

ALLIANCE FOR JUSTICE

ACTING ATTORNEY GENERAL: FIRST LOOK

MATTHEW WHITAKER



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INTRODUCTION

Less than twenty-four hours after Election Day 2018, President Trump fired Attorney General Jeff Sessions and tapped Sessions's chief of staff, Matthew Whitaker, to replace him as acting attorney general.

Putting aside the [probable unconstitutionality](#) of a non-Senate-confirmed appointment, Whitaker's appointment is alarming in many ways. It quickly emerged that Whitaker believes *Marbury v. Madison* was wrongly decided, that the Department of Education should be disbanded, and that states can nullify federal law. But these examples proved to be only the tip of the iceberg.

Between running for office twice as a Republican, Whitaker dedicated years of his life to hyperpartisan activities. He attacked Hillary Clinton while working at a right-wing nonprofit and made a name for himself intensifying the Clinton email frenzy through op-eds and TV appearances.

Ethical concerns from Whitaker's past also loom large. As a U.S. attorney in Iowa, Whitaker engaged in politically motivated investigations. In shady business deals at a company now under FBI investigation, he scammed veterans out of their life savings.

Most dangerous, however, is his imminent threat to the Mueller investigation, which he has frequently criticized. His criticism has included suggestions on how to suffocate, without formally terminating, the Mueller probe. He can now implement those plans.

As acting attorney general, Whitaker endangers the rule of law in this country. This report details why.

RISE AS A CONSERVATIVE IDEOLOGUE

I. ETHICALLY CORRUPT AS A U.S. ATTORNEY

Whitaker's tenure as a U.S. attorney was deeply troubling. Although he [described](#) his job as putting "bad guys in jail" and "[thugs](#) and predators" behind bars, Whitaker in fact used his office for partisan political purposes, targeting Democrats and Democratic activists.

In 2007, Whitaker brought a politically motivated prosecution against a rising Democratic star. Whitaker [charged](#) Matthew McCoy, an openly gay Democratic Iowa state senator, with attempted extortion. Whitaker's case against McCoy crumbled amidst

allegations of prosecutorial misconduct and political bias.

In fact, the jury [deliberated](#) for twenty minutes and acquitted McCoy of any wrongdoing. One of McCoy's lawyers [stated](#): "Ninety percent of federal court cases result in a conviction, and the swift 'not guilty' verdict indicates something was seriously wrong with Whitaker's case." During the trial, one of McCoy's attorneys, Jerry Crawford, walked over to the prosecuting attorneys and [said](#), "Pull this case now. I'm embarrassed for the United States of America." The trial attorneys said the decision to continue with the case came from higher up – likely Whitaker – and the prosecutors in the room had no say in the matter.

Whitaker's team also lied during discovery. They claimed that the government had never paid the government's key informant—the alleged victim—to tape conversations and share information. In court, however, it became clear that they had. The judge hearing the case [called](#) the "lapse of memory" by the prosecution "regrettable."

The local criminal defense bar was "[stunned](#)" that the government had paid "the alleged victim for his help prosecuting his purported victimizer." The former editorial page editor of the *Des Moines Register*, Gilbert Cranberg,

[asked](#), "Was McCoy's prosecution a product of poor judgment, inexperience, misplaced zeal or partisan politicking? Perhaps some or all of the above."

McCoy believes Whitaker targeted him because he is gay. He is still paying off \$100,000 in legal fees, over 10 years later. Even worse, his "reputation and future were damaged." McCoy [said](#), "The emotional stress took its toll on my physical and mental health. I lost both actual and potential income, along with my savings. When the DOJ wields its power in a partisan manner, it ruins lives. Whitaker almost ruined mine."

As U.S. attorney, Whitaker also [supported](#) the FBI's nine-month surveillance operation against anti-war protesters at the 2008 Republican National Convention. This group of protesters was extensively investigated in ways that possibly [violated](#) the protesters' rights. FBI agents spent months planning, intercepting, and combing through activists' garbage, spending precious money and resources targeting peaceful protesters.

Whitaker also took part in ideological activities while serving as U.S. attorney. In 2007, he served as master of ceremonies for an Iowa Christian Alliance event despite its [controversial past](#) of asking state judges to answer a survey seeking to elicit their opinions on issues such as marriage equality.

II. RADICAL POLITICAL PLATFORM

After President Obama took office, Whitaker left the U.S. attorney's office and entered private practice. In 2011, he unsuccessfully [interviewed](#) for a position on the Supreme Court of Iowa. Although he guaranteed he had no interest in running for office during that interview, he launched a campaign for the Senate a few short years later. Whitaker made various statements while running for Senate that display his hardline partisanship and conservatism.

