



When Mueller Concludes

Lessons from Previous Independent Investigations
and Related Congressional Oversight



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Jessica Marsden, David J. Leviss, John McDermott, David R. Fitzgerald, and Carolyn Appel

Jessica Marsden is Counsel at Protect Democracy. David J. Leviss, John McDermott, David R. Fitzgerald, and Carolyn Appel are attorneys practicing in Washington, D.C. who specialize in defending individuals and organizations navigating high-stakes, high-profile congressional, internal, and criminal investigations. The analysis and opinions expressed in this white paper are their personal views only.

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I. Introduction¹

Independent investigations into potential wrongdoing by members of the executive branch have a long history in the United States, stretching back over a century.² Since the Watergate investigation in the 1970s, there have been 19 public independent investigations under the now-expired independent counsel statute or special counsel regulations.³ The investigation into “the Russian government’s efforts to interfere in the 2016 presidential election,” led by Special Counsel Robert Mueller, is the latest of such investigations.⁴

These independent investigations — in particular, those involving allegations that the President committed or had knowledge of a crime — have frequently been preceded or accompanied by vigorous congressional oversight, up to and including impeachment proceedings, pursuant to Congress’s inherent authority to conduct investigations of the executive branch and its power to impeach.⁵ This paper examines three of those investigations: Watergate,

¹ The authors of this paper wish to thank Rahul Kohli who provided indispensable research for this paper.

² See, e.g., Leslie E. Bennett, *One Lesson from History: Appointment of Special Counsel and the Investigation of the Teapot Dome Scandal*, The Brookings Institution (1999), available at <http://academic.brooklyn.cuny.edu/history/johnson/teapotdome.htm> (recounting that the Senate’s investigation into fraudulent oil leases in 1923 through 1924 led to the appointment of a special prosecutor to investigate the allegations of wrongdoing by the Secretary of the Interior).

³ The investigations of Watergate, President Carter’s family peanut business, Banco Nazionale del Lavoro (“BNL”) and Valerie Plame were conducted by a special prosecutor rather than by an independent or special counsel. Thus, we have not included these four investigations in the tally of 19 recent independent or special counsel investigations. However, given the importance of these investigations, we have analyzed them as part of our review of Congress’s activity in connection with special counsel investigations. See Appendix.

⁴ Office of the Deputy Att’y Gen., Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017) (hereinafter “Mueller Appointment Memo”) (appointing Special Counsel Robert S. Mueller III to “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, including . . . any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump”).

⁵ See *Watkins v. United States*, 354 U.S. 178, 187 (1957) (“The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.”); *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) (holding that Congress’s “power of inquiry-with process to enforce it-is an essential and appropriate auxiliary to the legislative function”).

Iran-Contra, and Whitewater, each of which involved allegations of serious wrongdoing against a sitting President. An examination of Congress's approach to each inquiry leads to three key conclusions that establish historical precedent for how and why Congress should respond to the current Special Counsel investigation:

First, Congress typically undertakes its own distinct investigation when an independent investigation examines allegations that the President is involved in or aware of criminal conduct. Congress and independent investigators have different roles to play; Congress's legislative and political responsibilities with respect to reform and serving as a check on the power of the presidency are not fulfilled by a prosecutor's decisions with respect to criminal indictments. Given that there are allegations of links and coordination between President Donald Trump's campaign and the Russian government's interference in the 2016 election, Congress should thoroughly investigate the matter to remain consistent with historical precedent.

Second, Congress also acts when there exists credible evidence that the President has abused his power to obstruct justice. If Mueller reports credible evidence that President Trump obstructed justice, Congress should, consistent with historical precedent, thoroughly investigate the matter and consider whether the factual record provides a basis for holding him politically accountable, up to and including commencing impeachment proceedings.⁶

Third, congressional action alongside independent investigations has provided important public insight into improprieties by the President and the executive branch, as well as avenues for legislative reforms. Thus, Congress should continue to investigate matters concurrently with Mueller and make public its proceedings and findings, to the extent Congress is able to do so without impeding or endangering Mueller's investigation.

By acting in accordance with historical precedent in connection with Special Counsel Mueller's investigation, Congress will ensure that political pressure does not undermine its constitutional role in holding the President accountable, that the public understands whether the President or his campaign was involved with the Russian attack on the 2016 election or efforts to cover it up (along with any other illegalities that are disclosed through the investigation), and that Congress and the public can engage in informed debate on any resulting proposals for reform. Congress should rely on this history as a reminder of its obligations "to make investigations and exact testimony to the end that it may exercise its legislative function advisedly and effectively,"⁷ and to exercise the power of impeachment where a well-developed factual record and due consideration of appropriate legal and political questions support it.⁸

⁶ Congress similarly acts upon findings that a President has lied under oath. President Trump has not, to date, submitted to testimony under oath, but truthfulness in any future testimony would be an appropriate matter for congressional oversight.

⁷ *McGrain*, 273 U.S. at 161.

⁸ U.S. CONST. art. I, § 2, cl. 5; *id.* art. I § 3, cls. 6-7.

II. Overview of Past Independent Investigations and Congressional Activity

A. Special Prosecutors, Independent Counsel, and Special Counsel

The United States government has long sought to ensure impartial and nonpartisan investigations of the executive branch through an independent investigator, known variously as a special prosecutor, independent counsel, or special counsel depending on the statutory source of authority.⁹ Historically, the Department of Justice (“DOJ”) appointed a figure known as a **special prosecutor** from within the Department to investigate potential wrongdoing by public officials.¹⁰ During the Watergate scandal in the 1970s, however, under congressional pressure for an independent investigation, then-Attorney General nominee Elliot Richardson agreed during his confirmation hearings to name an outside independent special prosecutor to conduct the inquiry.¹¹

At the conclusion of the Watergate investigation, Congress went a step further and passed the Ethics in Government Act, which created the **independent counsel** role, with further insulation from executive branch influence.¹² The new statute provided for appointment of an independent counsel by a three-judge panel upon request of the Attorney General. The independent counsel could be removed only through impeachment or “by the personal action of

⁹ See, e.g., *In re Olson*, 818 F.2d 34, 39-43 (D.C. Cir. 1987) (noting that “the need for a special counsel who is to some extent independent of the Justice Department and free of the conflicts of interest that exist when an Administration investigates the alleged wrongdoing of its own high officials has been demonstrated several times this century” and describing several prominent investigations led by appointed special prosecutors, independent counsel, or special counsel); Special Prosecutor Provisions of Ethics in Government Act of 1978: Hearings Before the Subcomm. on Oversight of Gov’t Management of the S. Comm. on Gov’t Affairs, 97th Cong. 1 (1981) (statement of Sen. William S. Cohen, Chairman, Subcomm. on Gov’t Affairs) (citing the investigations into the Grant administration Whiskey Ring, the Teapot Dome scandal, and the alleged tax fraud in the Truman administration as experiences that “provided the justification for a temporary special prosecutor, free of pressures and divided loyalties”).

¹⁰ See Jim Mokhiber, *A Brief History of the Independent Counsel Law*, FRONTLINE (May 1998), available at <https://www.pbs.org/wgbh/pages/frontline/shows/counsel/office/history.html>.

¹¹ Nomination of Elliot L. Richardson, of Massachusetts, to be Attorney General: Hearings Before the S. Comm. on the Judiciary, 93d Cong. 4-7, 18-20 (1973); Elizabeth Holtzman, *The Senate Must Demand an Independent Special Prosecutor*, THE NATION, May 16, 2017, available at <https://www.thenation.com/article/the-senate-must-demand-an-independent-special-prosecutor/> (Holtzman, a member of the House Judiciary Committee during the Watergate investigation, wrote “the Senate refused to confirm [Richardson] unless he promised to appoint a Special Prosecutor who . . . would be given full independence to conduct a proper investigation, and who couldn’t be fired except for ‘extraordinary improprieties.’”).

¹² Ethics in Government Act of 1978, Pub. L. No. 95-521, §§ 601-04, 92 Stat. 1824, 1867-75 (1978).

the Attorney General and only for good cause, physical or mental disability . . . or any other condition that substantially impair[ed] the performance of such independent counsel's duties."¹³

Congress allowed the independent counsel statute to lapse temporarily between 1992 and 1994, and permanently in 1999. In its place, DOJ promulgated regulations that permit the Attorney General to appoint a **special counsel** when he or she determines that a criminal investigation is warranted and that the investigation or prosecution would present a conflict of interest for DOJ.¹⁴ A special counsel has the authority to investigate matters as directed by the Attorney General, as well as any crimes committed in the course of, or with the intent to interfere with, the investigation, such as perjury or obstruction of justice.¹⁵ The special counsel also can conduct appeals arising from matters within his or her jurisdiction and request additional jurisdiction.¹⁶ The Attorney General has the power to remove a special counsel for "misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause"¹⁷ These regulations remain in effect today.

B. Congressional Oversight and Impeachment

The Constitution grants Congress two core powers relevant to independent investigations. First, Congress has broad authority to conduct investigations in connection with the legislative process.¹⁸ This power includes "inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," "surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them," and "probes into departments of the Federal Government to expose corruption, inefficiency or waste."¹⁹

Second, Congress has the authority to impeach the President, Vice President, and all civil officers of the United States.²⁰ Under Article I, Section 2, Clause 5, the House of Representatives has "the sole power of impeachment"; under Article I, Section 3, Clause 6, the Senate has "the sole power to try all impeachments."²¹

As detailed below in analyses of the Watergate, Iran-Contra, and Whitewater investigations, the exercise of investigative authority by independent investigators and Congress has often been intertwined.

¹³ 28 U.S.C. § 596(a)(1).

¹⁴ 28 C.F.R. § 600.1.

¹⁵ 28 C.F.R. § 600.4(a).

¹⁶ *Id.* at §§ 600.4(a)-(b).

¹⁷ 28 C.F.R. § 600.7(d).

¹⁸ U.S. CONST. art I; *Watkins*, 354 U.S. at 187.

¹⁹ *Watkins*, 354 U.S. at 187.

²⁰ U.S. CONST. art. I, §§ 2-3; *id.* art II, § 4.

²¹ U.S. CONST. art. I, § 2, cl. 5; *id.* art. I § 3, cl. 6.

C. Brief Overview of Recent Independent Investigations

In addition to the ongoing investigation concerning Russian interference in the 2016 election and any ties to that interference within the Trump campaign, there have been 19 public investigations by independent and special counsel since Watergate.²² There have also been three key special prosecutor investigations, often discussed in connection with independent and special counsel investigations. These investigations cover a range of allegations, such as former White House Chief of Staff Hamilton Jordan's alleged use of cocaine in 1977 and former Assistant Attorney General for the Office of Legal Counsel Ted Olson's alleged false statements before Congress in 1983.²³ Significantly, five of these investigations, including Watergate, focused on the actions or knowledge of the President.²⁴

While not every independent investigation resulted in extensive congressional oversight, typically, congressional activity in connection with independent investigations has included committee investigations, hearings, reports, and when Congress deemed appropriate, impeachment proceedings. Depending on the facts of a particular investigation and level of congressional engagement at the time an investigator was appointed, congressional activity often preceded or was concurrent with a special prosecutor, independent counsel, or special counsel investigation.

