

Oversight of the Department of Justice
Hearing before the House Committee on the Judiciary
February 8, 2019

Questions for the Record

Questions submitted by Chairman Nadler

- 1) Earlier this Congress, I introduced H.R. 197, the “Special Counsel Independence and Integrity Act.” Chairman Lindsay Graham of the Senate Judiciary Committee has introduced an identical companion in the Senate.

This legislation codifies existing protections for special counsels appointed by the Attorney General and takes other steps designed to preserve the independence of investigations overseen by special counsels. Specifically, the bill provides that a special counsel (1) may only be removed by the Attorney General or the most senior Senate-confirmed official at the Department of Justice; (2) may only be removed for cause; (3) must be provided written notice that specifies the reason for removal; and (4) may file an action to challenge a removal.

Given your experience in the Office of the Attorney General, do you believe that such a law, if enacted, would benefit the Department of Justice?

- 2) Last Congress, Representative Lloyd Doggett introduced H.R. 5533, the “Special Counsel Transparency Act of 2018.” This legislation requires (1) a special counsel to make periodic reports on the status of an investigation; (2) a special counsel who is removed from office to report on the status of an investigation as of the date of dismissal; and (3) the Department of Justice to report on the status of an investigation following the removal of a special counsel.

This Congress, Senators Richard Blumenthal and Chuck Grassley introduced a similar bill—also titled the “Special Counsel Transparency Act” and also designed to ensure that the Department eventually releases the final report of a special counsel.

When his work concludes, Special Counsel Mueller must “provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.” 28 C.F.R. § 600.8. Do you believe that his report should be made public? Given the overwhelming public consensus that the report *should* be made public, do you believe that legislation like the Special Counsel Transparency Act might be helpful to the Department of Justice?

Questions Submitted by Representative Cohen

1. In response to my question about the August 6, 2017 opinion piece you wrote for CNN entitled, "Mueller's investigation of Trump is going too far," in which you agreed with President Trump's assertion that if Special Counsel Mueller started investigating finances of President Trump or his family Mueller would be crossing a, "red line," you testified that you made those comments as a private citizen, acting as a commentator, when you only had access to publicly available information, and not as Acting Attorney General of the United States.

When asked if you still held that position, you declined to respond yes or no. You said, "I am very familiar with the responsibilities of my office as Acting Attorney General, and we make our decisions based on the law, the facts on a case by case basis."

Do you still believe that any investigation by Special Counsel Mueller of the finances of President Trump or his family would be crossing a, "red line"?

If not, what information do you know now that you did not know as a private citizen that has changed your mind?

Questions Submitted by Representative Lieu

National Emergency Declaration

1. To what extent has the Justice Department been involved in the decision-making process regarding using a national emergency declaration to fund a border wall?
 - a. Will there be a written justification explaining the Department's position on this matter?
 - b. Will the Department commit to providing the Judiciary Committee a copy of that opinion or determination?
2. I understand that the statutes President Trump is threatening to use involve funding for military operations and for Army Corps projects. If an emergency is declared, those funds would have to be used to support a military mission. Is the Justice Department reviewing the legal basis for military operations at the southern border?
 - a. If yes, will the Department commit to providing this committee with a copy of its opinion on the matter?
3. Is the Justice Department reviewing the potential for massive amounts of litigation regarding eminent domain if people's private property is seized in support of this project?
 - a. If yes, will the Department commit to providing this committee with a copy of its opinion on the matter?

Indictments

1. There is no sentence in the U.S. Constitution that states that the President's national security advisor cannot be indicted, correct?
2. There is no sentence in the U.S. Constitution that states that the President's former campaign chairman cannot be indicted, correct?
3. There is no sentence in the U.S. Constitution that states that the President's children cannot be indicted, correct?
4. There is no sentence in the U.S. Constitution that states that the Vice President cannot be indicted, correct?
5. There is no sentence in the U.S. Constitution that states that the sitting president of the United States cannot be indicted, correct – regardless of DOJ policy?