Whitaker said he would vote to repeal the Affordable Care Act, which would have taken away protections for tens of millions of people, including cancer patients, people with diabetes, pregnant women, and many other Americans. Perhaps unsurprisingly, Whitaker was chief of staff at the Department of Justice when the Department took the [unprecedented](#) step of arguing the act of Congress was unconstitutional.

When running for office, he also [declared](#) that the Department of Education should be "disbanded" and [called](#) for President Obama to be "prosecute[d]" for considering raising the minimum wage by executive order.

Whitaker's 2014 U.S. Senate campaign committee is still [active](#) today.

Because Whitaker is currently the top Justice Department lawyer, this ongoing collection of donations may violate the Hatch Act. In 2018, Whitaker's campaign committee received \$8,800 in donations. The donors are three politically-connected Iowans and a former board member of the conservative Heritage Foundation. An independent federal agency has opened an [investigation](#) into this possible violation of federal law.

III. USING HIS WATCHDOG GROUP TO ATTACK HILLARY CLINTON

After losing the GOP nomination for Senate, Whitaker turned his attention to Hillary Clinton. From 2014 to 2016, Whitaker acted as the executive director of the Foundation for Accountability and Civic Trust (FACT), a right-wing "ethics watchdog group." Whitaker remained on FACT's [payroll](#) through late 2017, racking up almost \$1 million in income. FACT has called for [numerous](#) government investigations into purported ethical lapses by prominent Democrats. For example, FACT [urged](#) the Federal Election Commission (FEC) to look into a DNC consultant for allegedly meeting with Ukrainian officials in search of information on Trump. The consultant, who helped the DNC run an ethnic engagement program, [indicated](#) that any meetings she had were part of an Immigrant Heritage Month women's networking event.

Under Whitaker, who was the [sole](#) full-time employee in 2015 and 2016, FACT specifically targeted Hillary Clinton in any way it could. The following actions taken by the organization represent only a handful of ways Whitaker attacked Clinton as she prepared and ran for the presidency:

- Filed a [complaint](#) with the FEC against Hillary Clinton.
- Attacked Clinton aggressively for her use of a private email server, [demanding](#) that then-Attorney General Eric Holder look at her emails.
- Wrote a list of eight [questions](#) to be asked of Clinton during a Democratic presidential debate, seven of which were about her emails. An example includes: “How can people trust you to ensure their personal safety and security – as well as the security of the country – when you’ve admittedly been ignorant about security risks with your own email and those risks have been shown to be serious?”
- Made a [list](#) of “Top 10 Most Ethically Challenged Hillary Emails.”
- Requested an [investigation](#) into Clinton’s “preferential treatment” of family members and donors.

Whitaker capitalized on the public’s interest in Clinton’s email server to make a name for himself. He published an [op-ed](#) in *The Hill* to argue for the appointment of special counsel to investigate Clinton’s emails. He also [argued](#) that Trump’s firing of Comey was appropriate, as Comey should have prosecuted Clinton over her emails. In a CNN appearance, however, he didn’t feel the same way about the application of [ethics](#) laws to President Trump. Unsurprisingly, Whitaker’s entire view of ethical issues changed upon Trump’s election. For example, he has been entirely silent through the Trump [family’s reportedly similar conduct](#).

IV. SCAMMING VETERANS OUT OF THEIR LIFE SAVINGS

Before joining the Department of Justice, Whitaker [worked](#) for a sham company that was shut down after a Federal Trade Commission inquiry and is currently under [FBI investigation](#). The company, World Patent Marketing, claimed it would help customers with their ideas for inventions. Such inventions [include](#) proving that Bigfoot does exist and asserting that time travel could be possible within the next decade. Whitaker personally promoted innovations in hot tub design, appearing in a promotional [video](#) to support the shady company.

Instead of supporting innovators' ideas, World Patent Marketing reportedly [took](#) money from people—including many [veterans](#)—without following through with its promises to evaluate and manufacture new inventions. As a [member](#) of the “Invention Team Advisory Board,” Whitaker received over \$10,000 in payment between salary and campaign donations.

Whitaker humiliated himself in a 2014 company press release, [saying](#), “As a former US Attorney, I would only align myself with a first class organization.” Even better, Whitaker continued: “World Patent Marketing goes beyond making statements about doing business ‘ethically’ and translates them into action.” Later that year, a federal judge ruled that World Patent Marketing owed \$26 million in damages for systematically deceptive practices that cost some people their life savings.

World Patent Marketing's deceptive practices reportedly [include](#) falsely claiming its customers' inventions were sold in Walmart and Target, falsely claiming it owned a manufacturing plant in China, and falsely claiming its board of advisers—including Whittaker—personally reviewed customers' invention plans.

Further, the company's lawyers, including Whitaker, would often

respond to customer complaints with [intimidation](#), in one instance referencing World Patent Marketing's “intimidating security team, all ex-Israeli Special Ops and trained in Krav Maga, one of the most deadly of the martial arts.” Whitaker personally [threatened](#) a complaining customer via email, reminding the customer that he was a former U.S. attorney and warning of “serious civil and criminal consequences” if the customer took actions like filing a complaint with the Better Business Bureau.

