



TESTIMONY BY SPECIAL  
PROSECUTORS,  
SPECIAL COUNSELS,  
AND INDEPENDENT  
COUNSELS

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## Introduction

Since the appointment of the [first special prosecutor](#)<sup>1</sup> by President Ulysses Grant in 1875, Congress and the Department of Justice have periodically authorized independent prosecutors to conduct criminal inquiries where there is a need for the executive branch to investigate itself. From the earliest days of such investigations, Congress has requested and obtained testimony from prosecutors leading the independent inquiries.

Depending on the era and the nature of their authorities, independent prosecutors have been known as “special prosecutors,” “independent counsels,” and “special counsels.” [Until the 1970s](#),<sup>2</sup> these investigators were generally referred to as “special prosecutors” and were appointed by the Attorney General or President. Following President Richard Nixon’s firing of the special prosecutor appointed to investigate the Watergate scandal, Congress in 1978 [enacted a statute](#)<sup>3</sup> providing for the establishment of what became known as “independent counsels” through a two-step process in which the Attorney General made a determination that an independent inquiry was warranted and a three-judge panel made the appointment. When Congress in 1999 let the statutory authority for independent counsels expire, the Department of Justice [established regulations](#)<sup>4</sup> providing for the appointment of “special counsels” under the general administrative hiring authority of the Attorney General. All three have testified before Congress.

## EXAMPLES

- On June 21, 2023, Special Counsel John Durham [testified](#)<sup>5</sup> before the House Judiciary Committee on his investigation into alleged federal official interference with Donald Trump’s 2016 presidential campaign. His testimony addressed his investigative findings, including that the FBI had an affirmative obligation to investigate ties between the Russian government and the

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<sup>1</sup> The Washington Post, *The president who fired the special prosecutor - in 1875* (December 18, 2018). <https://web.archive.org/web/20221006035948/https://www.washingtonpost.com/history/2018/12/18/crosshairs-an-investigation-president-fired-special-prosecutor/>

<sup>2</sup> Congressional Research Service, *Special Counsel Investigations: History, Authority, Appointment and Removal*, page 6, (Updated March 13, 2019) (CRS Report R44857). <http://web.archive.org/web/20220412021919/https://sgp.fas.org/crs/misc/R44857.pdf>

<sup>3</sup> Congressional Research Service, *Special Counsel Investigations: History, Authority, Appointment and Removal*, page 8, (Updated March 13, 2019) (CRS Report R44857). <http://web.archive.org/web/20220412021919/https://sgp.fas.org/crs/misc/R44857>.

<sup>4</sup> Congressional Research Service, *Special Counsel Investigations: History, Authority, Appointment and Removal*, page 11, (Updated March 13, 2019) (CRS Report R44857). <http://web.archive.org/web/20220412021919/https://sgp.fas.org/crs/misc/R44857>

<sup>5</sup> House Committee on the Judiciary, *Hearing on the Report of Special Counsel John Durham* (June 21, 2023) (No. 118-28). <https://web.archive.org/web/20240401142543/https://www.govinfo.gov/content/pkg/CHRG-118hrg52753/pdf/CHRG-118hrg52753.pdf>

Trump campaign, that there were FBI transgressions in preparing applications for FISA surveillance warrants, and that the FBI failed to properly scrutinize certain key evidence it had received.

- On July 24, 2019, Special Counsel Robert Mueller [testified](#)<sup>6</sup> before the House Judiciary Committee on his investigation into alleged Russian interference in the 2016 presidential election. His testimony covered the extent of that interference and how his investigation was conducted.
- On July 26, 2000, Special Counsel John Danforth [testified](#)<sup>7</sup> before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee regarding his investigation of alleged misconduct by the Federal Bureau of Investigation during the multi-week stand-off in Waco, Texas, between the federal government and a group known as the Branch Davidians. His testimony addressed the substance of his investigation's findings and his office's relationship with the Department of Justice during the inquiry, among other issues.
- On November 19, 1998, Independent Counsel Kenneth Starr [testified](#)<sup>8</sup> before the House Judiciary Committee regarding his investigation into allegations concerning investments by President Bill Clinton and First Lady Hillary Clinton in Whitewater Development Corporation in Arkansas, the death of Clinton White House attorney Vince Foster, the firing of officials in the White House Travel Office, White House review of FBI background files, and conduct by President Clinton relating to a sexual harassment lawsuit. His testimony addressed his substantive findings and procedures used during his inquiry.
- On December 10, 1997, Independent Counsel Donald Smaltz [testified](#)<sup>9</sup> before the House Committee on Government Reform and Oversight regarding his ongoing inquiry into allegations concerning alleged wrongdoing by Secretary of Agriculture Mike Espy and related matters. His testimony addressed whether Department of Justice conduct was affecting his prosecution of pending cases, among other questions.
- On January 30, 1975, while the Watergate investigation was ongoing, Special Prosecutor Henry Ruth of the Watergate Special Prosecution Force and former Special Prosecutor Leon Jaworski

