

Understanding the Role of Independent Counsels, Special Prosecutors, and Special Counsels

Across history, the role of independent counsels, special prosecutors, and special counsels has been crucial in maintaining justice and investigating potential wrongdoings in various countries. These legal positions often take up high-profile cases that involve significant public interest and require specialized expertise. In this article, we will delve into the responsibilities, powers, and impact of independent counsels, special prosecutors, and special counsels.

What are Independent Counsels?

An independent counsel refers to an attorney or prosecutor appointed to handle investigations and prosecutions that require the utmost independence from executive branch control. The primary objective of an independent counsel is to conduct impartial investigations into allegations of misconduct or potential criminal activities within the government.

In the United States, the role of independent counsels was established through the Ethics in Government Act of 1978. Under this legislation, an independent counsel is appointed by a special three-judge panel to investigate and, if necessary, prosecute government officials involved in specific cases.

Independent Counsels, Special Prosecutors, Special Counsels, and the Role of Congress

by Andrew Ang (Kindle Edition)

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The decision to engage an independent counsel is typically made when there is a conflict of interest within the government or serious allegations of wrongdoing aimed at high-ranking officials.

Exploring Special Prosecutors

A special prosecutor, also known as an independent prosecutor, is an attorney appointed to independently investigate and prosecute crimes that involve government officials. The appointment of a special prosecutor arises when there is a need to avoid any conflict of interest or undue influence in a case.

Unlike an independent counsel, the role of a special prosecutor is not governed by a fixed legal framework. The appointment and scope of responsibilities are typically determined on a case-by-case basis, often relying on the Attorney General or other high-ranking officials.

Special prosecutors are often assigned cases that involve threats to national security or any activity that directly undermines public trust in government institutions.

Understanding Special Counsels

A special counsel is an attorney appointed to investigate and prosecute cases that involve potential misconduct or criminal activities committed by government officials or entities. The establishment of a special counsel, unlike the independent counsel and special prosecutor, falls under the purview of the executive branch.

The appointment of a special counsel usually arises from a need to maintain independence, impartiality, and transparency in high-profile investigations. Special counsels are typically given broad authority to investigate and, if necessary, prosecute individuals involved in the case.

In the United States, the position of special counsel gained significant attention when Robert Mueller was appointed to investigate Russian interference in the 2016 presidential election.

Comparing the Roles

While the roles of independent counsels, special prosecutors, and special counsels share similarities, they also exhibit distinct differences.

Independent counsels are established through legislative frameworks and operate with a higher degree of independence. Special prosecutors, on the other hand, have a more flexible appointment process and are often utilized in sensitive cases.

Special counsels, similar to special prosecutors, are appointed by the executive branch but possess the authority to operate with significant independence and freedom from political influence.

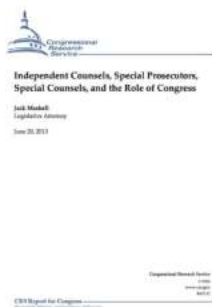
The Importance of these Roles

The significance of independent counsels, special prosecutors, and special counsels cannot be overstated. These positions serve as powerful instruments of accountability, ensuring that government officials can be held responsible for their actions.

By establishing independent bodies to investigate and prosecute potential crimes, public trust in the justice system can be preserved. These roles also act as a deterrent to potential abuses of power, encouraging transparency and honesty in government.

Independent counsels, special prosecutors, and special counsels each play a critical role in maintaining the integrity of the justice system and holding government officials accountable. These positions provide assurance to the public that wrongdoing will not be tolerated, no matter how powerful the individuals involved.

Whether it is the thorough investigations conducted by independent counsels, the flexibility and responsiveness of special prosecutors, or the transparent and independent operations of special counsels, these legal roles are essential in upholding justice and ensuring the proper functioning of democratic governments.



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This report provides information on the procedure for the appointment of an “independent counsel,” a “special prosecutor,” or a “special counsel” to investigate and prosecute potential or possible violations of federal criminal law by officials in the executive branch of the federal government and in federal agencies. Specifically examined is the role or authority of Congress in requiring an independent or special counsel investigation of executive branch officials.

