

United States Senate

WASHINGTON, DC 20510

December 22, 2018

The Honorable Rod J. Rosenstein
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Deputy Attorney General Rosenstein,

Thursday was an extremely troubling day for the reputation of the Department of Justice. Early in the day, the Department told the media that ethics officials had advised Acting Attorney General Matthew Whitaker that he did not need to recuse himself from supervision of the Special Counsel investigation. Then, later in the day, that story changed as reporters began to discover that it was untrue. Finally, at 7:53 pm, your office of legislative affairs sent a letter to me and to other Members of Congress informing us that Mr. Whitaker has chosen not to recuse himself -- notwithstanding the fact that he was advised by the Department's career ethics officials that "he 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." The rest of the letter consists of a great deal of tortured logic and embarrassingly strained rationalizations for Mr. Whitaker's indefensible decision to disregard the recommendation of career ethics officials.

Because you appointed Special Counsel Mueller and have supervised his investigation since its inception, and because I don't know whether anyone else in the building is exercising any adult supervision, I am writing you today find out what in the world is going on in the Justice Department. For reasons that have not been explained, it has taken weeks for the Department to answer a simple question that I and other Members of Congress have asked repeatedly: whether Mr. Whitaker will be recused from supervising the Special Counsel investigation. The answer, by the way, should have been obvious from the outset. As the Department's own ethics officials advised, he should unquestionably be recused -- because of his long public record of bias against the investigation. Instead, the country now faces a situation in which the integrity of the supervision of an investigation involving the President of the United States is deeply suspect. That is a terrible thing for the nation.

In view of all of the confusion your Department caused yesterday and of the very serious concerns raised by Mr. Whitaker's involvement in the Mueller investigation, I request that you immediately provide Congress and the American public with answers to the following questions:

1. On what date did Mr. Whitaker assume supervision of the Special Counsel investigation?
2. Did you concur in Mr. Whitaker's decision not to recuse himself from the investigation? If so, why? If not, how was your disagreement communicated to him or to others?

3. Which officials comprised the ad-hoc "committee" that was selected by Mr. Whitaker to advise him on his ethics decision; what training or expertise do those individuals have in government ethics; and why were those officials selected to advise Mr. Whitaker instead of career ethics officials?
4. Please provide all ethics guidance provided to Mr. Whitaker during both his service as Chief of Staff and as Acting Attorney General.
5. What access did Mr. Whitaker have to non-public information regarding the Special Counsel investigation prior to his elevation to the position of Acting Attorney General?
6. Please describe any and all actions taken by Mr. Whitaker to date with regard to any aspect of the Special Counsel investigation, including any attempts to influence, interfere with, or limit the authority, scope or funding of the Office of Special Counsel or its work.
7. Please consider this letter as a standing request for you to personally inform Congress and the public if Mr. Whitaker takes any future action, in any manner and for any reason, to influence, interfere with, limit or constrain the Special Counsel investigation.

Finally, I request that pursuant to your authority under DOJ regulations, you assign the Department of Justice Inspector General to investigate the propriety of Mr. Whitaker's decision to disregard the advice of career ethics officials and the process that led to that decision, including the role played by the ad-hoc group of advisors as well as whether and to what extent career ethics officials may have felt pressured in any way during that process.

Sincerely,

A handwritten signature in black ink, appearing to read "CL Se", written over a light blue horizontal line.

Charles E. Schumer
Democratic Leader