

**QUESTIONS FOR THE RECORD
ROD J. ROSENSTEIN
NOMINEE TO BE DEPUTY ATTORNEY GENERAL**

FOLLOW UP QUESTIONS FROM SENATOR LEAHY

1. I asked you in writing why it was proper for Elliot Richardson to commit to appointing an independent prosecutor for Watergate when his nomination was pending before this Committee, but not for you to make a similar commitment regarding Russian interference in our election and possible collusion with the Trump campaign. You replied, “Richardson’s decision to appoint a special counsel was appropriate given the facts and circumstances known to him in May 1973. Those facts and circumstances are included in histories of the Watergate era. The facts and circumstances known to me in March 2017 are quite different.”

This week we learned additional facts. On March 20, 2017, at a public hearing held by the House Permanent Select Committee on Intelligence, FBI Director James Comey “confirm[ed] that the FBI, as part of our counterintelligence mission, is investigating, the Russian government’s efforts to interfere in the 2016 presidential election. And that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government, and whether there was any coordination between the campaign and Russia’s efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.”¹

To ensure that the investigation is insulated as much as possible from any outside influences, this public announcement reaffirms the need for a Special Counsel who, unlike you, or the FBI director, does not report to the Attorney General, who was forced to recuse himself from this investigation, and cannot be fired by the President. In my view, several extraordinary circumstances are present, including an inescapable appearance of a conflict of interest.

a. In light of these newly public facts, do you still believe that it would be premature to commit to appointing an independent Special Counsel² to investigate the Russian connection to the Trump campaign?

RESPONSE: The federal regulation adopted by Attorney General Janet Reno, 28 C.F.R. § 600.1, requires the Attorney General or Acting Attorney General to make certain determinations before appointing a special counsel. I am not the Acting Attorney General at this time, and it would be premature to make a decision to appoint a special counsel, or not to appoint a special counsel, based solely on the limited information available to me.

b. Now that the FBI has publicly confirmed a counterintelligence investigation into Russian interference and possible collusion with the Trump campaign, will you commit to appointing a Special Counsel to ensure a fully impartial investigation that is protected from political meddling?

RESPONSE: I will do whatever is necessary to ensure an impartial investigation that is protected from political influence. If I am the Acting Attorney General for a particular matter, I will review the facts and circumstances, consider the applicable law and regulations, and consult with law enforcement professionals before making a decision.

2. Suppose an American citizen contracted with a foreign national for \$10 million per year to “influence politics, business dealings and news coverage inside the United States,” and was dealing with “the highest levels of the U.S. government — the White House, Capitol Hill and the State Department”³ as part of those efforts.

a. Would that American citizen be required to register with the Justice Department under the Foreign Agents Registration Act?

RESPONSE: The Foreign Agents Registration Act (FARA) requires any person acting as an agent of a foreign principal in a political or quasi-political capacity to make periodic public disclosure of the relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities. Whether the disclosure requirements apply to a particular person requires a fact-specific analysis, and it would not be appropriate for me to opine on a hypothetical case. The Department of Justice has career professionals and subject matter experts who are responsible for responding to FARA inquiries and conducting FARA investigations.

b. If that citizen failed to do so, might they be subject to prosecution under 22 U.S.C. § 618?

RESPONSE: Determining whether any person might be subject to prosecution for willfully failing to comply with FARA would require an analysis of the facts and circumstances, and it would not be appropriate for me to opine on a hypothetical case. The Department of Justice has career professionals and subject matter experts who are responsible for responding to FARA inquiries and conducting FARA investigations.

3. Have you ever briefed a potential subject of an ongoing investigation on details involving that investigation?

RESPONSE: The term “subject” has a broad meaning in the Department of Justice; we use it to refer to any person whose conduct is within the scope of a criminal investigation, not necessarily a person suspected of a crime. We use the term “target” to refer to a person who is a putative defendant. In either case, prosecutors disclose details about a criminal investigation to such persons only when it furthers the legitimate goals of the criminal investigation.

¹ <https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election>

² https://www.washingtonpost.com/world/national-security/senate-begins-confirmation-hearing-for-nominee-to-be-deputy-attorney-general/2017/03/07/4bd4ae02-02b2-11e7-ad5b-d22680e18d10_story.html

³ <https://www.apnews.com/122ae0b5848345faa88108a03de40c5a>