? Mr. Collins votes yes. Mr. Sensenbrenner? Mr. Chabot?

CHABOT:

Aye.

CLERK:

Mr. Cabot votes aye. Mr. Gohmert?

GOHMERT:

Aye.

CLERK:

Mr. Gohmert votes I. Mr. Jordan? Mr. Jordan votes yes. Mr. Buck. Mr. Ratcliffe. Ms. Roby. Mr. Gaetz. Mr. Johnson. Mr. Biggs. Mr. Biggs votes aye. Mr. McClintock? Mr. McClintock votes aye. Ms. Lesko?

LESKO:

Aye

CLERK:

Ms. Lesko votes aye. Mr. Reschenthaler? Mr. Cline? Mr. Cline votes aye. Ms. Armstrong?

ARMSTRONG:

Yes.

CLERK:

Ms. Armstrong votes aye. Mr. Steube? Are there any other members wishing to vote?

NADLER:

(INAUDIBLE) haven't voted? The gentleman from Texas?

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

CLERK:

Mr. Ratcliffe votes aye.

NADLER:

Clerical report.

CLERK:

Mr. Chairman, there are 24 nos and 10 ayes.

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 in 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's in 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'll begin by swearing you in. Raise your right arm. Do you swear, affirm under penalty of perjury that the testimony you're about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

WHITAKER:

(INAUDIBLE)

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 five 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 one minute to conclude your testimony. When the light turns red it signals the time is expired. Mr. Whitaker.

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 former Chairman Dingell. He was a statesman and a leader, and it is a sad day in this committee I'm sure.

First of all, let me say that it's 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 were dedicated to upholding our great Constitution and the laws of the United States. I served that up close during my five 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 from 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 three 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 two 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 is 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 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 7 most frequently abused prescription drugs are down more than 21 percent to the lowest level and 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 American 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 charge 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 increase 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 prosecutors served as its subject matter experts for federal prosecutors and investigators nationwide--wide, working with the FBI at the strategic information and operation 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 in 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 a 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 exchange 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 former--formal legal processes.

I will answer the committee's questions as best I can, but I will continue the long-standing 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 our--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.

NADLER:

Thank you for your testimony. We will now proceed under the five minute rule with questions. I will begin by recognizing myself for five 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?

WHITAKER:

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

NADLER:

But you can say whether you've been briefed or not.

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.

NADLER:

So, the answer's yes. Thank you.

Were you briefed on those matters at any point while you were serving as chief of staff to Attorney General Sessions?

WHITAKER:

Chairman, I know you're 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 was--had no involvement in the special counsel's--

NADLER:

--So, the--

WHITAKER:

--Investigation--

NADLER:

--Answer's no. So, the answer's no. Thank you.

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

WHITAKER:

Mr. Chairman, I've said all that I'm planning on saying about the number of times or the briefings that I've 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--

NADLER:

--But wait a minute--

WHITAKER:

--Talk any more about it.

NADLER:

The--the--whether you were briefed is the subject of an ongoing investigation? I didn't follow that.

WHITAKER:

No, the number of times I've been briefed and my involvement in the investigation, sir.

NADLER:

Well, it's 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?

WHITAKER:

What's the basis for that question, sir?

NADLER:

Yes or no? Is it correct?

WHITAKER:

Well, I--I mean, I--I--

NADLER:

--It is our understanding that one--at least one briefing occurred between--between your decision not to recuse yourself on December 19th and six days later, Christmas Day. Is that correct? Simple enough question. Yes or no?

WHITAKER:

Mr. Chairman, I--I--again, what is the basis for your question? You're saying that it is your understanding--

NADLER:

--Sir, I'm asking the questions. I only have five minutes, so please answer yes or no.

WHITAKER:

No, Mr. Chairman. I--I am going to. I--I--I don't--you were asking me a question, it is your understanding. Can you tell me where you get the basis--

NADLER:

--No--

WHITAKER:

--For--

NADLER:

--I'm not going to tell you that--

WHITAKER:

--Understanding?

NADLER:

I don't have time to get into that.

WHITAKER:

Well--

NADLER:

--I'm just asking you if--if that's correct or not. Is it correct? Were you briefed in that time period, between December 19th and Christmas Day? Simple question. Yes or no?

WHITAKER:

Congressman, if--if--if every member here today asks questions based on their mere speculation, and not--

NADLER:

--All right, never mind--

WHITAKER:

--And they don't have--

NADLER:

--At any point--

WHITAKER:

--A factual basis for--

NADLER:

--Yes or--yes or no--

WHITAKER:

--Questions--

NADLER:

--At any--

WHITAKER:

--It's going to be very difficult for me to answer--

NADLER:

--Yes or no--

WHITAKER:

--Their questions--

NADLER:

--At any point since that briefing, have you communicated any information you learned in that briefing to President Trump?

WHITAKER:

Mr. Chairman, I--I know that there is a unique--

NADLER:

--It's a yes or no question, sir--

WHITAKER:

--And special interest in this. I'm sorry?

NADLER:

It's a yes or no question. Have you communicated anything you learned in that briefing to--about the investigation to President Trump? Yes or no?

WHITAKER:

Mr. Chairman, as I've 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--

NADLER:

--Okay--

WHITAKER:

--Your question, I have not talked--

NADLER:

--To any--

WHITAKER:

--To the president of the United States about the special counsel's investigation.

NADLER:

So, the answer's no. Thank you.

To any other White House official?

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've already said, I have not talked about the special counsel's investigation with senior White House officials.

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?

WHITAKER:

Who do you consider third party individuals?

NADLER:

Well, it's 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?

WHITAKER:

Who I--third persons who I think may have conveyed that--

NADLER:

--Yes--

WHITAKER:

--Information?

NADLER:

Yes.

WHITAKER:

You know, as I sit here in this chair right now, Mr. Chairman, you know, I--I don't--that's 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.

NADLER:

But you won't answer the question?

WHITAKER:

I--I just did answer your question.

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 governments--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 following--in the coming weeks, under oath, with an understanding that the transcript will be released to the public as soon as practicable, therefore.

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 request or action to be taken by the special counsel?

WHITAKER:

Mr. Chairman, I see that your five minutes is up, and so--

(LAUGHTER)

--I'm--we--I am here voluntarily. I--we have agreed to five minute rounds and--

NADLER:

--The committee--

COLLINS:

--I think that's a fine place to end the five minute rule.

NADLER:

The committee will end--will--will--will come to order. I will point out that we didn't enforce the five minute rule on--on--on acting Attorney General Whitaker. We will--

COLLINS:

--I understand, Mr. Chairman. I was just saying that might be a good breaking point, if that'd work for you.

NADLER:

No. The attorney general was in the middle of saying something.

UNKNOWN:

Answer the question.

NADLER:

Answer the question, please.

CHABOT:

Regular order.

NADLER:

Should I ask the question--okay.

WHITAKER:

Yeah, could you--

NADLER:

--In your capacity as acting--

WHITAKER:

--Please ask the question? I just want to make sure--

NADLER:

--Let me--let me just repeat the question so--'cause--so people remember what we're talking about. In your capacity as acting attorney general, have you ever been asked to approve any request or action to be taken by the special counsel?

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.

NADLER:

So, I assume the answer is yes. You--

CHABOT:

--Regular order, Mr. Chair---

NADLER:

--You're--I assume the answer is yes, you have been asked--

WHITAKER:

--No, I--

NADLER:

--To approve a request or action and you've said yes or no.

WHITAKER:

Have--

NADLER:

--In other words--

WHITAKER:

--I want to--Mr. Chairman, I want to be very clear about what you're asking me. As you asking me if I have asked the special counsel to do something?

CHABOT:

Regular order, Mr. Chairman.

NADLER:

This whole thing? Well, I'm asking if--I think my words were clear enough. Have you ever been asked to approve any request or action to be taken by the special counsel?

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

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

CHABOT:

Point of order, Mr. Chairman.

NADLER:

I've asked the question.

CHABOT:

Point of order, Mr. Chairman.

NADLER:

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

CHABOT:

We're not operating under the five minute rule anymore then?

NADLER:

Point of--the witness will answer the question.

WHITAKER:

I want to be very specific about this, Mr. Chairman, because I think it's going to allay a lot of fears that have existed among this committee, among the legislative branch largely, and maybe among 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.

NADLER:

Very good. Thank you. My time is expired. I know recognize the ranking member, the gentleman from Georgia, Mr. Collins.

COLLINS:

Thank you, Mr. Chairman. Again, it is laying 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, we--is it no longer okay to wait for Robert Mueller. Well, it's no longer right. They've 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'm just going to say it 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's 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'm also going to deal with something that is directly under your oversight provision, Mr. Acting Attorney General, and we're going to talk about--with something I've written a letter about and believe--I believe that lying before this body or any body is wrong, especially under oath, and that's not the issue, but (INAUDIBLE) tactics. And I question is--were you aware of Roger Stone's indictment before it became public?

WHITAKER:

Congressman, that's a, as you know, an important question. It is also--Mr. Stone is part of an ongoing--

COLLINS:

Okay.

WHITAKER:

--investigation. But I have, again, been briefed on the special counsel's investigation. That would have been a--you know, that would've been considered a development that I would have been briefed on, and I was briefed on that.

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. (INAUDIBLE)

WHITAKER:

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

COLLINS:

Well that is a--I'm glad we're going down that road, Mr. Attorney General, because this is a--did somebody at the Department of Justice seemingly share a draft indictment with CNN prior to Stone's arrest? Prior--or prior to a grand jury's finding of a true bill?

WHITAKER:

Ranking Member Collins, the court had a sealed indictment that after Mr. Stone's arrest was unsealed. Consistent with all its prior indictments, the DOJ's basic policy for transparency in criminal cases is that the indictment is posted on the DOJ webpage promptly after it's 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.

COLLINS:

Well given your--I mean 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 would outside this, would you view this as a

problem? Do you--I mean, because this looks like this is something--I want to just ask you, in your final days here, would this be a problem with DOJ if we're looking at the timing doesn't match up, that somebody was--it seems to appear that 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've been there. But only one was.

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.

COLLINS:

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

WHITAKER:

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

COLLINS:

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

WHITAKER:

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

COLLINS:

Let's ask--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 that Mr. Ohr was operating outside normal channels and appropriate channels in which he was operating under, which has been publicly reported?

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.

COLLINS:

Which is very much of a concern.

WHITAKER:

And it is also being reviewed at the same time, 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 anymore about Mr. Ohr, his involvement in any matters that could be subject to either an inspector general's investigation or human resource matter.

COLLINS:

Well, Acting Attorney General Whitaker, barring the, now again, as we had another part to our play this morning when are now finding out that you may be subpoenaed to come back and do a deposition, which again, as we continue down this line, it's 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's 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. This should (INAUDIBLE) every citizen, whether a Republican, Democrat, Independent, could care less about politics. When there is ever a perception--and I've shared this with others that have come 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'm hoping that when Bill Barr comes in this will be one of his first steps so we can continue with. I know you've attempted to do that. But this is going to be a long day, and it's 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 at the--inside 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's going to be more of a rabbit chase down a lot of holes. With that, I yield back.

WHITAKER:

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

NADLER:

You may.

WHITAKER:

I think it's 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 five minutes, and you can ask the questions that are of most interest to you, but I, 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.

COLLINS:

I appreciate that. But if you would have watched the--if you had been glued to a TV yesterday morning you would've found out this wasn't what this was going to be about. Thank you, Mr. Attorney General.

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'll see if that's true, but we will not risk it. So the committee will--

(LAUGHTER)

WHITAKER:

So 15-minute rule, is that changed now?

NADLER:

The committee will stand in recess until after the--immediately after the last--the last in this series of votes.

NADLER:

The committee will come to order again. We'll now resume questioning under the five-minute rule. Ms. Lofgren.

LOFGREN:

Thank you, Mr. Chairman, and thank you, Mr. Whitaker, for being here today. On January 28 you made a statement, and I'm 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?

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 the 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.

LOFGREN:

Well, it seems to me that you did talk about an ongoing investigation, and therefore you can understand, I'm sure, we'd 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?

WHITAKER:

Congresswoman, thank you for that question. I would refer you to the special counsel regulations that, again, the question that I was--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 report will cover the decisions. And so I was talking about, as attorney general, if--as acting attorney general--if and when I receive 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.

LOFGREN:

So is it fair to say that really what you're 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 (INAUDIBLE) what you're saying?

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.

LOFGREN:

All right. Thank you very much for that clarification. I'd just like to note that to some extent it was hard to ignore that the willingness to discuss ongoing investigations has not been applied evenly.

I mean you've just mentioned today the Roger Stone indictment, and that's 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'd 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.

WHITAKER:

Congresswoman, thank you for that question. I came to Washington, DC 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.

LOFGREN:

If I may, that's very nice, but that wasn't the question I asked.

WHITAKER:

Well, as you know, I am, as I mentioned, honored to serve as acting attorney general, and I'm 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 statements.

LOFGREN:

That's 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're going to have a follow-up deposition (INAUDIBLE) will add this (INAUDIBLE) that question.

NADLER:

I'll allow the--allow you to ask the question again more specifically and ask the witness to answer the question specifically and not to continue filibustering.

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'm referencing you were a private citizen. This was before you were hired so it is not covered by executive privilege. Did you do that?

WHITAKER:

Congresswoman, just to be clear, you're 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--

LOFGREN:

Correct.

WHITAKER:

--when I was a private citizen--

LOFGREN:

Correct.

WHITAKER:

--and not at the Department of Justice?

LOFGREN:

Correct.

WHITAKER:

No, I did not.

LOFGREN:

All right.

NADLER:

Thank you. Mr. Chabot.

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'm 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's 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?

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'm 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 takedown 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 effected states and districts that could really make a dramatic difference in saving lives. We also--

CHABOT:

Thank you. Let me just, if I could, let me stop you there. I just have a follow-up question--

WHITAKER:

Sure.

CHABOT:

--along the same topic, but--and the president addressed this to a considerable degree in the 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?

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's 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 analogues of fentanyl. It's a very serious problem, and I know Ohio is dramatically affected by it.

CHABOT:

Thank you very much. I've only got about 30 more seconds, so let me just touch on one last thing. And I know you've only got a week left, so you probably won't personally--

WHITAKER:

Less than a week actually.

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 for--and we all pay for this at the gas pump time and time again. So I know we've 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'd like to make about that.

WHITAKER:

Congressman, I'm 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.

CHABOT:

Thank you. And I'd 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. Yield back.

JACKSON LEE:

I thank the chairman very much. This is extraordinary times, Mr. Attorney General. We know that the former director of the FBI testified to the House Intelligence Committee in an 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 they 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 matter.

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?

WHITAKER:

Congresswoman, I am the acting attorney general--

JACKSON LEE:

Yes or no, have you appeared before an oversight hearing in the Congress?

WHITAKER:

Congresswoman, I have not.

JACKSON LEE:

It has been 10 years--

NADLER:

The witness will answer the question as asked please.

WHITAKER:

Mr. Chairman--

COLLINS:

Mr. Chairman, (INAUDIBLE) if he has--feels that a yes or no is appropriate he will answer in a yes or no, if he does not feel that it's appropriate, he should be able to answer in the appropriate-- as many Democrat administration officials have done before this committee before. This--that this is unreal.

NADLER:

The--the member has only five minutes and if she--

COLLINS:

We've just discovered that we have a five-minute rule. That's amazing.