Our review of these past special prosecutor, independent counsel, and special counsel investigations has illuminated several trends concerning Congress's role. Congress has generally recognized an obligation to act, including to investigate or to commence impeachment proceedings, in cases where the President is alleged to be involved in a crime. The Watergate and Whitewater inquiries are key examples of Congress acting on this historic obligation. And in each of these cases, Congress's actions provided critical public access to information — from the daily re-broadcasting of the Watergate hearings, to the numerous reports issued during the Whitewater investigations.

An exception is Congress's lack of activity in connection with the investigation into President Jimmy Carter's family peanut business in 1979. The investigation, which included a deposition of President Carter, lasted seven months, after which the special prosecutor stated that

²² See Appendix.

²³ George Lardner Jr., *Grand Jury Clears Jordan*, WASH. POST, May 29, 1980, available at https://www.washingtonpost.com/archive/politics/1980/05/29/grand-jury-clears-jordan/e6af7391-4c5e-43a8-98b8-435935cf50d6/?utm_term=.2435ec4b9891; Philip Shenon, *Special Prosecutor Drops E.P.A. Case Without Indictment*, N.Y. TIMES, Aug. 27, 1988, available at <https://www.nytimes.com/1988/08/27/us/special-prosecutor-drops-epa-case-without-indictment.html>.

²⁴ The five investigations that focus on the actions or knowledge of the President include the investigations into Watergate, President Carter's family peanut business, Iran-Contra, Banco Nazionale del Lavoro ("BNL") Investigation, and Whitewater.

“there [was] no evidence to establish that President Jimmy Carter committed any crimes.”²⁵ This independent investigation regarding President Carter was born out of a Senate inquiry into, and subsequent criminal investigation of, President Carter’s budget director, who was indicted for violating federal banking regulations.²⁶ Although Republican members of Congress called for the appointment of an independent investigator, Congress did not otherwise investigate President Carter’s involvement in any wrongdoing or pursue impeachment.²⁷

Congress also typically exercises its oversight authority where the executive branch is alleged to have interfered with Congress’s powers, including its power to investigate. For example, former Assistant Attorney General for the Office of Legal Counsel Ted Olson’s alleged false statements before Congress led to the appointment of an independent counsel to investigate.²⁸

In other instances in which Congress has not acted in connection with an independent investigation, there are apparent explanations. When an independent investigation did not implicate the President, when an independent investigation identified no wrongdoing by the President, when no prosecutions were recommended, and when no necessary reforms were identified, Congress has often not taken any action. An example of this outcome can be seen in the investigation of former Assistant Attorney General Lawrence Wallace’s alleged income tax evasion, in which the independent counsel ultimately recommended against filing criminal charges.²⁹ Congress took no significant action in connection with this investigation or in response to its conclusion.

²⁵ *Excerpts from Statement on Carter-Inquiry Report*, N.Y. Times, Oct. 17, 1979, available at <https://www.nytimes.com/1979/10/17/archives/excerpts-from-statement-on-carterinquiry-report-no-evidence-of.html>; John F. Berry & Ted Gup, *Inquiry Clears Carter Family’s Peanut Business*, WASH. POST, Oct. 17, 1979, available at https://www.washingtonpost.com/archive/politics/1979/10/17/inquiry-clears-carter-familys-peanut-business/ca5371c9-f0a7-4809-9b7d-7a57e78b76b0/?utm_term=.481f0d60d70d.

²⁶ Nicholas M. Horrock, *Carter Loans Investigation: How It All Got Started*, N.Y. TIMES, Mar. 25, 1979, available at <https://www.nytimes.com/1979/03/25/archives/carter-loans-investigation-how-it-all-got-started.html>.

²⁷ Fred Barbash, *Probe of Carter Business Sought*, WASH. POST, Mar. 13, 1979, available at https://www.washingtonpost.com/archive/politics/1979/03/13/probe-of-carter-business-sought/50850e0c-e1a3-4255-9ab5-903af2ec1faa/?utm_term=.8a8cab1db994; Edward T. Pound, *Carter’s Business Cleared in Inquiry on Campaign Funds*, Oct. 17, 1979, available at <https://www.nytimes.com/1979/10/17/archives/carters-business-cleared-in-inquiry-on-campaign-funds-indictments.html>.

²⁸ *In Re Olson*, 818 F.2d 34 (D.C. Cir. 1987) (detailing the House Committee on the Judiciary’s investigation and subsequent letter to the Attorney General requesting appointment of an independent counsel).

²⁹ *Independent Counsels: A Rarefied Roster*, N.Y. TIMES, Aug. 11, 1998, available at <https://archive.nytimes.com/www.nytimes.com/library/politics/081198clinton-counsel-side.html>.

Similarly, where the target of the special counsel's investigation was promptly prosecuted or deceased, Congress also has not taken any action. For example, in the first half of the ten-year independent investigation into former Secretary of Housing and Urban Development Henry Cisneros's false statements to the FBI in connection with his nomination process, Secretary Cisneros resigned his post and pleaded guilty.³⁰ Congress took no significant action related to this matter. Similarly, the independent investigation into former Secretary of Commerce Ron Brown's failure to report large payments from a business partner concluded following his unexpected death in an airline crash and the indictments of several of his business partners.³¹ Congress took no significant action in connection with this investigation either.

D. Special Counsel Mueller's Investigation into the Russian Government's Efforts to Interfere in the 2016 Presidential Election

On May 17, 2017, Deputy Attorney General Rod Rosenstein commenced a new special counsel investigation by appointing Mueller to investigate "the Russian government's efforts to interfere in the 2016 presidential election."³² Specifically, the appointment order authorized Mueller to 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, including: (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 [the special counsel jurisdiction regulation]."³³ Although Rosenstein appointed Mueller pursuant to the acting Attorney General's authority to "provide supervision and management of the Department of Justice," the appointment order expressly stated that DOJ's special counsel regulations would apply.³⁴

To date, Mueller's investigation has led to seven guilty pleas and a jury conviction, and the investigation has pending indictments against another twenty-six individuals and three Russian companies.³⁵ The crimes alleged include making false statements to the FBI, conspiracy,

³⁰ Neil A. Lewis, *Long, Costly Case Against Cisneros Ends in Plea Deal*, N.Y. TIMES, Sept. 8, 1999, available at <https://www.nytimes.com/1999/09/08/us/long-costly-case-against-cisneros-ends-in-plea-deal.html>.

³¹ David Stout, *Investigation of Ron Brown Leads to Other Indictments*, N.Y. TIMES, Mar. 14, 1988, available at <https://www.nytimes.com/1998/03/14/us/investigation-of-ron-brown-leads-to-other-indictments.html>.

³² Mueller Appointment Memo.

³³ *Id.*

³⁴ *Id.* (citing authority for special counsel appointment as 28 U.S.C. §§ 509, 510, and 515 — the general statutory authority provided for appointment of DOJ staff to conduct investigations — but noting that the special counsel regulations applied to his appointment).

³⁵ Eric Tucker & Chad Day, *Mueller Shedding More Attorneys in Russia Investigation*, BOSTON, Oct. 2, 2018, available at <https://www.boston.com/news/politics/2018/10/02/mueller-shedding-more-attorneys-in-russia-investigation>; Andrew Prokop, *All of Robert Mueller's Indictments and*

identity theft, obstruction of justice, financial crimes, tax and bank fraud, campaign finance violations, and failing to register as a foreign agent.³⁶ According to media reports, Mueller continues to negotiate with President Trump over whether to testify.³⁷ Mueller has delivered written questions to the President about Russia's involvement in the election, and President Trump's legal team is reported to have submitted responses.³⁸ It remains unclear when Mueller's investigation will conclude and whether his findings will become public.

Meanwhile, numerous congressional committees have conducted — with varying degrees of thoroughness and bipartisanship — their own investigations into Russian efforts to influence the 2016 presidential elections, though of course, none have taken into account any still pending or yet-to-be-revealed findings from Mueller. The House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the Senate Committee on the Judiciary, and the House Committee on Oversight and Government Reform have each commenced inquiries.³⁹ In a party-line vote, the House Intelligence Committee majority adopted what it deemed a final report concluding that, “[w]hile the Committee found that several of the contacts between Trump associates and Russians — or their proxies, including Wikileaks — were ill-advised, the Committee did not determine that Trump or anyone associated with him assisted Russia’s active measures campaign.”⁴⁰ The House Intelligence Committee minority members issued a separate report, identifying what it viewed as significant gaps in the Committee’s investigation.⁴¹ The Senate Intelligence Committee issued a report including its

Plea Deals in the Russia Investigation So Far, VOX, Oct. 10, 2018, available at <https://www.vox.com/policy-and-politics/2018/2/20/17031772/mueller-indictments-grand-jury>.

³⁶ Andrew Prokop, *All of Robert Mueller’s Indictments and Plea Deals in the Russia Investigation So Far*, VOX, Oct. 10, 2018, available at <https://www.vox.com/policy-and-politics/2018/2/20/17031772/mueller-indictments-grand-jury>.

³⁷ Darren Samuelsohn, *Trump Lawyers Working on Answers to Mueller’s Russia Conspiracy Questions*, POLITICO, Oct. 11, 2018, available at <https://www.politico.com/story/2018/10/11/trump-lawyers-mueller-questions-895346>.

³⁸ *Id.*; Carol Leonnig & Robert Costa, WASH. POST, Nov. 20, 2018, available at https://www.washingtonpost.com/politics/trump-submits-answers-to-special-counsel-questions-about-russian-interference/2018/11/20/3b5a18d4-ed0f-11e8-baac-2a674e91502b_story.html?utm_term=.06d2f512cf39.

³⁹ Robin Opsahl, *After House Intel Report, Here’s a List of All the Trump-Russia Investigations*, ROLL CALL, Apr. 25, 2018, available at <https://www.rollcall.com/news/politics/made-list-russia-investigations-dont>.

⁴⁰ *Report on Russian Active Measures*, H. Permanent Select Comm. on Intelligence (Mar. 22, 2018) at 60-61, available at https://intelligence.house.gov/uploadedfiles/final_russia_investigation_report.pdf.

