

February 27, 2017

Robin C. Ashton  
Counsel  
Office of Professional Responsibility  
U.S. Department of Justice  
Suite 3529  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Dear Ms. Ashton:

Democracy 21 is filing this complaint with the Office of Professional Responsibility (OPR) calling on your Office promptly to conduct an investigation into whether Attorney General Jeff Sessions is in violation of Department of Justice rules and regulations.

The violations involve the failure of Attorney General Sessions to recuse himself from all DOJ investigations and actions regarding (i) any interactions between President Donald Trump, his campaign staff or other individuals supporting his campaign, and Russian actors during Trump's 2016 presidential campaign, (ii) any Russian interference with the 2016 presidential election, (iii) the contacts between former National Security Adviser Michael Flynn and Russian actors, and (iv) leaks concerning these matters.

We also call on OPR to promptly take all necessary steps to address this matter, including, if warranted by the results of OPR's investigation, issuing public findings that Attorney General Sessions is violating Department of Justice regulations and that he is required by Justice Department regulations to recuse himself from the matters listed above and from any consideration and decision about whether to appoint an outside special counsel to deal with these matters.

OPR has jurisdiction to investigate allegations of professional misconduct against attorneys of the Department of Justice that relate to the exercise of their authority to investigate, litigate or provide legal advice. OPR Annual Report (2014) at 1.

It is clear, as well, that this jurisdiction and responsibility includes investigating Attorney General Sessions and any apparent violation of DOJ regulations by him. In 1988, OPR, in

response to a complaint filed by Common Cause, exercised its jurisdiction to investigate then-Attorney General Edwin Meese to determine if he had violated administrative rules and provisions of the **Code of Ethics for Government Service** that barred executive branch officials from using their public positions for private gain.<sup>1</sup> OPR found that Meese as Attorney General had violated these rules as they applied to Justice Department officials.<sup>2</sup>

With regard to the current matter, published reports state that the FBI, which is under the jurisdiction of the Justice Department that Attorney General Sessions heads, is already investigating matters relating to Russia's alleged interference with the 2016 election and to interactions between Russian individuals and the Trump presidential campaign and transition.

On February 17, 2017, Democracy 21 joined with 24 organizations and individuals to send a letter to Attorney General Sessions that set forth the case that government regulations require Sessions to recuse himself with regard to this investigation and any related matter. To date, the Attorney General has not responded to this letter, and there has been no indication from the Justice Department that the Attorney General has, or will, recuse himself.

We believe that the failure of Attorney General Sessions to recuse himself from the matters set forth above is a violation of Department of Justice regulations and that with an FBI investigation already underway, his recusal has to take place immediately. Therefore, we are calling on you to exercise your responsibility and promptly make clear, if your investigation so concludes, that Sessions must comply with Justice Department regulations and recuse himself from these matters.

The grounds set forth below for why DOJ regulations require Attorney General Sessions to recuse himself in these matters incorporates the arguments made in the February 17 letter to the Attorney General.

The applicable DOJ recusal regulation, 28 CFR § 45.2(a), applies to all employees of the Department of Justice and provides:

(a) .... no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

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<sup>1</sup> "Meese's Department Probes Him," *New York Times News Service* (July 20, 1988).

<sup>2</sup> "Justice Department Rips Meese," *New York Times*, (January 18, 1989)

The Attorney General's history of personal and political affiliation with President Trump and his presidential campaign, and with White House staff, clearly meet the regulation's definition of a political or personal relationship.<sup>3</sup>

There is a substantial public record that demonstrates the close personal and political relationship between Attorney General Sessions and President Trump, his campaign staff and his associates who likely are or will be subjects of the investigation of the contracts between the Trump campaign and Russian individuals, both before and after the 2016 election. This record includes, for instance:

- Attorney General Sessions was the first Senator to endorse then-candidate Donald Trump in February 2016.<sup>4</sup> In fact, he was the only Senator to endorse him up until he clinched the Republican nomination in the summer of 2016.<sup>5</sup>
- Attorney General Sessions was chosen to formally nominate Donald Trump as the Republican candidate for the presidency at the Republican National Convention.<sup>6</sup>
- Attorney General Sessions participated in at least nine Trump campaign rallies<sup>7</sup> and attended at least 45 campaign events.<sup>8</sup> He also made numerous press appearances for the Trump campaign and was considered a surrogate for him.