NADLER:

If she wants a yes or no answer, she's entitled to it. I will not allow the witness to stall and waste members' time. The witness will answer the question.

COLLINS:

Where were you when Ms. Lynch and Mr. Holder here?

NADLER:

The witness will answer the question.

JACKSON LEE:

Mr. Chairman, may I have my time restored? I think it was at four minutes.

NADLER:

Yes, you may.

JACKSON LEE:

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

WHITAKER:

Congresswoman--

JACKSON LEE:

Can the clock be restored?

WHITAKER:

I'm sorry. What was your--I don't know if your time's been restored or not.

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'm asked a

question; did you have a confirmation hearing and have you not yet appeared for an oversight hearing?

WHITAKER:

Congresswoman, I am an acting attorney general. I have been appointed according to the Vacancies Reform Act and I have never ap--appeared in front of Congress for any hearing even when I was United States attorney.

JACKSON LEE:

I asked for a yes or no answer. Is that--let me--and so you've 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, Trump family members and others? Yes or no?

WHITAKER:

As I have previously answered congresswoman--

JACKSON LEE:

Yes or no, sir?

WHITAKER:

As I previously answered congresswoman I have not discussed--

JACKSON LEE:

Yes or no?

WHITAKER:

As I previously answered congresswoman I have not discussed--

JACKSON LEE:

And since you're appointed acting attorney general did you discuss or share your private opinions with the special counsel?

WHITAKER:

Again the special counsel's investigation is an ongoing investigation and I have nothing more to say than what I've said--already said.

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?

WHITAKER:

Again congresswoman is there someone that provides you the basis for that question or is that an anonymously-sourced (INAUDIBLE)?

JACKSON LEE:

I am asking the questions, sir. Answer the question yes or no.

WHITAKER:

Could you repeat the question please?

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?

WHITAKER:

Congresswoman, as I've mentioned several times today in my opening statement and otherwise--

JACKSON LEE:

Yes or no?

WHITAKER:

--not talking about the conversations that I've had with the president of the United States or his senior staff.

JACKSON LEE:

So that is a no?

WHITAKER:

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

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've given. Have you given an extensive review?

WHITAKER:

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

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?

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.

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 pr--pursuit of that office that hostile foreign power cont--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?

WHITAKER:

Congresswoman, I--I'm not here to address--

JACKSON LEE:

Yes or no?

WHITAKER:

--hypothetical questions. I'm here for an oversight hearing. I don't believe you know I was very unsuccessful in my senate campaign.

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?

WHITAKER:

Congresswoman, if I was contacted by a foreign national or--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's hard for me to answer your hypothetical (INAUDIBLE).

JACKSON LEE:

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

NADLER:

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

WHITAKER:

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

NADLER:

Thank you. Mr. Gomer? Is he here? Mr. Jordan?

Mr. Jordan.

JORDAN:

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

WHITAKER:

Congressman, thank you for that question and I know this is of a great interest to you and--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 subject 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--

JORDAN:

Well, my question is not--well, I'll get to that. My question is why because it was 2 1/2 months after the special counsel was formed so let's go back to the beginning document which you told the chairman earlier you were--you were completely briefed on the special counsel's investigation.

I want to go ahead it's just a one-page document order number 3915-2017 says this Mr. Whitaker, the special counsel is authorized to conduct the investigation including any matters that are arose or may arise directly from the investigation. That's pretty broad. Do you agree?

WHITAKER:

Yeah, and in my experience it's consistent with other appointments of special councils.

JORDAN:

That's fine. I mean I think it may be too broad but it's--it's 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 1/2 months later we get this, this three-page memo from Rod Rosenstein acting attorney general to Robert Mueller special counsel title says the scope of the investigation 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 its 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's true why do you have to say it? If you can do it all along why do you have to put it in a memo?

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--I was not at the Department of Justice.

JORDAN:

I'm not asking that. I'm asking you said you were fully briefed. The chairman asked--

WHITAKER:

But you're asking me why at the time Rod Rosenstein--

JORDAN:

I'm asking you why 2 1/2 months after the broadest order you can have why did Rod Rosenstein say hey, you could do this all along but now I'm putting it in a memo? Can I 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 1/2 months later and then you redact everything after it. You know what's under the Reed actions, Mr. Whitaker?

WHITAKER:

I do, sir.

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

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.

JORDAN:

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

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's the whole purpose of the special counsel.

JORDAN:

No, no, so I want to make--you said yes, there are specific names 2 1/2 months into the investigation that Rod Rosenstein gave the special counsel, specific American names to go investigate?

WHITAKER:

Congressman, as you know--

JORDAN:

Because if that's the case then--I hope--I want to know yes or no. I hope you answer it.

WHITAKER:

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

JORDAN:

But I'm asking you a specific or--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 the sp--that Rod Rosenstein sent to the special counsel?

WHITAKER:

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

JORDAN:

And you know why I'm asking this, Mr. Attorney General. Because in this country we don't investigate people, we investigate crimes and if there were specific American citizens names in this redacted 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's appropriate for the American citizens to know the full parameters of an investigation into the guy they made president of the United States?

WHITAKER:

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

JORDAN:

And that's why I'm asking you the question. I would like a yes or no answer. Do you--are there names mentioned under this redacted portion of this memo?

WHITAKER:

On that as I--as I mentioned before, that memo props up a confidential investigation as is every Department of Justice (INAUDIBLE).

JORDAN:

Simple question, Mr. Whitaker. Are there names, specific American names mentioned in this redacted 70 percent, redacted memo that happens 2 1/2 months after the special counsel gets his order to start his investigation where he was given the broadest latitude you can possibly have?

NADLER:

Time of--time of the gentleman has expired. The witness may answer the question.

WHITAKER:

I would just refer the congressman to the general practice of the Department of Justice that we investigate crimes, not individuals.

NADLER:

Thank you. Mr. Cohen.

COHEN:

Thank you, Mr. Chair. Mr. Attorney General, the inspector general of the GSA will be having a rather scathing report on the GSA's decision not to address significant issues concerning the government's post office in its lease to the Trump family concerning the emoluments clause. And it was said that GSA attorneys said they did not referred the matter to OLC, but a senior attorney told the IG that the OLC office of legal counsel knew about the old post office lease and it was up to them to do something. Are you aware of anything the Justice Department did to look into violations of the emolument's clause at the Trump Hotel?

WHITAKER:

Congressman, the emoluments clause, as it relates to the Trump Hotel, is the subject of several ongoing litigation matters.

COHEN:

Right.

WHITAKER:

And so, while I can acknowledge that I am aware of the, not only of the situation you described, but generally the litigations surrounding the emoluments clause, as the acting attorney general sitting here today, I'm unable to talk specifically about those cases.

COHEN:

You can't say if there any memos from the office of legal counsel regarding emoluments clause violations and limitations?

WHITAKER:

Congressman, as I said sit here today, those--the emoluments clause, as it relates to the Trump organization, especially the hotel in Washington DC is the subject of ongoing litigation.

COHEN:

And the Justice Department is helping you represent the president in those suits, is he not? Is that appropriate when it's 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--to the Congress? Is he supposed to buy the Constitution? Shouldn't he have his personal lawyers, not Justice Department lawyers, represent him for this nefarious conduct?

WHITAKER:

Congressman, I can understand that this is an important issue to you, but as it relates to the emolument's clause and Department of Justice, defense of the president of the United States, it is well within our purpose to be involved in that case.

COHEN:

You said that if they--if the administration--the special counsel's investigation looked into President Trump's finances, it beeped crossing a redline. 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 redline but, in fact, was a red line from Moscow that we need to look into?

WHITAKER:

Congressman, when I made that statement, I was a private citizen and had no publicly available information--I--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.

COHEN:

So that's no longer your opinion? It's not crossing a redline 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 United States of America and not to his personal financial interests or his families?

WHITAKER:

Congressman, as I--as I mentioned earlier at the Department of Justice and as--as long as I am at acting attorney general, we're going to follow the law and the facts wherever they may lead, and we're going to do our jobs with fidelity.

COHEN:

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

WHITAKER:

Congressman, as I've mentioned previously, the special counsel's investigation is an ongoing investigation and so I think it would be inappropriate for me to--

COHEN:

--But she would never see a witch-hunt, would you? You'd stop a witch-hunt, wouldn't you?

WHITAKER:

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

COHEN:

You said that you're not interfering with a special counsel's investigation. Have you denied him any funds he's requested at all?

WHITAKER:

Congressman, I can tell this is an important issue for you, but let's--

COHEN:

--It's an important issue for the American public and for the--the whole world.

WHITAKER:

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

COHEN:

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

WHITAKER:

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

COHEN:

I yield back the balance of my time.

NADLER:

I thank the gentleman. Mr. Gohmert.

GOHMERT:

Thank you, Mr. Chairman. And acting attorney general , thank you for being here today. I am--

WHITAKER:

--It's good to see you again, congressman.

GOHMERT:

I'm 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's good to see you. One thing I wanted to hear it first was a statement that you had made, and I wanted to confirm that this is--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?

WHITAKER:

Well, I don't know which speech or statement you're quoting. It sounds like something I would've said, yes.

GHOMERT:

And you wouldn't have said that if you didn't believe that, right?

WHITAKER:

Oh, I believe what you're saying. The--the drugs and the general illegality that's pouring in through our Southern border is having a negative effect on our country.

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?

WHITAKER:

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

GOHMERT:

I'm talking about the people directly to you and directly to Deputy Rosenstein.

WHITAKER:

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

GOHMERT:

Yes, because--

WHITAKER:

--Although, I will tell you, I think Rod Rosenstein as deputy attorney general has over 100 direct reports as deputy attorney general.

GOHMERT:

Yeah, 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--and in fact, I had informed Jeff that one--that his contact at the--with the NSC was sitting on his notices, so either develop conflicts or wasn't properly prepared, and that was Tashina Gauhar.

And she reported directly to Rosenstein. He--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 are setting the attorney general up to be harmed. But this--and then Anthony Ferrante. I know currently, apparently, he's 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. He's--she's currently director of cyber security policy and instant response at the NSC through the White House. There were reports that she met routinely with the Mueller investigators. You've--you--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're 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.

NADLER:

The time of the gentleman has expired.

NADLER:

Mr. Johnson?

JOHNSON:

Thank you. General Whitaker, do you agree with the president's statement that the Russia investigation is a witch hunt?

WHITAKER:

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

JOHNSON:

Well, you commented about the Roger Stone investigation, which is ongoing, did you not?

WHITAKER:

Congressman, just to be clear about this--

JOHNSON:

--You did comment on the--I mean, we heard--

WHITAKER:

--I--I--I mentioned it. I--

JOHNSON:

--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?

WHITAKER:

That's 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--was at the--

JOHNSON:

--Well, you--you don't know whether or not--

WHITAKER:

--Press location--

JOHNSON:

--The CNN reporter was camped out with no advance knowledge or whether or not he was tipped off or not. Isn't that a fact?

WHITAKER:

Congressman, that is true, but I'm very concerned--

JOHNSON:

--All right. Well, let me move on--

WHITAKER:

--That a operation--that an--

JOHNSON:

--Let me move--hold on, sir--

WHITAKER:

--FBI is--

JOHNSON:

--I'm controlling the time. Let me move on.

I'd 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?

WHITAKER:

I appreciate this question, and I'm glad this is the--an opportunity for--

JOHNSON:

--It's a pretty direct question--

WHITAKER:

--Me to address this.

JOHNSON:

Did you receive your final guidance on that question on December--

WHITAKER:

--As you know--

JOHNSON:

--Nineteenth--

WHITAKER:

--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--

JOHNSON:

--Well, let me just ask you--

WHITAKER:

--Financial--

JOHNSON:

--I understand you take that position. But a--my simple question is, isn't it a fact that you received your final ethics guidance on that question on December 19th, 2018?

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. And I--

NADLER:

--Mr. Whitaker--

WHITAKER:

--That decision--I was very--

NADLER:

--You were asked a direct--

WHITAKER:

--Comfortable with that decision.

NADLER:

Mr. Whitaker, you were asked a direct question. And it's getting a little tiresome, hearing you stall and wasting the member's time. The member only has five minutes. You--he asked you a specific question. Did you last receive advice on that on December 18th? The answer out to be yes or no, or--or some other date or I don't remember. But you don't--we don't need a speech. The gentleman-

-

COLLINS:

--Mr. Chairman--

NADLER:

--May repeat the--no. The gentleman may repeat his question.

COLLINS:

No. Mr. Chairman, I mean, if we're going to--if we're going to counsel the witness and act as his attorney on how he should answer--are you answering the questions or is the witness answering the question?

NADLER:

I'm asking the--

COLLINS:

--It's a yes or no--

NADLER:

--Witness not to stall.

COLLINS:

And we have endured that many time here when he's trying to answer the question--

NADLER:

--The gentleman is--

COLLINS:

--In the way that he is asked. It's--

CICILLINE:

--Point of order. Point of order--

NADLER:

--The gentleman--the gentleman is out of order. Mr. Johnson has the floor.

JOHNSON:

And I'd like to have my--

NADLER:

--Your time will be restored.

JOHNSON:

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?

WHITAKER:

Congressman, I made my recusal decision by myself after consulting--

JOHNSON:

--But there were career--

WHITAKER:

--With--

JOHNSON:

--DOJ officials who advised you that you should not touch that investigation. Isn't that correct?

WHITAKER:

Congressman--

JOHNSON:

--Yes or no--

WHITAKER:

--I consulted with career ethics officials. I consulting with my senior staff. I consulted with the Office of Legal Counsel. It was my decision to make. I decided not to recuse. I'm happy to walk through the step by step advice that I received. But I consulted--I--

JOHNSON:

--There were four--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?

WHITAKER:

Congressman, the regulations actually say that I have--

JOHNSON:

--Four individuals advised you that you did not have to recuse yourself. Is that correct?

WHITAKER:

Congressman, let me be clear. It was my decision to make--

JOHNSON:

--You're not being clear, sir, other than--

WHITAKER:

--And I made the decision--

JOHNSON:

--In your obstruction and refusal to answer my question.

WHITAKER:

I'm not obstructing anything. I'm answering your question.

JOHNSON:

Well, you are obstructing--

WHITAKER:

--I consulted with a lot of people regarding my recusal. But it was my decision.

JOHNSON:

Well, you're not telling me who it was. Who did you--

WHITAKER:

--I followed the regulation--

JOHNSON:

--Consult with?

WHITAKER:

As I mentioned, I consulted with--

JOHNSON:

--Name--

WHITAKER:

--Career ethics officials--

JOHNSON:

--Name me some names.

WHITAKER:

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

JOHNSON:

Name me some names, sir.

WHITAKER:

Well, one person would be the assistant attorney general for our Office--

JOHNSON:

--What's his name--

WHITAKER:

--Of Legal Counsel--

JOHNSON:

--Or her name?

WHITAKER:

Steve Engel.

JOHNSON:

And who else?

WHITAKER:

He's a Senate confirmed--

JOHNSON:

--Who else did you consult with?

WHITAKER:

I also consulted with his principal deputy.

JOHNSON:

And that person's name is?

WHITAKER:

His name is Curtis Gannon.

JOHNSON:

And who else did you consult with, sir?