⁴¹ H. Permanent Select Comm. on Intelligence, *Minority Views*, Mar. 26, 2018, available at <https://democrats-intelligence.house.gov/uploadedfiles/minorityviews.pdf>.

initial findings that evidence supports the intelligence assessment that Russia made efforts to influence the 2016 U.S. presidential election in Trump's favor.⁴²

According to press reports, the House is likely to reopen and expand investigations into Russian interference in the 2016 presidential election, after Democrats won the majority in that chamber on November 6, 2018.⁴³ These investigations appear likely to track investigative approaches that Democratic lawmakers were unable to pursue as the minority party in the House, as well as findings from Mueller's investigation as they emerge. This is consistent with historical precedent. For instance, during the Whitewater investigation, the switch from Democratic to Republican control of the Senate saw the reopening of congressional investigations, which resulted in further public disclosure of information from the investigation.

III. Analysis of Key Independent Investigations

As the new Congress contemplates actions in concert with and at the close of Mueller's investigation, three key independent investigations — Watergate, Iran-Contra, and Whitewater — provide useful insight into the historical precedent and traditional inter-branch relations that should guide Congress's approach to investigating Russian interference with the 2016 election, to investigating the role of any Americans, including the President and his campaign officials, in that interference or its cover up, and to addressing any necessary reforms identified by those investigations.

A. Watergate

The 1972 arrest of five Republican operatives attempting to break into the Democratic National Committee's headquarters in the Watergate hotel resulted in the most consequential special counsel investigation in modern American history. In total, the special prosecutor's investigation produced 69 indictments, 48 of which resulted in guilty pleas or findings of guilt at trial. But it was President Richard Nixon's involvement in the illegal activity and its aftermath, leading to his decision to resign from office rather than face imminent impeachment proceedings, that cemented the Watergate investigation's prominent place in U.S. history.

1. Brief Background

On June 17, 1972, five men were arrested after they were caught breaking into and attempting to bug the Democratic National Committee's headquarters at the Watergate building

⁴² *The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections*, S. Select Comm. on Intelligence (July 3, 2018), available at https://www.burr.senate.gov/imo/media/doc/SSCI%20ICA%20ASSESSMENT_FINALJULY3.pdf.

⁴³ Lauren Fox & Jeremy Herb, *What Democrats in Congress Will Do If They're in Power After Midterms*, CNN, Oct. 15, 2018, available at <https://www.cnn.com/2018/10/15/politics/democrat-investigations-house-majority/index.html>.

in Washington, D.C.⁴⁴ Though the White House initially denied any involvement in the incident, a few weeks later, reports emerged that a \$25,000 check to the Nixon reelection campaign was deposited in one of the accused burglar's bank accounts.⁴⁵ Then, on September 15, 1972, DOJ indicted the five men arrested at the scene, along with G. Gordon Liddy and James W. McCord, former officials of President Nixon's re-election committee, for the Watergate break-in, with their trial to begin on January 8, 1973.⁴⁶ A few months after the indictments, on February 7, 1973, the Senate unanimously passed S. Res. 60, a resolution creating the Senate Select Committee on Presidential Campaign Activities to investigate the matter.⁴⁷ A week after the Select Committee began its public hearings, Attorney General Elliot Richardson announced the nomination of Archibald Cox Jr. to be the independent special prosecutor for the Watergate investigation.⁴⁸

Throughout the summer of 1973, both the Senate Select Committee on Presidential Campaign Activities⁴⁹ and Cox sparred with President Nixon over subpoenas relating to taped conversations in the Oval Office.⁵⁰ The D.C. Circuit Court of Appeals ordered President Nixon

⁴⁴ *The Complete Watergate Timeline (It Took Longer Than You Realize)*, PBS, May 30, 2017, available at <https://www.pbs.org/newshour/politics/complete-watergate-timeline-took-longer-realize>.

⁴⁵ *Id.*

⁴⁶ Between January 11 and 15, 1973, the five original burglars pled guilty to the Watergate break-in. Press reports between January 15 and 22, 1973 suggested the Watergate defendants were being paid by people within the Committee to Re-elect the President, and that they were promised money and clemency if they pled guilty. Watergate Special Prosecution Force Report, at 253. Liddy and McCord were convicted on all counts on January 30, 1973. *Id.*

⁴⁷ *Id.* at 207 n. 2.

⁴⁸ *Id.* at 207. Richardson agreed to appoint an *independent* special prosecutor in exchange for his confirmation. Elizabeth Holtzman, *The Senate Must Demand an Independent Special Prosecutor*, *supra* n. 11; Ken Hughes, *Three Little Words*, Miller Center, May 10, 2017, available at <https://millercenter.org/three-little-words> (Senator Ted Kennedy told the Miller Center that the appointment of Cox was “nothing that . . . Richardson wanted. We wanted it, and [Kennedy] played a role with others on the committee. This was a *quid pro quo* for his being able to get through . . . [and Richardson] understood that.”).

⁴⁹ On February 8, 1974, the United States District Court for the District of Columbia dismissed the Select Committee's lawsuit for enforcement of its subpoena duces tecum for five taped conversation between John Dean and President Nixon, which was issued pursuant to S. Res. 60, 93d Cong. (1973). *See Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 370 F. Supp. 521, 524 (D.D.C. 1974). On May 23, 1974, the D.C. Circuit Court of Appeals affirmed the lower court's ruling, holding that the subpoenaed material was not critical to the Committee's performance of its legislative functions. *See Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731–33 (D.C. Cir. 1974).

⁵⁰ On July 23, 1973, after unsuccessfully requesting the taped conversations in the Oval Office that could resolve conflicting testimony given at the Senate Select Committee's hearing

to produce tapes subpoenaed by Cox on October 12, 1973.⁵¹ President Nixon attempted a compromise, offering to produce the tapes to Senator John Stennis, who would listen to them and summarize their contents for the special prosecutor, and ordered Cox to seek no further litigation on October 19, 1973.⁵² The next day, in a press conference, Cox announced he was rejecting President Nixon's orders.⁵³ In what became known as the Saturday Night Massacre, President Nixon ordered Cox fired that night.⁵⁴ Three days later, amid political uproar over the firing of Cox, President Nixon informed U.S. District Judge John Sirica (who was overseeing the criminal trial for the Watergate break-in) that he would comply with Cox's grand jury subpoena.⁵⁵

Firing Cox and complying with the subpoena, however, did not mark the end of the investigation of President Nixon. On November 1, 1973, Acting Attorney General Robert Bork announced that Leon Jaworski would succeed Cox as the special prosecutor.⁵⁶ The firing of Cox did not deter Jaworski's — or Congress's — investigations.

On February 6, 1974, after "[a] number of impeachment resolutions [had been] introduced by Members of the House,"⁵⁷ the House of Representatives authorized the House Judiciary Committee to investigate grounds to impeach the President.⁵⁸ Two months later, on April 16, 1974, Special Prosecutor Jaworski issued a subpoena for tapes of 64 additional White House conversations, including the "smoking gun" tape of President Nixon ordering that the FBI's investigation into the break-in be blocked.⁵⁹ The President fought the Special Prosecutor's subpoena, but a unanimous Supreme Court upheld its enforcement on July 24, 1974, in *United States v. Nixon*.⁶⁰

regarding involvement of administration officials in various crimes, Special Prosecutor Cox issued a grand jury subpoena for the tapes. *See* Watergate Special Prosecution Force Report, at 8.

⁵¹ *See id.* at 8.

⁵² *See id.* at 256.

⁵³ *Id.*

⁵⁴ Attorney General Richardson resigned rather than fire Cox, and President Nixon fired Deputy Attorney General William French Smith when he similarly refused to fire Cox. *See* Watergate Special Prosecution Force Report, at 9, 256. Third in line at the Department of Justice, Solicitor General (who then became the Acting Attorney General) Robert Bork fired Cox, and transferred the independent counsel's investigation to the Department of Justice's criminal division. *See id.* at 8-9, 256.

⁵⁵ *See id.* at 256.

⁵⁶ On November 21, 1973, Fred Buzhardt, special counsel to President Nixon, informed Judge Sirica of an 18-and-a-half-minute gap on the tape of a June 20, 1972 conversation between President Nixon and his chief of staff, H.R. Haldeman. *See id.* at 257.

⁵⁷ Investigatory Power of Comm. on the Judiciary with Respect to Its Impeachment Inquiry, Congressional Record — House, Feb. 6, 1974, at 2350.

⁵⁸ *See* Watergate Special Prosecution Force Report, at 258.

⁵⁹ *Id.* at 259.

⁶⁰ 418 U.S. 683 (1974).

Within a week of the release of the “smoking gun” tape, the House Judiciary Committee adopted three articles of impeachment.⁶¹ Article I charged President Nixon with obstruction of justice, Article II charged him with misuse of powers and violating his oath of office, and Article III charged him with failure to comply with House subpoenas.⁶² Nixon’s support quickly evaporated, even from his long-time supporters in Congress, including Republican members of the House Judiciary Committee.⁶³ On August 9, 1974, facing almost certain impeachment in the House and conviction in the Senate, President Nixon resigned.⁶⁴

2. Congressional Activity in Connection with the Special Prosecutor Investigation

Two congressional committees were primarily responsible for investigating the Watergate scandal: the Senate Select Committee⁶⁵ and the House Judiciary Committee.⁶⁶ The public portions of the two committees’ hearings gained wide media attention, including daily rebroadcasting of hearings for those members of the public that could not view the hearings during the workday.⁶⁷

Though similar in subject, the purposes of the investigations by the Senate Select Committee, the Special Counsel, and the House Judiciary Committee were each different. The Senate Select Committee was tasked with “bring[ing] facts before the public in order to propose legislative remedies for any abuses it might uncover.”⁶⁸ For example, when the Senate Select Committee submitted its final report, it recommended several legislative fixes including Freedom of Information Act reforms, the Right to Financial Privacy Act, the Tax Reform Act, and the 1978 Ethics in Government Act.⁶⁹

By contrast, the special prosecutor “had the responsibility of investigating and prosecuting specific criminal charges.”⁷⁰ In remarks made after the conclusion of the investigation, Jaworski stated that he very clearly thought there was evidence supporting an

⁶¹ See Watergate Special Prosecution Force Report, at 260.

⁶² *Id.*

⁶³ David E. Rosenbaum, *Allies in House Shifting on Nixon*, N.Y. TIMES, Aug. 7, 1974, available at <https://www.nytimes.com/1974/08/07/archives/allies-in-house-shifting-on-nixon-rhodes-and-all-10gop-backers-on.html>.

⁶⁴ Watergate Special Prosecution Force Report, at 261.

⁶⁵ *Id.* at 207, n. 2.

⁶⁶ See *id.* at 258.

⁶⁷ “Gavel-to-Gavel”: *The Watergate Scandal and Public Television*, American Archive of Public Broadcasting, available at <https://americanarchive.org/exhibits/watergate>.

⁶⁸ Watergate Special Prosecution Force Report, at 6.

⁶⁹ S. REP. NO. 93-981 (1974); Remarks of Attorney General Benjamin R. Civiletti at the Annual Dinner of the Univ. of Chi. Law Sch. & Alumni Ass’n, Apr. 25, 1980, available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-25-1980.pdf>.

