

Statement of Richard Ben-Veniste
United States Senate Committee on the Judiciary
Subcommittee on Crime and Terrorism

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Chairman Graham and Ranking Member Whitehouse, I am pleased to accept your invitation to appear before this subcommittee to discuss my personal views on the overlapping but largely distinguishable responsibilities between congressional oversight hearings and the work of federal prosecutors.

I have been fortunate over the course of my legal career to have served as a federal prosecutor in the Southern District of New York, an assistant special prosecutor in the office of the Watergate Special Prosecution Force, chief minority counsel to the Senate Whitewater Committee, chief counsel in senate hearings chaired by both Sen. Lawton Chiles (D. FL) and Sen. Arlen Specter (R. PA), as a defense lawyer in a criminal case brought by a special prosecutor, and as a member of the bipartisan 9/11 Commission.

Congressional investigations have long been a shining example of democracy in action – informing the public and providing fact based grounds for critical legislation. Investigations of organized crime, union busting and union corruption, Wall Street banking practices, the Ku Klux Klan and the Vietnam War

are but a few areas in which important societal changes have resulted from congressional inquiries.

As such, I have great appreciation for the invaluable benefit to our society of Congressional inquiries that have allowed disinfecting sunlight into dark corners that might otherwise remain hidden from view. And, of course, it is in regard to Congress's oversight responsibilities that there is sometimes a bit of bumping and even bruising with the prosecutor's function of bringing lawbreakers to justice, while also ensuring that due process of law is observed and that the rights of individuals are respected.

Sometimes, in high profile investigations, the prosecution has been too focused on protecting prosecutorial options to appreciate the larger issues of the public's right to know. It is little remembered that Watergate Special Prosecutor Archibald Cox went to court to try to block the Senate Watergate Committee from granting immunity to John Dean. The Senate went forward with immunity, and Dean's resulting testimony provided Congress and the public with critical information it needed to know about misconduct of extraordinary scope at the highest reaches of government that might otherwise have taken an unacceptable amount of time to expose. As it happened, Dean was later prosecuted, pleaded guilty and gave testimony that was irrefutably corroborated by presidential tape recordings. And the evidence uncovered by the Senate Watergate Committee

provided essential building blocks to the Watergate Special Prosecutor's office in completing the investigation and bringing indictments.

Despite significant changes in law and procedure since Watergate, the lesson remains that sometimes exposing serious public corruption – particularly when the wrongdoers are still operational, will trump providing prosecutors all the flexibility they desire. In short, there are no compelling reasons why congressional and special counsel investigations should not proceed concurrently.

The system works best when congressional committees are in internal synch, where the chair and ranking member are speaking with one voice in planning and executing an investigative strategy that will be both appropriately aggressive and at the same time thoughtfully deferential to legitimately prosecutorial objectives. In my view, the best example of this kind of bipartisan cooperation is seen in the relationship between Chairman Tom Kean and Vice-chair Lee Hamilton on the 9/11 Commission – demonstrating how much intellectual energy and investigative firepower can be harnessed when political beings put national interest above narrow party goals.

Unlike Congress's goal of educating and informing the public, prosecutors are bound by rules that promote secrecy and discourage – even criminalize – inappropriate extrajudicial disclosure of their work in process. Imbued with

tremendous power, prosecutors must have the experience and judgment to separate the wheat from the chaff and exercise discretion in deciding to bring – or not bring cases.

In the investigation of the ramifications of Russian state interference in America's 2016 presidential election, Congress has the responsibility to collect and present in public hearings why this event deserves every American's serious attention. And the judiciary committees of both houses have an additional obligation – that Special Counsel Robert Mueller be permitted to complete the work he has been duly appointed to oversee – including a fair and thorough examination of Russia's interference in our presidential election and whether any US citizen was complicit in or aided and abetted that interference. It must be made clear that serious constitutional remedies would follow any improper attempt to curtail or interfere with Special Counsel Mueller's inquiry.

Thank you, and I thank the members of this subcommittee for your attention.