After World Patent Marketing was shut down, several advisory-board members returned payments they had received from the company. However, a court-appointed receiver said Whitaker [never responded](#) to the receiver's demand notice and did not return any fees.

Whitaker's extended involvement with this sham company illuminates his untrustworthiness and disregard for the laws of the United States.

CONNECTION TO RIGHT-WING EXTREMISTS

Whitaker has built strong relationships with right-wing extremists and groups.

Connections to the conservative elite propelled him to the highest rungs of government. His fidelity to Trump clearly earned him the title of acting attorney general. Meanwhile, earlier events in his career raise questions about what closed-door promises he might have made to other partisan influencers with whom he has worked closely.

Whitaker landed his job as Sessions's chief of staff through the [intervention](#) of a powerful conservative mover and shaker, Leonard Leo. Leo is the executive vice president of the Federalist Society, which has groomed and hand-picked most of Trump's judicial nominees. Although Sessions and Whitaker had never met, Leo convinced Sessions that Whitaker should get the job. "I recommended him and was very supportive of him for chief of staff for very specific reasons," Leo [explained](#).

In addition, FACT is closely [linked](#) to the Judicial Crisis Network (JCN), a conservative judicial advocacy group. The former treasurer and member of board of directors of FACT, Neil Corkery, was also a treasurer of JCN. These groups are run by the same conservative ideologues.

FACT has [paid](#) hundreds of thousands of dollars to CRC Public Relations, a firm that has been utilized to spread right-wing conspiracy theories. For example, CRC Public Relations guided Ed Whelan's unsubstantiated and [widely](#)

[criticized suggestion](#) that Dr. Christine Blasey Ford was assaulted by a classmate who looked like Brett Kavanaugh. After his "[stunningly irresponsible](#)" series of tweets, Whelan took a leave of absence from the conservative Ethics and Public Policy Center.

RADICAL VIEWPOINTS

Whitaker has expressed beliefs that contradict our Constitution and, if put into practice, would dismantle the structure of our government.

I. DISPARAGED *MARBURY V. MADISON*

Whitaker disparaged *Marbury v. Madison*, a Supreme Court case which established the principle of judicial review.

In a Q&A for his 2014 U.S. Senate run, Whitaker was asked about the role of the courts and his opinion on the worst Supreme Court decision. Whitaker responded, "I would start with the idea of *Marbury v. Madison*. That's probably a good place to start and the way it's looked at the Supreme Court as the final arbiter of constitutional issues." Although Whitaker criticized the power of the Supreme Court to declare legislative and executive acts unconstitutional, he contradicted himself by simultaneously

denouncing the Supreme Court's refusal to strike down the Affordable Care Act, an act of Congress.

Laurence Tribe, a Harvard law professor, stated that Whitaker's views would be "destabilizing" to our country if he advanced them as acting attorney general. Tribe continued, "He seems to think much of the fabric of federal law that is part of our ordinary lives violates the Constitution of the United States to which he is evidently going to take an oath."

Whitaker also incorrectly categorized the role of the judiciary. He [said](#) that although the judiciary is supposed to be the "inferior branch" of government, the courts have reach too far and "unelected judges" are deciding "many of our tough public policy issues." The central concepts of checks and balances and judicial independence seem to have been lost on him.

Whitaker either misunderstands our system of government or was willing to feign utter ignorance for political gain – neither of which is appropriate past behavior for an acting attorney general.

II. ARGUES STATES CAN NULLIFY FEDERAL LAW

Whitaker's apparent ignorance about the basic principles of our Constitution extends to the concept of federalism.

During a 2013 campaign speech, he [argued](#) that states could nullify federal law if they had the "political courage" to do so.

As support for this erroneous claim, Whitaker stated that "states set up the federal government and not vice versa." He also stated that "our founding fathers believed in nullification."

One may direct Whitaker to Article VI, Clause 2 of the U.S. Constitution to educate him on the basic structure of our union. The Supremacy Clause binds states to apply federal law, which it makes supreme. As University of Texas law professor Stephen Vladeck [said](#), "Nullification as a serious, mainstream legal argument didn't survive the Civil War (or the constitutional amendments that followed)." And for good reason. He continued, "For someone who holds those views to be the nation's chief law enforcement officer, even temporarily, is more than a little terrifying."

III. FAVORS A JUDICIARY THAT TAKES A "BIBLICAL VIEW OF JUSTICE"

During his 2014 Senate campaign, Whitaker [said](#) that he would ask judicial nominees whether they were "people of faith" who take a "biblical view of justice." In response to the moderator's question, about how they would evaluate President Obama's judicial nominees if they were elected, Whitaker expressed the astounding

belief that those who don't take a biblical view of justice should not be on the federal bench.