⁷⁰ Watergate Special Prosecution Force Report, at 6.

indictment for obstruction of justice against President Nixon.⁷¹ However, Jaworski thought it would not be “proper” to indict President Nixon for obstruction of justice because he harbored “substantial doubt that a sitting president was indictable for the offense of *obstruction of justice*.”⁷² Further, Jaworski feared that given “the dire consequences of an act of such doubtful validity, the returning of such an indictment, under all of the circumstances, seemed insupportable.”⁷³ In Jaworski’s calculation “there was serious doubt that the United States Supreme Court would have permitted an indictment of a sitting president for obstruction of justice, *especially when the House of Representatives’ Committee on the Judiciary was then engaged in an inquiry into whether the President should be impeached on that very ground*.”⁷⁴ Jaworski later remarked that he thought that President Nixon would not resign if an indictment had been returned, meaning that the “country would have been burdened with a beleaguered President who could not have been brought to trial for a substantial period of time. It seemed that the trauma the nation would suffer in the interim would be awesome.”⁷⁵

Unwilling to bring an indictment against President Nixon, Jaworski instead sent “the House Judiciary Committee all of the evidence that had been assembled by the grand jury bearing on [President Nixon’s] involvement in the alleged obstruction of justice.”⁷⁶ This included the grand jury’s listing of President Nixon as an unindicted co-conspirator.⁷⁷ Special Prosecutor Jaworski’s report to the House Judiciary Committee encompassed 800 pages of documents and thirteen tape recordings of President Nixon’s Oval Office conversations.⁷⁸ To assist the House Judiciary Committee, Jaworski also prepared a document known as the “Road Map,” a 55-page summary describing all of the evidence the special prosecutor had gathered

⁷¹ Leon Jaworski, *The Most Lustrous Branch: Watergate and the Judiciary*, 45 FORDHAM L. REV. 1267 (1977) (“substantially embod[ying] the text of the Seventh Annual John F. Sonnett Memorial Lecture delivered by Mr. Jaworski at the Fordham University School of Law on February 15, 1977”).

⁷² *Id.* at 1269 (emphasis in original).

⁷³ *Id.*

⁷⁴ *Id.* (emphasis in original).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Warren Weaver Jr., *Jaworski Backs Naming of Nixon*, N.Y. TIMES, July 2, 1974, available at <https://www.nytimes.com/1974/07/02/archives/jaworski-backs-naming-of-nixon-says-president-was-listed-as.html>; Anthony Ripley, *Jury Named Nixon a Co-Conspirator but Didn’t Indict*, N.Y. TIMES, June 7, 1974, available at <https://www.nytimes.com/1974/06/07/archives/jury-named-nixon-a-coconspirator-but-didnt-indict-st-clair-confirms.html>; John P. MacKenzie, *Court Orders Nixon to Yield Tapes; President Promises to Comply Fully*, WASH. POST, July 25, 1974, available at <https://www.washingtonpost.com/wpsrv/national/longterm/watergate/articles/072574-1.htm>.

⁷⁸ Stephen Bates, Jack Goldsmith & Benjamin Wittes, *The Watergate ‘Road Map’ and the Coming Mueller Report*, LAWFARE, Sept. 14, 2018, available at <https://www.lawfareblog.com/watergate-road-map-and-coming-mueller-report>.

about President Nixon’s conduct, including citing underlying testimony.⁷⁹ The Road Map did not contain any legal analysis or draw legal conclusions.⁸⁰ But, crucially, the Road Map included factual statements and references to the underlying documents and tapes.⁸¹ As James Doyle, then a special assistant to the Watergate special prosecutors, wrote in his book, *Not Above the Law*, “[t]he strength of the document was its simplicity. An inexorable logic marched through its pages. The conclusion that the President of the United States took part in a criminal conspiracy became inescapable.”⁸²

In possession of this evidence, the House Judiciary Committee instituted hearings — many of which were public — on whether to recommend impeachment of President Nixon.⁸³ Though debate ensued, the release of the tape on which President Nixon ordered the FBI investigation blocked⁸⁴ ensured bipartisan support to adopt articles of impeachment on obstruction of justice.⁸⁵ And, eventually, the House Judiciary Committee also adopted articles of impeachment charging the President with misuse of power, violating his oath of office, and failing to comply with House subpoenas.⁸⁶

B. Iran-Contra

In 1986, the media exposed two secret government operations illegally aiding Nicaragua’s anti-Sandinista rebels or “Contras.” These revelations prompted one of the longest independent counsel investigations, lasting until August 1993, which addressed allegations that, as in Watergate, reached all the way up to the President. The operations under investigation included (i) covert assistance to the military activities of the Contras from October 1984 to October 1986 when there was a statutory prohibition against such aid, and (ii) using money from sales of arms to Iran — despite an embargo on such sales — to assist the Contras.⁸⁷ The independent counsel’s investigation led to criminal charges against fourteen individuals.⁸⁸ Eleven were found guilty (though two of the most notable figures — Oliver North and John

⁷⁹ Charlie Savage, *Legal Experts Urge Release of Watergate Report to Offer Mueller a Road Map*, N.Y. TIMES, Sept. 14, 2018, available at <https://www.nytimes.com/2018/09/14/us/politics/mueller-report-grand-jury-watergate.html>.

⁸⁰ Bates, Goldsmith & Wittes, *supra* n. 78.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Leon Jaworski, *The Most Lustrous Branch: Watergate and the Judiciary*, *supra* n. 71, at 1272; *Impeachment Powers*, Deschler’s Precedents, Vol. 3, Ch. 14, available at <https://www.gpo.gov/fdsys/pkg/GPO-HPREC-DESCHLERS-V3/html/GPO-HPREC-DESCHLERS-V3-5-5-2.htm>.

⁸⁴ This tape is known colloquially as the “smoking gun” tape.

⁸⁵ “*Gavel to Gavel*,” *supra* n. 66.

⁸⁶ See Watergate Special Prosecution Force Report, at 260.

⁸⁷ Lawrence W. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters*, Vol. 1, Aug. 4, 1993 (hereinafter “Iran-Contra Walsh Report”) at xiii.

⁸⁸ *Id.* at xiv.

Poindexter — eventually had their convictions reversed on appeal), two received unprecedented pre-trial pardons by President George H. W. Bush, and one prosecution was dismissed on national security grounds.⁸⁹

1. Brief Background

In response to allegations in the media, President Ronald Reagan addressed the nation on November 13, 1986 and admitted that his administration had illegally sold arms to Iran.⁹⁰ Later that month, he also admitted that the profits from those sales had been diverted to support the Contras in further violation of statutory prohibitions.⁹¹ On December 19, 1986, a three-judge panel appointed an independent counsel to investigate these issues, pursuant to the Ethics in Government Act passed in the wake of Watergate.⁹² President Reagan also set up his own review, known as the Tower Commission, which studied the procedures of the National Security Council staff.⁹³ Soon after, Congress established its own Senate and House Select Committees on January 6 and 7, 1987, respectively.⁹⁴

From May to August 1987, the joint Select Committees held hearings on the Iran-Contra scandal, the most famous of which included immunized testimony by North (a Marine lieutenant colonel on the National Security Council staff) and Poindexter (the National Security Advisor) in July 1987.⁹⁵ On March 16, 1988 a grand jury indicted North, Poindexter, and two others on conspiracy to defraud the United States.⁹⁶ A federal jury convicted North on three counts; Poindexter was convicted on five counts.⁹⁷ North appealed his conviction, and on July 20, 1990, the D.C. Circuit Court of Appeals vacated the verdict on the grounds that witnesses' recollections were influenced by immunized testimony before Congress.⁹⁸ A year later, the D.C. Circuit Court of Appeals reversed Poindexter's conviction on the same basis.⁹⁹

⁸⁹ *Id.* at xxiii-xxv.

⁹⁰ Ronald Reagan, President, Address to the Nation on the Iran Arms and Contra Aid Controversy (Nov. 13, 1986) (transcript available in the Ronald Reagan Presidential Library).

⁹¹ Iran-Contra Walsh Report at 24.

⁹² *Id.* at xiii.

⁹³ *Id.* at 25.

⁹⁴ *Id.* at 25 n. 2.

⁹⁵ Carl Channell and Richard Miller pled guilty to conspiracy to defraud the United States on April 29, 1987 and May 6, 1987 respectively. See *Legal Aftermath Timeline*, Understanding the Iran-Contra Affairs, Brown Univ., available at

https://www.brown.edu/Research/Understanding_the_Iran_Contra_Affair/timeline-legal.php.

⁹⁶ Secord pleaded guilty to making false statement to Congress on November 8, 1989. Hakim pleaded guilty to supplementing the salary of a government official. *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

On Christmas Eve 1992, just before leaving office following his electoral defeat, President Bush pardoned six individuals involved in the investigation (all of whom had been convicted on charges involving perjury, false statements, withholding information from Congress, or obstruction of justice).¹⁰⁰ Finally, on August 4, 1993, the independent counsel issued its report finding that President Reagan and then-Vice President Bush did not violate any laws.¹⁰¹

2. Congressional Activity in Connection with the Independent Counsel Investigation

Congressional oversight of the Iran-Contra scandal began in response to widespread news reports about the illegal arms sales, well before the judicial panel appointed an independent counsel. For example, in August 1985, multiple news outlets reported that North had given military advice to the Contras.¹⁰² On August 16, 1985, Representative Michael Barnes, the then-Chairman of the House Foreign Affairs Committee's Subcommittee on Western Hemisphere Affairs wrote to National Security Advisor Robert McFarlane asking whether National Security Council staff had provided tactical influence on Contra operations.¹⁰³ Representative Lee H. Hamilton, Chairman of the House Permanent Select Committee on Intelligence, sent a similar inquiry to McFarlane.¹⁰⁴ While McFarlane's internal review turned up several "problem documents," *i.e.*, memoranda written by North suggesting there was some truth to the allegations, he decided not to bring the documents to Congress's attention.¹⁰⁵ Instead, as the independent counsel later concluded, McFarlane lied to Congress in September and October 1985 in response to the inquiries from Representatives Barnes and Hamilton.¹⁰⁶

When the illegal arms sales again became top news stories in early November 1986, both the House and Senate Intelligence Committees called for briefings on the arms sales by Secretary of State George Shultz, Secretary of Defense Caspar Weinberger, CIA Director William J. Casey, and Poindexter.¹⁰⁷ These briefings did not resolve the inquiry and both houses of Congress formally established special panels to investigate further: the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition was formally established by S. Res. 23 on January 6, 1987 and the House Select Committee to Investigate Covert Arms Transactions with Iran was established by H. Res. 12 the next day.¹⁰⁸ The two Select Committees

¹⁰⁰ *Id.*

¹⁰¹ Iran-Contra Walsh Report at xvii-xviii.