WHITAKER:

Congressman, I don't think--

JOHNSON:

--I'm asking you a--

WHITAKER:

--Any public exposure--

JOHNSON:

--Pretty clear question--

WHITAKER:

--Of these folks--

JOHNSON:

--Sir. Who else did you consult with about whether or not you should--

WHITAKER:

--Well--

JOHNSON:

--Recuse yourself from the Mueller investigation?

WHITAKER:

Generally who did I consult with?

JOHNSON:

I want to know specifically who you talked to.

WHITAKER:

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

JOHNSON:

And he advised you that your recusal was unnecessary, or did he advise you to recuse?

WHITAKER:

He actually could not identify any precedent for me to recuse. He said it was a--

JOHNSON:

--And--

WHITAKER:

--Close call.

COLLINS:

Regular order.

WHITAKER:

He said that--I'm sorry. Did you have a question?

JOHNSON:

Go ahead.

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--

JOHNSON:

--Did he--did he recognize that you--

WHITAKER:

--He also said--

JOHNSON:

--Recuse--

WHITAKER:

--That--

JOHNSON:

--Yourself?

NADLER:

The time of the--the time of the gentleman has expired.

WHITAKER:

Can I finish?

NADLER:

The witness may finish his answer.

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.

NADLER:

Mr. Ratcliffe?

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 eight-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's 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 a 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'm 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'd 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.

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 that's a really good question, about Project Safe Neighborhoods. In 2017 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 overall 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.

Some other things that we've done is, as the attorney general was 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 the ERPOs, and there is--you know, congressman, I really appreciate your tone that this oversight hearing is not a hearing about the types of things that we're talking about, but to (INAUDIBLE) congressman, the chairman sent me a letter specifically outlining things that he wanted to talk about, and I don't feel like we've talked about many of those things. So I'm glad that you offered that opportunity to talk about the Department of Justice's efforts reducing gun violence.

RATCLIFFE:

Thank you, Attorney General. I'd like to yield the remainder of my time to Congressman Jordan.

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?

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.

JORDAN:

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

NADLER:

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

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.

NADLER:

Thank you. Mr. Deutch.

DEUTCH:

Thank you, Mr. Chairman. General Whitaker, you and I are both lawyers. My first day of criminal law my professor came in and said if someone asks you a yes or no question don't just repeat the question and answer yes or no, otherwise during your career people will think you're not a good lawyer. We know you're a good lawyer. Let's heed that advice going forward. In November--

WHITAKER:

We did not go to the same law school.

DEUTCH:

In November 2018--we didn't. The advice is good, nonetheless. In November 2018, Chris Wallace asked the president a question. He said, do 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?

WHITAKER:

Congressman, the president appointed me--

DEUTCH:

I'm going to go back. I understand how it all worked. I'm 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?

WHITAKER:

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

DEUTCH:

Who'd you--who'd you interview with for this, for the chief of staff job, not for this job, for the chief of staff job?

WHITAKER:

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

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 17, 2017 to September 22, 2017?

WHITAKER:

Are you saying before I was actually the chief of staff?

DEUTCH:

I'm saying between May 17, 2017--

WHITAKER:

Well, congressman, I had never met the president until after I joined the Department of Justice in October 2017.

DEUTCH:

So have you--let me just ask you another question. You didn't communicate with him. Did you communicate with anyone at the White House about the special counsel investigation before September 22, 2018?

WHITAKER:

I assume you're excluding my appearances on CNN because I don't know if the White House was watching my appearances on CNN.

DEUTCH:

No, if--if you talked to anybody at the White House--I mean you've told me that the president wasn't watching those, otherwise he would've been aware of your positions. So I assume the president wasn't watching. Did you talk about those appearances with anyone at the White House?

WHITAKER:

I did not talk about my appearances on CNN.

DEUTCH:

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

WHITAKER:

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

DEUTCH:

And when you were--throughout that process did you ever communicate with anyone--here's the question. By my account 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?

WHITAKER:

Congressman, I had at the time you described, May 2017 until I joined the department on October 4, 2017, I didn't have a relationship with the White House.

DEUTCH:

Did you talk to any--did talk to any White House personnel before you were hired, anyone at the White House?

WHITAKER:

Congressman, I--

DEUTCH:

That's an easy one. Did you talk to anyone at the White House? Is the answer no?

WHITAKER:

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

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?

WHITAKER:

In May--between May--

DEUTCH:

Let me just fast--let me just go--let me just go forward because here's the issue. When you became the attorney general, since becoming the attorney general you said that you have had--you've 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?

WHITAKER:

Congressman, I'm not aware of that happening.

DEUTCH:

Who else--how many people were in those briefings with you when you're briefed about the Mueller investigation?

WHITAKER:

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

DEUTCH:

And have there been--have you ever attempted to use any intermediaries to get information to the president or others on his staff?

WHITAKER:

No, I have not attempted to use any intermediaries to get information to the president or his staff.

DEUTCH:

So I'll close, Mr. Chairman, just by saying this is going to be a long hearing. We're going to go on for a while. The concern that we have, Mr. Whitaker, is that there was no Senate confirmation here. We're not the Senate. But the administration justified their decision in picking you under the Vacancies Reform Act. There was a law on the books at the--for the attorney general's succession, and the authority to oversee the special counsel's work. It goes from one Senate confirmed official to another, from the AG, WAG, associated 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're trying to figure out is why is it exactly that the president--

COLLINS:

Regular order.

DEUTCH:

--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, Mr. Chairman.

NADLER:

The time of the gentleman has expired.

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 the United States attorney, which is a very important position, as Mr. Ratcliffe previously stated, and 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 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.

BIGGS:

Thank you, Mr. Chairman. I'll just say to Mr. Whitaker, my questions normally--in a normal oversight committee would be vastly different than the direction I'm going to go because we've kind of wandered into this other stream over here, so I'm going to ask you some questions. The long-standing constitutionally-based Department of Justice policy holds that a sitting president cannot be indicted. Is that--and that's based on the last review, which happened during the Clinton administration. Is that still an effect or has that changed?

WHITAKER:

That is still the policy of the Department of Justice.

BIGGS:

Have you spoken to deputy Attorney General Rosenstein about his statements on invoking the 25th amendment and wiretapping the President Trump?

WHITAKER:

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

BIGGS:

Okay, I'm not sure I understand that understood that. You said you--no reason to believe that they were not consistent. So there were a couple of negatives there. Do you believe they were consistent to what he believed at the time?

WHITAKER:

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

BIGGS:

--Oh, you're talking about his comments, not--not--his comments to the press, not the ones about him wearing a wire?

WHITAKER:

I'm talking about Deputy Attorney General Rosenstein's comments to the press after it was reported that he had considered wearing a wire--

BIGGS:

--So his response--

WHITAKER:

--And invoking the 20th amendment.

BIGGS:

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

WHITAKER:

Again, I'm not here to talk about the internal discussions that I have with the--

BIGGS:

--Well, this is really critical. It's not--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--in his role as an unbiased overseer of the Mueller investigation. So it's not directly dealing with the investigation, but it deals with his capacity to be unbiased. So I'm not asking whether--I'm 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?

WHITAKER:

Congressman, I--this is an important question to you, but I'm not going to answer my conversations with Deputy Attorney General Rosenstein. I believe that they are deliberative. Obviously, I'm exercising the full--

BIGGS:

--Okay, so I get it--

WHITAKER:

--Responsibilities of the acting attorney general position.

BIGGS:

I appreciate that. I appreciate it and I know that that answer is important to you. I know that's important to you but the--answering in a way that we as the American people can understand, that's important to us. So let's get to June 21, 2017 where you said the truth is there was no collusion with the Russians and the Trump campaign. There was interference by the Russians into the election, but there was not collusion with the campaign. That's where the left seems to be combining these two issues. The last thing they want right now is the truth to come out in 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's that simple. Do you still adhere to that statement? Is that still true in your mind today?

WHITAKER:

Congressman, as I mentioned before in to 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--and I had no inside information. I did not know the details of the investigation. I--I obviously know the traditions of the Department of Justice, rules and regulations and I continue to follow those as I exercise (INAUDIBLE)--

BIGGS:

--I remember it--I remember the answers that you gave to a similar question but not--not this question here. And so that's not what I'm asking. What I'm asking is as we sit here today, a year and half later, has your opinion changed from what you stated, June 21, 2017, has it changed? That's--that's a simple question. That's not hard.

WHITAKER:

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

BIGGS:

So, the scope memo indicates that the scope of the Mueller investigation with any links or 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?

WHITAKER:

Congressman, as I was discussing with Representative Jordan, I'm not going to talk about the scope of this special counsel.

BIGGS:

--All right, then I'll go forward then and say the indictments and the relation to scope one, Papadopoulos for false statements occurring after molar was appointed. Manafort acts unrelated to the election campaign, Gates acts unrelated to the election campaign, Flynn, false statements about postelection conversations, Richard (INAUDIBLE), unrelated to campaign or election, Cohen, referred by Mueller to Southern District of New York because it was out of his scope, Sam Patton, not really to the 2016 election or campaign and (INAUDIBLE) for false statements occurring after molar was appointed. Not one indictment alleged in an illegal relationship between a member of the Trump campaign and Russia. And that's consistent with what we've seen so far in that. And with that, thank you, Mr. Chairman.

NADLER:

The time of the gentleman has expired (INAUDIBLE).

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's my understanding that before you moved to the Department of Justice that you are the executive director of the Foundation for Accountability--

COLLINS:

--Mr. Chairman? Mr. Chairman--

BASS:

--And civic and trust.

COLLINS:

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

BASS:

FACT is a conservative--

COLLINS:

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

BASS:

--Ethics watchdog where he--

COLLINS:

--I have a point of order--

BASS:

--Made full use of the opportunity to call for investigations

NADLER:

--The gentleman will state his point--

BASS:

--Of multiple Democrats--

NADLER:

--The gentlelady will suspend; the gentleman will state his point of order.

COLLINS:

My point of order by the very statement from the gentle lady is outside of the scope of an oversight investigative hearing on the Department of Justice.

BASS:

It is not. You need to let me finish--

NADLER:

--That is not--

BASS:

--My question and you'll see what is asking.

NADLER:

The gentle--the gentlelady will suspend. That is not a valid point of order. The gentlelady will continue.

BASS:

Thank you.

COLLINS:

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

NADLER:

--The gentlelady has the floor.

COLLINS:

Mr.--are you just going to overrun a point of order?

BASS:

Yeah, because your--

NADLER:

--The gentlelady--

COLLINS:

--I can state my point of order--

NADLER:

--The gentlelady will suspend. I--I ruled that it was not a valid point of order and the gentlelady has the floor. The gentle lady will continue.

BASS:

Thank you.

COLLINS:

I was not through with my point of order.

NADLER:

The gentlelady will continue.

COLLINS:

Appeal to the ruling of the chair.

CICILLINE:

Move to table.

JACKSON LEE:

I move to table.

NADLER:

Motion to--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 role. One moment while we set up the clerk.

CLERK:

Mr. Chairman?

NADLER:

Aye.

CLERK:

Mr. Chairman votes aye. Ms. Lofgren? Ms. Jackson Lee?

JACKSON LEE:

Aye.

CLERK:

Ms. Jackson Lee votes aye. Mr. Cohen?

COHEN:

Aye.

CLERK:

Mr. Cohen votes aye. Mr. Johnson? Mr. Deutsch?

DEUTSCH:

Mr. Deutsch votes aye. Miss Bass?

BASS:

Aye.

CLERK:

Ms. Bass votes aye. Mr. Richmond?

RICHMOND:

Aye.

CLERK:

Mr. Richmond votes aye. Mr. Jeffries?

JEFFRIES:

Aye.

CLERK:

Mr. Jeffries votes aye. Mr. Cicilline?

CICILLINE:

Aye.

CLERK:

Mr. Cicilline votes aye. Mr. Swalwell?

SWALWELL:

Aye.

CLERK:

Mr. Swalwell votes aye. Mr. Lieu? Mr. Raskin?

RASKIN:

Aye.

CLERK:

Mr. Raskin votes aye. Ms. Jayapal? Miss Demings?

DEMINGS:

Aye.

CLERK:

Ms. Deming's votes aye. Mr. Correa?

CORREA:

Aye.

CLERK:

Mr. Correa votes aye. Ms. Scanlon?

SCANLON:

Aye.

CLERK:

Ms. Scanlon votes aye. Miss Garcia?

GARCIA:

Aye.

CLERK:

Ms. Garcia votes aye. Mr. Negus?

NEGUS:

Aye.

CLERK:

Mr. Neguse votes aye. Ms. McBath?

MCBATH:

Aye.

CLERK:

Ms. McBath votes aye. Mr. Stanton?

STANTON:

Aye.

CLERK:

Mr. Stanton votes aye. Ms. Dean?

DEAN:

Aye.

CLERK:

Ms. Dean votes aye. Ms. Mucarsel-Powell?

MUCARSEL-POWELL:

Aye.

CLERK:

Ms. Mucarsel-Powell votes aye. Miss Escobar?

ESCOBAR:

Aye.

CLERK:

Ms. Escobar votes aye. Mr. Collins?

COLLINS:

No.

CLERK:

Mr. Collins votes no. Mr. Sensenbrenner? Mr. Chabot? Mr. Gohmert? Mr. Jordan? Mr. Buck? Mr. Ratcliffe? Ms. Roby?

ROBY:

Nay.

CLERK:

Ms. Roby votes nay. Mr. Gaetz? Mr. Johnson? Mr. Biggs?

BIGGS:

No.

CLERK:

Mr. Biggs votes no. Mr. McClintock?

MCCLINTOCK:

No.

CLERK:

Mr. McClintock votes no. Ms. Lesko?

LESKO:

No.

CLERK:

Ms. Lesko votes no. Mr. Reschenthaler?

RESCHENTHALER:

No.

CLERK:

Mr. Reschenthaler votes no. Mr. Cline?

CLINE:

No.

CLERK:

Mr. Cline votes no. Mr. Armstrong?

ARMSTRONG:

No.

CLERK:

Mr. Armstrong votes no. Mr. Steube?

NADLER:

Is there--is there--is there any member of the committee who hasn't voted who wishes to vote? Ms. Lofgren.

CLERK:

Ms. Lofgren?

LOFGREN:

Aye.

CLERK:

Ms. Lofgren votes aye.

NADLER:

Is there any other member who hasn't voted who wishes to vote? The clerk will report.

CLERK:

Mr. Chairman, the ayes are 21, the nos are 8.

NADLER:

In that case the motion to table is adopted. We returned to Miss Bass.

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 FACTs 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, Representative Ami Berra, Huffman, Lewis. In fact, the organization actually called for an investigation into a member of this committee, Representative Hank Johnson.

So that's a total of about 46 individuals or organizations that over the time period when you were the executive director of FACT that 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 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?

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.

BASS:

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

WHITAKER:

All of-again, you know I'm here for an oversight hearing and--

BASS:

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

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 (INAUDIBLE).

BASS:

I don't have time to look into the website. I'm asking you a question now. You were the executive director. Which Republicans did you file?

WHITAKER:

Congresswoman, again as I sit here today all I can do is refer you to the website (INAUDIBLE).

BASS:

Okay. So let me just ask this since you have been at the--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've been the acting AG?

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--I would and it was--and my recommendation was adopted by the Department of Justice I'm certain that I could not be involved in that investigation.

WHITAKER:

You are certain but you don't know whether you--did you

NADLER:

The committee will come to order. We will resume questioning the witness under the five-minute rule. Mr. McClintock.

