STATEMENT OF PROFESSOR KEN GORMLEY
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON THE REAUTHORIZATION OF THE INDEPENDENT COUNSEL ACT

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Good afternoon. My name is Ken Gormley. I am a Professor of Constitutional Law at Duquesne University in Pittsburgh. I greatly appreciate the opportunity to express my views to this Committee regarding the re-authorization of the Independent Counsel Act of 1978. It represents, I believe, one of the most important issues facing Congress at this critical juncture in American history.

I have a particular interest in the subject of the independent counsel law. I am the author of "Archibald Cox: Conscience of a Nation" (Perseus Books 1997), the biography of the first Watergate Special Prosecutor. Flowing from my work on the Cox book, I have (more recently) published academic pieces analyzing the failures of the independent counsel law, and proposing extensive reforms. I published an article in the December issue of the Michigan Law Review, entitled "An Original Model of the Independent Counsel Statute," advocating dozens of specific reforms designed to bring the statute back to its original (and laudable) purpose, restoring it to those sensible foundations that prompted Congress to enact it in the first place, in the aftermath of Watergate. I also published an article in the January issue of Stanford Law Review, entitled "Impeachment and the Independent Counsel: A Dysfunctional Union," advocating that the "impeachment referral" provision be dropped from the statute entirely.

I agree with many of those who have already testified before this Committee, that the statute suffers from horrible design defects that have become glaringly apparent with the passage of time. Unlike many other witnesses who have addressed this Committee, however, it is my belief that the independent counsel statute can and should be salvaged, but only after radical overhauls have been accomplished that reserve this extraordinary machinery for truly rare and extraordinary cases.

Let me begin by agreeing with the comments of Senator Howard H. Baker, Jr., when he appeared before this Committee last month. Senator Baker advocated a sort of "cooling off period," before this Senate made any irrevocable decisions about the independent counsel law. I believe that is a sound approach. Having just bandaged up wounds from a bitter and divisive impeachment trial, flowing from one of the most controversial and divisive independent counsel investigations since the statute was enacted in 1978, it seems ill-advised for Congress to scrap legislation that was adopted after five years of hard work, public debate and difficult soul-searching. Times of turmoil and governmental crisis are the worst time to make sweeping decisions to abandon entire legislative schemes. It seems far wiser to put a little distance between the events of the past year, and the ultimate decision concerning the fate of the independent counsel law, so that this important issue can be considered dispassionately. It seems better to allow the statute to lapse, temporarily, and revisit the subject after having studied all options thoroughly, than to make a hasty decision that may obliterate a valuable piece of legislative work forever.

The Monica Lewinsky affair -- in the year 1999 -- has shattered the public trust in our institutions of government, no less than the Watergate affair did in the 1970's. Cab drivers and school

teachers now distrust legislators, presidents, attorneys general, and special prosecutors. Burying the independent counsel law will only return us to the flawed pre-Watergate method of *ad hoc* appointment of special prosecutors, which generated so much public distrust in the first place. It is far better to seek to turn 20 years' worth of legislative effort into a productive, rehabilitated statute.

The Senate will therefore achieve the best result for this nation if it proceeds cautiously. It must consider the long-term ramifications if the statute is scrapped entirely; it must examine possible substitutes for the existing statute; and it must consider ways to significantly overhaul the law that might make it work as Congress deems useful. Without considering all possibilities, this body will be incapable of determining the best alternative for the nation.

My own view, as expressed in the Michigan article, is that the present statute *can* be restructured to operate in a productive fashion. The first question that must be answered, however, is: Do we really need an independent counsel law, in the year 1999? Why renew a statute in a hostile climate after this legislative scheme has created so many problems after a short twenty-year existence?

My own conclusion is that this statute -- or at least its framework -- fulfills an important function in significant criminal investigations involving the executive branch. If today's Congress eliminates the statute entirely, I fear that future Congresses will find it necessary to re-invent the statute in one form or another, because the need for the law will not die. There have been twenty independent counsels in the same number of years, with the list growing steadily. Some of this reflects a statute run amok, admittedly. But some of it reflects a legitimate perception by this Congress, by the Justice Department, and by the American public that fairness must be carefully and specially safeguarded in certain high-level investigations involving the executive branch.

