

Congress of the United States
Washington, DC 20515

June 29, 2017

The Honorable Michael E. Horowitz
Inspector General
Department of Justice
950 Pennsylvania Ave. NW, Suite 4706
Washington, DC 20530

Dear Inspector General Horowitz:

We respectfully request that the Inspector General of the Department of Justice investigate whether Attorney General Jeff Sessions violated his recusal from matters relating to the presidential campaigns in 2016 when he participated in President Trump's decision to fire FBI Director James Comey.

The actions of Attorney General Sessions in collaborating directly with President Trump to fire Director Comey reflect a lapse in judgment by our nation's top law enforcement official and appear to violate multiple promises made by the Attorney General and his aides. This troubling pattern has only become more aggravated as additional facts about the Attorney General's conduct come to light.

Since the Department has failed to respond to multiple previous inquiries on this matter—despite promising to do so—we now ask that your office investigate and report back to us with any findings and recommendations you determine are warranted.

We want to make clear that our request is separate and apart from Special Counsel Mueller's investigation, which concerns only whether any criminal acts occurred. It is critical to examine the protocols governing recusals at the Department and determine whether they were followed in this case, whether other staff members were involved, whether administrative disciplinary procedures are warranted, and whether improvements can be made to this process in the future.

Attorney General's Recusal From Presidential Campaigns

The Attorney General has made clear repeatedly in broad and unequivocal terms that he recused himself from all matters involving both the Trump and Clinton presidential campaigns.

On January 10, 2017, the Attorney General testified during his confirmation hearing before the Senate Judiciary Committee that he would recuse himself "from any questions involving those kind of investigations that involve Secretary Clinton and that were raised during the campaign or to be otherwise connected to it." When asked if he would recuse himself from the Clinton email investigation and matters involving the Clinton Foundation, he responded, "yes." When asked if he would recuse himself from matters relating to an investigation of the

Trump campaign, he answered: “I would review it and try to do the right thing as to whether or not it should stay within the jurisdiction of the Attorney General or not.”¹

On March 2, 2017, the Attorney General held a press conference during which he explained, “I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”²

On the same day, the Department issued, and posted on its website, a press release entitled, “Attorney General Sessions Statement on Recusal.” That statement read:

During the course of the confirmation proceedings on my nomination to be Attorney General, I advised the Senate Judiciary Committee that “[i]f a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed.”

During the course of the last several weeks, I have met with the relevant senior career Department officials to discuss whether I should recuse myself from any matters arising from the campaigns for President of the United States.

Having concluded those meetings today, I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.³

On the same day, Jody Hunt, the Attorney General’s Chief of Staff, sent an email to Acting Deputy Attorney General Dana Boente, FBI Director James Comey, Acting Assistant Attorney General for National Security Mary McCord, Acting Assistant Attorney General for Legislative Affairs Sam Ramer, and Director of the Office of Public Affairs Sarah Isgur Flores entitled, “Recusal.” The email stated:

After careful consideration following meetings with career Department officials over the course of the past several weeks, the Attorney General has decided to recuse himself from any existing or future investigations of any matters related in any way to the campaigns for president of the United States. ...

¹ Senate Committee on the Judiciary, Testimony of Senator Jeff Sessions, *Hearing on Attorney General Nomination* (Jan. 10, 2017) (online at www.cq.com/doc/congressionaltranscripts-5017061?10).

² *Transcript of Jeff Sessions’s Recusal News Conference, Annotated*, Washington Post (Mar. 2, 2017) (online at www.washingtonpost.com/news/the-fix/wp/2017/03/02/transcript-of-jeff-sessions-recusal-press-conference-annotated).

³ Department of Justice, *Attorney General Sessions Statement on Recusal* (Mar. 2, 2017) (online at www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal).

You should instruct members of your staff not to brief the Attorney General (or other officials in the Office of the Attorney General) about, or otherwise involve the Attorney General (or other officials in the Office of the Attorney General) in, any such matters described above.⁴

These statements make clear that the Attorney General should not have been involved in any matters whatsoever relating to either the presidential campaign of Donald Trump or the presidential campaign of Hillary Clinton.

Apparent Violation of Recusal

Documents released by the White House indicate that the Attorney General had direct conversations with the Deputy Attorney General about Director Comey's actions relating to the FBI's investigation of Secretary Clinton—a topic the Attorney General recused himself from weeks earlier.

On May 9, 2017, the Attorney General sent a letter to the President recommending that he remove Director Comey “for the reasons expressed by the Deputy Attorney General in the attached memorandum.”⁵ In the attached memorandum, the Deputy Attorney General wrote that he had discussed Director Comey's actions relating to the Clinton investigation directly with the Attorney General. He wrote: “As you and I have discussed, however, I cannot defend the Director's handling of the conclusion of the investigation of Secretary Clinton's emails.”⁶ Based on these documents alone, the Attorney General's actions appear to violate his recusal.

Despite the statements in the documents released by the White House, the President stated on national television two days later that in fact he fired Director Comey because of his handling of the investigation into the Trump campaign's potential communications with the Russians. He stated: “I was going to fire [Comey] regardless of recommendation.” He added: “When I decided to just do it, I said to myself—I said, you know, this Russia thing with Trump and Russia is a made-up story. It's an excuse by the Democrats for having lost an election that they should've won.”⁷

⁴ Email from Jody Hunt, Chief of Staff, Office of the Attorney General, Department of Justice, to Dana Boente, Acting Deputy Attorney General, et al. (Mar. 2, 2017) (online at www.scribd.com/document/350779492/Jody-Email).

⁵ Letter from Attorney General Jeff Sessions to President Donald J. Trump (May 9, 2017) (online at www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html).