¹⁰² *Id.* at 5-6.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* ("North soon told Fiers, 'Bud McFarlane just perjured himself for me — God bless him.'").

¹⁰⁷ Iran-Contra Walsh Report at 23.

¹⁰⁸ *Id.* at 25.

held joint hearings from May to August 1987.¹⁰⁹ However, Congress never asked President Reagan to testify before the joint Select Committees nor to provide the Select Committees with a deposition or statement.¹¹⁰

The joint Select Committees' hearings were a media spectacle. As described below, North was given immunity to testify in front of the Select Committees, and for six days, he freely admitted that he had shredded documents, lied to Congress, and falsified records.¹¹¹ North testified in his Marine uniform, adorned with many medals,¹¹² a factor that helped swing public opinion toward the Reagan administration, which framed the arms transactions to Iran and the aid to the Contras as justified aggression to provide a check on communism.

One of the most contentious issues between the independent counsel and the Select Committees was the decision to immunize North and compelling him to testify before Congress. "No adverse factor shaped or constricted the Independent Counsel's criminal investigation more than the congressional immunity grants made to North."¹¹³

In December 1986, President Reagan first proposed that North (and Poindexter) be granted immunity after both men refused to testify before the Senate Select Committee on Intelligence during its preliminary investigation into the Iran-Contra scandal.¹¹⁴ President Reagan contended the two men's testimony would exculpate him.¹¹⁵ The independent counsel, however, argued that key witnesses would have "little incentive to testify fully and truthfully before Congress if they received immunity before impeaching or corroborating evidence had been gathered."¹¹⁶ After initially resisting President Reagan's proposal, the Committee acquiesced.

During this independent counsel investigation, Democrats ran the Senate and House Select Committees, and eager for the investigation to reach the public hearing stage quickly, they proceeded without completing an extensive private examination of key witnesses.¹¹⁷ Without the

¹⁰⁹ *Legal Aftermath Timeline*, Understanding the Iran-Contra Affairs, Brown Univ., *supra* n. 95.

¹¹⁰ Iran-Contra Walsh Report at 468.

¹¹¹ Sean Wilentz, *Mr. Cheney's Minority Report*, N.Y. TIMES, July 9, 2007, *available at* <https://www.nytimes.com/2007/07/09/opinion/09wilentz.html>; see also <https://www.cspan.org/video/transcript/?id=2182>.

¹¹² *Id.*

¹¹³ Iran-Contra Walsh Report at 32.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* (John Dean and Jeb Stuart Magruder were immunized in the Watergate scandal, but they had both pleaded guilty before their cases came to trial.).

¹¹⁷ Key Players, Understanding the Iran-Contra Affairs, Brown Univ., *available at* https://www.brown.edu/Research/Understanding_the_Iran_Contra_Affair/h-keyplayers.php; Iran-Contra Walsh Report at 33-34 (describing the negotiation process between the White House

advantage of prior private testimony, the Select Committees were ill-equipped to restrict North's testimony to narrowly responsive answers, and North's broad testimony proved fatal to his subsequent criminal conviction. The independent counsel's report did not spare its criticism of the Senate Select Committee in this regard: "The Committee[] publicly and blindly examined a hostile, articulate, immunized witness without the protection and guidance of a significant prior statement."¹¹⁸

Additionally, the independent counsel concluded that indicting North just before his scheduled congressional testimony would likely have meant North would refuse to testify, creating a firestorm that the independent counsel's investigation would not survive: "A simultaneous attack by the defendants and Congress on the Independent Counsel could have resulted in a premature effort by the courts to deal with the immunity problem in the abstract and the possible destruction of the prosecution of North and Poindexter and also the ongoing investigation."¹¹⁹ Ultimately, the independent counsel was unable to hold North accountable due to this immunized testimony, and the final report found no wrongdoing on behalf of the President or Vice President.

C. Whitewater

In January 1994, Attorney General Janet Reno appointed Robert Fiske as special prosecutor to investigate Bill and Hillary Clinton's involvement in the Whitewater Development Corporation, a business deal predating Clinton's election as President. The investigation continued until 2002, including a special prosecutor and two independent counsels, and expanded far beyond the Whitewater deal, including probing the suicide of Deputy White House Counsel Vince Foster, President Clinton's affair with White House intern Monica Lewinsky, alleged improprieties related to hiring in the Whitehouse travel office ("Travelgate") and the collection of FBI reports regarding prominent Republicans ("Filegate"). By the conclusion of the investigation, fourteen individuals had been convicted, the Clintons were cleared of any criminal misconduct related to Whitewater business deals, Travelgate, and Filegate, and of any involvement in Foster's death. But President Clinton was impeached by the House and acquitted by the Senate on charges of perjury and obstruction of justice related to his affair with Lewinsky.

1. Brief Background

In the late 1970s, then-Arkansas Attorney General Bill Clinton, and his wife, Hillary, entered into business with James and Susan McDougal to start a home development enterprise, Whitewater Development Corporation.¹²⁰ James McDougal later purchased a small savings and

and the Senate Select Committee and discussing that the Senate Committee was "unwilling to await the outcome of litigation").

¹¹⁸ Iran-Contra Walsh Report at 35.

¹¹⁹ *Id.* at 34.

¹²⁰ Dan Froomkin, Timeline, Untangling Whitewater, WASH. POST, *available at* <https://www.washingtonpost.com/wp-srv/politics/special/whitewater/timeline.htm>.

loan association, naming it Madison Guaranty.¹²¹ Madison Guaranty collapsed in 1989, and McDougal was indicted (and later acquitted) on fraud charges.¹²² The Federal Resolution Trust Corporation investigated the collapse of Madison Guaranty, and in a 1992 DOJ referral, named the Clintons as potential beneficiaries of unlawful transactions at Madison Guaranty, including that “money from . . . Madison Guaranty[] had been used to pay some of the mortgage [balance] on a real estate investment by the Clintons in the 1980’s.”¹²³

Investigation into Whitewater and Madison Guaranty continued after President Clinton took office in 1993.¹²⁴ Several media outlets stoked speculation of wrongdoing by the Clintons after Foster committed suicide during the first year of Clinton’s presidency. Foster had been handling the production of documents related to the Clintons’ business involvement with the Whitewater Development Corporation and reports surfaced alleging that files were removed from his office shortly after his death.¹²⁵ Attorney General Reno responded to calls for an independent inquiry in January 1994 by appointing Fiske as special prosecutor to investigate the Clintons’ involvement in Whitewater. Although, at that time, Congress had allowed the independent counsel statute to lapse, Attorney General Reno’s appointment of Fiske as special prosecutor was met with bipartisan approval.¹²⁶ Fiske’s jurisdiction quickly expanded to include any improprieties related to Foster’s death.¹²⁷

¹²¹ *Id.*

¹²² *Id.*

¹²³ David E. Rosenbaum, *The Whitewater Inquiry: Clinton’s Account of Deal Is Questioned*, N.Y. TIMES, Mar. 25, 1994, available at <https://www.nytimes.com/1994/03/25/us/the-whitewater-inquiry-clinton-s-account-of-deal-is-questioned.html>; Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120.

¹²⁴ Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120; Dylan Matthew, *Whitewater, Explained for People Who Don’t Remember the Clinton Presidency*, Apr. 13, 2015, available at <https://www.vox.com/2015/4/13/8397309/hillary-clinton-whitewater>; David E. Rosenbaum, *The Whitewater Inquiry: Clinton’s Account of Deal Is Questioned*, *supra* n. 123.

¹²⁵ Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120; Associated Press, *Clinton Records Removed After Suicide: White House: Papers on Business Deals, Taxes Were Deliberately Taken out of Foster’s Office, Aide Says*, L.A. TIMES, Dec. 21, 1993, available at http://articles.latimes.com/1993-12-21/news/mn-4202_1_white-house; Associated Press, *Missing File on Clinton Associate Prompts Probe*, L.A. TIMES, Dec. 19, 1993, available at http://articles.latimes.com/1993-12-19/news/mn-3591_1_loan-association.

¹²⁶ See Susan Schmidt, *Judges Replace Fiske as Whitewater Counsel*, WASH. POST, Aug. 6, 1994, available at https://www.washingtonpost.com/archive/politics/1994/08/06/judges-replace-fiske-as-whitewater-counsel/4ca08c66-62cd-4ef3-a44f-9835399ed0ee/?utm_term=.68175416711e.

¹²⁷ *Id.* Indeed, the Whitewater investigation had several expansions in scope including the Lewinsky matter, Travelgate, and Filegate. See *A Whitewater Chronology*, WALL ST. J., May 28, 2003, available at <https://www.wsj.com/articles/SB122721127833145225>.

Congress soon began its own investigations into the Whitewater matter and the death of Foster. During the summer of 1994, both the House and Senate Banking Committees began hearings.¹²⁸ In January 1995, before the seating of a new Republican majority, the outgoing Democratic majority of the Senate Banking Committee issued a report finding no illegal activity by the Clintons related to Whitewater.¹²⁹ In August 1995, the Republican-controlled House Banking Committee concluded its investigation, also finding no illegality.¹³⁰

In the summer of 1995, however, the Republican-controlled Senate voted to establish the Special Committee to Investigate Whitewater Development Corporation and Related Matters, citing the need to continue exploring questions that were left unanswered by the Banking Committee's hearings and that implicated "the very heart of our democratic system of government."¹³¹ The majority and minority factions of the committee reached far different conclusions: The Republican majority issued a report alleging a pattern of misconduct by a senior Clinton administration official and Mrs. Clinton, while the Democratic minority concluded that the investigation had vindicated Mrs. Clinton.¹³²

Congress had renewed the independent counsel statute in 1994, and that year, a three-judge panel declined to appoint Fiske as the independent counsel, reasoning that there could be a perceived conflict of interest based on his original appointment by Reno, a member of President Clinton's cabinet.¹³³ Instead, the panel replaced Fiske with Kenneth Starr, former judge on the U.S. Court of Appeals for the District of Columbia and Solicitor General under President George

¹²⁸ Susan Schmidt, *Judges Replace Fiske as Whitewater Counsel*, *supra* n. 126; *see also* <https://www.c-span.org/video/?59121-1/whitewater-investigation-day-1-part-1>; <https://www.c-span.org/congress/committee/?2106&congress=103>.

¹²⁹ *Id.*; S. REP. NO. 103-433, Vol. 1 (1995).

¹³⁰ Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120.

¹³¹ 141 Cong. Rec. S6771 (daily ed. May 17, 1995), *available at* <https://www.congress.gov/congressional-record/1995/5/17/senate-section/article/S6771-2>; Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120.

¹³² Compare S. REP. NO. 104-280, at 1-375 (1996) with *id.* at 376-664; Stephen Labaton, *Whitewater Hearing Cleared the Clintons, Democrats Say*, N.Y. TIMES, June 19, 1996, *available at* <https://www.nytimes.com/1996/06/19/us/whitewater-hearing-cleared-the-clintons-democrats-say.html>.