Whitaker's answer trickled on, ending with an impassioned "If they have a secular world view, where this is all we have on earth, then I am going to be very concerned about how they judge." It is clear that religion should have no bearing on judging. What is also clear is that Whitaker does not understand that the Constitution's religious test clause expressly forbids requiring federal employees to adhere to any particular religion.

IV. CONNECTION TO HOMOPHOBIC GROUPS

During the 2014 Republican U.S. Senate candidate forum in Iowa, Whitaker [said](#), "If we start saying there are more important things than life and marriage we might as well elect a Democrat." He [argued](#) that marriage should only be between a man and a woman. When Whitaker was not short-listed for a vacancy on the Iowa Supreme Court, he [stated](#) that conservatives like him should have been more seriously considered because the Iowa Supreme Court's 7-0 ruling on marriage equality showed a lack of "diversity of thought."

Whitaker also defended a journalist, Bob Eschliman, for calling LGBTQ people the "Gaystapo" and "the enemy," arguing the homophobic rant was an expression of

his religious beliefs. Even worse, he represented the journalist as part of a team of volunteers orchestrated by the anti-LGBTQ and anti-choice Liberty Institute. Whitaker filed a discrimination complaint with the EEOC when Eschliman was fired from the Newton Daily News for [accusing](#) "the LGBTQXYZ crowd" and the "Gaystapo" of trying to "make their sinful nature right with God." Further, the Alliance Defending Freedom, a [group](#) the Southern Poverty Law Center designates as a hate group, used the case as an [example](#) of incidents of "assault on freedom of religion."

V. OPPOSES CRIMINALIZING ACTS OF INTIMIDATION AGAINST WOMEN SEEKING ABORTION CARE

Whitaker's anti-choice stance is more radical than mainstream conservatives'. He has publicly [criticized](#) a federal law that the Department of Justice is charged with enforcing that prohibits the use of force and intimidation aimed at women seeking health care at women's health clinics. While interviewing for the Iowa Supreme Court, he [said](#) he personally disagreed with using a clinic protection law to prosecute a man who drove his car into a health clinic and attempted to set it on fire.

Whitaker has stated that he will enforce clinic protection laws despite his personal opposition. Reproductive

rights groups, however, fear acts of intimidation will be overlooked with Whitaker as attorney general.

WILL ATTEMPT TO CURTAIL THE MUELLER INVESTIGATION

The most frightening aspect of the acting attorney general's background is his insistence on ending the Mueller investigation. Due to Whitaker's recent promotion, he may now hold the power to oversee—and, if he so desires, terminate—the Russia probe. If this plan were enacted, Whitaker would shepherd the country directly into a [constitutional crisis](#).

Whitaker has made many statements expressing his disdain for the Mueller investigation. He sees nothing wrong with the Trump Tower meeting involving a Kremlin-connected lawyer that is reportedly a subject of the inquiry, [stating](#), “you would always take that meeting.” In an online [opinion piece](#), Whitaker explained that any investigation into Trump's personal finances would be a “red line” that Mueller is “dangerously close to crossing.” Whitaker argued that “[i]t does not take a lawyer or even a former

federal prosecutor like myself” to conclude that any investigation into Trump's finances has no relationship to the 2016 election or Russia. In contrast, it is increasingly clear that financial information may [link](#) Trump to Russian meddling.

The acting attorney general [stated](#) that calls for an investigation into Russian interference in the 2016 election “ring hollow” because “similar calls for special counsels during the scandals of the Obama administration were dismissed out of hand by the same people making these demands now.”

Whitaker has even offered suggestions to how the overseer of the Mueller investigation could thwart Mueller's efforts with little political backlash. On CNN, he [offered](#) this advice: “Rod [Rosenstein]... [could] cut the budget of Bob Mueller and do something a little more stage crafty than the blunt instrument of firing the attorney general and trying to replace him.” Clearly, Whitaker has put much thought into determining how to undermine the investigation and the rule of law.

Whitaker also has a personal connection to a Mueller witness. In 2014, after losing his bid for U.S. Senate, Whitaker [chaired](#) the state treasurer campaign of Sam Clovis, who had rivaled him for the Senate seat. Clovis was involved with Trump's

presidential campaign and allegedly encouraged Trump campaign aide George Papadopoulos to meet with Russians. Due to his involvement, Clovis was reportedly interviewed by Mueller and gave testimony to a grand jury.

President Trump watched Whitaker closely, realizing that Whitaker would protect his personal interests in a way Sessions would not. Whitaker's numerous public statements denigrating the Russia probe served as his audition for the role. Now that he landed the part, it is likely Whitaker will follow through with his promises. Whitaker's appointment threatens the principle that no one – including the president – is above the law.