Here's Some History on Presidents and Special Counsels

James Comey managed to play a role in appointment of the two most recent special counsels to investigate possible wrongdoing in a presidential administration. And both cases featured leaks to the press.

Comey, ousted as FBI director by President Donald Trump, admitted last week in testimony before the Senate Intelligence Committee that he leaked a bureau memo to a friend in hopes of prompting the naming of a special counsel to look into Russian interference with the 2016 election.

Last month the Justice Department named former FBI Director Robert Mueller as special counsel to investigate Russian interference in the 2016 election and potential collusion with Trump campaign.

Back in 2005, when he was a deputy attorney general, Comey named a special prosecutor to investigate who in the George W. Bush administration leaked the name of a CIA employee to syndicated columnist Robert Novak.

But special prosecutors, in some iteration, have been around Washington for a long time. The first one, in 1875, investigated the Grant administration's "Whiskey Ring" scandal.

"It has been essentially the same function, a special investigator working outside the Department of Justice," Kenneth Starr, the independent counsel appointed to investigate President Bill Clinton's Whitewater land deal who ended up uncovering his affair with White House intern Monica Lewinsky, told The Daily Signal.

“It’s a variation of the same themes,” added Starr, whose work led to Clinton’s impeachment by the House—and ultimately acquittal by the Senate.

In the century after Grant’s presidency, administrations appointed special prosecutors with varying degrees of autonomy to probe activities in the executive branch.

Most notably, during the Watergate scandal, President Richard Nixon’s “Saturday Night Massacre”—essentially, firings of Justice Department officials who wouldn’t sack a special prosecutor—temporarily stalled the investigation until the naming of another prosecutor.

A post-Watergate reform defined the special prosecutor more clearly in law, creating an independent counsel with broad autonomy from the administration, but critics claimed that gave the prosecutor too much unchecked power.

Congress let the independent counsel statute lapse in 1999—shortly after Clinton’s impeachment and acquittal.

Both before and after taking on the job, Starr was on record opposing the law, believing it didn’t include enough checks to ensure accountability.

“There was a serious challenge to the law. When I was part of the Reagan administration; we argued independent counsel provisions were unconstitutional,” Starr said of the 1978 Ethics in Government Act, which formally created the office of independent counsel.

The Supreme Court didn’t agree, upholding the law in the 1988 case of Morrison v. Olson.

“I was asked. I viewed it as a call to serve, and the Supreme Court had upheld the law,” Starr said of his accepting the assignment six years later.

In 1875, President Ulysses Grant fired special prosecutor John

Henderson after the probe came close to the president’s inner circle.

The scandal? Politicians, whisky producers and federal employees were stealing tax revenues from alcohol sales.

Despite Grant’s action, the investigation resulted in more than 100 convictions and about $3 million in recovered taxes.

The U.S. Post Office and a railroad would be the subject of future independent investigations.

During the administration of President James Garfield, the Justice Department named William Cook as special prosecutor to investigate charges that Post Office officials were taking bribes to award delivery routes.

The scandal was called the “Star Route” scheme. Though it was shut down, no convictions resulted.

Two special prosecutors did investigations during Teddy Roosevelt’s administration.

In 1903, Judge Holmes Conrad and Charles Bonaparte investigated another U.S. Post Office bribery scandal, bringing some 300 convictions.

Two years later, Francis Heney probed allegations that railroads committed fraud to obtain use of federal land. After indicting more than 1,000 people, he narrowed the probe to 35—including members of Congress—but won no convictions.

In 1921, after Calvin Coolidge was elevated to the presidency as a result of President Warren Harding’s death, an independent investigation opened into the Teapot Dome scandal involving Harding administration officials.

Atlee Pomerene and Owen Roberts investigated the matter, which revolved around the sale of oil held in reserve for the Navy—most notably at Teapot Dome, Wyoming. The probe led to the conviction and imprisonment of Harding's Interior Secretary Albert Bacon Fall.

Three decades later, in 1952, Newbold Morris investigated alleged corruption at the Internal Revenue Service, according to the *Saturday Evening Post*'s breakdown of independent investigations.

Morris also began investigating the Justice Department, after this, Attorney General J. Howard McGrath fired the prosecutor and President Harry Truman then fired the attorney general. Still, the investigation resulted in the firing of 160 IRS employees.

Watergate and Forward

In 1973, Attorney General Elliot Richardson named Archibald Cox as special prosecutor for the Watergate investigation. After Nixon ordered Cox's firing on Oct. 20, both Richardson and Deputy Attorney General William Ruckelshaus resigned rather than carry out the order.