MCCLINTOCK:

Thank you, Mr. Chairman. Mr. Whitaker, I'm sure you'd agree that the appearance of favoritism or partisanship by law enforcement agencies is absolutely deadly to a nation that's 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 can--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've been reading Greg 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?

WHITAKER:

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

MCCLINTOCK:

That's not what--

WHITAKER:

Let me finish. Let me finish.

MCCLINTOCK:

--the preponderance of evidence is telling me from sources such as this one.

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.

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?

WHITAKER:

Congressman, I can assure you that any allegation of misconduct by an employee of the department of justice will be looked into thoroughly.

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?

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.

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's 66 years old, doesn't own any firearms, and yet he was the subject of

a predawn raid by 29 combat armed officers. 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 predawn 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. And 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?

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 the safety of the surrounding--

MCCLINTOCK:

Well, then how do you explain the discrepancy between the way Roger Stone was treated and the way Bob Menendez was treated?

WHITAKER:

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

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?

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.

NADLER:

The time of the gentleman has expired. Mr. Richmond.

RICHMOND:

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

WHITAKER:

Congressman, I believe--

RICHMOND:

It was.

WHITAKER:

--President Grant signed the Department of Justice--

RICHMOND:

No, no, no, no, no, it was. We're 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?

WHITAKER:

Are you talking about the Civil Rights division specifically?

RICHMOND:

No, DOJ.

WHITAKER:

The Department of Justice was set up to give a--

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?

WHITAKER:

I was, and in fact I sat right behind him (INAUDIBLE).

RICHMOND:

Right. That's exactly where I'm going because do you remember me asking him a question about diversity in leadership at 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?

WHITAKER:

If the Senate confirms my friend, Don Washington, to be head of the U.S. Marshals, which I believe he is--it's 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?

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've 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're charged with enforcing civil rights and making people feel that you're 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?

WHITAKER:

Congressman, I think the act, while it's--you know, again, part of an ongoing prosecution, I can tell you--

RICHMOND:

Let me just say this--

WHITAKER:

--the act was charged as a hate crime (INAUDIBLE)--

RICHMOND:

I agree with you, and I applaud you--

WHITAKER:

--it was a heinous act.

RICHMOND:

I applaud you for that. But that's the one individual. I'm asking you, in general, do you believe that there were good people that were protesting and there were good people that were anti-protestors? So I'm talking about the people marching with--

WHITAKER:

Congressman--

RICHMOND:

--lights--I mean, the tiki torches and the chants. Do you think that some of them were good people is the short question?

WHITAKER:

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

RICHMOND:

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

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 that answer if those people identify that way.

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?

WHITAKER:

No.

RICHMOND:

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

WHITAKER:

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

RICHMOND:

Is it a lot? Is it a few? I mean we're talking about a serious concern in the United States of America. I would think we're talking over 100, or we're talking less than 25. Just--but if you don't know ballpark, I'm 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. Is the DOJ, have they opened an investigation in that, and if they have I guess you can't talk about it. Are you looking at that?

WHITAKER:

Congressman, 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're watching that situation very carefully.

RICHMOND:

Well, I don't want to go over my time, and I guess in the last 12 seconds I will just implore you to implore, which will now be the third attorney general during this term, that after two years we should be doing better with diversity in the department of justice, and I'm 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.

NADLER:

Thank the gentleman. Mr. Cline.

Oh, I'm sorry. I'm sorry. Ms. Lesko.

LESKO:

Thank you. You know, I have to say that I'm very disappointed in this hearing. You know, I--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's nothing but character assassination, harassment of--of our witness and it's 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 you think of the hearing and I said, "It's a joke." But--but now I'm just sad. I'm sad because we were on the floor just a little while ago talking about how we are honoring our late Representative Dingell and talking about bipartisanship and how we need to get things done and yet, here we are with the blatant political showed that doesn't help anything.

I imagine if American people are watching this right now, they'd be shaking their heads. Like, what are you doing there? We need to work together to get things done. And so that's my statement but I do have a question for--for Mr. Whitaker about DOJ oversight.

Following the New York Governor Cuomo support of abortion up to the moment of birth and Governor Northam, 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'm getting really concerned that this is violating the law. And has DOJ looked into this?

WHITAKER:

Yes. As an American citizen, I am very concerned.

LESKO:

And can you also tell me, I--I read recently a Wall Street Journal opinion piece. It was from 2018 and in that it said New York City--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 be tried to stop?

WHITAKER:

Congresswoman, every life is valuable and I--I--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--and how we enforce the laws of the Department of Justice. And this is an issue that I know there is a lot a passion about and I appreciate your passion and it's something that we actually share together.

And if you look at my statements previous to joining that affirmative justice, especially during the 2014 campaign for the United States Senate, I was very outspoken in this regard but it's--it's--as I sit here as acting attorney general, I think would be inappropriate for me to comment more fulsomely on this issue, but we're going to enforce the laws that Congress passes, and we are going to hold those accountable that violate the law.

LESKO:

Thank you. I yield back my time.

NADLER:

Thank you. Mr. Jeffries.

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'm 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.

WHITAKER:

All right, well, congressman, I mean--and I'm--

JEFFRIES:

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

WHITAKER:

Okay.

JEFFRIES:

I assume you know the difference. The investigation in the possible Trump-Russia collusion in the 2016 election has resulted in 37 indictments, is that correct?

WHITAKER:

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

JEFFRIES:

34 individuals have been indicted, true?

WHITAKER:

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

JEFFRIES:

Three corporate entities have been indicted, correct?

WHITAKER:

I believe so. Correct.

JEFFRIES:

The investigation has identified 199 different criminal acts, true?

WHITAKER:

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

JEFFRIES:

There have been seven guilty pleas, correct?

WHITAKER:

Yes, there have been seven guilty pleas.

JEFFRIES:

Four people have already been sentenced to prison, true?

WHITAKER:

I believe so, but I--again, I do not have this information in front of me, so to the extent that, you know, I disagree with you, it's because these are facts--

JEFFRIES:

Understood, thank you.

WHITAKER:

(INAUDIBLE)

JEFFRIES:

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?

WHITAKER:

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

JEFFRIES:

Trump's campaign Chairman, Paul Manafort, pled guilty to conspiracy to defraud the United States, true?

WHITAKER:

Mr. Manafort did plead guilty, yes.

JEFFRIES:

Trump's deputy campaign manager, Rick Gates has pled guilty to lying to the FBI, correct?

WHITAKER:

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

JEFFRIES:

Trump's former national security advisor, Michael Flynn, has pled guilty to lying to the FBI, correct?

WHITAKER:

That is a true fact. Yes.

JEFFRIES:

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

WHITAKER:

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

JEFFRIES:

Trump--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?

WHITAKER:

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

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?

WHITAKER:

Congressman, can you tell me exactly where I said that?

JEFFRIES:

I'd be happy to. So in a tweet that you issued on August 6 of 2017, you made reference to a note to Trump's lawyer, do not cooperate with Mueller's lynch mob. Do you recall that?

WHITAKER:

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

JEFFRIES:

Okay, reclaiming my time. Manafort, Gates, Flynn, Cohen, Papadopoulos, and Stone, all in deep trouble. One by one all of the Presidents men are going down in flames. It's often said where there's smoke, there's fire. There's a lot of smoke emanating from 1600 Pennsylvania Ave. right now. Yet, you decided not to recuse yourself. Is that right?

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've discussed today, and I determined that it was not necessary for me to recuse.

JEFFRIES:

And Donald Trump considered the Sessions refusal to be a betrayal, is that right?

WHITAKER:

Congressman, I have no idea as I sit here today what the president believed about General Sessions recusal.

JEFFRIES:

Okay, so let's be clear. The investigation into Russia's attack on our democracy is not a witch-hunt, it's not a fishing expedition, it's not a hoax, it's not a lynch mob, it's 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.

NADLER:

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

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 case 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?

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 has 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 attained 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 non-detained 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--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've authorized and funded more immigration judges, we have put a dramatic number of more judges especially to the areas where it's needed which it often times at the border.

CLINE:

So you've 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've 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?

WHITAKER:

Yes. In fact, government-wide, where there are administrative 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.

CLINE:

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

WHITAKER:

We issued an attorney general order which set the standard which had been different based on what the immigration appeals court which is an internal--the Board of Immigration Appeals which is an internal DOJ body that the attorney general sits over we've passed rules and regulations and a new standard for issuing those continuances for good cause as you mentioned.

CLINE:

All right. Thank you. I yield back.

NADLER:

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

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. A second article, Sessions Replacement Matthew Whitaker Called Mueller's Appointment Ridiculous and a Little Fishy. Third article, All of the Times Robert Mueller's New Boss Railed Against the Russia probe. Trump's Pick to Replace Jeff Sessions once said Mueller Investigation Risk Become a Witch Hunt and finally an article entitled Trump's New Acting Attorney General once mused about defending Robert Mueller.

NADLER:

Without objections, these documents will be placed in the record and I recognize the gentleman for five minutes.

CICILLINE:

Thank you, Mr. Chairman. Mr. Whitaker, I'm going to be really straight with you upfront. I'm 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's a good one. I'll assume they're all good questions and you are grateful.

One, you were briefed by the special counsel you've 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?

WHITAKER:

Congressman, as I previously testified there was one other individual in that briefing with me.

CICILLINE:

And who is that individual?

WHITAKER:

It is the U.S. attorney from the Eastern District of California who I've brought on.

CICILLINE:

What is the name of the individual Mr. Whitaker?

WHITAKER:

His name is Greg Scott.

CICILLINE:

So that's the--did you communicate any information you learned in those briefings to other members of your staff?

WHITAKER:

I don't believe so, no.

CICILLINE:

Do you know whether any information that you learned in those briefings were communicated to anyone at the White House?

WHITAKER:

As I mentioned previously congressman, we have kept a very close--

CICILLINE:

Mr. Whitaker, it's a yes or a no. Do you know whether it was commuted to anybody at the White House?

WHITAKER:

As I sit here today I don't--I don't--I don't know whether it was communicated but I do not believe Mr. Scott or I--

CICILLINE:

did you 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?

WHITAKER:

Yes, together with the general standard that investigative information and materials are need to know and law enforcement--

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?

WHITAKER:

The president specifically tweeted that he had not lashed out.

CICILLINE:

I'm asking you, Mr. Whitaker. Did the president lash out at you, not asking what he tweeted? I don't have a lot of confidence in the veracity of his tweets. I'm asking you under oath.

WHITAKER:

Congressman, that is based on an unsubstantiated.

CICILLINE:

Sir, answer the question yes or no. Did the president lash out to you about Mr. Cohen's guilty plea?

WHITAKER:

No, he did not.

CICILLINE:

And it anyone from the White House or anyone on the president's behalf lash out at you?

WHITAKER:

No.

CICILLINE:

Mr. Whitaker, did the president lash out to you on or about December 8, 2018, to discuss a case before the southern district in New York where he was identified as individual one?

WHITAKER:

No, congressman.

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?

WHITAKER:

Did they contact me to lash out?

CICILLINE:

Yes. Did they reach out to you in some way to express dissatisfaction?

WHITAKER:

No.

CICILLINE:

Okay. Did you 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?

WHITAKER:

Congressman, I did not.

CICILLINE:

So when you claimed earlier that you were going to invoke a privilege you are invoking your privilege of about questions the president hasn't even seen.

WHITAKER:

Congressman, to be clear I'm not invoking any privilege.

CICILLINE:

Well you said earlier that you in your written testimony that you would not answer questions about your conversations with the president. Did you not?

WHITAKER:

Yes, I did--

CICILLINE:

So you are not sitting here today saying the president has instructed you not to answer a question, correct?

WHITAKER:

I'm not sitting here today saying that the president has instructed--

CICILLINE:

So then you're prepared to answer all of these questions?

WHITAKER:

Congressman, I think I was pretty explicit in my opening statement as to--

CICILLINE:

So--so have you spoken to the president, Mr. Whitaker, about the Mueller investigation?

WHITAKER:

Congressman, as I have previously testified, I had--did not talk--talk to the president about the Mueller investigation.

CICILLINE:

Have you ever spoken to the president or--or parts of his legal team about information that you've learned in your capacity as acting attorney general related to the Mueller investigation or any other criminal investigation involving the president?

WHITAKER:

Congressman, while I have specifically been saying that I'm not going to comment about my conversations with the president for his senior staff I have also been very clear that the president has not instructed me to do anything--

CICILLINE:

That wasn't my question. My question was have you had conversations about what you learn? That's a yes or a no.

WHITAKER:

Congressman, I have--I spent all day every day talking--

CICILLINE:

Mr. Whitaker, my question is very specific. Have you spoken to the president or his legal team about what you learn in the Mueller investigation or the related criminal investigations that may involve the president? Yes or no?

WHITAKER:

Congressman, as I specifically answered earlier to a question--

CICILLINE:

Mr. Whitaker, you are clearly not going to answer the question so I'm going to move on. You know Professor John Barrett, correct?

WHITAKER:

Ye--

CICILLINE:

Anyway this is a law school professor who tweeted that you told him in June 2017 that he was flying--that you are 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 a special counsel as ridiculous and a little fishy, that Mueller investigating Trump's finances would be going too far, that there is 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

meaning as Donald Trump Junior with a 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--you said all of those things and they are all in print and it answers Mr. Deutsch'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's a statement. I yield back.

NADLER:

I observe that. The time of the gentleman has expired.

NADLER:

Who's next?

Mr. Reschenthaler. Mr. Reschenthaler is recognized.

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 9. In this letter, in the chairman's own words it said that this committee was here to, quote unquote, to conduct oversight of the department. In this letter is 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's 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 affect the constituents in my district and millions of Americans. And frankly, a lot of these issues are life-and-death. So I'm really confused as I sit here today in this hearing with my Democrat colleagues focused solely on one topic, and that's the Mueller investigation. I really hoped that my friends across the aisle would've 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 in 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 murder of Kate Steinle, they were all released because some city wanted to score cheap political points, and that's why I'm focused on ending sanctuary cities. Mr. Whitaker, what steps is the DOJ taking to end the dangerous practice of sanctuary cities?

WHITAKER:

Well, first of all, we're 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 they--jails will release convicted criminals back into the community instead of informing immigrations 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 that, like you mentioned, and I cannot imagine a situation where a mayor, or 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're ending it is by taking away the resources to those jurisdictions that have that policy.

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 it is more likely now that someone's 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 is the DOJ taking to address this shift, and do you think that a lot of the problems that we're seeing in these stats comes from a porous Southern border?

WHITAKER:

To address your second question first, I do believe that most illegal opioids, like fentanyl--nonprescription illegal opioids, like fentanyl, heroin and their derivatives do--are imported through our Southern border. Some, not a majority, but some are also imported via direct mail, for example, and ordered 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 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. 70,000 people, as you mentioned, have died of drug overdoses. The 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 an emergency schedule 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.

RESCHENTHALER:

Thank you, Mr. Whitaker. I yield back my time.

SWALWELL:

Thank you. Mr. Whitaker, does your watchdog organization ever receive contributions from foreign donors?

COLLINS:

Mr. Chairman, point of order.

NADLER:

(INAUDIBLE) the gentleman will suspend. The gentleman will state his point of order.