In future years, when the public cries out for an investigation after some new scandal erupts involving the President, Vice-President or the attorney general, what rules will govern this process? Americans have grown to rely upon independent counsels, despite the skepticism that attaches to specific investigations. The Justice Department itself has grown comfortable with the notion of appointing neutral outside prosecutors, at least in certain cases involving high-level members of the executive branch. So where is our legal system left, if the independent counsel statute is simply scrapped? Is our nation to return to the old wing-and-a-prayer method of *ad hoc* appointment -- wait for a crisis and leave the investigation to the whim of each attorney general, even if she is investigating the President or Vice-President whose election led to her appointment, or if she is tainted by the scandal herself? (Watergate and Teapot Dome both presented such unhappy scenarios). The reason that Democrats and Republicans alike supported special prosecutor legislation, during the tumultuous months of Watergate, was that public confidence in the existing *ad hoc* method was shattered. The American public, and Congress in the 1970's, recognized that certain extraordinary cases involving the executive branch required a set of rules that minimized the chance of bias, or abuse of the criminal justice process. The American public, and Congress, also recognized that in some cases institutional chaos might arise if one branch of government forced a constitutional showdown -- as the executive branch did in Watergate -- where no rules were in place to resolve the showdown in advance.

During Watergate, Attorney General-designate Elliot Richardson and his choice for special prosecutor, Archibald Cox, scribbled out ideas on hotel napkins to establish a make-shift set of rules to govern a fast-moving criminal investigation that required a neutral outside prosecutor. Many members of this Senate worked with Cox and Richardson to grind out a fair, impromptu charter for the special prosecutor, in order to establish parameters that the parties could respect and the public could trust. One of the points of enacting a statute, after Cox's firing in the infamous "Saturday Night Massacre," was to eliminate this haphazard approach to special prosecutor investigations, when serious crises arose in the future.

One common response to all of this is "we succeeded just fine in Watergate, didn't we? There was no special prosecutor law on the books at that time, yet the combination of political pressure, public pressure, and pressure from the American news media forced the appointment of a neutral outside prosecutor with the power to conduct a fair investigation -- indeed a second prosecutor was hired once Cox was fired. These two outsiders ultimately brought the President to justice, did they not?"

There is some truth to this retort. But it overlooks one important fact. After spending seven years studying, and writing about, the events of Watergate -- particularly those involving the tenure of the first Watergate Special Prosecutor, Archibald Cox -- I can tell you that President Nixon came very close to succeeding in his plan to abort the Watergate investigation entirely. Although it is true that after Cox's firing during the "Saturday Night Massacre," the American public rose up and President Nixon was ultimately forced to disgorge the subpoenaed tapes, this story almost had a different ending. In the week prior to his firing, Archibald Cox came extremely close to succumbing to the pressure of the White House, and agreeing to a secret compromise that would have allowed President Nixon (at least in large part) to preserve the secrecy of his tapes, in order to avoid a Constitutional showdown. Cox was acutely aware that if he pushed the executive branch too far, he might reveal the ultimate weakness of American democracy -- that no one branch within the tripartite system (including Congress or the courts) can force another branch to act against its will, without risking serious damage to the entire structure.

It is true that this nation survived Watergate without an independent counsel statute. But the very reason that Congress in the 1970's adopted that law, and people like Archibald Cox and Elliot Richardson testified in support of it in this Senate, was that they recognized the dangers inherent in operating without a pre-established set of rules, especially when a crisis of the magnitude of Watergate (or Teapot Dome) struck. President Nixon came very close to succeeding in his plan to shut down the Watergate investigation. He failed only because of Cox's strength of character, the fact that there were very few college football games televised the day of Cox's final press conference, and other twists of fate. That is why nine days later, both Democrats and Republicans in Congress introduced legislation to create a special prosecutor law. They did not wish to risk being caught off-guard again.

Congress spent five years constructing this statute. It re-authorized the legislation three times, each time with significant amendments. Rather than throwing away this careful piece of legislative work-product, I believe that it is far more productive to examine the failures of the statute over the past two decades, and construct a much leaner independent counsel law that is

reserved for rare and special occasions, as Congress initially intended following the Watergate debacle.

What exactly did Congress in the 1970's envision when it constructed this law? A few things can be gleaned from the legislative history -- not only by studying the legislation that succeeded, but by examining the numerous bills that failed.

First, the statute's overarching purpose was to drag certain investigations out of the muck of partisan politics in order to restore public confidence in government. Watergate had virtually destroyed public trust in government -- particularly in the presidency, but tainting all three branches. Reversing this lack of trust, by adopting legislation that addressed the appearance of conflict as well as actual conflict, was a goal that transcended all others. And it remains a worthwhile goal.