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<sup>6</sup> House Committee on the Judiciary, *Oversight of the Report on the Investigation into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III* (July 24, 2019) (No. 116-41).

<https://web.archive.org/web/20230720114852/https://www.govinfo.gov/content/pkg/CHRG-116hrg38243/pdf/CHRG-116hrg38243.pdf>

<sup>7</sup> Senate Committee of the Judiciary, Subcommittee on Administrative Oversight and the Courts, *Continuation of the WACO Investigation* (July 26, 2000) (S. Hrg. 106-1019).

<http://web.archive.org/web/20220523082339/https://www.govinfo.gov/content/pkg/CHRG-106shrg73366/pdf/CHRG-106shrg73366.pdf>

<sup>8</sup> House Committee on the Judiciary, *Impeachment Inquiry: William Jefferson Clinton, President of the United States*, Page 19, (Updated November 19th, 1998) (Serial No: 66).

<http://web.archive.org/web/20221109182639/https://www.govinfo.gov/content/pkg/GPO-CDOC-106sdoc3/pdf/GPO-CDOC-106sdoc3-9.pdf>

<sup>9</sup> House Committee on Government Reform and Oversight, *The Current Implementation of the Independent Counsel Act*, Volume 2, Page 60, (December 9 and 10, 1997) (H. Report 105-89).

<https://web.archive.org/web/20221201185006/https://www.govinfo.gov/content/pkg/CHRG-105hrg95557/pdf/CHRG-105hrg95557.pdf>

[testified](#)<sup>10</sup> before the Subcommittee on Criminal Justice of the House Judiciary Committee regarding legislation to require a final report on the inquiry. Their testimony addressed the types of information expected to be included in the final report planned by the Special Prosecutor's office, the terms under which President Nixon agreed to allow Jaworski to listen to certain tape recordings, whether the office planned to challenge the pardon that President Ford had issued to Nixon, and whether there was any information expected in the final report that had not yet emerged publicly.

- On November 20, 1973, Special Prosecutor Leon Jaworski [testified](#)<sup>11</sup> before the Senate Judiciary Committee on events preceding the firing of his predecessor and the terms of his appointment. His testimony addressed his efforts to secure information from the White House, whether the White House had erected obstacles to obtaining information, whether the investigation commenced by Archibald Cox required modification, conversations with White House officials about national security concerns, and what steps had to be taken to ensure his independence.
- On November 5 and November 8, 1973, respectively, while the Special Prosecutor inquiry into Watergate was ongoing, former Special Prosecutor Archibald Cox and Special Prosecutor Leon Jaworski [testified](#)<sup>12</sup> before the Subcommittee on Criminal Justice of the House Judiciary Committee regarding legislative proposals for ensuring the independence of the Special Prosecutor. Cox's testimony addressed examples of White House pressure on the Department of Justice and subjects that still required investigation. Jaworski's testimony addressed his discussions with White House officials in which he received assurances regarding his independence, the level of staffing he planned for the inquiry going forward, and the jurisdiction of the inquiry.
- On October 29, 30, and 31, 1973, former Special Prosecutor Archibald Cox [testified](#)<sup>13</sup> before the Senate Judiciary Committee regarding the events surrounding his firing by President Richard Nixon while Cox was investigating alleged wrongdoing by executive branch officials relating to the Watergate break-in, election law violations, and other abuses of power. His testimony addressed subjects including cases that were ongoing at the time of the firing, the procedural discussions between the Special Prosecutor and the White House, including his inability to obtain certain requested materials from the White House, and how to ensure independence for special prosecutors.

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<sup>10</sup> Subcommittee on Criminal Justice of the Committee on the Judiciary, *Authority to Issue Final Report by The Special Prosecutor* (January 30th, 1975).