¹³³ Order at 4, *In re Madison Guar. Sav. and Loan Ass'n*, No. 94-1 (D.D.C. Aug. 5, 1994), *available at* <https://www.archives.gov/files/research/kavanaugh/releases/docid-70105132.pdf>; Susan Schmidt, *Judges Replace Fiske as Whitewater Counsel*, *supra* n. 126; Sara Fritz, *Fiske Ousted in Whitewater Case; Move Is Surprise: Investigation: Federal three-judge panel names Kenneth Starr as new special counsel. Switch is seen as prolonging probe. The action stuns Clinton's advisers*, Aug. 6, 1994, *available at* http://articles.latimes.com/1994-08-06/news/mn-24261_1_independent-counsel https://www.washingtonpost.com/archive/politics/1994/08/06/judges-replace-fiske-as-whitewater-counsel/4ca08c66-62cd-4ef3-a44f-9835399ed0ee/?utm_term=.68175416711e.

H. W. Bush, who continued, and expanded, the investigation for approximately five years.¹³⁴ In the fall of 1997, Starr issued a report on Foster's death.¹³⁵ The report confirmed Fiske's conclusion that Foster committed suicide and cleared the Clintons of any involvement in his death.¹³⁶ In January 1998, Starr's jurisdiction was expanded to include investigating illegal conduct arising out of a civil case involving President Clinton, *Jones v. Clinton*. Starr was granted authority to investigate whether witnesses and other parties involved in the case, including Monica Lewinsky and President Clinton, suborned perjury, obstructed justice, or otherwise acted illegally.¹³⁷ Starr's investigation into the Lewinsky matter culminated in a September 1998 report, setting forth 11 possible grounds for impeachment, including perjury, obstruction of justice, witness tampering, and abuse of power.¹³⁸

A month later, the House voted to launch an impeachment inquiry against President Clinton.¹³⁹ In December 1998, the House Judiciary Committee approved four articles of impeachment largely on a party line vote, accusing President Clinton of lying to a grand jury, committing perjury, obstructing justice, and abusing his power.¹⁴⁰ On December 19, 1998, the full House of Representatives voted (largely along party lines) to approve two of the four articles of impeachment: perjury to a grand jury and obstruction of justice.¹⁴¹ At that point, the matter moved to the Senate, which voted to acquit President Clinton.

¹³⁴ Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120; *Text Order Appointing Starr*, L.A. TIMES, Aug. 6, 1994, available at http://articles.latimes.com/1994-08-06/news/mn-24149_1_independent-counsel.

¹³⁵ *Whitewater: The Foster Report*, WASH. POST, available at <https://www.washingtonpost.com/wp-srv/politics/special/whitewater/docs/fosterx.htm>; Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120.

¹³⁶ *Whitewater: The Foster Report*, *supra* n. 135.

¹³⁷ Patrick Barkham, *Clinton Impeachment Timeline*, THE GUARDIAN, Nov. 18, 1998, available at <https://www.theguardian.com/world/1998/nov/18/clinton.usa>; John Mintz & Toni Locy, *Starr's Probe Expansion Draws Support, Criticism*, WASH. POST, Jan. 23, 1998, available at https://www.washingtonpost.com/archive/politics/1998/01/23/starrs-probe-expansion-draws-support-criticism/6b907a9b-4db3-481d-8202-76db89360ab3/?utm_term=.1ec6597ff44e; Communication from Kenneth W. Starr, Independent Counsel, Transmitting a Referral to the United States House of Representatives Filed in Conformity with the Requirements of Title 28, United States Code, Section 595(C), H.R. Doc. No. 105-310 (1998).

¹³⁸ Dan Froomkin, *Grounds, Introduction, Untangling Whitewater*, WASH. POST, available at <https://www.washingtonpost.com/wp-srv/politics/special/clinton/icreport/7grounds.htm>.

¹³⁹ H.R. Rep. No. 105-795 (1998).

¹⁴⁰ H.R. Rep. No. 105-830 (1998).

¹⁴¹ H.R. Res. 611-105th Cong. (1997-1998).

The Whitewater investigation came to a close in March 2002.¹⁴² By that time, Robert Ray had replaced Starr as independent counsel.¹⁴³ With regard to the matters surrounding the original focus of the investigation — Whitewater Development Corporation — Ray’s final report confirmed that James McDougal had acted illegally and stated that he may have committed additional crimes for which he was never prosecuted before his death in prison.¹⁴⁴ Though the report faulted Mrs. Clinton for some of her testimony during the investigation, it found no credible evidence that the Clintons had knowledge of or participated in McDougal’s illegal acts.¹⁴⁵ And finally, with regard to the Lewinsky matter, Ray concluded that President Clinton had acted illegally and that there existed sufficient evidence to prosecute; nonetheless, Ray exercised the discretion of his office to decline prosecution, based at least in part on a deal reached with President Clinton in which he agreed to pay a fine and receive a five-year suspension of his law license.¹⁴⁶

2. Congressional Activity in Connection with the Independent Counsel Investigation

There was substantial congressional activity throughout the independent counsel’s Whitewater investigation. During the House and Senate Banking Committee hearings on Whitewater, 29 Clinton administration officials were called to testify.¹⁴⁷ The Republican-controlled Senate established the Special Committee to Investigate Whitewater Development Corporation and Related Matters.¹⁴⁸ That Committee deposed 274 witness and held 60 days of public hearings, including public testimony by 136 witnesses.¹⁴⁹ The House Committee on Oversight and Government Reform also conducted an investigation, which was fraught with allegations of partisanship.¹⁵⁰ Then, in response to Starr’s report on the Lewinsky matter, Congress initiated impeachment proceedings. This included an initial inquiry by the House

¹⁴² Neil A. Lewis, *Special Counsel Puts Lewinsky Case to Rest*, N.Y. TIMES, Mar. 7, 2002, available at <https://www.nytimes.com/2002/03/07/us/special-counsel-puts-lewinsky-case-to-rest.html>.

¹⁴³ *Id.*

¹⁴⁴ Neil A. Lewis, *Final Report by Prosecutor on Clintons Is Released*, N.Y. TIMES, Mar. 21, 2002, available at <https://www.nytimes.com/2002/03/21/us/final-report-by-prosecutor-on-clintons-is-released.html>.

¹⁴⁵ *Id.*

¹⁴⁶ Neil A. Lewis, *Special Counsel Puts Lewinsky Case to Rest*, *supra* n. 142; Pete Yost, *Clinton Accepts 5-Year Law Suspension*, WASH. POST, Jan. 19, 2001, available at https://www.washingtonpost.com/wp-srv/aponline/20010119/aponline132649_000.htm.

¹⁴⁷ Dan Froomkin, *Timeline, Untangling Whitewater*, *supra* n. 120.

¹⁴⁸ *Id.*

¹⁴⁹ S. Rep. No. 104-280, at 1 (1996).

¹⁵⁰ H.R. REP. 105-829, vol. 2 (1998); Mike Dorning, *Rep. Burton Fires His Top Clinton Investigator*, CHI. TRIBUNE, May 6, 1998, available at <http://www.chicagotribune.com/news/ct-xpm-1998-05-06-9805070002-story.html>.

Judiciary Committee, the approval by the House Judiciary Committee of four articles of impeachment, the approval by a majority of the full House of two articles of impeachment, and finally, an impeachment trial and acquittal by the Senate.

While both the independent counsel's office and Congress engaged in intense and important investigations, each entity served purposes distinct to its jurisdiction and goals. In short, Congress deferred to the independent counsel's determinations as to criminal conduct, while the independent counsel had to defer to Congress's political determinations.

Congress's investigations led to largely disparate and partisan conclusions in terms of wrongdoing by the Clintons and other executive branch officials. While the House and Senate Banking Committee reports, as well as the minority report of the Senate Special Committee, all largely cleared the Clintons and other officials of any wrongdoing, the Senate Special Committee found a pattern of misconduct among administration officials and Mrs. Clinton. Still, even the majority report of the Senate Special Committee stopped short of directly alleging criminal conduct. And given the divergent and partisan results of these investigations, the final narrative on criminality was left largely to the independent counsel's office, which, while it obtained convictions of at least 14 people involved in Whitewater, did not find credible evidence of illegality on the part of the Clintons or Clinton administration officials with regard to any of the core Whitewater matters or the death of Foster.

Nonetheless, once the inquiry turned to the Lewinsky affair and President Clinton's related conduct, Congress took the findings of the independent counsel's office and used them to reach a political conclusion. The fact-finding related to the Lewinsky phase of the investigation was handled at the outset largely by the independent counsel. And given that the conduct of the President himself was at issue, Starr focused on putting together a report that set forth grounds for impeachment, rather than a case for criminal prosecution. Starr issued that report to Congress on the afternoon of September 9, 1998, after which it fell to Congress to determine the proper repercussions from those findings.

A month after Starr issued his report, the House Judiciary Committee opened a formal inquiry into the impeachment of President Clinton. Although Starr had recommended 11 separate grounds for impeachment, including perjury, obstruction of justice, witness tampering, and abuse of power, the House voted to affirm only two articles of impeachment, limited to Clinton's alleged perjury and obstruction of justice. And, when the Senate evaluated the basis for these articles of impeachment, Clinton was acquitted on all counts.

This sequence of events shows the distinct and necessary roles of both the independent counsel and Congress in dealing with criminal investigations of the executive branch. The partisanship and rancor of Congress can lead to vastly divergent interpretations of the same evidence, resulting in conflicting — and far from conclusive — determinations as to criminal culpability. Thus, the independent counsel was better situated than Congress to assess the sufficiency of the factual record to support criminal charges. At the same time, the independent counsel was ill-suited to pass judgment on the appropriate political consequences for the President's actions. The independent counsel's report set forth the evidence and basis for

impeachment, and then Congress acted on the referral, allowing for a public debate and decision as to the consequences of the President's actions. Congress's decision was respected by the independent counsel's office, which ultimately concluded that President Clinton had acted illegally, but declined to prosecute, after reaching "what amount[ed] to a plea-bargain deal," under which President Clinton agreed to a five-year suspension of his law license and to pay a \$25,000 fine.¹⁵¹

IV. Conclusions

This review of the Watergate, Iran-Contra, and Whitewater investigations offers important historical context that should guide Congress's efforts to address the allegations underlying the Mueller investigation.