The second lesson that jumps out of the statute's protracted history is that it was originally conceived to address 'big problems." It was primarily designed to deal with rare, major crises in the executive branch -- like Watergate in the 1970's and the Teapot Dome scandal in the 1920's -- rather than the ongoing stream of picayune matters that inevitably dog high-level executive officials during any administration. The rejection of S. 495 and other bills advocating the creation of a *permanent* special prosecutor, in the latter part of 1976, confirms that the special prosecutor law was never meant to establish a permanent inquisitor. The temporary special prosecutor was expected to come alive only under extraordinary circumstances involving major conflicts. Indeed, the hearings and debates are littered with references to Watergate and Teapot Dome as models. Both of these affairs shared much in common. Both involved allegations of criminal activity by high-ranking executive officials while holding federal office. Both involved a tainted Justice Department that was embroiled in scandal and could not be trusted to conduct a neutral investigation. Both involved a well-developed crisis, that threatened to consume the government if left unchecked.

A final lesson that can be gleaned from the legislative history is that the scope of the special prosecutor's job was meant to be narrowly circumscribed. Both proponents and opponents of the law understood that if the special prosecutor's jurisdiction were not carefully limited, the statute would be patently unconstitutional because it would create an unaccountable fourth branch of government. The creation of a temporary (rather than a permanent) special prosecutor with a passport identifying his or her precise jurisdiction, was meant to avoid this dangerous precipice.

The three principal aims of the legislation -- restoring public trust in government, reserving the statute for major crises, and carefully circumscribing the special prosecutor's jurisdiction -- remain noble goals.

Over a dozen specific reforms are essential if the independent counsel law is to be returned to its original, sensible purpose. These can be roughly organized into three categories: I) Reforms relating to the appointment of special prosecutors; II) Reforms relating to the role and powers of special prosecutors; and III) Reforms relating to the duties of the special court. I will address each in turn.

I. REFORMS RELATING TO THE METHOD AND FREQUENCY OF APPOINTING INDEPENDENT COUNSELS.

Since the statute's adoption in 1978, there have been 20 independent counsels appointed, some branching off into multiple investigations.

The runaway nature of the statute is not attributable to a single independent counsel or a single political party. Members of both parties have discovered how to push the buttons and tilt the machine, in the years following Watergate, in order to create problems and nightmares for political foes. As both parties have perfected this game of political pinball, they have abandoned the original notion that the special prosecutor law should be reserved for rare and special crises. The over-use and trivialization of the independent counsel law is thus the single greatest flaw that has emerged since the adoption of this legislation in 1978.

But how does Congress prevent the statute's overuse and trivialization? In several ways.

A. Amend the Triggering Device.

Most scholars, and those who have first-hand experience working with the independent counsel statute, are in agreement that -- if the law is to function properly -- critical adjustments must be made in retooling the statute's triggering device contained in Section 592. The existing standard, that sets off the extraordinary independent counsel mechanism whenever there exist "reasonable grounds to believe that further investigation is warranted," unleashes the enormous power of this special office prematurely. The triggering device is set so low that every puff of smoke that resembles an allegation of criminal wrongdoing is sufficient to set off alarm bells and prompt (at least potentially) the appointment of an independent counsel. This hardly reserves the special prosecutor statute for special occasions. It allows it to be easily manipulated for political purposes, and to be used for exploratory digging rather than for serious emergencies.

The statutory language should be amended to require the appointment of an independent counsel only when there exists "*substantial* grounds to believe that a *felony* has been committed and further investigation is warranted." Not only does this language ratchet the threshold upwards, but it provides a nice balance between weak, premature allegations (which should *not* trigger the statute) and well-developed allegations (which *should* cause an independent counsel to be appointed).

Not until the triggering mechanism is significantly adjusted in this fashion will the statute begin to operate in a restrained (and sensible) fashion.

B. Allow the Attorney General to Exercise More Power in Conducting the Preliminary Investigation.

The second reform necessary, as it relates to the statute's triggering mechanism, involves allowing the attorney general to exercise more authority in conducting the preliminary investigation. As presently drafted, Section 592 sharply constricts the powers of the attorney general. She is not permitted to convene grand juries, engage in plea bargains, grant immunity, or issue subpoenas. Although it is certainly important to prevent the Justice Department from

jumping headlong into an investigation because it might "spoil" the case for an independent prosecutor, the current statute goes too far by preventing any meaningful preliminary investigation. If the attorney general is to make an informed decision whether the appointment of an independent counsel is justifiable and sensible, she *must* be permitted to subpoena witnesses and gather reliable evidence. Moreover, the provision in Section 592 that requires the attorney general to ignore the question whether the alleged criminal conduct was inadvertent or negligent (as opposed to knowing or intentional) is unduly restrictive and takes away the attorney general's ability to exercise sound judgment in determining whether picayune offenses should be prosecuted.