<http://web.archive.org/web/20201031025619/https://www.govinfo.gov/content/pkg/CHRG-94hrg52901/pdf/CHRG-94hrg52901.pdf>

<sup>11</sup> Hearings before the Senate Committee on the Judiciary, *Special Prosecutor* (October 29, 30 and 31, 1973).

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<sup>12</sup> House Committee on the Judiciary, Subcommittee on Criminal Justice, *Special Prosecutor and Watergate Grand Jury Legislation* (October 2, 8; November 1, 5, 7 and 8, 1973).

[https://drive.google.com/file/d/1naQ8xI5P91bJdiCW3oGyjObK8VjtgoP2/view?usp=share\\_link](https://drive.google.com/file/d/1naQ8xI5P91bJdiCW3oGyjObK8VjtgoP2/view?usp=share_link)

<sup>13</sup> Hearings before the Senate Committee on the Judiciary, *Special Prosecutor* (October 29, 30 and 31, 1973).

[https://drive.google.com/file/d/1bRIMRwVMhhtBXUI-6EktBlus9EucOoAH/view?usp=share\\_link](https://drive.google.com/file/d/1bRIMRwVMhhtBXUI-6EktBlus9EucOoAH/view?usp=share_link)

- On May 21, 1973, while the Watergate investigation was ongoing, Special Prosecutor Archibald Cox [testified](#)<sup>14</sup> before the Senate Judiciary Committee on the nomination of Elliot L. Richardson to be Attorney General, alongside Richardson. Both men provided testimony on the measures in place to ensure the independence of Cox's inquiry, and Richardson discussed the Justice Department's handling of the Watergate investigation.
- On April 10, 1952, former Special Assistant to the Attorney General Newbold Morris [testified](#)<sup>15</sup> before the Special Subcommittee to Investigate the Department of Justice of the House Judiciary Committee regarding his inquiry into alleged bribery and other corruption involving tax cases. His testimony addressed the circumstances surrounding his firing by Attorney General Howard McGrath, the information requests he had made to McGrath and others, his conversations with President Truman in which the President expressed support for his plan to request information from the White House, and other matters.
- On March 5, 1884, and June 25, 1884, former Special Prosecutor William Cook [testified](#)<sup>16</sup> before the House Committee on Expenditures in the Department of Justice on the Star Route Cases regarding his investigation of alleged bribery among U.S. postal officials. His testimony addressed his conversations with President Garfield regarding procedures he would use in the inquiry upon taking the appointment, his conversations with the President during the inquiry, and cases on which he recommended indictments, along with supporting evidence.
- On July 25, 1876, former Special Prosecutor John B. Henderson [testified](#)<sup>17</sup> before the House Select Committee Concerning the Whiskey Frauds regarding his inquiry into allegations that Midwestern whiskey distillers had been bribing Bureau of Internal Revenue officials to avoid paying liquor taxes. His testimony addressed the substance of his inquiry, including the point at which he began to suspect government officials' complicity in fraud, and the circumstances surrounding his dismissal.

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<sup>14</sup> Senate Committee on the Judiciary, *Nomination of Elliot L. Richardson to be Attorney General* (May 9, 10, 14, 15, 21, and 22, 1973).

[https://drive.google.com/file/d/1Czzxmbf2a9W0btmatNdgOp9wsxWaeVo5/view?usp=share\\_link](https://drive.google.com/file/d/1Czzxmbf2a9W0btmatNdgOp9wsxWaeVo5/view?usp=share_link)

<sup>15</sup> Special Subcommittee to Investigate the Department of Justice, Committee on the Judiciary, *Hearings on H. Res. 95* (March 26 and 31; April 10; May 5 and 12; June 6, 23, 24, 26, and 27, 1952).

[https://drive.google.com/file/d/1ykXxV1DMMEHoF1hwdt5EivPQ\\_K\\_Eubl\\_/view?usp=share\\_link](https://drive.google.com/file/d/1ykXxV1DMMEHoF1hwdt5EivPQ_K_Eubl_/view?usp=share_link)

<sup>16</sup> House of Representatives, *Testimony relating to Expenditures in the Department of Justice, the Star-Route Cases* (1884). [https://drive.google.com/file/d/1AdcTcnAugkA-yFLhkF4q3Es68TgtW5BF/view?usp=share\\_link](https://drive.google.com/file/d/1AdcTcnAugkA-yFLhkF4q3Es68TgtW5BF/view?usp=share_link)

<sup>17</sup> House Select Committee Concerning the Whiskey Frauds, *Whiskey Frauds* (July 25, 1876).

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