First, Congress has typically taken action whenever there are allegations that the President is involved in criminal conduct or abuse of power. During the Watergate, Iran-Contra, and Whitewater/Lewinsky inquiries, Congress conducted robust investigations of its own alongside the independent investigators. Indeed, Congress has acted in four of the five¹⁵² cases focused on the President's knowledge of or participation in criminal conduct. Although Congress did not conduct its own investigation into the matter involving President Carter's family peanut business, the special counsel's investigation into that matter lacked allegations of cover-ups or refusals to cooperate that plagued other independent investigations. Indeed, Carter cooperated with the investigation by sitting for a deposition, and in the end, the special prosecutor concluded that there was no basis for criminal prosecution of anyone involved. Accordingly, given the allegations of links or coordination between President Trump's campaign and the Russian government's interference in the 2016 election, and the President's refusal to provide live testimony, the focus of the current special counsel investigation appears more analogous to the Watergate, Iran-Contra, and Whitewater/Lewinsky inquiries. Congress should thoroughly investigate this matter to remain consistent with historical precedent.

Second, Congress has taken action in response to credible evidence that the President has abused his power by obstructing justice or lying under oath, such as during the Watergate and Whitewater investigations. For example, when President Clinton was found to have committed actions during the Whitewater investigation that may have amounted to perjury and obstruction of justice (among other crimes), Congress initiated impeachment proceedings on that basis even though the conduct was well afield of the investigation's initial mandate. Accordingly, if Special Counsel Mueller finds credible evidence that President Trump has obstructed justice or lied under oath, historical precedent calls for a thorough investigation by Congress and, if Congress develops a factual record to support it, consideration of impeachment could be appropriate.

¹⁵¹ Pete Yost, *Clinton Accepts 5-Year Law Suspension*, *supra* n. 146.

¹⁵² For this figure, the Whitewater investigation, along with the investigation into the death of Vincent Foster, the investigations into Filegate and Travelgate, and the investigation into the Lewinsky matter — which were all investigated under expansions of the Whitewater investigation — are counted as a single investigation. *See also supra* n. 23.

Congressional precedent does not mandate a particular course of action, but history suggests that Congress should conduct a careful review of Mueller's findings and develop its own independent investigative record to determine whether and how to hold the President accountable.

Third, Congress is uniquely situated to provide public insight into executive branch improprieties concurrently with independent investigations and to propose reforms in response. During the Watergate investigation, daily re-broadcasts of committee hearings kept the American public acutely attuned to the progress of Congress's investigation in real time and provided the foundation for informed debate about appropriate political consequences for the President. In the Whitewater matter, where some comprehensive reports of the independent counsel's office were not filed until nearly a decade after the investigation had begun, Congress's intermittent reports on the various topics being investigated ensured that the public was periodically apprised of Congress's investigative activities and their findings, and Congress's impeachment hearings likewise ensured a public airing of the charges against the President and informed debate on how to achieve appropriate accountability. Accordingly, as Mueller investigates and compiles his findings, Congress should continue its investigative activities, making public its actions and findings where appropriate. The American people depend on Congress to make a public record when it finds evidence of executive wrongdoing so they may participate in political debate on necessary reforms and appropriate remedies for abuses of power.

Appendix

Investigation	Time Period	Target/Scope of Special Prosecutor/ Independent Counsel/ Special Counsel Investigation	Findings of Special Prosecutor/ Independent Counsel/Special Counsel Investigation	Congressional Activity
Watergate	February 1973 – July 1975	Administration personnel complicit in Watergate break-ins	<p>Special Prosecutor Jaworski obtained court approval for the grand jury to send to the House Judiciary Committee a report outlining all evidence before the grand jury bearing on President Nixon’s involvement in alleged obstruction of justice.</p> <ul style="list-style-type: none"> ➤ Federal courts upheld transmission of the report and underlying grand jury materials to House Judiciary Committee. ➤ Jaworski’s report included detailed information on the President’s obstruction of justice, equipping the House Judiciary to draw up an article of impeachment for obstruction of justice. ➤ Sixty-nine indictments returned leading to forty-eight convictions. 	<p>SENATE:</p> <ul style="list-style-type: none"> ➤ Select Committee on Presidential Campaign Activities: <ul style="list-style-type: none"> ○ Committee declined to defer its investigation to that of Special Prosecutor despite potential conflicts; investigations proceeded in parallel. ○ Parallel investigations proved mutually beneficial: Committee discovered existence of Nixon’s White House taping system, which the Special Prosecutor then subpoenaed for the grand jury. ○ Final report recommended several legislative solutions to uncovered systemic flaws and led to enactment of Ethics in Government Act of 1978. <p>HOUSE:</p> <ul style="list-style-type: none"> ➤ Judiciary Committee: <ul style="list-style-type: none"> ○ Adopted three Articles of Impeachment based on all the evidence uncovered, including the Nixon tapes, which were produced after <i>U.S. v. Nixon</i>.

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Hamilton Jordan – Personal Drug Use	November 1979 – May 1980	Hamilton Jordan, Chief of Staff to President Carter	Matter referred to a grand jury; issued 53-page report noting that the grand jury voted unanimously not to bring criminal charges.	None
President Carter – Peanut Warehouse	March 1979 – October 1979	President Jimmy Carter	Special Prosecutor did not recommend criminal charges.	None
Timothy Kraft – Personal Drug Use	September 1980 – March 1981	Timothy Kraft, Carter Campaign Manager	Independent Counsel did not recommend criminal charges.	None
Raymond Donovan – Organized Crime Connection	1981 – 1984	Raymond Donovan, Secretary of Labor	<p>Independent Counsel did not recommend criminal charges on substantive basis of investigation — Donovan’s participation in an illegal payoff.</p> <p>➤ Filed a supplemental report regarding whether Donovan had given false testimony to Congress nine months after his substantive recommendations; again, recommended against criminal charges.</p> <p>Separate U.S. Attorney for S.D.N.Y investigation also recommended against prosecution.</p>	<p>SENATE:</p> <p>➤ Labor Committee:</p> <ul style="list-style-type: none"> ○ Investigated Executive interference with confirmation process after FBI’s withholding of damaging information on Donovan was exposed. ○ Conducted hearings and released final report in May 1983.

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Edwin Meese – Personal Finances and Cronyism	April 1984 – September 1984	Edwin Meese, Attorney General Nominee	<p>Independent Counsel released 385-page report:</p> <ul style="list-style-type: none">➤ Acknowledged probable violations of conflict of interest statute, 18 U.S.C. § 208(a), and the Internal Revenue Code for willfully failing to pay tax at the time it was required, 26 U.S.C. § 7206(1).➤ But concluded “no basis” for federal criminal charges under § 208(a) because Meese did not materially alter the legislative process and because no evidence that Meese acted for personal gain was discovered.➤ Recommended against criminal charges on tax issue because Meese intended to pay back-taxes.	<p>SENATE:</p> <ul style="list-style-type: none">➤ Judiciary Committee conducted confirmation hearings before and after the independent counsel investigation.
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Theodore Olson, Jr. – Obstruction of Congressional Investigation	May 1986 – March 1989 (includes 14-month hiatus while <i>Morison v. Olson</i> was pending before Supreme Court).	Primary: ➤ Olson, Office of Legal Counsel Secondary: ➤ Edward Schmults ➤ Carol Dinkins	Independent Counsel found that Olson’s testimony in the Judiciary Committee’s congressional investigation was “misleading and disingenuous,” but that it did not rise to the level of “prosecutable perjury.” ➤ Independent Counsel sought to broaden scope to include senior Justice Department officials to determine whether a larger conspiracy to “obstruct or impede” Congress existed. ➤ D.C. Circuit court upheld AG’s authority to limit the investigation to charges against Olson.	HOUSE: ➤ Judiciary Committee: <ul style="list-style-type: none"> ○ In 1984, the Judiciary Committee investigated the Justice Department’s role in a 1982-83 congressional investigation of the EPA’s administration of the Superfund program. One question was whether Olson improperly advised President Regan to assert executive privilege to block Congress from receiving records relating to the EPA’s alleged misconduct. ○ In its final report, the Judiciary Committee alleged that Olson and Schmults deliberately gave false and misleading testimony to obstruct the investigation of the EPA. The Committee sent its report to the Attorney General with a request to appoint Independent Counsel to investigate the alleged obstruction.
Michael Deaver – Conflict of Interest and Lobbying Improprieties	May 1986 – August 1989	Michael Deaver, former Deputy White House Chief of Staff	Independent Counsel did not recommend criminal charges for substantive object of investigation — potential ethics violations for post-administration lobbying activities in violation of 18 U.S.C. § 207 (1982). ➤ But Deaver was indicted on five counts of perjury for testimony before Congress and the grand jury. He was convicted at trial on three of the five counts.	SENATE: ➤ House Democrats on the Senate Judiciary Committee petitioned Attorney General Meese to consider the appointment of an independent counsel to investigate Deaver’s lobbying efforts. HOUSE ➤ Oversight and Investigations Subcommittee of the Energy and Commerce Committee.

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Iran - Contra	December 1986 – December 1992	<p>Primary:</p> <ul style="list-style-type: none"> ➤ John Poindexter, Deputy National Security Advisor ➤ Oliver North, National Security Council senior staff member 	<p>Independent Counsel brought criminal charges against fourteen individuals. North and Poindexter were convicted, but their convictions were later vacated on constitutional grounds due to their immunized testimony before Congress.</p> <ul style="list-style-type: none"> ➤ Two classes of criminality: (i) operational crimes, <i>i.e.</i>, illegal use of funds generated from illegal arms sales; and (ii) cover-up crimes, <i>i.e.</i>, false statements and obstruction after operations revealed. ➤ Independent Counsel found “pervasive dishonesty,” at level of President, but conceded that “all of the facts may never be known.” 	<p>Senate and House Permanent Select Committees, both with Democratic majorities, conducted joint hearings.</p> <ul style="list-style-type: none"> ○ North and Poindexter provided immunized testimony in front of the joint Select Committee.
W. Lawrence Wallace – Income Tax Evasion	December 1986 – December 1987	W. Lawrence Wallace (former Assistant Attorney General)	Independent Counsel did not recommend criminal charges.	No public congressional activity.
WedTech	<p>Special Prosecutor appointed in February 1987 (Nofziger); May 1987 (expanded to include Meese)</p> <p>Concluded July 6, 1988</p>	<p>Lyn Nofziger, White House Aide</p> <p>Edwin Meese, former White House Aid and Attorney General</p> <p>Numerous other government officials were convicted in connection with WedTech, including Congressman Biaggi</p>	<p>Independent Counsel concluded that evidence of bribery (regarding efforts for an individual to obtain a contract to manufacture small engines for the Army) and FCPA violations (regarding a pipeline project in Israel) were insufficient for criminal charges.</p> <p>Nofziger was convicted, but his conviction was overturned on appeal to the D.C. Circuit.</p>	<p>SENATE:</p> <ul style="list-style-type: none"> ➤ Subcommittee on Oversight and Government Management: <ul style="list-style-type: none"> ○ Conducted an 18-month investigation into Meese’s intervention on a \$32 million Army contract; concluded that Meese violated White House policy. ○ The Senate investigation ran concurrently with the special prosecutor’s investigation.