If the attorney general were granted greater power to conduct a meaningful preliminary investigation -- at the earliest stage of the process -- there would exist far fewer marginal independent counsel investigations.

C. Limit the Categories of Persons Covered by the Statute.

The third essential reform, that garners almost universal support among commentators and former special prosecutors, relates to the list of individuals covered by the statute. Presently, Section 591(b) sweeps within its ambit not only the President and Vice-President, but a laundry list of other executive officials. In all, nearly 240 persons are covered, most of whom hold considerably subordinate positions in the executive hierarchy.

Not only is this list of "covered individuals" absurdly broad, but it cheapens the independent counsel statute by forcing its application in cases that are far from kindling for incendiary national crises.

At least when it comes to the *mandatory* application of the statute, the law should be amended to reduce the list of covered individuals to an essential core. Specifically, the statute should be limited to the President, Vice President, and the attorney general. These three key members of the executive branch must be covered by the law, since it was primarily designed to ensure that individuals at the top of the executive ladder could not investigate themselves. Likewise, the highest officials on the committees to elect and re-elect the President, who have been covered by the statute since its adoption in 1978, should remain so. These individuals act as *alter egos* for the President and Vice President with respect to fund-raising -- an activity that inherently creates potential for criminal abuse under the American electoral system.

But that should be the extent of the mandatory coverage of the statute.

With respect to the laundry list of other cabinet officers, sub-cabinet officers, and administrative heads presently covered by Section 591 of the statute, these should be moved into an "optional" category. When it comes to allegations of criminal activity involving such lower-level officials, the attorney general should be *permitted* -- but not required -- to set the statute into motion. However, this should be left to the sound discretion of the attorney general. In some cases, the attorney general might find it beneficial to invoke the provisions of the statute for a lower-level official, particularly where a conflict of interest -- or the appearance thereof -- exists. Otherwise, the attorney general should remain free to decline utilizing the statute at all, or remain free to appoint her own neutral independent prosecutor, as several past attorneys general (such as Griffin

Bell) have done. The attorney general's determination, when it comes to these optional cases, should be final and non-reviewable.

The statute should also be narrowed by amending Section 591 to limit it to crimes committed while in federal office, or in seeking that office. The purpose of the statute is to address public actions of public officials. Other extraneous matters should be handled by traditional investigations conducted by federal and state investigative authorities. This can be accomplished competently, and satisfactorily, without grave danger to the nation.

D. Leave Other Investigations to the Justice Department.

Assuming that the above reforms are implemented, all other investigations concerning alleged wrongdoing by high-level executive officials would return to the Justice Department. Investigations such as those involving Secretary of Agriculture Mike Espy, HUD Secretary Henry Cisneros, and most of the other 20 independent counsel investigations to date would have never been covered by such a revised statute, at least in terms of the *mandatory* application of the law. They would have been returned to the state and federal criminal justice systems, that have successfully handled such matters for the past 200 years.

Much of the problem relating to the runaway nature of the modern special prosecutor law flows from the fact that the nation, traumatized by Watergate, foreswore its trust in the attorney general and other government lawyers. These government attorneys have supervised difficult and sensitive cases in a capable fashion since 1789, often in investigations involving corrupt public officials including members of the executive branch. The presumption should no longer be that any allegation involving a hint of potential conflict -- because it relates to an actor within the executive branch -- must be removed from the Justice Department and farmed out to an outside prosecutor. Rather, the reverse presumption should apply. Except where there exists substantial evidence that a serious felony involving one of the covered individuals exists -- and unless the alleged criminal wrongdoing relates to conduct committed while in federal office -- the mandatory provisions of the statute should not be triggered.

This reform would assist in reserving the statute for rare and special occasions, so that it would be used primarily as a failsafe mechanism -- to prevent serious constitutional meltdowns -- rather than as a reflexive response to every allegation lodged against a member of the executive branch.

II. REFORMS RELATING TO THE ROLE AND POWERS OF INDEPENDENT COUNSELS.

Besides radically adjusting the manner in which the independent statute is triggered, and the group of officials to which it applies in a mandatory fashion, the law should be reformed in another important way. The job description of the independent counsel himself -- and the scope of his extraordinary power -- should be significantly reined in.

A. The Independent Counsel's Jurisdictional Limits Must Be Strictly Controlled.

One of the most serious breakdowns in the independent counsel statute in recent years relates to jurisdictional limits. Although few newspaper or television accounts cast it in these terms, the

recent Monica Lewinsky scandal (for instance) raised serious questions about the operation of the statute when it came to controlling the jurisdictional boundary-lines of special prosecutors.