⁶ Memorandum for the Attorney General from the Deputy Attorney General (May 9, 2017) (online at www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html).

⁷ *Nightly News with Lester Holt*, NBC News (May 11, 2017) (online at www.nbcnews.com/nightly-news/video/i-was-going-to-fire-comey-anyway-trump-tells-lester-holt-in-interview-941538371971).

Regardless of which reason is true—that the President fired FBI Director Comey because of his investigation into the Clinton campaign or his investigation into the Trump campaign—both matters were supposed to be off limits for the Attorney General.

Failure of Department to Respond to Congress

On May 12, 2017, Ranking Members Cummings and Conyers wrote to the Deputy Attorney General, due to the recusal of Attorney General Sessions on these matters. That letter detailed the facts outlined above, cited the legislative and administrative rules governing recusals at the Department, and asked for information about how this matter would be investigated.⁸ The Department failed to respond to the letter.

On May 19, the Deputy Attorney General appeared before the full House of Representatives to deliver a classified briefing. Ranking Member Cummings, as one of the first Members to pose a question, asked the Deputy Attorney General directly whether he planned to respond to the letter. Before the entire House, the Deputy Attorney General confirmed that the Ranking Members' letter would in fact receive a response from the Department. He stated that he did not know which entity within the Department would have purview over this issue, and he suggested that it could be the Office of Professional Responsibility. Nevertheless, he promised that the Ranking Members would receive a response. However, the Department again failed to respond.

On June 13, 2017, the Deputy Attorney General confirmed during testimony before the Senate Appropriations Committee that he in fact discussed Director Comey's investigation of the Clinton email matter with the Attorney General, as his memo stated. However, he declined to answer whether the Attorney General had violated his recusal as a result:

Senator Coons: And during his January 10 confirmation hearing, AG Sessions stated he would recuse himself from any matters involving campaigns for the president of the United States and specifically investigations into Secretary Clinton's email server. Is that correct?

Deputy Attorney General Rosenstein: That's my understanding, Senator.

Senator Coons: So, why did you write a memo to Attorney General Sessions exclusively discussing a matter that—as I understand it—Attorney General Sessions explicitly told us in Congress he was recused from, and why was that an appropriate basis for him to make a hire or fire recommendation to the President?

⁸ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member John Conyers, Jr., House Committee on the Judiciary, to Deputy Attorney General Rod Rosenstein, Department of Justice (May 12, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-05-12.EEC%20Conyers%20to%20Rosenstein-DOJ%20re%20AG%20Sessions%20Recusal.pdf>).

Deputy Attorney General Rosenstein: Senator, I don't think that's a question for me to answer. I have said in my previous briefings with the Senate and the House that my memo truthfully reflects my views. I'm not in a position to comment on anybody else.⁹

The same day, Attorney General Sessions conceded during testimony before the Senate Intelligence Committee that he had recommended that the President remove Director Comey for the reasons set forth in the Deputy Attorney General's memorandum—namely, those relating to Director Comey's actions during the Clinton email investigation. Nevertheless, Attorney General Sessions claimed he had not violated his recusal:

Attorney General Sessions: The recusal involved one case involved in the Department of Justice and in the FBI. They conduct thousands of investigations. I'm the Attorney General of the United States. It's my responsibility to our Judiciary Committee and other committees to ensure that that Department is run properly. I have to make difficult decisions, and I do not believe that it is a sound position to say that, if you're recused for a single case involving any one of the great agencies like DEA or U.S. Marshals or ATF that are part of the Department of Justice, you can't make a decision about the leadership in that agency.¹⁰

The Attorney General was apparently attempting to dramatically narrow the scope of his recusal, which includes "any existing or future investigations of any matters related in any way to the campaigns for President of the United States."¹¹

Request for Investigation and Report

We request that your office now investigate this matter and determine whether the Attorney General violated his recusal by participating in the President's decision to fire Director Comey.

We reiterate that this request is separate and apart from Special Counsel Mueller's investigation, which involves only whether any criminal acts occurred and not whether any administrative or regulatory provisions are implicated.

⁹ Senate Appropriations Subcommittee on Commerce, Justice, and Science, Testimony of Deputy Attorney General Rod Rosenstein, *Hearing on Fiscal 2018 Justice Department Budget* (June 13, 2017) (online at <http://www.cq.com/doc/congressionaltranscripts-5122756?14&search=X84IBFxw>).

¹⁰ *Transcript: Jeff Session's Testimony on Trump and Russia*, Politico (June 13, 2017) (online at www.politico.com/story/2017/06/13/full-text-jeff-session-trump-russia-testimony-239503).

¹¹ Department of Justice, *Attorney General Sessions Statement on Recusal* (Mar. 2, 2017) (online at www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal) (emphasis added).

Section 528 of title 28 of the United States Code is entitled, "Disqualification of Officers and Employees of the Department of Justice." In passing this provision, Congress required the Department of Justice to establish regulations to "require the disqualification of any officer or employee of the Department of Justice ... from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof."¹²

According to this law, the administrative penalty for any Department official who violates such a recusal could be termination. The statute states: "Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office."¹³

For these reasons, we ask that your office also provide recommendations you determine are warranted relating to the Department's processes for handling recusals and its administrative procedures for handling related disciplinary actions.

Thank you for your cooperation with this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



John Conyers, Jr.
Ranking Member
Committee on the Judiciary



¹² 28 U.S.C. § 528 (online at www.law.cornell.edu/uscode/text/28/528).

¹³ *Id.*

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cc. The Honorable Trey Gowdy, Chairman,
Committee on Oversight and Government Reform

The Honorable Bob Goodlatte, Chairman,
Committee on the Judiciary