COLLINS:

My point of order, and I'm going to go back to this, and we'll--again (INAUDIBLE) the majority does not care, but this is outside of the scope of this hearing. This was not while he was employed here, and whether he outside had donors are not during the time he was not employed, making no connection either way, is not inside the scope of this hearing. And that's not the call of this committee, and you know, look, I'm outgunned over here. I have no votes. This is not part of the call of the hearing. Mr. Swalwell, there's plenty of things to do, and Mr. Cicilline, you (INAUDIBLE)

SWALWELL:

Mr. Collins, if you want to sit down there with his lawyers, you can go sit down there, but you're not his lawyer.

NADLER:

The gentleman will suspend.

COLLINS:

And neither are you, Mr. Swalwell, and if you have any questions that are actually part of this instead of running for president down there, we could get this done.

SWALWELL:

You can sit down there. There's room.

NADLER:

Both gentleman will suspend.

COLLINS:

Mr. 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's going at this point. The gentleman--so the gentleman's point of order is not well taken. The gentleman will resume.

COLLINS:

Appeal the ruling of the chair.

JACKSON LEE:

Move to table.

NADLER:

The gentleman appealed the ruling of the chair. The gentlelady moved to table. Move to table is not debatable. The clerk will call the role on the motion to table.

UNKNOWN:

(INAUDIBLE) voice vote.

UNKNOWN:

Mr. Chairman.

NADLER:

Oh, let's--call the role--all in favor of tabling the resolution--I'm sorry, all in favor of tabling the appeal of the ruling of the chair will say aye. Aye.

Nay?

The ayes have it. The appeal--the motion is tabled. The gentleman will continue.

SWALWELL:

Mr. Whitaker, does your organization have foreign contributions?

WHITAKER:

Just to be clear are you talking about--

SWALWELL:

Yes or no?

WHITAKER:

What do you mean by my organization?

SWALWELL:

You led an organization called FACT. Did it receive foreign contributions while you were there?

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.

SWALWELL:

When you--did you interview with Don McGahn in July 2017 to have the job that Ty Cobb would ultimately get?

WHITAKER:

I ultimately did not meet with Mr. McGahn, so I met with his staff.

SWALWELL:

Did you talk with him on the phone?

WHITAKER:

You know, we actually never did end up talking on the phone either.

SWALWELL:

Who did you meet with on his staff?

WHITAKER:

I talked to Annie Donaldson from his staff who was his chief of staff at the time.

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?

WHITAKER:

No, I did not.

SWALWELL:

Was it brought up by the chief of staff?

WHITAKER:

In fact at the time, congressman, everyone at the White House did not want to talk about the special counsel's investigation (INAUDIBLE).

SWALWELL:

But you were interviewing for a job that would respond to the special counsel's investigation. Is that right?

WHITAKER:

At the time I was interviewing for the position that was ultimately occupied by Ty Cobb.

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--

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's why they wanted to bring in someone that had been unrelated to the investigation and the campaign (INAUDIBLE)

SWALWELL:

Did they talk to you about your prior opinions about the Mueller investigation?

WHITAKER:

No, we did not discuss it. We discussed about my background as a United States attorney and my legal practice.

SWALWELL:

Has there been discussion at the department about keeping the Mueller report from going to Congress?

WHITAKER:

No, we--in fact, we're continuing to follow the special counsel regulations as it relates to the report. We haven't received the report.

SWALWELL:

Has there been a draft opinion about keeping it from going to Congress?

WHITAKER:

You know, congressman, I'm not going to talk about the kind of ongoing investigation that is the special counsel. I will share with you that consistent with--

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?

WHITAKER:

Congressman, I've already answered that question in my opening statement.

SWALWELL:

Do you believe Attorney General Sessions should have recused?

WHITAKER:

As I mentioned in my answers previously, the recusal decision (INAUDIBLE).

SWALWELL:

No, do you believe, yes or no, that he should have recused?

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.

SWALWELL:

Have there been any discussions at the department about pardons for Paul Manafort, Roger Stone, Michael Flynn or Michael Cohen?

WHITAKER:

Congressman, we have a very well-worn system for--

SWALWELL:

That the president doesn't follow. But have there been discussions about pardons for those individuals that you're aware of, yes or no?

WHITAKER:

Congressman, as I've been acting attorney general I have not been involved in any discussions of any pardons, even including the ones you're discussing.

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?

WHITAKER:

Congressman, that position that I mentioned last week in a press conference was my position as acting attorney general.

SWALWELL:

Would Bob Mueller, if sitting before us right now, agree with you?

WHITAKER:

You know, congressman, Bob Mueller is going to finish his investigation when he wants to finish his investigation.

SWALWELL:

Is Mr. Mueller honest?

WHITAKER:

Congressman, I have been on the record about my respect for Bob Mueller and his ability to conduct this investigation.

SWALWELL:

Do you believe he's honest, yes or no?

WHITAKER:

I have no reason to believe he's not honest, so yes, I do believe he's honest.

SWALWELL:

Do you believe he's conflicted, yes or no?

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'm sure that whether it's Bob Mueller, whether it's Rod Rosenstein--

SWALWELL:

But the president has called him conflicted. The president's called him conflicted, and you oversee the investigation. Do you believe that Mr. Mueller is conflicted?

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 agents that work for me follow regular order, and as I sit here today I don't have any reason to believe that.

SWALWELL:

You--so you don't believe--you believe he's honest, you don't believe he's conflicted. Can you say right now, Mr. President, Bob Mueller is honest and not conflicted?

WHITAKER:

Congressman, I'm not a puppet to repeat what you're saying. I (INAUDIBLE)

SWALWELL:

Are you able to say it, or do you not believe it?

WHITAKER:

I have answered your question as to what I believe about the special counsel. I stand by my prior statement.

SWALWELL:

Can you say it to the president, though?

WHITAKER:

Congressman, I am not here to be a puppet to repeat terms and words that you say that I should say.

SWALWELL:

Can you say that to the president?

COLLINS:

Regular order.

SWALWELL:

Mr. Chair, he hasn't answered that question.

NADLER:

Sorry?

SWALWELL:

He has not answered the question if he would say that Mr. Mueller is honest and not conflicted to the president.

NADLER:

Time of the gentleman has expired. The witness may answer the question.

WHITAKER:

I don't have anything further to add. I think I've answered the congressman's question.

NADLER:

That's a question for observers.

The gentleman from North Dakota, Mr. Armstrong.

ARMSTRONG:

Mr. Whitaker, you've obviously been acting attorney general during some fairly interesting times and we've 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 is 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 is the way government is supposed to work.

It's 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 I--anytime on your way out, if you have any advice on something Congress can do to continue this momentum, I would be very, very appreciative.

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--and--and what you've 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. attorney's offices how to--how to implement the First Step Act and I know that the Bureau of Prisons as well is--is implementing the act.

ARMSTRONG:

And I--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've always found about your pretrial release program is that 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. attorney's offices across this country is phenomenal and they deserve to be credited for that.

WHITAKER:

And as a former United States attorney for five and a half years in Des Moines, Iowa, I understand uniquely how pretrial release works and so I, you know, we'd be interested in your proposal and would look at that and work with you carefully to try to implement something like that.

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--that we prosecute crime, 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--in a very particular statute and we were dealing with it and there were members of the FBI and the DOJ that said--that were concerned about vagueness. But as far as I understand in the federal code, particularly in the federal criminal code, gross negligence has the same definition, approximately, everywhere in the criminal code, right?

WHITAKER:

In my experience your statement is generally correct, yes.

ARMSTRONG:

So, if gross negligence would be vague under one particular statute of the criminal code, then we should be concerned that it's vague under every other criminal--other section of the criminal code.

WHITAKER:

That is correct. And there's, for example, jury instructions that would say that she informed the jury as to evaluate a gross negligence standard to--to convict someone of a crime.

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 proposal 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?

WHITAKER:

As I sit tight here right now, I don't know the answer to your question, but I'm happy to get back to you on that.

ARMSTRONG:

I'd--I'd appreciate that. And then I'm, just again, under normal course of order, I'm assuming it works the same as everywhere, law enforcement agents, and I know a lot of FBI agents actually do have law degrees, but FBI agents investigate crimes and then it goes up to food chain to the U.S. attorney's office, but usually maybe--

WHITAKER:

--Remember, I mean, you need a--you need a predication to even open investigation and that's the step that I think a lot of people forget. I mean, there's many stops along the way. And when you

conduct a criminal investigation, first you have to predicate the investigation, then it's--it's investigated by the--the agents--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, you know, that's--that's, you know, and then--and then, again, there's a discovery process and a trial process. It's a very, very well worn and, you know, to 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.

ARMSTRONG:

Well I'm just concerned moving forward that we have the same--I mean, everybody knows--and obviously this is hypertension and hyper political, but I'm very concerned moving forward that everybody knows what the rules of the game are as far as statues are and that the walls 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 and this hearing today is noticeable of that. So on your way out, maybe is the best time to deal with some of those things because sometimes that's when the--that's when the we have the courage to do it. But this could very much come up again in the future.

WHITAKER:

Thank you, congressman.

NADLER:

The time of the gentleman has expired. The committee will stand in recess for two minutes. I ask that the members remain here if they can. The hearing--the committee will come to order and will resume questioning with the five-minute rule. (INAUDIBLE).

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?

WHITAKER:

I would. In fact, there is a Time Magazine--

LIEU:

--Thank you--

WHITAKER:

--Cover hanging in my office that says the same thing.

LIEU:

You don't have to keep saying that. Thank you. You haven't taken any sort of a loyalty to Donald Trump, have you?

WHITAKER:

No, I have not taken any loyalty.

LIEU:

Have you signed any nondisclosure agreement (INAUDIBLE) Donald Trump?

WHITAKER:

We signed our ethics pledge, which was the most robust ethics pledge, but I haven't signed any other document other than the normal DOJ employment document.

LIEU:

And there was no nondisclosure agreement with anything you signed, correct?

WHITAKER:

I don't believe so, but I don't know what the standard DOJ forms are.

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?

WHITAKER:

I proudly took the oath for the second time when I came back to the Department of Justice.

LIEU:

Thank you. I'm going to 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?

WHITAKER:

Congressman, as is consistent with the practice of the Department of Justice, we investigate crimes and we prosecute individuals that commit crimes.

LIEU:

I'm just asking a simple question. I'll go on. There is no sentence in the U.S. Constitution that states the president's former campaign chairman can be indicted, correct?

WHITAKER:

Same answer to my previous--to your previous question.

LIEU:

Does that sentence exist in the Constitution?

WHITAKER:

Of course it does not, congressman.

LIEU:

That's right.

WHITAKER:

You know that and I know that.

LIEU:

That's right, because Paul Manafort was indicted. There is no sentence in the Constitution that says the president's children can't be indicted, correct?

WHITAKER:

Congressman, you know, you can give me the whole list. I mean, you know sort of--

LIEU:

--No, I'll give you three more.

WHITAKER:

The--okay.

LIEU:

Just--yeah, right?

WHITAKER:

There is no sentence in the United States Constitution that says that the president's children cannot be indicted.

LIEU:

There is no sentence in the U.S. Constitution that says the vice president can be indicted, correct?

WHITAKER:

That's correct.

LIEU:

There is no sentence in the U.S. Constitution, this is my last one, there is no sentence in the US Constitution that says the sitting president of the United States cannot be indicted, correct?

WHITAKER:

Congressman, because that is the opinion of the office of--

LIEU:

--Yeah, I don't actually care what DOJ policy is--

WHITAKER:

--(INAUDIBLE) consistent with the practices--

LIEU:

--I'm asking about the Constitution--

WHITAKER:

--Of the Department of Justice--

LIEU:

--Mr. Whitaker, it's just a yes or no question--

--For years--

LIEU:

--Mr. Whitaker, I'm asking you a factual--

WHITAKER:

--Under both administrations.

LIEU:

After this hearing, you can spin the Constitution all you want. As you sit here today you just have-

WHITAKER:

--I'm not spinning the Constitution--

LIEU:

--You just have to answer a factual yes or no question. I'm going to make it even easier for you. There is no sentence in the Constitution that says, "The sitting president of the United States cannot be indicted," correct?

WHITAKER:

Congressman--

LIEU:

--It's a yes or no--

WHITAKER:

--As--I would refer you--

LIEU:

--I have it right here.

WHITAKER:

I--I have a copy myself.

LIEU:

Right, so is that sentence in this Constitution? It's not, correct?

WHITAKER:

--The quote that you--.

LIEU:

--I'm not trying to trick you.

LIEU:

No, I--

WHITAKER:

--It's not a hard question. I don't--

WHITAKER:

--Again, it is--

LIEU:

--It's a founding document of our federal government. Is that sentence in this Constitution?

WHITAKER:

Congressman, you and I both know that the way that the OLC opinion is written (INAUDIBLE)-
-

LIEU:

-- I'm asking about the Constitution, the founding--

WHITAKER:

--Question is what the president of the United States--

WHITAKER:

--I'm just asking about the Constitution--

LIEU:

--Sitting president of the United States can't be indicted.

LIEU:

I'm just going to, Mr. Chair, I'm just going to submit the U.S. Constitution for the--for the record and say no, that sentence is not in there. Now going to move on. Earlier today you had testified you did not communicate to Donald Trump or senior White House advisors about the special counsel's investigation. So I'm going to ask your related question, did you communicate to Donald Trump or any White House advisors about investigations from the Southern District of New York concerning the Trump organization, the Trump (INAUDIBLE) committee, Michael Cohen, or the investigations related to Trump entities or potentially the president?

WHITAKER:

Congressman, I mentioned that--I said other investigations in my opening statement. I really don't have anything further to add that answer.

LIEU:

And when you said other organizations, you mean you communicated to the president about the investigation?

WHITAKER:

No, no I didn't. That's--that's not what I said.

LIEU:

That--that you could not?

WHITAKER:

In my opening statement. I just--I'll refer you back to my opening statement. I was very clear about that.

LIEU:

Did you communicate to the president or any senior White House advisors about investigations from the Southern District of New York related to Trump entities?

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 in the Southern District of New York would be included in other investigations.

LIEU:

Okay, thank you. So I want to move to another subject. The president has talked about national emergency. Under the latest FBI data is correct, isn't it, that violent crime across the United States has gone down.

WHITAKER:

Yeah, we celebrate, actually, that violent crime has been going down the last two years.

LIEU:

That's right. Property crime--property crime is down--gone down as well, isn't that right?

WHITAKER:

Congressman, as I sit here right now I--I believe generally all crime is down in the last two years--
-

LIEU:

--And then my last question--

WHITAKER:

--Since Trump was elected.

LIEU:

--Sure, my last question to you is you would agree with Donald Trump, would you, when last year he tweeted out that border crossings were at a 45-year low?

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've seen an absolute dramatic surge in--in family units.

LIEU:

Thank you.

NADLER:

The time of the gentleman has expired. Mr. Raskin.

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 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's 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's one that tells the story, "Conservative Nonprofit with Obscure Roots and Undisclosed Funders Paid Matthew Whitaker \$1.2 Million." According to The Washington Post, in the three years after you arrived in Washington, Whitaker received more than \$1.2 million as the leader of a charity that reported having no other employees. That's a pretty good deal.

Now, what was the name of the charity that you ran, Mr. Whitaker?

WHITAKER:

Congressman, you've mentioned a lot in your--

RASKIN:

--No, but I'm asking--

WHITAKER:

--Preamble--

RASKIN:

--You a very specific question--

WHITAKER:

--And I--I--no, you--

RASKIN:

--What was the name of the charity--

WHITAKER:

--Listen, you have--you have challenged my character.

