

**Questions for Deputy Attorney General Rod Rosenstein**  
**December 13, 2017, Hearing before the House Judiciary Committee**

**In an interview with NBC's Scott MacFarlane on December 6, you indicated that you were "[satisfied](#)" with how the Special Counsel's investigation is proceeding. Why are you satisfied with the course of the investigation so far?**

- Because of the recusal of Attorney General Sessions from matters relating to the Trump campaign, the responsibility to appoint and select a special counsel fell to you. The Special Counsel regulation requires that an individual named as Special Counsel "be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies." ([Section 600.3\(a\)](#)). Why did you think that Robert Mueller was a good choice for the job, given these requirements?
- Have your expectations about Special Counsel Mueller's handling of the investigation been met?
- Do you have faith in the integrity of the team of lawyers, investigators, and professionals that the Special Counsel has assembled?
- Do you have confidence that members of the Special Counsel's team have been complying with applicable rules and policies of the Department of Justice?
- To the extent that issues arise involving failures of the Special Counsel's team to comply with Department policies, are you confident in the ability of the Department to investigate them and, when appropriate, take appropriate action against offending individuals?

**Are you satisfied that the Special Counsel and his team are in compliance with Special Counsel and Department of Justice requirements prohibiting conflicts of interest?**

- The Special Counsel regulation states that the Special Counsel and his staff are "subject to disciplinary action for misconduct and breach of ethical duties under the same standards and to the same extent as are other employees of the Department of Justice" ([Section 600.7\(c\)](#)). As you are no doubt aware, the Department of Justice [prohibits](#) employees from participating in matters in which they have a financial interest as well as matters in which other individuals close to the employee (including spouses, children, and business partners) have a financial interest. Are you satisfied that the Special Counsel and his team are free of conflicts that violate this requirement?
- In addition, Department regulations ([28 C.F.R. § 45.2](#)) prohibit a DOJ employee, without written authorization, from participating in a criminal investigation or prosecution if he has a personal or political relationship with any person or organization. Are you satisfied that the Special Counsel and his team are free of conflicts that violate this requirement?
- What steps did the Department take to ensure that Robert Mueller did not have conflicts that would have precluded him from being appointed special counsel for the Russia investigation (and related matters)?
- This summer, a senior FBI counterintelligence official, Peter Strzok, was reportedly removed from the Special Counsel's investigation for allegedly sending anti-Trump text messages to another individual during the 2016 campaign. That matter has reportedly been referred to the

Department's Office of Inspector General. Is such a referral consistent with the way that the Department routinely handles questions about the impartiality of its civil servants?

- Do Department policies prohibit its employees from registering with a political party, so long as they comply with the Hatch Act?
- Do Department policies prohibit employees from making donations to the political party of their choice, again, so long as the Hatch Act is complied with?
- Do Department policies prohibit employees from expressing their political views in private as long as the Hatch Act is otherwise met?

**Has Special Counsel Mueller's investigation proceeded within the scope of authority set forth under the [May 17 order](#) you issued when you appointed the Special Counsel?**

- Your order provides that the Special Counsel shall "conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017." Specifically, the order states that the scope of that investigation included "(i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a)." Let's focus for the moment on the first category.
  - The term "collusion" has been widely used to describe the focus of the Russian investigation but does not appear in this order. Why did you use the term "coordination" in your May 17 order?
  - The term "coordination" does not refer to any specific criminal offenses, is that correct?
  - Is it fair to say that the term "coordination" refers instead to a category of conduct that, depending on the facts uncovered, could implicate a variety of criminal offenses?
- Let's turn to the second category outlined in your order.
  - Why did you give the Special Counsel authority to investigate "any matters that arose or may arise directly from the investigation"?
  - What is the distinction between a matter that arises "directly" as opposed to one that arises "indirectly"?
- Turning now to the third category outlined in your order, where you referenced [28 C.F.R. § 600.4\(a\)](#). That provision states in relevant part that "[t]he jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted."
  - Accordingly, have you authorized Special Counsel Mueller to investigate these charges as well?
  - Based on this language, does Special Counsel Mueller have the authority to investigate any individual who may have obstructed the investigation that FBI Director Comey confirmed on March 20?
  - Does this authority to investigate include possible obstruction of that investigation by senior White House officials—including the President?
- The Special Counsel obtained an [indictment](#) of Trump campaign chairman Paul Manafort and his deputy Rick Gates on a number of charges, including conspiracy against the United States,

conspiracy to launder money, failure to register as a foreign agent, and failure to file reports of foreign bank and financial accounts. Are these matters that are in the scope of the order you issued appointing Special Counsel Mueller? Do you have any reason to think that Special Counsel Mueller has exceeded the authority that you granted him in your May 17 Order?