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Samuel Pierce – HUD Fraud	March 1990 - October 1998	Samuel Pierce, Secretary of the Department of Housing and Urban Development (“HUD”)	<p>Independent Counsel attributed declination of criminal indictment to:</p> <ul style="list-style-type: none">➤ Secretary Pierce’s public admission of mismanagement and abuse during his time overseeing HUD;➤ Other mitigating factors “including the conflicting evidence of the intent with which he acted, the absence of any evidence that he or his family profited from his actions at HUD, and his age and multiple health problems.” <p>Investigation resulted in seventeen criminal convictions, including:</p> <ul style="list-style-type: none">➤ Two former Assistant Secretaries for Housing;➤ Former Treasurer of the United States;➤ Former Secretary of the Interior.	<p>Congressional investigations prompted independent counsel appointment.</p> <p>SENATE:</p> <ul style="list-style-type: none">➤ HUD/Mod Rehab Investigation Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs conducted investigation.➤ Senate Committee on Banking Housing, and Urban Affairs conducted investigation. <p>HOUSE:</p> <ul style="list-style-type: none">➤ Subcommittee on Employment and Housing of the House Committee on Government Operations conducted a 14-month investigation into fraud, waste, and abuse of HUD’s programs during Secretary Pierce’s time in office.➤ Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs conducted investigation.➤ House Committee on the Judiciary recommended that an independent counsel be appointed “to investigate whether any crimes were committed by Secretary Pierce and others.”
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Banco Nazionale del Lavoro (“BNL”)	October 1992 – December 1992	Administration personnel involved in the scheme to defraud the parent bank and the U.S. Government of money from loans to Iraq.	Independent Counsel determined no federal crime had been committed by anyone in the U.S. government.	<p>Congressional investigations prompted independent counsel appointment:</p> <p>SENATE:</p> <ul style="list-style-type: none"> ➤ Senate Select Committee on Intelligence conducted investigation into BNL bank fraud matter and whether the CIA had provided Congress with accurate information regarding the matter. <p>HOUSE:</p> <ul style="list-style-type: none"> ➤ House Banking Committee conducted investigation into BNL bank fraud matter.
Whitewater	January 1994 – February 1999	<p>Primary:</p> <ul style="list-style-type: none"> ➤ Bill Clinton, President ➤ Hillary Clinton, First Lady <p>Secondary:</p> <ul style="list-style-type: none"> ➤ Jim Guy Tucker, Clinton’s Successor as Arkansas Governor ➤ Susan McDougal, Clinton business associate 	<p>Independent Counsel did not recommend criminal charges against Clintons for substantive object of investigation, whether Bill Clinton committed fraud in procuring loans to his business partners on the Whitewater land deal, but outlined eleven possible grounds for impeachment after expanding the investigation to encompass the Lewinsky affair.</p> <p>Independent Counsel issued a final report in 2002, concluding that the McDougals had committed fraud but that there was no evidence that the Clintons knew of or participated in those acts.</p> <p>Ultimately, sixteen indictments returned, on which fourteen convictions were obtained, including Arkansas Governor Jim Guy Tucker.</p>	<p>SENATE:</p> <ul style="list-style-type: none"> ➤ Banking Committee: <ul style="list-style-type: none"> ○ Democrat controlled; conducted hearings in summer 1994; issued report in January 1995 finding no illegalities. ➤ Special Whitewater Committee: <ul style="list-style-type: none"> ○ Republican controlled; began hearings in July 1995; final report issued June 1996 asserting various improprieties in the handling of evidence by Clinton administration and the administration’s response to investigations by Congress and others. ➤ Full Senate:

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				<ul style="list-style-type: none"> ○ Acquitted Clinton in impeachment trial in February 1999. <p>HOUSE:</p> <ul style="list-style-type: none"> ➤ Banking Committee: <ul style="list-style-type: none"> ○ Republican controlled; conducted hearings in summer 1994; issued report in August 1995, finding no illegalities. ➤ Judiciary Committee: <ul style="list-style-type: none"> ○ In October 1998, voted to launch impeachment inquiry against Clinton relating to Lewinsky affair. ○ Adopted three Articles of Impeachment in December 1998 for lying to a grand jury, committing perjury by denying he had sexual relations with Monica Lewinsky, and obstructing justice.
Travelgate (expansion of Whitewater investigation jurisdiction)	1994 – 2000	<p>Primary:</p> <ul style="list-style-type: none"> ➤ Hillary Clinton, First Lady <p>Secondary:</p> <ul style="list-style-type: none"> ➤ Bill Clinton, President 	Independent Counsel cleared President Clinton of any wrongdoing. Independent Counsel found substantial evidence that Mrs. Clinton lied under oath, but concluded that this could not be proved beyond a reasonable doubt and thus declined to bring charges.	<p>HOUSE:</p> <ul style="list-style-type: none"> ➤ Government Reform and Oversight Committee: <ul style="list-style-type: none"> ○ Republican controlled; conducted investigation starting in spring 1993; issued report in September 1996, alleging a cover-up by the Clinton Administration and recommending increased congressional oversight related to White House hiring practices.

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Filegate (expansion of Whitewater investigation jurisdiction)	June 1996 – March 2000	Primary: ➤ Hillary Clinton, First Lady Secondary: ➤ Bill Clinton, President	Independent Counsel found no substantial evidence that Mrs. Clinton was involved in the procurement of FBI files.	HOUSE: ➤ Government Reform and Oversight Committee: ○ Republican controlled; conducted investigation starting in spring 1993; issued report in September 1996, alleging a cover-up by the Clinton Administration and recommending increased congressional oversight.
Michael Espy – Bribery Charges	September 1994 – December 1998 (end of trial)	Michael Espy, Secretary of Agriculture	Independent Counsel charged thirteen individuals, including Espy, and six businesses with various crimes concerning the receipt and concealment of improper gifts and gratuities to Espy. Espy and four other were acquitted of all charges; fourteen of the others indictees were convicted or pleaded guilty to one or more charges.	No public congressional activity.
Henry Cisneros – False Statements to FBI	May 1995 – January 2006	Henry G. Cisneros, HUD Secretary	Independent Counsel indicted Cisneros, who pleaded guilty to a misdemeanor count of lying to the FBI during his appointment process.	No public congressional activity.
Ron Brown – Illegal Financial Dealings	July 1995 – November 1996	Primary: ➤ Ron Brown, Secretary of Commerce Secondary: ➤ Nolanda Hill (business associate of Brown)	Independent Counsel's primary investigation ended after the death of Ron Brown. Justice Department then assumed investigative control, eventually charging Nolanda Hill and her business associate with filing and preparing false tax returns, to which they pleaded guilty. Later, Ronald Brown's son (Michael Brown) pled guilty to illegal donations as well.	No public congressional activity.

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Eli Segal – Improper Fund Raising	November 1996 – December 1997	Eli Segal, Head of AmeriCorps and 1992 Clinton campaign aide	Independent Counsel did not recommend criminal charges.	No public congressional activity.
Bruce Babbitt – False Statements	March 1998 – November 1999	Bruce Babbitt, Secretary of the Interior	Independent Counsel did not recommend criminal charges. The investigation principally concerned allegations that Babbitt made false statements regarding an Indian casino request.	No public congressional activity.
Alexis Herman – Influence Peddling	May 1998 – April 2000	Alexis M. Herman, Secretary of Labor and former special assistant to President Clinton.	Independent Counsel did not recommend criminal charges in nonpublic final report, which he submitted to the United States Court of Appeals for the District of Columbia Circuit per Section 594 of the Ethics in Government Statute. ➤ Wide breadth of potential criminality, including racketeering, conspiracy, extortion, and Campaign Finance violations.	No public congressional activity.

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“Plamegate” Unauthorized Disclosure of CIA Identity	December 2003 – December 2007	<p>Primary:</p> <ul style="list-style-type: none">➤ Lewis “Scooter” Libby, Chief of Staff to Vice President Cheney <p>Persons of Interest:</p> <ul style="list-style-type: none">➤ Karl Rove, Advisor to President Bush➤ Richard Armitage, Deputy Secretary of State.	<ul style="list-style-type: none">➤ Special Prosecutor did not recommend criminal charges for substantive object of investigation, unauthorized disclosure of classified information, but indicted Libby for actions in the course of investigation, including:<ul style="list-style-type: none">○ Obstruction of Justice (18 U.S.C. § 1503);○ False Statements (18 U.S.C. § 1001(a)(2)); and○ Perjury (18 U.S.C. § 1623).	<p>SENATE:</p> <ul style="list-style-type: none">➤ Intelligence Committee Report. <p>HOUSE:</p> <ul style="list-style-type: none">➤ Committee on Oversight and Government Reform:<ul style="list-style-type: none">○ Open Hearing at which Plame testified.➤ H. Res. 499 (Introduced Jan. 21, 2004): Resolution of inquiry introduced by House minority, reported adversely by Committees on Armed Services, Judiciary, and International Relations.
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Waco	September 1999 – November 2000	Special Counsel authorized to “investigate the 1993 confrontation between federal agents and the Branch Davidians (“Davidians”) that resulted in the deaths of four agents of the Bureau of Alcohol, Tobacco and Firearms (“ATF”) and at least 82 Davidians.”	<p>Special Counsel concluded that the government of the United States and its agents were not responsible for the April 19, 1993, tragedy at Waco.</p> <p>But Special Counsel also concluded that certain FBI and Department of Justice officials failed to disclose to the Attorney General, Congress, the courts, counsel for the Davidians, and the public, evidence and information about the use of pyrotechnic tear gas rounds until August 1999.</p>	<p>SENATE:</p> <ul style="list-style-type: none">➤ Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary conducted investigation, including two days of public hearings in 1995.➤ Subcommittee placed its investigation on hold pending completion of Special Counsel’s investigation, but in 2000, the Subcommittee held a hearing on the “Continuation on the Waco Investigation” at which the Special Counsel testified. <p>HOUSE:</p> <ul style="list-style-type: none">➤ Subcommittee on Crime of the House Committee on the Judiciary and Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight jointly conducted an investigation, including 10 days of public hearings in July and August 1995.
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Russia Election Interference	May 17, 2017 – Present	Special Counsel had authority to investigate “the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including: (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 [the special counsel jurisdiction regulation].”	To date, Special Counsel Mueller’s investigation has led to seven guilty pleas and a jury conviction, and the investigation has pending indictments against an additional 26 individuals, three Russian companies, one California man, and one London-based lawyer.	<p>SENATE:</p> <ul style="list-style-type: none">➤ Senate Select Committee on Intelligence.➤ Senate Committee on the Judiciary. <p>HOUSE:</p> <ul style="list-style-type: none">➤ House Permanent Select Committee on Intelligence.➤ House Committee on Oversight and Government Reform.
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