

# Senator Joseph Lieberman

## Independent Counsel Law Reauthorization

Hearing Statement

April 14, 1999

Thank you Mr. Chairman, for the thoughtful way you've organized and run this important series of hearings, which concludes today with four very distinguished and important witnesses.

I've said throughout these hearings that we should not allow our consideration of the Independent Counsel reauthorization to be driven by the conduct of one or another Independent Counsel, nor to be mired in partisan controversies, nor used to settle lingering political scores. In fact, we've benefited from hearing a wide variety of perspectives that have contributed significantly to the informed discussion we've had over the last several weeks. At the same time, Mr. Chairman, members of the Committee haven't flinched from asking witnesses tough questions when we felt it was necessary to get at substantial issues, which in turn has helped crystallize some critical arguments on both sides of this debate about reauthorization.

I expect the same today.

There has, of course, already been abundant public analysis and commentary on the way Judge Starr has conducted his investigation of Whitewater and other matters relating to the President. Some of the criticisms of his work are irrelevant to our deliberations. But some go to the heart of the Independent Counsel statute and the questions we've been asking in these hearings. In that respect, it is certainly appropriate for us to ask Judge Starr what his conduct as Independent Counsel reveals about the law that authorized and governed his investigation. I look forward to that discussion.

Twenty years ago, when Watergate was the nation's most recent resonant political scandal, Congress passed the statute we're now reviewing. Our predecessors were motivated by the highest of ideals: to ensure that the rule of law would be applied scrupulously even in cases involving our nation's most powerful leaders - even in cases involving the President. In my opinion, the law has worked in support of that worthy purpose more often than not, and most Americans seem to agree, with polls showing that a healthy majority supports reauthorization of the statute.

Yet in Congress there is deep dissatisfaction with the law, to the point that its re-enactment is seriously in doubt, and there is no escaping the fact that Judge Starr's investigation is coloring the views of many of the Independent Counsel's critics. Many of our colleagues have cited what they view as Judge Starr's missteps as powerful evidence of the law's failings and justification for its termination. As you know, Mr. Chairman, I do not agree that the law is fatally flawed. But I do believe there are areas where we need to make significant reforms. And although I do not share

the most critical opinions of Judge Starr's conduct, I do agree that his term as Independent Counsel illuminates the need for some substantial reforms.

For example, should Judge Starr's work as Independent Counsel have been allowed to go on so long and so far from his original mandate? The Independent Counsel statute allowed Judge Starr's investigation to mushroom beyond Whitewater, not just into related matters but also into seemingly unrelated matters.

The statute was intended to give the public confidence in the impartiality of the Independent Counsel, but the sequential extension of Judge Starr's jurisdiction gave much of the public exactly the opposite impression - that this was an Independent Counsel in pursuit of a person, not a crime, that what began as a prosecution seemed to many to end as a persecution. Does this experience not compel us to consider changes in the statute that would prohibit extensions of an Independent Counsel's jurisdiction into unrelated areas, and even to limit its length in time? One of the fundamental purposes of the Independent Counsel statute was to guarantee that our nation's most powerful leaders are treated like any other citizen when suspected of criminal conduct.

The Department of Justice is currently considering whether Judge Starr failed to follow certain Department of Justice guidelines which are to be applied to every citizen. I would be interested in learning how much weight the Judge gave to those guidelines in his conduct as Independent Counsel, how he feels about the guidelines, and whether we should find a way to better emphasize adherence to them and require consultations with the Department.

We've been hearing from many people that the statute would work better if the Independent Counsel was required to have criminal law enforcement experience. Without the budgetary restraints and competing priorities faced by regular prosecutors, an Independent Counsel presiding over a complex and wide-ranging investigation has to exercise much more discretion and restraint when deciding which cases to prosecute. This should be the decision of the Independent Counsel, not his subordinates. Judge Starr has been a distinguished private attorney, professor, solicitor general and federal judge but never served as a prosecutor. Did that affect the quality of his service? Did it lead him to rely more than was appropriate on the advice of his subordinates? Those are questions I want to ask today.

Finally, Judge Starr's investigation attained its greatest notoriety the day he delivered his impeachment referral and supporting evidence to Congress, pursuant to Section 595(c) of the Independent Counsel statute. His critics have questioned whether he crossed the line and became an aggressive advocate for impeachment. Some have used this experience to argue for amending the law to ensure that Independent Counsel in the future do not intrude upon Congress's constitutional powers impeachment.

I look forward to hearing Judge Starr's thoughts on this question and other matters today.

If the advance reports of his testimony today are accurate, I am disappointed. But that should make his appearance here today very interesting and hopefully very productive. His position raises the fundamental question of whether the flaws he sees in the Independent Counsel law justify the loss of the guaranteed independence of prosecutors.

We are also fortunate this morning to have all three federal judges who currently make up the Division of the Court responsible for appointing Independent Counsel. The operations of the Special Division have been the subject of much speculation in recent years. I hope we can learn more about the internal functioning of this uniquely-configured court. I am particularly interested in the process by which Independent Counsel are selected, and whether we can improve it. I am hopeful that Judges Sentelle, Fay, and Cudahy will also have helpful insights on the other difficult questions the Division faces, such as how an Independent Counsel's jurisdiction should be interpreted and when it should be expanded, and to what extent the Special Division can oversee the Independent Counsel's work without violating the Constitution's Separation of Powers doctrine.

I thank our witnesses for appearing today, and I would like to thank the Chairman again for arranging all five hearings in such a fair and bipartisan manner. Through these hearings we have learned a great deal about the way the Independent Counsel has operated, we have heard some call for its demise and others for its reform. I personally hope we can build on this accumulated experience and insight by enacting a new, more workable statute that remains nonetheless truly independent. To win over the many doubters, we must curb the flaws in the statute that have been revealed in Independent Counsel investigations. But to preserve its vital purpose, we must assure the public that no government official, not even the President, is above the law. I remain convinced that the surest way to do that is through an Independent Counsel statute.

Thank you Mr. Chairman.