

United States Senate

WASHINGTON, DC 20510

July 24, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

The Honorable Lee J. Lofthus
Assistant Attorney General for Administration
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Deputy Attorney General Rosenstein and Assistant Attorney General Lofthus:

On Wednesday, July 11, 2018, the Senate confirmed Brian Benczkowski to be Assistant Attorney General (AAG) of the Criminal Division of the Department of Justice (“Department”). Today, we write for further information concerning Mr. Benczkowski’s ethics agreement with the Department, the scope of his recusals, any waivers he has been granted, and any other information relevant to the Department’s review of Mr. Benczkowski’s prior work at it relates to his compliance with the Ethics in Government Act, associated regulations, Department policy, and the Trump Ethics Pledge, Executive Order 13770.

The context of Mr. Benczkowski’s selection to lead the Criminal Division raises concerns that must be addressed in your review. With no prosecutorial experience and barely any time in a courtroom of any sort, Mr. Benczkowski appears to have been nominated at least in part as a result of his prior, political relationship with Attorney General Sessions. With the Attorney General recused from the Department’s Russia investigation, President Trump repeatedly violating rules and norms designed to protect the independence of that investigation, and House Republicans engaged in an active campaign to discredit the Department and FBI and make confidential investigative materials public, the Department and its ethics officials should take the utmost precautions to prevent any backchannel, unauthorized disclosures of the Special Counsel’s work.

The issues with Mr. Benczkowski extend to his experience, as well as his lack of experience. During the course of his confirmation proceedings, it came to light that as a lawyer in private practice, Mr. Benczkowski recently represented the Russian Alfa Bank in connection with allegations that its servers had maintained a clandestine back channel to the Trump Organization. Mr. Benczkowski’s representation of Alfa Bank also included a review of the so-called “Steele dossier,” the private intelligence report by Christopher Steele that bears on issues central to the ongoing Special Counsel investigation into Russian election interference and related matters.

Before his confirmation, Mr. Benczkowski committed to recuse himself, if confirmed as AAG, from all matters related to Alfa Bank.¹ He did not, however, commit to recuse himself from all matters related to the Alfa Group Consortium, the parent company of Alfa Bank, or individuals related to that entity. He also did not commit to recuse himself from the Special Counsel's investigation into Russian election interference. Three individuals with ownership interests in Alfa Group Consortium—Mikhail Fridman, Pyotr Aven, and German Khan—have been identified to Congress by the United States Department of Treasury as among “senior foreign officials and oligarchs in the Russian Federation, as determined by their closeness to the Russian regime and their net worth.”² A son-in-law of Mr. Khan, Alex Van der Zwaan, pleaded guilty to lying to federal investigators.³

With respect to those matters, Mr. Benczkowski told the Senate Judiciary Committee:

Because I do not know the scope of [the Department's investigation into Russian interference with the 2016 election or Special Counsel Mueller's investigation], I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me in the Criminal Division where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and make a decision as warranted by the law and the facts.⁴

In prior correspondence with the Senate, the Department has confirmed that the Special Counsel's Office (SCO) may need to “seek approvals from the Criminal Division as required by statute, regulation, or policy[.]”⁵ The Department has also committed that “if Mr. Benczkowski is confirmed as AAG, the Department will require his consultation with appropriate ethics experts within the Department prior to his participation in or supervision of the SCO's interaction with the Criminal Division.”⁶

The significance of these determinations was underscored by two steps taken by the Department just last week. For example, without recusal, there is a risk that Mr. Benczkowski would have oversight of investigative steps such as the Special Counsel's recent request for use immunity for five witnesses in the SCO's prosecution of Paul Manafort. Likewise, last Tuesday, the Department indicted a Russian national, Mariia Butina, for acting and conspiring to act as an agent of a foreign government. The indictment was handed down by a grand jury in the United States District Court for the District of Columbia and signed by the District's United States

¹ See Response from Brian Benczkowski to Question for the Record #2 from Senator Sheldon Whitehouse, August 1, 2017 (“I have decided to recuse myself from any matter involving Alfa Bank for the duration of my service as the Assistant Attorney General for the Criminal Division, if I am confirmed.”).

² Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities, January 29, 2018.

