

WRITTEN STATEMENT OF ROD J. ROSENSTEIN
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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
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Chairman Graham, Ranking Member Feinstein, and other members of the Committee, thank you for inviting me to join you today.

When I was sworn in as Deputy Attorney General on April 26, 2017, I became responsible for helping the Attorney General supervise 115,000 Department of Justice employees and oversee hundreds of thousands of matters.

One of the most important matters was an investigation of Russian election influence schemes. Attorney General Sessions had complied with a legal obligation to recuse himself from that investigation seven weeks earlier.

Many federal agents and prosecutors were working on criminal cases that officials considered potentially relevant to Russian election meddling. As a result of events that followed the departure of the FBI Director, I was concerned that the public would not have confidence in the investigation and that the acting FBI Director was not the right person to lead it.

I decided that appointing a Special Counsel was the best way to complete the investigation appropriately and promote public confidence in its conclusions. As we now know, the eventual conclusions were that Russians committed crimes seeking to influence the election and Americans did not conspire with them.

A special counsel appointment was consistent with Department of Justice precedent. Attorney General Bill Barr and Attorney General Janet Reno each appointed special counsels in several cases when they concluded that a prosecutor with a degree of independence from the Department could best resolve sensitive matters.

Recently, Attorney General Barr has assigned U.S. Attorneys to take charge of significant investigations. But in May 2017, there were only three confirmed U.S. Attorneys, all Obama Administration appointees who had been ordered to resign and then permitted to holdover for a few months.

Some people confuse Special Counsels with Independent Counsels. Independent Counsels are appointed by federal judges. The Department of Justice does not supervise them. They often expand their jurisdiction. And they usually investigate for many years.

In contrast, Special Counsel Mueller was supervised by the Department, with jurisdiction that was limited in scope and duration.

I asked the Special Counsel to review each criminal allegation the FBI considered relevant to Russian election influence operations and recommend whether to close the matter; investigate because it might be relevant to Russian election meddling; or refer the matter to another prosecutor.

I also established a supervisory chain of command. Highly qualified Department attorneys met regularly with the Special Counsel team to review recommendations about which matters to investigate and to approve significant steps, in consultation with me. Whenever the Special Counsel proposed charges for which a U.S. Attorney would need approval from a Department headquarters division, those charges were reviewed as usual by the Tax Division, the National Security Division, or the Criminal Division.

I understand that today's hearing may focus on the Foreign Intelligence Surveillance Act. When I served as Deputy Attorney General, every FBI FISA application was written by agents and attorneys, reviewed by supervisors, sworn under oath by a federal agent, and certified by the FBI Director.

Before any application was submitted to the court, a senior Department official – either the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for National Security – met with National Security Division supervisors to ensure that the application set forth a valid legal and factual basis. Ultimately, each application was submitted to a federal judge who decided whether it established probable cause to issue a warrant.

Every application that I approved appeared to be justified based on the facts it alleged, and the FBI was supposed to be following protocols to ensure that every fact was verified. But investigative reviews published by the Inspector General in December 2019 and March 2020 revealed that the FBI was not following the written protocols, and that “significant errors” appeared in applications filed in connection with the Crossfire Hurricane investigation.

The Inspector General concluded, “That so many basic and fundamental errors were made by three separate, hand-picked teams on one of the FBI’s most sensitive investigations ... that FBI officials expected would ... be subjected to close scrutiny, raised significant questions regarding the FBI chain of command’s management and supervision of the FISA process.”

Senators, whenever agents or prosecutors make serious mistakes or engage in misconduct, the Department of Justice must take remedial action. And if existing policies fall short, those policies need to be changed. Ensuring the integrity of governmental processes is essential to public confidence in the rule of law.

While it is necessary to correct mistakes and punish wrongdoers, it should not go unsaid today that our law enforcement agencies are filled with men and women who act with integrity. As we watch them deal with extraordinarily difficult challenges throughout the country, we should take this opportunity to let them know that they have our appreciation and support.

In conclusion, I know that members of this Committee share a commitment to the principles of the Department of Justice. I look forward to addressing your questions.