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### November 17, 2018: The Matthew Whitaker Appointment

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Title: The Matthew Whitaker Appointment

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11/17/2018--What is the Office of Attorney General? "The Attorney General is the head of the Department of Justice. Rev. Stat. § 346 (Comp. St. § 515). He is the hand of the president in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offenses be faithfully executed." *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922). I mention this because, while there is legitimate speculation about the authority of President Trump to appoint Matthew Whitaker interim Attorney General, the thumb on the scale should be that the Attorney General works for the President and carries out the President's policies. The AG is not a check on the President, except of course the check that any lawyer should be, refusing to act outside the law. The opposition to the appointment of Whitaker has to do with his past stated opposition to the Russia collusion investigation. Again, people are missing the point. Nobody doubted that President Nixon had to be the one deciding whether to fire the independent prosecutor in the Saturday Night Massacre. The resignations had to do with whether a particular person was willing to be the person to do it. That is why Robert Bork ultimately did fire Archibald Cox. The action was ultimately ruled illegal by a court, but it was the President's call whether to fire Cox and then test the legality of the action. This is what it means that the Attorney General is not a check on the President. Ending the Russia collusion investigation may be a bad policy. It may even be obstruction of justice. But the President has the authority to attempt to perform these acts. Courts and impeachment are the checks. Within the Executive Branch, argument and even resignation are all that someone below the President should be able to do. I say all this as a critic of the Russia investigation. It never made sense to me to assume that the Russians needed any go ahead from Donald Trump. They accomplished most of what they did illegally before he was even a serious candidate. Besides, I dislike the whole idea of a genuinely independent prosecutor. Justice Scalia was right about that in the Morrison case. The President has to control the investigation of his subordinates and himself. That is one of the President's natural advantages in conflicts with Congress. The only way to get rid of a President is a 2/3 vote in the Senate or, much more likely, voting the President out of office. I greatly look forward to that.