Solicitor General Robert Bork, as acting head of the Justice Department, fired Cox in what became known as the "Saturday Night Massacre." Bork named Leon Jaworkski to replace Cox and continue the investigation, which eventually led to Nixon's resignation on the brink of impeachment in the House.

To prevent another "Saturday Night Massacre," in 1978 Congress changed the law to establish a special prosecutor or independent counsel and provide that he or she can't be fired.

Under the law, the attorney general may petition a special three-judge panel of the U.S. Court of Appeals for the District of Columbia to name an independent counsel if there are "credible allegations of criminal misconduct by certain high-level personnel in the executive branch of the federal government whose prosecution by the administration might give rise to an appearance of a conflict of interest," according to a Congressional Research Service report.

By contrast, a special counsel is appointed by the attorney general, as just occurred in the naming of Robert Mueller to probe Russian interference in the election, if the attorney general determines it would be a conflict of interest for the Justice Department to probe a specific subject.

A special counsel, however, can be removed by the attorney general—as Cox was.

Starr doesn’t believe this would happen again, because of politics.

“I mean politics in the best sense of the word,” Starr told The Daily Signal, adding that a president or attorney general who fires a prosecutor for getting too close would face the public’s wrath, as Nixon did, and face accountability through public opinion and, potentially, Congress.

“No one would want the Saturday Night Massacre all over again,” Starr said.

President Jimmy Carter’s administration faced independent counsels probing alleged drug use by associates.

In 1978, Arthur Hill Christy investigated an accusation that Hamilton Jordan, the White House chief of staff, had used cocaine. In 1980, Gerald Gallinghouse investigated accusations that Carter’s campaign manager used drugs. No charges were brought in either probe.

The Reagan administration was the subject of probes by several independent counsels.

Independent counsels were named to investigate Reagan’s labor secretary, attorney general, assistant attorney general and legal counsel in separate cases. None of the cases resulted in an indictment.

However, beginning in 1986, Lawrence Walsh investigated the so-called Iran-contra scandal, in which administration officials were accused of secretly selling arms to Iran and using proceeds to fund rebel forces in Nicaragua.

The probe carried over into the George H.W. Bush administration, and led to the indictment of several officials, including Defense Secretary Casper Weinberger. Most of those convicted were pardoned in the final days of the Bush administration.

In 1990, Arlin Adams investigated influence peddling in the Department of Housing and Urban Development, leading to felony convictions for aides and associates of Samuel Pierce, Reagan’s two-term HUD secretary, who was not charged.

Congress let the independent counsel statute lapse in 1992, but in light of the Whitewater matter involving Bill and Hillary Clinton and their associates in Arkansas, Congress reauthorized it in 1994 and Starr took the job.

Starr’s investigation expanded into matters such as firings in the White House travel office and the White House’s potentially improper accessing of FBI files—known, respectively, as Travelgate and Filegate. Then, in 1998, with permission from Attorney General Janet Reno and a three-judge panel, Starr expanded his probe to examine whether Clinton lied under oath in a civil suit about his affair with Lewinsky, which began when she was a White House intern.

His actions involving Lewinsky led to Clinton’s being impeached for committing perjury before a federal grand jury and for obstructing justice. The House impeached the president that December, and the Senate acquitted him the following February.

Independent counsels also investigated Clinton’s agriculture secretary, interior secretary, a former chief of staff and a former labor secretary, but those probes did not result in indictments. One independent counsel, David Barrett, secured an 18-count indictment against Clinton HUD Secretary Henry Cisneros for obstruction of justice and conspiracy. Clinton later pardoned him.

After the independent counsel law expired again in 1999, the Justice Department returned to the practice of using a special counsel, who is under the attorney general. Reno named former Sen. John Danforth, R-Mo., to investigate the fiery end of the Branch Davidians' compound near Waco, Texas, to determine whether there was any misconduct on the part of federal law enforcement.

In 2005, Attorney General John Ashcroft recused himself from an investigation into who leaked the name of CIA employee Valerie Plame. His deputy, Comey, appointed Patrick Fitzgerald as special counsel.

The matter resulted in a perjury conviction for Lewis "Scooter" Libby, then an aide to Vice President Dick Cheney. However, Deputy Secretary of State Richard Armitage later admitted to leaking Plame's name.

Twelve years later, in May, Deputy Attorney General Rod Rosenstein announced his naming of Mueller to investigate the Russia matter. {eoa}

This article was originally published at . Used with permission.