- The Special Counsel regulations permit the Special Counsel to request additional jurisdiction beyond that specified in your May 17 order ([28 C.F.R. § 600.4\(b\)](#)). Has the Special Counsel requested additional jurisdiction? If so, have you granted it?

**How would you respond if the President attempted to remove Special Counsel Mueller and can you commit to supporting the preservation of his inquiry’s investigative materials and the continuation of pending grand jury proceedings?**

- Department of Justice regulations governing the creation, oversight, and termination of a special counsel investigation provide that only the Attorney General can remove the Special Counsel ([Section 600\(d\)](#)), and this authority falls to you in light of the Attorney General’s recusal. The grounds for removal under these regulations are “misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of departmental policies.” ([Section 600\(d\)](#)) Do you believe there is any basis to fire Special Counsel Mueller under this standard?
- What would you do if the President asked you to fire the Special Counsel? Would you resign?
- What would you do if the President tried to remove Special Counsel Mueller himself regardless of the regulatory limit on removal authority? Would you appoint a new Special Counsel?
- Do you believe the President has any basis for claiming authority to fire the Special Counsel himself without involving you in this action?
- Would you commit today that you will take all feasible steps within your authority to ensure that any investigative records created or collected in the course of the Special Counsel’s inquiry would survive any successful effort to remove Special Counsel Mueller?
- If Special Counsel Mueller were removed, would you agree that the grand jury empaneled for his inquiry should be transferred to another authorized attorney for the government to continue the investigation? To assess and act on evidence pending before the grand jury at the time of such removal? To act on pending criminal charges?

**According to a [statement of expenditures](#) released by the Department of Justice on December 5, the Special Counsel’s office spent \$3.2 million from May 17, 2017 through September 30, 2017, and the F.B.I. [spent another \\$3.5 million](#) supporting the investigation. Are these expenditures appropriate and consistent with investigations of comparable size and importance that the Department has previously conducted?**

- The statement of expenditures explains that “[i]n the year ahead, the Department will continue to dedicate and leverage resources to maintain strong program and financial management controls.” Could you describe the ways in which the Department is ensuring that the Special Counsel investigation is using taxpayer resources responsibly?
- In your view, are the resources being spent by the Special Counsel proportionate to the scale and importance of the investigation?

**In your view has Attorney General Sessions complied with the terms of his [March 2, 2017, recusal](#) from “any existing or future investigations of any matters related in any way to the campaigns for President of the United States”?**

- Please confirm that the Attorney General is not participating in any aspect of the investigation being conducted by Special Counsel Robert Mueller.
- Is it your understanding that this recusal extends to matters concerning the budget of the Special Counsel’s office and FBI resources supporting the Special Counsel investigation?

**Has anyone in the White House contacted you about the Special Counsel investigation since the appointment of Special Counsel Mueller on May 17, 2017?**

- Do you think it is appropriate for the President to comment publicly on any pending investigation?
- Do you think it is appropriate for the President to publicly call for the investigation of specific individuals?
- Has the President ever contacted you to urge action in any pending investigation? What would you do if he did? Would you meet alone with the President if he asked? Have you? If he asked you to drop an investigation would you do so?
- Has the President ever contacted you to urge action to initiate an investigation?
- Has anyone acting on the President’s behalf ever contacted you to urge action, initiate, or stop an investigation? If so, describe how you responded.

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Prepared by the Presidential Investigation Education Project, a joint initiative by the American Constitution Society and Citizens for Responsibility and Ethics in Washington. For further inquiries please contact Caroline Fredrickson, Kara Stein, or Kristin Amerling at 202-365-3343 or Norman Eisen, Noah Bookbinder, or Conor Shaw at 202-408-5565. For additional information about the project, please visit <https://www.acslaw.org/PresidentialInvestigationEducationProject>.