RASKIN:

No, no. I'm asking you a question.

WHITAKER:

Do I have an ability to answer--

RASKIN:

--I control this time--

WHITAKER:

--No--

RASKIN:

--Mr. Whitaker--

WHITAKER:

--You do not--

RASKIN:

--If you want to ask the chairman--

WHITAKER:

--I have an ability--

RASKIN:

--For time of your own, you can do it--

WHITAKER:

--I have an ability--

RASKIN:

--This is my time--

WHITAKER:

--To answer your--

RASKIN:

--Mr. Whitaker, you don't run this committee--.

WHITAKER:

--If you--

RASKIN:

--You don't run the Congress of the United States--.

NADLER:

--The gentleman--the gentleman--

RASKIN:

--And you don't run the Judiciary Committee.

NADLER:

The gentleman will suspend. The gentleman is correct. The witness will answer the questions, and it's up to the gentleman to decide what questions. The gentleman will continue--will resume.

RASKIN:

What was the title of the not-for-profit that you ran?

WHITAKER:

What time period, sir?

RASKIN:

What was the last title? I know it changed its name three different times, right? What was the final name?

WHITAKER:

While I was employed as the executive director, it was called the Foundation for Accountability and Civic Trust.

RASKIN:

Did you name it?

WHITAKER:

I did. Actually, you know, that's--

RASKIN:

--Those are highly--

WHITAKER:

--Hold on, let's--

RASKIN:

--Noble goals--

WHITAKER:

--Let me--

RASKIN:

--Accountability and--

WHITAKER:

--Let me--

RASKIN:

--Civic trust--

WHITAKER:

--Be--let me give a point--

RASKIN:

--So let's talk about some accountability--

WHITAKER:

--I need to--you asked me a question--

RASKIN:

--And civic trust--

WHITAKER:

--I would like to answer.

RASKIN:

Mr. Whitaker, I've got a question for you.

WHITAKER:

No, you asked me a question.

RASKIN:

I asked you a question. I'm--

WHITAKER:

--I did not give--I did not give--

RASKIN:

--I control the floor, Mr. Whitaker.

COLLINS:

Mr. Chairman?

RASKIN:

You don't understand.

NADLER:

The--

RASKIN:

--Now--

NADLER:

--The gentleman is correct. The gentleman controls the time. And if he wishes, as many--many members have done on occasion, they make a statement. They don't even ask a question. But if he wishes to proceed to another question, it's his time.

WHITAKER:

But congressman, I do not feel--

NADLER:

--And we will proceed--

WHITAKER:

--I mean Mr. Chairman, I do not--

NADLER:

--The gentleman will be--

WHITAKER:

--I do not feel like--

NADLER:

--The gentleman--

WHITAKER:

--My answer would be complete on the record--

NADLER:

--It's up to the--

WHITAKER:

--To the question he asked.

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--

COLLINS:

--Mr. Chairman--

RASKIN:

--Before you went to the Department of Justice--

COLLINS:

--Point of order.

RASKIN:

I'm--I'm asking my question.

COLLINS:

Mr. Chairman, point of order, which overrules your question. Point of order.

NADLER:

The gentleman will--will explain his--the gentleman will suspend. The gentleman will state his point of order.

COLLINS:

You know, look, we're going to go down this probably many more times. But again, if he wanted to--if you want to do a confirmation hearing, this is not into the scope of this hearing. This is not a confirmation hearing and is not shown to be a--

RASKIN:

--Mr. Chairman, this goes to the--

NADLER:

--The gentleman--the gentleman's point of order is not well taken. The gentleman--the--the gentleman from Maryland has the discretion to ask the questions. The gentleman will proceed.

COLLINS:

Appeal the ruling of the chair.

RASKIN:

The--the--

NADLER:

--The gentleman has appealed the ruling of the chair. The gentlelady has moved to table. All in favor of the motion to table the appeal of the ruling of the chair will vote aye. Aye.

UNKNOWN:

Aye.

NADLER:

Opposed nay.

UNKNOWN:

Nay.

NADLER:

The ayes have it. The ruling of--the--the motion is tabled.

COLLINS:

Mr. Chairman, can you--

NADLER:

--The gentleman--

COLLINS:

--And I engage in a colloquy? Suspend the clock.

NADLER:

--The gentleman will--

COLLINS:

--Can we suspend the clock and you and I engage in--

NADLER:

--No. No, no, no--

COLLINS:

--Colloquy?

NADLER:

The--we're in the--

COLLINS:

--It may solve some long--of the problems that--

NADLER:

--We're in the middle of--

COLLINS:

--Are delaying this.

CICILLINE:

Point of order, Mr. Chairman.

NADLER:

We're--

CICILLINE:

--Is the ranking member just going to continue to interrupt when he doesn't like the flow of questions?

NADLER:

Excuse me.

COLLINS:

I'll probably make a point of order when it needs to be made.

NADLER:

I hope--

COLLINS:

--But right now it'd get overruled--

CICILLINE:

--It'd be good if the use of it was actually a point of order.

NADLER:

Everyone will please suspend. We will--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'll recognize him after the gentleman has completed. The gentleman will resume.

RASKIN:

Thank you, Mr. Chairman. It's been reported publicly that there was one donor. And as we understand it, I think you're 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?

WHITAKER:

Yes, I do.

RASKIN:

Who was the donor?

WHITAKER:

The donor was another nonprofit 501(c)(3) organization called the Donors Trust.

RASKIN:

Okay. Now, that was the pass-through vehicle. But who reached into their pocket and wrote the check to go through that to pay your salary?

WHITAKER:

Congressman, as--as you know, because you've looked at this issue, the Donors Trust is a--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--

RASKIN:

--Okay--

WHITAKER:

--That then funded the--

RASKIN:

--Thank you--

WHITAKER:

--Foundation--

RASKIN:

--All right. Well, then I've got a--

WHITAKER:

--Would have been from--

RASKIN:

--Theory that I want to float with you. And it goes to something very strange that's been happening in the Department of Justice really--recently. Casino billionaire and magnate Sheldon Adelson hates online gambling, for obvious reasons. It's competition for him. He wants people in the casinos, not online. And he's spent more than \$1 million lobbying Congress to override a 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 is 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?

WHITAKER:

Congressman, the--General Sessions was recused at the time that that decision came out. So therefore--

RASKIN:

--So, were you recused too--

WHITAKER:

--I was recused, and so I was not involved in that decision. But I--

RASKIN:

--Did you ever talk to Sheldon Adelson about it?

WHITAKER:

No, I've actually never met Sheldon Adelson.

RASKIN:

Okay. Did you talk to any of his lobbyists about it?

WHITAKER:

No, I did not.

RASKIN:

Did you talk to Charles Cooper about it?

WHITAKER:

No, but I do know Charles Cooper. And I would point out, one of the things, Mr. Raskin--

RASKIN:

--Well, look, if you--

WHITAKER:

--It's very important--

RASKIN:

--You can ask the chairman for time--

WHITAKER:

--It's when--it's when the opinion--when the--

RASKIN:

--But I can't give you my time. Forgive me. We only have five minutes.

WHITAKER:

In the first OLP and--OLC--

RASKIN:

--So--

WHITAKER:

--Opinion came out--

NADLER:

--The gentleman--the gentleman controls the time. At the conclusion of his statement--

WHITAKER:

--Does the Chairman not want the witness--

NADLER:

--At the conclusion--

WHITAKER:

--To give full answers--

NADLER:

--At the conclusion of his five minutes, I will afford--

WHITAKER:

--Okay--

NADLER:

--The witness some time, but the gentleman controls the time.

RASKIN:

Thank you, Mr. Chairman.

In January and February of 2018, the chairman and vice chairman of Wild Rose Casino and Resorts, a casino in Iowa, each donated \$2,600 to your senate campaign, which was over four 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?

NADLER:

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

WHITAKER:

To answer your question specifically, no, I did not.

To go back to the other point I'd like to make, congressman, is that the first OLC opinion that proceeded 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. So, I think it is very consistent, and your inference that somehow--that that process was--was corrupted or corrupt is absolutely wrong. And the premise of your question I reject.

NADLER:

Gentlelady from Washington, Ms. Jayapal.

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. I--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 chief--former Attorney General Jeff Sessions' chief of staff at the time. Is that correct?

WHITAKER:

Of the zero-tolerance policy being implemented?

JAYAPAL:

You were his chief of staff at the time.

WHITAKER:

At what point in time? I was--

JAYAPAL:

Of the family separation policy. Let me just tell you were.

WHITAKER:

There was--I'm sorry, there was no family separation policy. There was a zero tolerance policy (INAUDIBLE).

JAYAPAL:

This has been given four Pinocchios multiple times. I'm just going to tell you--you were 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?

WHITAKER:

No.

JAYAPAL:

So as the chief of staff you were not aware of what your boss was doing?

WHITAKER:

Was the memo--I'm sorry, you're talking about the leaked memo or the memo or the memo that General Sessions issued (INAUDIBLE) the zero--

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 boss, former boss's zero-tolerance prosecution policy memo was coming. Is it correct that the Department of Justice provided no advanced notice to those departments?

WHITAKER:

Congresswoman, the department's policy--

JAYAPAL:

That's just a--it's just a yes or no. Did you provide advanced notice to those--

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 it says that we will take all referrals from DHS.

JAYAPAL:

I'm just 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 advanced 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 ORR lied to the GAO and that they were somehow aware and given advanced notice?

WHITAKER:

No, I'm not going to suggest that anybody was not telling the truth. I'm saying that when we publicly announced the zero-tolerance policy it was pursuant to a public event in San Diego (INAUDIBLE) head of ICE participated.

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'm not talking about once it was public. I'm 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's only one answer to this. It's gone through the courts.

WHITAKER:

You know, did we track it?

JAYAPAL:

Did you track when you were prosecuting a parent or legal guardian who had been separated from a child?

WHITAKER:

I don't believe we were tracking that.

JAYAPAL:

You were not tracking it. That is the correct answer. And when parents are prosecuted and sentenced they are in DOJ custody, correct?

WHITAKER:

Correct, they are--their custody is transferred to the U.S. Marshals.

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?

WHITAKER:

I understand that the policy of zero-tolerance--

JAYAPAL:

Has the Justice Department started tracking parents and legal guardians who were separated from their children at the border?

NADLER:

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

WHITAKER:

Congresswoman, I appreciate your passion for this issue, and I know that you've been very involved on the front lines of this issue.

JAYAPAL:

This is about more than my passion. This is about the children's future, Mr. Whitaker. Please answer. Go ahead, please.

NADLER:

The witness may answer.

WHITAKER:

Congresswoman, the responsibility for the arrests 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.

NADLER:

Thank you. The time of the gentlelady has expired. Ms. Demings.

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've sat through--and my colleague's 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's 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's really 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. Lieu asked you--

WHITAKER:

It does.

DEMINGS:

--if you ever--prove it. 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.

WHITAKER:

Congresswoman, as I've mentioned several times today, I am not going to discuss my private conversations with the president of the United States no matter--

DEMINGS:

So yes or no, did you--

WHITAKER:

No matter what the question is.

DEMINGS:

Yes or no, did you discuss with President Trump anything about Michael Cohen?

WHITAKER:

Congresswoman, as I have expressed several times today, I am not--

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?

WHITAKER:

Congresswoman--

DEMINGS:

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?

WHITAKER:

Congresswoman, I sit on top of the Department of Justice, as you mentioned.

DEMINGS:

Did you ever have any conversations about anybody who works with the District of Virginia, firing or reassigning? With anybody, not just the president, anybody at all?

WHITAKER:

Congresswoman, I am not going to talk today about--

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--it's your words--extremely talented, highly principled public servants who are dedicated to upholding our great Constitution and the laws of the United States. I'm sure you're familiar with this because you keep up. At a rally last fall the president said look what's being exposed at the Department of Justice and the FBI. You have some real bad ones. You see what's happening at the FBI? They're all gone. They're all gone. But there's a lingering stench, and we're 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.

WHITAKER:

Congresswoman, since I've become the acting attorney general I have reestablished a positive relationship between the Department of Justice and the White House. As you know--

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?

WHITAKER:

I have actually a very high estimation of the men and women at the Department of Justice. They are the most exceptional, hard-working people that I have ever had a chance (INAUDIBLE) so happy (INAUDIBLE).

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?

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 (INAUDIBLE).

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're asked about how do you view the people who work for you, that's your answer, that's pretty pitiful. Let me ask you this. You've 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'm told the overwhelming number or 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?

NADLER:

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

WHITAKER:

Congresswoman, we actually both agree the ports of entry at our Southern border are our most trafficked with drugs and illegality. It also comes in between ports of entry.

DEMINGS:

Overwhelming of drugs come through the ports of entry. Do you agree?

WHITAKER:

On our Southern border, yes.

DEMINGS:

Agree or disagree with that?

WHITAKER:

I believe that a tremendous amount of drugs come through our ports of entry on the Southern border, yes.

NADLER:

Mr. Correa.

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 2017, a joint FBI, DHS bulletin warned of a growing threat of violence posed by white supremacists, wood neo-Nazis, right-wing extremists, and other white nationalist groups. An extensive study of terrorist plots between '08 and '16 founded plots and attacks by white nationalist groups in the U.S. outnumbered the threats by Islamic extremists two to one. White supremacist groups have been aggressively recruiting on 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 very basic question, do you believe that white nationalism, white supremacists, extremists or right wing groups in this country pose a threat?

WHITAKER:

Yes, I do.

CORREA:

Is it growing?

WHITAKER:

Based on that report issued by the FBI, I have no reason, as I sit here today, to disagree with that.

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?

WHITAKER:

I believe that we are dedicating resources to the appropriate threats. That is done, obviously, done below my role. It's 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--

CORREA:

--Do you believe--

WHITAKER:

--As I sit here today, I think we are adequately addressing the threats that we face, but we are always reallocating resources--

CORREA:

--If I may ask, I'm running out of time--

WHITAKER:

--Based on how those threats evolve.

CORREA:

Adequately addressing the threat, and you--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're allocating adequate resources towards prosecuting hate crimes?

WHITAKER:

I do. And if you look at some of the high-profile cases we've done, like the synagogue shooting in Pittsburgh or the Charlottesville situation we previously discussed or even the--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--

CORREA:

--But if you'd, again, sir--

WHITAKER:

--Hate crimes--

CORREA:

--If you look at the numbers, 7,000 reported, almost 20 percent increase in 2017, 30 convictions, adequate?

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 those victims of those crimes don't receive the proper justice I think would--would be a misstatement.

CORREA:

I think I'm looking at it from relative. We're--we're looking at foreign terrorism and yet are we ignoring domestic terrorism?

WHITAKER:

No, we are not ignoring that.

CORREA:

So are we allocating the equal or more resources to domestic versus foreign, yes or no?

WHITAKER:

Again, congressman, we allocate our resources based upon the threats and where the federal government should deploy those resources. And again, it's a very dynamic daily evaluation as to where the threats are and I believe we are adequately resourcing all of the threats, including the ones you described.

CORREA:

Do you think domestic terrorism from white extremist groups is on the rise and you think we should allocate additional resources to combating these kinds of terrorist attacks in this country?