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<sup>3</sup> 28 CFR §45.2(c) defines those terms:

(1) Political relationship means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

<sup>4</sup> Eli Stokols, "Sen. Jeff Sessions endorses Trump," *Politico*, February 28, 2016.  
<http://www.politico.com/story/2016/02/sen-jeff-sessions-endorses-trump-219939>

<sup>5</sup> Aaron Bycoffe, "The Endorsement Primary," *FiveThirtyEight.com*, June 7, 2016.  
<https://projects.fivethirtyeight.com/2016-endorsement-primary/>

<sup>6</sup> Joel Gehrke, "Jeff Sessions to make formal nomination of Trump," *The Washington Times*, July 19, 2016.  
<http://www.washingtontimes.com/news/2016/jul/19/jeff-sessions-put-donald-trumps-name-nomination-tu/>

<sup>7</sup> They were: [Mobile, AL](#) (8/21/15); [Madison, AL](#) (2/28/16); [Austin, TX](#) (8/23/16); [Tampa, FL](#) (8/24/16) [Everett, WA](#) (8/30/16); [Phoenix, AZ](#) (8/31/16); [Bangor, ME](#) (10/15/16); [Portsmouth, NH](#) (10/15/16); [Windham, NH](#) (11/5/16)

<sup>8</sup> Senator Dianne Feinstein, *Congressional Record*, February 7, 2017 at S827.

- According to numerous press reports, Attorney General Sessions had a critical role in the campaign:
  - “A source close to the campaign [said] Trump only truly consults one person, Alabama Republican senator Jeff Sessions: ‘When Jeff Sessions calls, Trump listens.’”<sup>9</sup>
  - President Trump’s Chief Strategist, Stephen Bannon told *The Washington Post* that Attorney General Sessions was “‘the clearinghouse for policy and philosophy’ in Trump’s administration, saying he and [the Attorney General] are at the center of Trump’s ‘pro-America movement’ and the global nationalist phenomenon. ‘Throughout the campaign, Sessions has been the fiercest, most dedicated, and most loyal promoter in Congress of Trump’s agenda...’”<sup>10</sup>
  - Paul Manafort, President Trump’s campaign manager during part of 2016, told the press that Attorney General Sessions had become a “very close personal friend and adviser” to Trump.<sup>11</sup>
  - “‘Sessions brings heft to the president’s gut instincts,’ said Roger Stone, a longtime Trump adviser. He compared Sessions to John Mitchell, who was attorney general under Richard M. Nixon but served a more intimate role as a counselor to the president on just about everything.”<sup>12</sup>
- According to press reports, Attorney General Sessions continued to play a critical role in the transition after the election:
  - “Sessions became a daily presence at Trump Tower in New York, mapping out the policy agenda and making personnel decisions.”<sup>13</sup>
  - The *Post* went on to report that Attorney General Sessions “lobbied for a ‘shock-and-awe’ period of executive action that would rattle Congress, impress Trump’s

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<sup>9</sup> Gabriel Sherman, “Inside Operation Trump, the Most Unorthodox Campaign in Political History,” *New York magazine*, April 3, 2016. <http://nymag.com/daily/intelligencer/2016/04/inside-the-donald-trump-presidential-campaign.html>

<sup>10</sup> Philip Rucker and Robert Costa, “Trump’s hard-line actions have an intellectual godfather: Jeff Sessions,” *The Washington Post*, January 30, 2017. [https://www.washingtonpost.com/politics/trumps-hard-line-actions-have-an-intellectual-godfather-jeff-sessions/2017/01/30/ac393f66-e4d4-11e6-ba11-63c4b4fb5a63\\_story.html?utm\\_term=.c2677f874965](https://www.washingtonpost.com/politics/trumps-hard-line-actions-have-an-intellectual-godfather-jeff-sessions/2017/01/30/ac393f66-e4d4-11e6-ba11-63c4b4fb5a63_story.html?utm_term=.c2677f874965)