³ The Special Counsel referenced Mr. Khan in his sentencing memorandum for Mr. Van der Zwaan: “Van der Zwaan is a person of ample financial means—both personally and through his father-in-law, a prominent Russian oligarch, who has paid substantial sums to the defendant and his wife. He can pay any fine imposed.” Government's Sentencing Memorandum, Crim. No. 18-31 (D.D.C) filed Mar. 27, 2018.

⁴ Response from Brian Benczkowski to Question for the Record #3 from Senator Sheldon Whitehouse, August 1, 2017.

⁵ Letter from Hon. Stephen Boyd to Senator Sheldon Whitehouse, Dec. 11, 2017.

⁶ *Id.*

Attorney, Jessie Liu. Mr. Benczkowski's involvement in these actions could, at a minimum, create the appearance of a conflict or undue influence over these decisions.

Given Mr. Benczkowski's prior relationship with the Attorney General and his representation of Alfa Bank—particularly in connection to the Steele Dossier—we believe Mr. Benczkowski should be recused from all aspects of the Special Counsel investigation, as well as from all matters related to the Alfa Group Consortium and its principals. A categorical recusal is the only way for the Department to ensure public confidence in those and any associated investigations. To further understand the Department's position and decisions related to Mr. Benczkowski's conflicts of interest, we request that you provide the following documentation and, as applicable, address the following questions:


- All ethics agreements, recusals, waivers, or other documentation pertaining to the scope of Mr. Benczkowski's duties at the Department.
- All counseling notes, emails, and any other communication between Mr. Benczkowski, the Department's Ethics Office, and the Office of Government Ethics.
- A copy of Mr. Benczkowski's signed "Ethics Pledge."
- If Mr. Benczkowski has not been recused from all matters related to the Alfa Group Consortium, please explain why.
- If Mr. Benczkowski has not been recused from all matters related to Mikhail Fridman, Pyotr Aven, and/or German Khan, please explain why.
- What was Mr. Benczkowski's involvement, if any, in the Department's request for use immunity for five witnesses in the SCO's prosecution of Paul Manafort, and in the Department's decision to charge Mariia Butina?
- If Mr. Benczkowski has not been recused from all matters related to the Special Counsel's investigation into Russian interference in the 2016 election, or related investigations and prosecutions conducted by the Department or United States Attorneys' offices, please explain why.


In Mr. Lofthus's February 26, 2018, letter to Office of Government Ethics Acting Director David Apol, he stated that Mr. Benczkowski would meet with ethics officials during his first week of service and complete document compliance with his ethics agreement within 90 days of service. The critical importance and pendency of matters before the Department demand assurances that Mr. Benczkowski will have no role, consultative or otherwise, in them until his ethics arrangements are complete. Accordingly, we request a response to this letter no later than July 31, 2018.

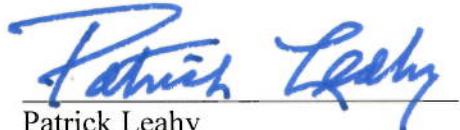
Sincerely,



Sheldon Whitehouse
United States Senator



Richard J. Durbin
United States Senator

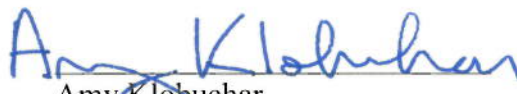

Dianne Feinstein
United States Senator

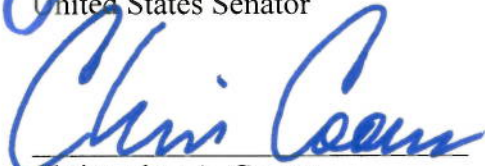

Mark R. Warner
United States Senator



Patrick Leahy
United States Senator


Ron Wyden
United States Senator



Jack Reed
United States Senator

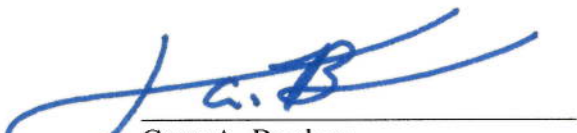

Amy Klobuchar
United States Senator


Christopher A. Coons
United States Senator


Richard Blumenthal
United States Senator


Mazie Hirono
United States Senator


Martin Heinrich
United States Senator


Cory A. Booker
United States Senator


Kamala D. Harris
United States Senator