Under the Constitution and its separation of powers principles and structure, Congress has no direct role in federal law enforcement, nor in triggering or initiating the appointment of any prosecutor for any particular matter (other than the advice and consent role of the Senate regarding certain nominations made by the President). Congress, however, has recognized inherent authority to conduct oversight hearings and legislative investigations by its committees into misconduct, mismanagement, or any other malfeasance relating to the officers and agencies of the executive branch of government to assure the government’s proper functioning, to assure the proper expenditure of funds that Congress appropriates, and to explore the need for remedial legislation. Revelations from such investigations and oversight, in addition to providing information for remedial legislation, may contribute to the public pressure on the Administration or Department of Justice to appoint an “independent” counsel or prosecutor to investigate uncovered evidence or allegations of wrongdoing by persons in the Administration.

Congress may also have a legislative role in designing a statutory mechanism for the appointment of “independent counsels” or “special prosecutors,” as it did in title VI of the Ethics in Government Act of 1978. Under the provisions of that law

relating to the appointment of “independent counsels” (called “special prosecutors” until 1983), the Attorney General was directed to petition a special three-judge panel of the U.S. Court of Appeals to name an independent counsel upon the receipt of 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. In 1999, Congress allowed the “independent counsel” provisions of law to expire. Upon the expiration of the law in June of 1999, no new “independent counsels” or “special prosecutors” may be appointed by a three-judge panel upon the application of the Attorney General.

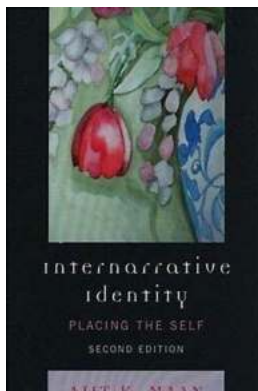
The Attorney General retains the general authority to designate or name individuals as “special counsels” to conduct investigations or prosecutions of particular matters or individuals on behalf of the United States. Under regulations issued by the Attorney General in 1999, the Attorney General may appoint a “special counsel” from outside of the Department of Justice who acts as a special employee of the Department of Justice under the direction of the Attorney General. The Attorney General, however, may also appoint an individual as a special counsel, and may invest that individual with a greater degree of independence and autonomy to conduct investigations and prosecutions, regardless of any “special counsel” regulations, as Attorneys General did in 1973, 1994, and 2003. In 1973, Attorney General Elliot Richardson named Archibald Cox to be the “special prosecutor” for the “Watergate” investigation; in 1994, during an earlier expiration of the independent counsel provisions of law, Attorney General Janet Reno named a “regulatory” independent counsel Robert Fisk to investigate allegations concerning the matter known as “Whitewater”; and in 2003, Attorney General Ashcroft recused himself from the investigation of the leak of the identity of a CIA agent, and Deputy Attorney General Comey named U.S.

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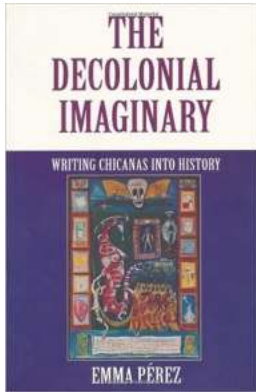
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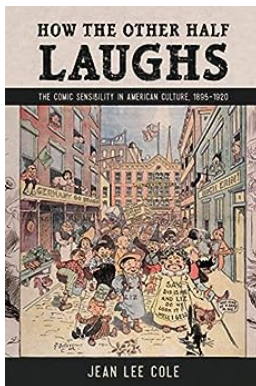
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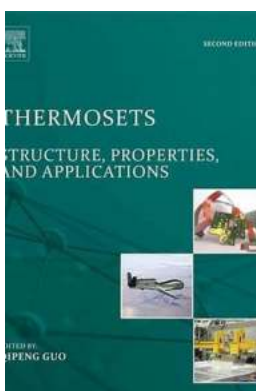
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June 20, 2013

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