<sup>11</sup> Gehrke, *op cit.*

<sup>12</sup> Rucker and Costa, *op cit.*

<sup>13</sup> *Ibid.*

base, and catch his critics unaware, according to two officials involved in the transition planning.”<sup>14</sup>

- After President-elect Trump stated he would nominate then-Senator Sessions to be Attorney General, Senator Sessions appeared at a post-election rally for him. At that rally Attorney General Sessions told the crowd that the Trump campaign was “more than a normal campaign, but a movement,” and he thanked President-elect Trump for “the opportunity to participate in a movement that I believe can help make America great again.”<sup>15</sup>
- Several of the Attorney General’s former employees and individuals with whom he has personal relationships work at the White House. Current White House deputy chief of staff Rick Dearborn worked for him as his chief of staff.<sup>16</sup> Senior Advisor to President Trump, Stephen Miller, worked as his communications director.<sup>17</sup> According to press reports, he has a long-standing relationship with Cliff Simms, who directs White House message strategy.<sup>18</sup>

Cumulatively, these examples overwhelmingly demonstrate that Attorney General Sessions has a “close identification with an elected official ... a political party, or a campaign organization, arising from service as a principal adviser thereto” under 28 C.F.R. § 45.2(c). Most significantly, these facts clearly demonstrate that Attorney General Sessions has a close identification with President Trump and close aides of the President.

Under 28 C.F.R. § 45.2, no individual who played such a key role on the Trump presidential campaign and has served a key adviser to Trump and members of his administration—establishing, at a minimum, a political relationship to those entities as defined by 28 C.F.R. § 45.2(c)(1)—could participate in investigations into contacts between the Trump campaign and Russian actors, Russian interference with the 2016 presidential election, the activities of former National Security Adviser Michael Flynn, or leaks concerning any of these matters. These persons clearly have “a specific and substantial interest that would be directly affected by the outcome of the investigation[s].” 28 C.F.R. § 45.2(a)(2).

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<sup>14</sup> *Ibid.*

<sup>15</sup> Feinstein, *op cit.*

<sup>16</sup> Alex Isenstadt and Matthew Nussbaum, “Trump adds deputy chiefs of staff,” *Politico*, January 3, 2017. <http://www.politico.com/blogs/donald-trump-administration/2017/01/trump-adds-two-additional-deputy-chiefs-of-staff-233122>

<sup>17</sup> Julia Ioffe, “The Believer,” *Politico*, June 27, 2016. <http://www.politico.com/magazine/story/2016/06/stephen-miller-donald-trump-2016-policy-adviser-jeff-sessions-213992>

<sup>18</sup> Rucker and Costa, *op cit.*

The only exception to the requirement of recusal set out at 28 C.F.R. § 45.2(a) would require that “The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.” 28 C.F.R. § 45.2(b)(2). Given the high-profile nature of Attorney General Sessions’ endorsement of the President’s candidacy and depth of public involvement, there is no question that this condition cannot be satisfied.

In short, the well-established and widely known close affiliation between Attorney General Sessions and President Trump and his campaign and White House staff clearly meet 28 C.F.R. § 45.2(c)’s definition of a “political or personal relationship.” That relationship precludes any possibility of Attorney General Sessions avoiding a conflict of interest or the appearance of a conflict.

To date, there is no public indication that Attorney General Sessions has taken any steps to recuse himself from the ongoing investigation of these matters by the Department of Justice, including by the FBI. His failure to do so is in violation of the applicable Departmental regulation at 28 C.F.R. § 45.2(a).

We call on OPR to undertake an investigation into the Attorney General’s failure to comply with Departmental regulations that require his recusal from the Department’s investigation of potential Russian influence in the 2016 election and in related matters.

If the results of the investigation show, as we believe, that Attorney General Sessions has failed to recuse himself from this matter as required by Justice Department regulations, OPR should make public findings to that effect, impose appropriate sanctions on Attorney General Sessions and take whatever additional steps are required to ensure that all Department attorneys, including the Attorney General, comply with Justice Department rules.

This is a matter of urgent public importance that is vital to ensure ongoing public confidence in the impartiality and fairness of the Justice Department.

Sincerely,

Fred Wertheimer  
President