



**When Mueller Concludes:
Lessons from Previous Independent Investigations and
Related Congressional Oversight**

Protect Democracy's new report, [*When Mueller Concludes: Lessons from Previous Independent Investigations and Related Congressional Oversight*](#), places in historical context the incoming Congress's constitutional role as a check on executive power, including its responsibility to conduct oversight on any connection between President Donald Trump's campaign and Russia's attack on the 2016 election or efforts to interfere with Special Counsel Robert Mueller's investigation of that attack. As we explain in that paper, independent investigations into potential wrongdoing by members of the executive branch have a long history in the United States, stretching back over a century. 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. The investigation into "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump," led by Special Counsel Robert Mueller, is the latest of such investigations.

These independent investigations — in particular, those involving allegations that the President committed or had knowledge of a crime — frequently have been accompanied by vigorous congressional oversight, up to and including impeachment proceedings. Congress conducts this oversight pursuant to its constitutional authority to investigate the executive branch and its power to impeach. Protect Democracy's report examines three prominent congressional proceedings accompanying special counsel investigations: Watergate, 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:

1. 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. Mueller's investigation is ongoing, and new facts continue to emerge from that work. When the Special Counsel concludes, the

Department of Justice should share his complete findings with Congress — and the public. To be consistent with historical precedent, Congress must develop its own factual record based on those findings and its own oversight efforts. The purpose of this factual record is not to assess criminal liability, as Mueller will do, but to identify necessary reform and appropriate accountability for any wrongdoing involving the President. While some Committees in the prior Congress conducted their own investigations of Russian interference in the election, they did not have the benefit of the findings and evidence identified by the Special Counsel. It is important that Congress investigate with the benefit of Mueller’s findings and evidence.

2. Congress also acts when there exists credible evidence that the president has abused his power to obstruct justice. If Mueller identifies 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 the President politically accountable, up to and including commencing impeachment proceedings.

3. Congressional action alongside independent investigations has provided important public insight into improprieties by the president and executive branch and 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.

Historical precedent offers the current Congress essential guidance as it works alongside Special Counsel Mueller’s investigation. Congress has a role to play both in educating the public and in identifying problems requiring policy solutions rather than criminal prosecutions, such as loopholes in the law or dangerous practices that could be more effectively deterred through new penalties. Thorough investigation by Congress will help the public understand any coordination between the Trump campaign and Russia during the 2016 election — or efforts to cover it up — which will allow the American people to participate in informed debate on any resulting proposals for reform. Following the path laid out by previous oversight endeavors, Congress also will ensure that political pressure does not undermine its constitutional role in holding the President accountable. Congress should rely on this history as a reminder of its obligations, as described by the Supreme Court, “to make investigations and exact testimony to the end that it may exercise its legislative function advisedly and effectively,” and, if a carefully and thoroughly developed factual record and due consideration of myriad legal and political questions supports it, to exercise the power of impeachment appropriately.