WHITAKER:

Congressman, I believe I already answered this question, but I just want to be clear. I agree with the FBI's assessment--

CORREA:

You--I'm sorry, I didn't hear your answer.

WHITAKER:

Okay, well I believe with the FBI 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 we go after--

CORREA:

--Sir, I'm running out of time but I'm going to say we're going to continue to look at this in Homeland Security because I believe that we are missing the ball here. In 2017, DHS terminated grant 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.

NADLER:

(INAUDIBLE). Ms. Scanlon.

SCANLON:

Good afternoon, Mr. Whitaker.

WHITAKER:

Good afternoon.

SCANLON:

In response to a question from my Pennsylvania colleague, you mentioned that the Department of Justice has been attempting to withhold federal dollars from so-called sanctuary cities, is that right?

WHITAKER:

Well yes, I talked about the (INAUDIBLE).

SCANLON:

Thank you. And one of those cities is Philadelphia, right?

WHITAKER:

I believe so, yes.

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?

WHITAKER:

Congresswoman, that is the--

SCANLON:

--Isn't it correct the ruling of the federal court?

WHITAKER:

Congresswoman, I--

SCANLON:

--Isn't it correct that that was--

WHITAKER:

--Going to discuss an--

SCANLON:

--The ruling of--

WHITAKER:

--Ongoing litigation--

SCANLON:

--Isn't it correct that the federal court ruled that the Department of Justice's action was illegal and unconstitutional? That's a matter of public record, sir.

WHITAKER:

Congresswoman--

SCANLON:

--Is it correct?

WHITAKER:

Congresswoman, I don't disagree that a district court judge--

SCANLON:

--Mr. Whitaker, you may--you may be confused here. This may appear to be a contact sport, but it's not a gridiron and I'm not letting you run out the time, okay? Isn't it true the federal court ruled that that was illegal and unconstitutional?

WHITAKER:

Congresswoman, again--

SCANLON:

--Okay, I'll take that as a yes--

WHITAKER:

--That's the subject of ongoing litigation. It would not be appropriate--

SCANLON:

--Isn't it also true, Mr. Whitaker--

WHITAKER:

--For me to talk about it.

SCANLON:

Mr. Whitaker, I'm 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?

WHITAKER:

Congresswoman, this is the subject of ongoing litigation.

SCANLON:

Isn't it true that the federal court found that in a public opinion?

WHITAKER:

Congresswoman, I am not going to comment about--

SCANLON:

--Okay, I'll take that as a yes as well--

WHITAKER:

--Ongoing investigation.

WHITAKER:

Let's move on to some other questions. And just to be clear, I'm asking oversight questions about your enforcement priorities to nearing 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?

WHITAKER:

That is incorrect.

SCANLON:

Okay, when is your first working date as chief of staff for Attorney General Sessions?

WHITAKER:

I started the Department of Justice on October 4 of 2017.

SCANLON:

Okay. And then you became acting attorney general as of November 7, 2018?

WHITAKER:

The president tweeted that I was going to be the next acting attorney general on November 7 of 2018. My--the order that I have received from the president has the date of November 8 of 2017, I'm sorry, 2018.

SCANLON:

Okay, do you have a copy of that order?

WHITAKER:

I do have a copy of that order.

SCANLON:

Can you provide it to the committee, please?

WHITAKER:

I'd be happy to.

SCANLON:

That be great.

WHITAKER:

I don't have it with me though, if that's your question.

SCANLON:

Okay, that 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 department lawyers to draft that request?

WHITAKER:

Congresswoman, the department is currently defending the Census Bureau in litigation on this issue--

SCANLON:

Did Attorney General Sessions ask--

WHITAKER:

--Across the country--

SCANLON:

--Or are you refusing to answer the question?

WHITAKER:

I--I think it's inappropriate for me to comment about the--

SCANLON:

--Okay we--

WHITAKER:

--Subject of ongoing litigation.

SCANLON:

Okay, Mr. Chairman, I'd like to reflect that Mr. Whitaker hasn't answered the question and I'd ask this matter to be addressed in the upcoming deposition. Let's see, do you know if the president directed the department of justice lawyers to make that request?

WHITAKER:

Congresswoman, this is the subject of ongoing litigations.

SCANLON:

Okay, so you're not going to answer that question, either?

WHITAKER:

We are currently defending the United States court.

SCANLON:

Thank you. Was acting Assistant Attorney General John Gore involved in the drafting of that request to add the census question?

WHITAKER:

Congresswoman, as I've previously stated, this is the subject of ongoing litigation.

SCANLON:

Okay, so we'll let the record reflect that again you're 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?

WHITAKER:

Correct, and one of the jobs of the Department of Justice.

SCANLON:

Okay, thank you. And isn't it also true that the most recent Voting Rights Act enforcement action was filed on January 10, 2017?

WHITAKER:

As I mentioned previously, the department is committed to--

SCANLON:

--Is it correct that the most recent voting rights enforcement act action filed by your department was in 2017, January 10?

WHITAKER:

Congresswoman, I'll give you an example--

SCANLON:

-- It's a yes or no question--

WHITAKER:

--During the first term of the Obama administration, they filed, I believe, one--

SCANLON:

--Okay, reclaiming my time--

WHITAKER:

--Section divide to voting rights--

SCANLON:

--No running out the clock. I refer--

WHITAKER:

--I'm answering your question.

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.

NADLER:

Without objection. The fact that that is noted on the website will be entered into the record.

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?

WHITAKER:

May I answer the question? I see my time has expired.

SCANLON:

I think there's a yes or no.

WHITAKER:

The Department of Justice--

NADLER:

--The gentle ladies time has expired. The witness may answer the question.

WHITAKER:

Thank you. Department of Justice has changed positions only in one voting case and that's the Husted case, and the Supreme Court agreed with our new greeting reading of the statute.

GARCIA:

Thank you, Mr. Chairman. I have about four documents I ask for unanimous consent to 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 Progressive Times Mission, Texas Sheriff Crime Dropped 10 percent in Rural Hidalgo in the Last Year.

NADLER:

Without objection these documents will be entered into the record. The gentlelady is now recognized for five minutes.

GARCIA:

So Mr. Acting Attorney General what is it in your mind that leads you to conclude that the border region is--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 I--just please a short answer because I've only got five minutes.

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.

GARCIA:

So you're talking about other cities, not the cities there in fact in the border areas?

WHITAKER:

Well, I think you would agree with me that--that most illegal immigrants that come in through our Southern border don't--don't reside at the border regions that they transit through there and then make their way to other parts of our country.

GARCIA:

Well, I know many come to Houston because we've 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 were--had a lot of crime and I just simply don't agree with you.

But let me move on to another topic in following up on some questions about the family separation policy or the zero-tolerance policy. You said earlier in--in answering a question about some of your background that you were by General Sessions side for a full year side by side and you were aware of everything in the Justice Department separation policy. Is that true?

WHITAKER:

I served as chief of staff for 13 months and I--I am familiar with the zero-tolerance policy, yes. I don't under--

GARCIA:

But you said you--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?

WHITAKER:

I participated in discussions about the zero-tolerance policy internally but again I'm not going to talk about the internal deliberations. The decision was to issue a zero-tolerance policy.

GARCIA:

But who is--who is the brainchild of the policy? Who hatched it? I mean where did it come from? We've never had it before and to the level that is being executed now.

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.

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?

WHITAKER:

That's a--that's 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.

GARCIA:

So you have no idea how many children might be--you've not seen any documents across your desk from DHS or ORR or anybody else?

WHITAKER:

Again, those are different departments within the Executive Branch so--

GARCIA:

I know that, sir. But I know that you are the acting attorney general and a lot--you get a lot of reports, a lot of documents, a lot of data. You've not seen anything to give us any idea just how many children have been torn away from the arms of their mothers?

WHITAKER:

No, I would have to refer you to HHS and DHS again when--

GARCIA:

Do you know how many have been reunited with their families?

WHITAKER:

Again, congresswoman, those are not statistics that I'm involved in because those cases--.

GARCIA:

And again and I--I--you don't have to be the one to break the little finger--finger sticks counting the children. I just want to know if you've seen anything cross your desk or any member of your staff so that--so that Americans who are just finding this policy to be abhorrent and inhumane can have an idea as to when the children will ever be reunited with their families. You cannot--you cannot tell us that today?

WHITAKER:

No, I would have to refer you to HHS and DHS which are--which would be responsible for the parts of the process because once we receive individuals for prosecution under the zero-tolerance policy we only deal with the adults and we don't keep track of--

GARCIA:

One last question since I'm running out of time. At the State of the Union the president said that he was going to make and I'm paraphrasing it a priority to make sure that people with pre-existing conditions were protected. Does that mean that you are going to drop all of the ACA litigation that you are involved in?

WHITAKER:

As you know congresswoman the Affordable Care Act litigation is ongoing in the--

GARCIA:

Well, I know that. The question is are you going to be willing to settle it? Are you going to be able to--to drop some of that since the President is changing priorities and direction for his Department of Justice?

NADLER:

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

WHITAKER:

We have a unitary executive and if the president sets a policy and issues a policy directive, we will follow that policy.

GARCIA:

Thank you.

NADLER:

Mr. Neguse.

NEGUSE:

Mr. Attorney General, thank you for being here. I also want to thank my colleague the distinguished gentleman from South Dakota on the other side of the aisle for his support of criminal justice reform and looking forward to working with him.

ARMSTRONG:

North Dakota.

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 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 2016 I understand this was before you were at the Department of Justice, Mr. Attorney General, the DEA took a big step toward 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 they 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?

WHITAKER:

For the three months that I've been the acting attorney general this is an issue that I've been aware of and I've 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, the grow facility to the researchers.

So it is something that I am very aware of, it's something that I'm trying to push. Unfortunately I have six days left in this chair at the most. I don't know if I'm going to successfully get to it but I understand the concern and know that we are trying to we're trying to make it work.

NEGUSE:

I appreciate that and I applaud that and if I could get your assurances that within the six 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.

WHITAKER:

Yeah, we'll try to get an answer as to the current status but my recollection of where I last found it is that the treaty--

NEGUSE:

No, that sufficient. I want to make sure I--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 or would be fired?

WHITAKER:

I learned on November 7 if that's your question. I mean--

NEGUSE:

It is.

WHITAKER:

Yeah, okay.

NEGUSE:

Okay. So you learn by virtue of that same tweet that--.

WHITAKER:

Yeah.

NEGUSE:

That we all learned?

WHITAKER:

I would suggest the only point I put on that congressman, I'm sorry to interrupt but is that Mr. Sessions redesigned, sent in his resignation letter.

NEGUSE:

Understand. So did you have any conversations with folks at the White House prior to November 7, 2018 about Attorney General Sessions resigning or being fired, however you would characterize that?

WHITAKER:

As is the long-standing practice of the Department of Justice and the Executive Branch generally the president's entitled to confidential communications and while I'm not confirming or denying the existence of any conversation I'm not going to talk about my private conversations with the president of the United States.

NEGUSE:

We will follow up on that front or I would ask the chairman to take that up in a deposition to the extent that is one is noticed. A question around--you mentioned earlier in some of your testimony around the reasoning behind your appointment that one of the reasons you believe 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?

WHITAKER:

Correct, I spent 5 and a half years as the United States attorney for the Southern District of Iowa.

NEGUSE:

Yes, sir. And you also mentioned that one of the reasons in your view that you believe you were appointed acting attorney general was that you'd 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.

WHITAKER:

Yeah, and I knew all of the active matters that we were recused from obviously. I knew all of the policies that we had not only implemented but that were in progress.

NEGUSE:

Understand.

WHITAKER:

I knew all of the people and the individuals--

NEGUSE:

Understand.

WHITAKER:

--both inside the Department of Justice and the interagency.

NEGUSE:

Understand. I just want to reclaim my time here. So I appreciate that and I guess the question I have is I'm sure you're 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 Vacancy Act he was next in line in succession to be appointed attorney general in the occurrence--in the occasion in which that office was vacant occasioned by Mr. Sessions' termination or resignation or what have you.

And so I'm trying to understand why--I mean were you surprised that you were appointed rather than Deputy Attorney General Rosenstein? That the ordinary rules of succession weren't followed?

WHITAKER:

It's been an honor of a lifetime to serve as the acting attorney general and I have as I've mentioned six days left and I'm 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 and which has been passed by Congress and so my appointment as is outlined in the 20-page OLC opinion is legitimate and-and has--has precedent.

NEGUSE:

And I'm not with respect to the attorney general I was not referencing the legitimacy of the appointment. What I was saying was under the Vacancies Act 28 USC 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.

NADLER:

The gentleman has yielded back. Ms. McBath.

WHITAKER:

Mr. Chairman. Mr. Chairman? Mr. Chairman? I'm sorry.

NADLER:

Yes.

WHITAKER:

I just wanted to address that issue really quickly just so we were all on the same page. The first assistant together with any other Senate-confirmed individual together with anyone that's served 90 days the last 365 days that senior position is eligible to be in there. There really there's no ranking or hierarchy of those three positions. Obviously, I'm in the third bucket as chief of staff. I just want to make sure we are clear on that.

NADLER:

Thank you. Ms. McBath.

MCBATH:

Thank you, Mr. Chairman. Mr. Whitaker, I'm 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?

WHITAKER:

The Department of Justice is committed to upholding the voting rights of all Americans.

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 stated earlier, your statement earlier was that you were side-by-side with AG--with Attorney General Sessions advising him on all aspects of the--of the department, yet you don't know--but you are--but at this point you're saying you don't appear--you don't appear--you do not express suspected there was any voter suppression. So what I'm asking is that do you not know of any's voter suppression or do you not know whether or not those laws are being enforced?

WHITAKER:

I don't believe that I said that I'm aware that there might've been voter suppression. Did I--is that some of you heard me say?

MCBATH:

No, I'm just--I'm just asking you might it be the case that you were not aware of any voter suppression?

WHITAKER:

Well, the Department of Justice, I--I sit atop a--a massive organization, as you can imagine. In 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--any of the--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 an investigation, that is something we will seriously look at.

MCBATH:

so, did the State Department assess the need for election monitors in the 2019 elections?

WHITAKER:

I think I mentioned in my opening statement that we sent out 35 civil rights divisions teams to believe 19 states, if I remember right. I might be wrong, and I'd refer you back to my statement. But I--we did send out election monitors from the civil rights division.

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're aware of?

WHITAKER:

As I sit here today, I do not know if Georgia received what I'm describing. Obviously, we would--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 wouldn't be surprised that they did send election monitors to Georgia.

MCBATH:

Well, I can tell you, I--I really think that we needed them and I'm very disappointed in the numbers that we received. We needed for 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. Would you commit to providing this information for this committee?

WHITAKER:

We try to respond to all the letters we receive from Congress. Obviously, February 1 was, I believe, only a week or so ago. I've kind of lost track of what day it is, but yeah, I mean, we will look at

that letter and we 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--and I know that we are going to enforce 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.

MCBATH:

Okay, well thank you for that because if we don't get answers, I promise you we'll keep asking. Another question that I have is, let's see here, what steps did the department take to support election security efforts during the 2018 election, specific efforts?

WHITAKER:

Are you talking about the actual voting devices or--

MCBATH:

--Yes.

WHITAKER:

That--the responsibility for the security of the voting devices and machines is actually the responsibility of the department of homeland security.

MCBATH:

Can you tell this committee what those--what those response buildings 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.

