

## Notable Special Counsels Throughout History and Their Roles in American Politics

November 16, 2017

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## SPECIAL PROSECUTOR HISTORY

BEN BRATMAN

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## NOMENCLATURE

- *Special Prosecutor*
  - *Independent Prosecutor*
    - *Special Counsel*
      - *Special Assistant Attorney General*

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### SPECIAL COUNSELS THROUGH HISTORY



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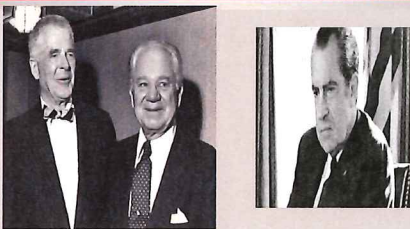
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### SPECIAL COUNSELS THROUGH HISTORY NIXON AND THE "SATURDAY NIGHT MASSACRE"



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### INDEPENDENT COUNSEL [1978 – 1999] AND THEN BACK TO SPECIAL COUNSEL



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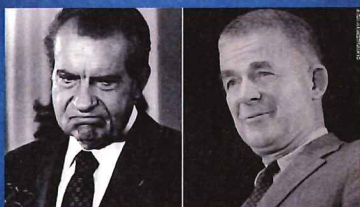
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## Nixon vs. Special Prosecutor Archibald Cox



Nixon vs Special Prosecutor Archibald Cox.wmv

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## Leon Jaworski describes his authority in the aftermath of Cox's dismissal.



SYND 9-11-73 WATERGATE PROSECUTOR LEON JAWORSKI.mp4

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## Current DOJ Special Counsel Regulations

- § 600.7 Conduct and accountability
  - (a) A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice . . . .
  - (b) The Special Counsel shall not be subject to the day-to-day supervision of any official of the Department. However, the Attorney General may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. In conducting that review, the Attorney General will give great weight to the views of the Special Counsel. If the Attorney General concludes that a proposed action by a Special Counsel should not be pursued, the Attorney General shall notify Congress as specified in § 600.9(a)(3).
  - (d) The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal.

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## Can the special counsel be fired?

- Peter M. Shane: Professor of law and administrative law scholar at Ohio State University's Mortiz College of Law. Believes that Trump cannot fire Muller.
  - Deputy Attorney General Rod Rosenstein can only fire Muller "for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause."
  - Even if Trump orders Rosenstein to fire Muller, Rosenstein cannot legally fire Muller without good cause.
  - Trump could fire Rosenstein and have his replacement fire Muller. However Shane argues that Rosenstein's replacement likely would not act in a way that violates the law, and Trump has no political reason to cause a second Saturday Night Massacre.

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## Can the special counsel be fired?

- Neal Katyal: Partner at Hogan and Lovells, former acting solicitor general of the United States, wrote 28 C.F.R. §600 while solicitor general, believes that Trump can fire Muller.
  - The Constitution gives Trump full prosecution power in Article II. This means that any federal prosecutor ultimately works for the president. This Constitutional reality is not something that a regulation can overturn, therefore, it would not be illegal for Trump to direct Rosenstein to fire Muller without violating the law.
  - More extravagantly, Trump can order Rosenstein to remove the good cause requirements from § 600.7(d), then order Rosenstein to fire Muller.

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## Small Group Discussion

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## Mueller Investigation

- Beginnings:
  - Russian Influence Campaign (2016)
  - Recusal of A.G. Jeff Sessions (March 2, 2017)
  - Firing of FBI Director James Comey (May 9, 2017)
  - Assistant A.G. Rod Rosenstein appoints Mueller (May 17, 2017)
    - Under 28 U.S.C. § 515(a); 28 C.F.R. § 600.4(a)
    - Mueller to investigate "any link...between the Russian government and individuals associated with the campaign of President Donald Trump" and "any matters that arose or may arise directly from the investigation"

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## Current Indictments

**Paul Manafort**  
(Campaign Chairman)

- Title 18
  - Sec. 371 (Conspiracy to commit offense or defraud United States)
  - Sec. 981-82 (Civil/Criminal forfeiture)
  - Sec. 1001(c) (Statements or entries generally)
  - Sec. 1956 (Laundering of monetary instruments)
- Title 22 (Sec. 618 – willful violations only)
  - Sec. 612 (Registration statement) - Foreign Agents
- Title 31 (Sec. 5322 – willful violations only)
  - Sec. 5314 (Records and reports on foreign financial agency transactions)

**Rick Gates**  
(Deputy Campaign Chairman)

- Failure to disclose Ukraine income to IRS for bank loans
- Ukraine payouts (2006-2016) hidden in low-tax countries while lobbying in US
- Undisclosed lobbying for the European Centre for a Modern Ukraine through unnamed lobbying firms
- Related to money laundering activities

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## Papadopoulos Plea

- George Papadopoulos (Foreign Policy Adviser)
  - Plea to making false statements during Jan. 27, 2017 interview with FBI
    - 18 U.S.C. § 1001 (Statements or entries generally)
    - Lied about communications with Kremlin-affiliated individuals
  - Tried to arrange meeting between Trump campaign and Russia

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Question and Answer Session

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