NADLER:

The time of the gentle lady has expired. The--the witness may answer the question.

WHITAKER:

Again, if there's a specific evidence that crimes have been committed I--we would be very interested in that at the Department of Justice.

MCBATH:

Thank you.

NADLER:

Thank you. Miss Stanton--Mr. Stanton.

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 of your current position.

WHITAKER:

Are you talking about the DOJ Office of Inspector General?

STANTON:

Yes, the Justice Department inspector general's 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.

WHITAKER:

I am happy to commit to that. I will cooperate with the inspector general. Michael Horwitz is a fine DOJ. Career employee. I have the utmost respect for him. I think he's done exceptional work.

STANTON:

Thank you so much. The impact of the government shutdown on the functioning of the Department of Justice, the law enforcement function--function, is it fair to say that the shutdown was devastating on the ability of the department to do their work?

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 accepted 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.

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 it issue a

memorandum saying that during the time of the shutdown, the ancillary functions of the department that involve travel would be not allowed. Is that accurate?

WHITAKER:

I don't have that memo in front of me, but that is consistent with my understanding of our guidance in that regard.

STANTON:

On January 13, 2019 in the middle of the government shut down, did you travel to give a speech to the Heritage Foundation?

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'm not sure what you mean. I went to Capitol Hill to give a speech to the heritage foundation, yes.

STANTON:

Okay, would you consider that activity, a speech at the Heritage Foundation, to be an ancillary function of the department?

WHITAKER:

You know, congressman, again, I had no other way to get to a speech that I had committed to give before the shutdown.

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 federal law for religious liberty, the guidance involved expect expansion of exemptions to RFRA at a Religious Liberty Summit held in 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 and agencies. It's fair to say that there's been limited public information on the task force and its work. The only public documentation is a two-page memorandum issued establishing task force. Are you aware of any additional documents or guidance that further explain the task force mandate and processes?

WHITAKER:

No, I'm not familiar with any additional--

STANTON:

--Are you familiar with the budget is of the task force?

WHITAKER:

I do not believe, as I sit here today, that we've actually effectuated the task force yet. And so I don't, you know, and it's going to be an internal task force that would come--that would have no specific separate budget.

STANTON:

Will you commit that during the remaining time that your attorney--acting attorney general to provide this committee any additional details regarding that task force, which has been in place now for, I guess, seven months or more?

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.

STANTON:

Recently, HHS interpreted RFRA to allow a Christian-based foster care--foster care agency that does receive federal tax dollars to discriminate against potential foster parent because they happen to be Jewish. Do you know if the Justice Department stands behind this HHS determination that a taxpayer subsidized organization can discriminate against Jewish individual?

WHITAKER:

I am certain that the Department of Justice will defend that--that position of a--of a sister agency.

STANTON:

Thank you very much.

NADLER:

The time of the gentleman has expired. Miss Dean

DEAN:

Thank you, Mr. Chairman, and thank you, Mr. Whitaker, for agreeing to appear before us today. And I'm 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?

WHITAKER:

As we previously explored with one of your colleagues, I had interviewed preliminarily for the position that ultimately Ty Cobb occupied, and then Emmet 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 had never--after the election of 2016 I had never intended to come into the administration, but I was, you know, I was happy to be asked, and I explored opportunities, and those are the two that I interviewed for.

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?

WHITAKER:

I used my experience as a United States--

DEAN:

Is it true, yes or no?

WHITAKER:

No, I wouldn't characterize it as disparagement, no. I think I tried to explain to the American people when I was on CNN and other outlets how the process worked, how the process for appointment, how the process the (INAUDIBLE)--

DEAN:

No, I'm not asking you about process. I'm asking you about the subject and the investigation 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're 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?

WHITAKER:

You know, I can't remember if it was--which preceded which, but I believe I received a phone call from the president of the United States asking me to be the acting attorney general.

DEAN:

A moment ago you said you learned by tweet. Did I misunderstand you?

WHITAKER:

Yeah, I think you did.

DEAN:

Okay, so you learned first by a phone call from the president?

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.

DEAN:

Okay, and how long was that phone call? Was it just simply I'm letting you know of this or was there substantive conversation about your role?

WHITAKER:

Well I'm not going to discuss the private conversations I've had with the president. I think it's important that he is entitled to that confidentiality from a cabinet secretary, even acting like I am, and I will tell you that it was not a substantive phone call.

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's during this time--

WHITAKER:

Congresswoman, I don't remember.

DEAN:

--you have to decide--it's 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?

WHITAKER:

Congresswoman, while I'm not going to discuss any meetings that I've had with the president nor conversations, I will tell you that I interact with the president on a regular basis, including after I was appointed acting attorney general.

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 Mueller.

WHITAKER:

Yeah, I spent five weeks. I spent five weeks considering that question.

DEAN:

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?

WHITAKER:

Congresswoman--

DEAN:

It's a yes or no. Please, my time is running out.

WHITAKER:

Congresswoman, I would just point you to a letter. It's a more fulsome--

DEAN:

And I've waited a long time. Please, it's a yes or no.

UNKNOWN:

Can you answer the question?

WHITAKER:

This question is not a yes or no question because it is--you have to understand how it was my decision to make. (INAUDIBLE)

DEAN:

No, no, I'm not talking about your decision. I'm talking about the guidance that you received, not your decision.

WHITAKER:

It was not their decision to make because the--

DEAN:

No, no, no, I'm asking you factually about the guidance you received. Career officials told you-- you should refuse to avoid even the appearance of an impropriety of bias, and you set the tone for your department. Am I correct?

WHITAKER:

Congresswoman, they told me it was a close call. They said it could go either way. And they said--

DEAN:

So to set the tone you think on a close call you go the other way?

WHITAKER:

As the attorney general and not to buy into 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.

DEAN:

And yet you had career--have I lost my time, Mr. Chairman? Oh, (INAUDIBLE).

NADLER:

Ask--get this question out. I'll let him answer it. That will be that.

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?

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.

NADLER:

Time of the gentlelady has expired.

DEAN:

Thank you, Mr. Chairman.

NADLER:

You're welcome. Ms. Mucarsel-Powell.

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's very interesting to me when I look at the board. Is this a private or a public foundation?

MUCARSEL-POWELL:

FACT, was that--the 501(c)(3), is it a private or a public--

WHITAKER:

It's a 501(c)(3). I don't know.

MUCARSEL-POWELL:

There are two separate types.

WHITAKER:

Congresswoman, I don't have the 990 filings or any of those (INAUDIBLE).

MUCARSEL-POWELL:

But you worked there from 2014 to 2017.

WHITAKER:

I was. I was--

MUCARSEL-POWELL:

And you were the executive director for the (INAUDIBLE).

WHITAKER:

Yes, I was.

MUCARSEL-POWELL:

But you don't know if it's a private or a public?

WHITAKER:

I haven't worked for FACT in 16 months, and I--in my preparation for this oversight hearing--

MUCARSEL-POWELL:

Okay, thank you. Thank you, Mr. Whitaker.

WHITAKER:

--I didn't review the filings. I don't know which box we checked.

MUCARSEL-POWELL:

So were their only--thank you, Mr. Whitaker, thank you. Were there only three board members in this 501(c)(3)?

WHITAKER:

I believe there were--yes, there were three board members.

MUCARSEL-POWELL:

William Gustoff, Neil Corkery, Matthew Whitaker, correct?

WHITAKER:

Yep.

MUCARSEL-POWELL:

Okay. So it's also my understanding that you filed numerous FEC complaints while working there.

WHITAKER:

All of our complaints were posted online, and I don't--

MUCARSEL-POWELL:

Were they FEC complaints, Mr. Whitaker? You filed FEC complaints.

WHITAKER:

We filed all--we filed many different types of complaints.

MUCARSEL-POWELL:

Were--did you file FEC complaints?

WHITAKER:

We are very similar to (INAUDIBLE).

MUCARSEL-POWELL:

I'm just--it's very--you worked as the Executive Director of this 501(c)(3). Did you file FEC complaints? Very, very easy.

WHITAKER:

Yes, yes, yes, we filed FEC complaints in addition to others.

MUCARSEL-POWELL:

And who made the decision to file these complaints?

WHITAKER:

I was the executive director. I believe I signed all if not all of those (INAUDIBLE).

MUCARSEL-POWELL:

Did you make the sole decision to file these complaints, or were you directed--

WHITAKER:

No, I was not directed. I was the executive director.

MUCARSEL-POWELL:

You did that on your own?

WHITAKER:

Yes, we were an independent, nonpartisan--

MUCARSEL-POWELL:

501(c)(3), nonpartisan.

WHITAKER:

Ethics watchdog, yes.

MUCARSEL-POWELL:

It's a nonpartisan. Did you file any FEC complaints against any Republicans?

WHITAKER:

As I sit here today I don't recall, but I mean all of our complaints are posted online.

MUCARSEL-POWELL:

Okay, 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 or for elective public office.

NADLER:

Without objection.

MUCARSEL-POWELL:

Thank you. I have some other questions here, if you give me some time. All this time I'm waiting and I can't find the questions. No, no. Thank you. This pertains to also an issue that's very close and dear to my heart, LGBTQ issues. In October 2017 that Department of Justice withdrew a 2014 memo, which stated that the best reading of the Title VIII--Title VII's prohibition on sex discrimination in the workplace encompasses anti-transgender 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?

WHITAKER:

Yes, I am familiar with those memos that do not extend Title VII to LGBT--

MUCARSEL-POWELL:

Thank you. And at the time of the reversal were you serving as the chief of staff for Attorney General Sessions, correct?

WHITAKER:

I served as chief of staff from October 4 of 2017 until I was appointed acting attorney general in 2018.

MUCARSEL-POWELL:

So who ordered the reversal of this policy?

WHITAKER:

I'm certain it was attorney general sessions who sets the entire policy for the Department of Justice.

MUCARSEL-POWELL:

And who drafted the new memo?

WHITAKER:

As I said here today I don't have any idea. That would be deliberative worked on by I'm sure many people at the Department of Justice.

MUCARSEL-POWELL:

Any outside groups that were involved in the process?

WHITAKER:

Not that I'm aware of. But again, I wasn't directly (INAUDIBLE).

MUCARSEL-POWELL:

And do you stand by the decision to reverse its position that title VII protects transgender people from discrimination?

WHITAKER:

Congresswoman, I think it plainly reads--

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?

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.

MUCARSEL-POWELL:

Okay, so I take that yes okay. Do you believe that members of the LGBT community should not be protected under federal discrimination laws?

WHITAKER:

Again, congresswoman, I personally believe the discrimination of any kind shouldn't happen, but I will tell you that title VII--

MUCARSEL-POWELL:

Yes or no please. I don't have much time. You believe that members of the LGBT community should not be protected under federal discrimination laws? Yes or no? Yes or no? As you know question mark at

WHITAKER:

The plain reading of title VII does not extend to transgender and you uniquely control what is the law. We merely enforce the law.

MUCARSEL-POWELL:

Do I still have time, Mr. Chairman?

NADLER:

The gentlelady's time is expired. Ms. Escobar?

ESCOBAR:

Thank you, Mr. Chairman. Mr. Whitaker, this hearing began this morning at 9:30. I've been waiting almost six hours. It's nearly 3:30 in the afternoon. I've been waiting nearly six hours to ask my questions. I'm going to ask you for a favor. Out of respect for this committee, out of respect for me

as a member of Congress, I'm 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 follow up, that you please answer the follow up as succinctly as possible.

WHITAKER:

Congresswoman, with all due respect--

ESCOBAR:

--And that--sorry--

WHITAKER:

--I--

ESCOBAR:

--Excuse me. If I could--

WHITAKER:

--I'm going to answer--with all due respect--

ESCOBAR:

--If I could please--

WHITAKER:

--I'm going to answer--

ESCOBAR:

--Get my statement out--

WHITAKER:

--Your questions--

ESCOBAR:

--Sir. I've watched you do--

WHITAKER:

--I'm--I'm--

ESCOBAR:

--That to every member on this committee--

WHITAKER:

--Because a lot of questions don't--

ESCOBAR:

--I'm asking that you please--

WHITAKER:

--Have yes/no answers.

ESCOBAR:

--All me to ask my question.

NADLER:

The time belongs to the member.

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 the 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's 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?

WHITAKER:

We're going to continue to follow the policies of--at EOIR that are currently in place.

ESCOBAR:

Will you facilitate, assist, help ensure that asylum seekers have access to legal counsel in Mexico? Yes or no?

WHITAKER:

Congresswoman, there is a very well defined process for asylum seekers to obtain counsel, and we're going to continue to follow that. I--of course this--

ESCOBAR:

--Mr. Whitaker, even while--

WHITAKER:

--It's--

ESCOBAR:

--They're in Mexico?

WHITAKER:

As the acting attorney general I--I cannot make an assurance especially regarding what happens in a foreign country. I mean I know you understand that but--

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?

WHITAKER:

Congresswoman, I'm not familiar with the situation you're describing but I'm happy to look into it and get back to you.

ESCOBAR:

Thank you. Another question related to this issue, does the Department of Justice have an immigrant advocate watchlist?

WHITAKER:

Congresswoman, I--I'm not aware of the question you're asking me or the answer to it so I'm happy to look into it and get back to you but I just that's--

ESCOBAR:

Thank you. I appreciate that.

WHITAKER:

That's not something that sounds familiar and that I prepared for today.

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, 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 a wall.

Data from the FBI's Uniform Crime Reporting Program shows that El Paso has historically been one of the safest communities 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?

WHITAKER:

Congresswoman, we use the UCR on a regular ongoing basis to not only know where our crime hotspots are but to also put our resources at the Department of Justice.

ESCOBAR:

Sir, that's not my question. Let me repeat my question.

WHITAKER:

Okay.

ESCOBAR:

Do you have any reason to disagree with the FBI's Uniform Crime Reporting data?

WHITAKER:

Congresswoman, I think the UCR--

ESCOBAR:

Do you have any reason, sir, to disagree with your FBI's data?

WHITAKER:

As I sit here today

ESCOBAR:

Yes, or no?

WHITAKER:

I do not have any reason to disagree--

ESCOBAR:

Okay. Great. Perfect.

WHITAKER:

--with the FBI's data.

ESCOBAR:

Thank you very much. Switching gears again. Did you ever create--

NADLER:

The gentlelady's time has expired. I will let her finish this one question and--

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?

WHITAKER:

I am aware of documents relating to pardons of individuals, yes.

NADLER:

The gentlelady's time has expired. I'm 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?

WHITAKER:

Congressman, I'm sure that are aware that federal law allows asylum-seekers to be returned to a safe third country.

NADLER:

I'm not aware though that it allows people not to--to--that 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 of the members who are still here for their patience and their fortitude. I want to thank Attorney General Whitaker for appearing today.

JACKSON LEE:

Mr. Chairman?

NADLER:

Ms. Jackson Lee.

JACKSON LEE:

Thank you. I'm not asking--I'm putting these questions on the record. 1--

NADLER:

Excuse me. Submit them to the record. Don't--don't read them.

JACKSON LEE:

I will submit them for record regarding--

NADLER:

Without objection the questions are admitted.

JACKSON LEE:

And the article, two articles. Three articles for the record. VQ, Washington Post, New York Times and also an article by Shane Croucher(SP) (INAUDIBLE).

NADLER:

Without objection, the articles are admitted. 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 without limited to 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 a 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 objections all members will have five 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.