One of the hallmarks of the legislation, that was designed to save it from patent unconstitutionality, was its careful limitation of the special prosecutor's field of authority. The Congressional debates are abundantly clear in this regard. One of the ways that the 1970's Congress sought to ensure that the special prosecutor could not run amok -- or become a roving "Frankenstein monster" (as one Representative put it) -- was to narrowly constrain his or her scope of authority and nail down his or her jurisdictional limits in a clear written charter.

The sweep of the independent counsel's jurisdiction is broad in one sense -- allowing him or her (in essence) to stand in the shoes of the attorney general in conducting a particular inquiry. Yet it is meant to be narrow in another more crucial sense. Unlike an ordinary prosecutor, sitting at a desk in the Justice Department or in the U.S. Attorneys Office, this *special* prosecutor was not meant to be free to investigate and prosecute any federal crime placed on his or her desk. Rather, he or she was to be forever tied to the written statement of jurisdiction, formulated by the attorney general and reduced to writing by the special court. Indeed, if this were not the case, the statute would be patently unconstitutional, because it would be creating an unaccountable 4th branch of government.

Chief Justice William H. Rehnquist made this precise point in affirming the constitutionality of the statute in *Morrison v. Olson*. The Chief Justice explained: "Unlike other prosecutors, (the independent counsel) has no ongoing responsibilities that extend beyond the accomplishment of the mission that she was appointed for and authorized by the Special Division to undertake."

Regrettably, the independent counsel statute has evolved in such a way that the jurisdictional constraints envisioned by Congress in the 1970's have been rendered worse than impotent. The independent counsel's office has been able to transform itself into a free-floating satellite branch of government unaccountable to any other, a cardinal sin under our tripartite constitutional system. This has been accomplished, primarily, through the defective provision contained in section 593(c), dealing with expansion of jurisdiction.

The relatively benign-looking provision contained in section 593(c) directs the special court, upon the request of the attorney general, to "expand the prosecutorial jurisdiction" of the independent counsel under certain circumstances. This section establishes an abbreviated period in which the attorney general may conduct a preliminary investigation, and requires the attorney general to give "*great weight to any recommendations of the independent counsel*" concerning the expansion of jurisdiction. The special court is then required to ratify the expansion of jurisdiction -- or appoint a separate independent counsel -- if so requested by the attorney general.

The net effect of these statutory provisions is to create a chamber of horrors for potential targets of an investigation. It almost guarantees -- indeed it almost mandates -- that the expansion of jurisdiction will occur if an independent counsel aggressively seeks it. The expansion of jurisdiction by Independent Counsel Kenneth Starr, from the Whitewater investigation to the Monica Lewinsky investigation, provides a simple case in point. Mr. Starr's staff requested that Attorney General Reno expand jurisdiction into the largely unrelated Lewinsky matter. (There

did exist a potential link between the two investigations -- in the form of Clinton friend Vernon Jordan allegedly providing consulting work and job assistance to Webster Hubbell and Monica Lewinsky -- but the attorney general never carefully explored this link to determine how substantial it was.) After conducting a truncated preliminary investigation (in one day), Attorney General Reno approved the expansion, giving great weight to the recommendations of the independent counsel. The three-judge panel was then virtually required by statute to approve this expansion of jurisdiction.

This relatively facile ability of an independent counsel to leapfrog from one subject to the next represents one of the most serious defects in the statute. It defeats the elaborate system of controls built into the special prosecutor law by the 1970's Congress, and creates a separation of powers nightmare. It means that, as a practical matter, the independent counsel can spring from one matter to the next, becoming (in effect) a permanent inquisitor of a President or some other target of choice -- even though this is not what Congress intended when it formulated the statute. It also means that the essential pronouncement of the Supreme Court in *Morrison v. Olson*, that the independent counsel shall have "no ongoing responsibilities that extend beyond the accomplishment of the mission that she was appointed for and authorized by the special division to undertake," becomes a hollow incantation.

The statute should be amended to create a presumption *against* expansion into matters unrelated to the special prosecutor's original charter. First, the statute as currently configured creates the real danger that an independent counsel may operate outside the sphere of political and constitutional accountability, since it allows relatively easy expansion from the prosecutor's narrow jurisdictional charter. Second, the statute as currently configured makes hash of the ability of the attorney general to engage in any sort of meaningful preliminary investigation in determining whether an expansion is appropriate. Third, the existing provisions dealing with expansion of jurisdiction undermine the principal goal of the statute, which is to select the most neutral individual available for any given investigation. An existing independent counsel, however honorable and trustworthy, arrives with the baggage of his or her extant investigation on his or her back. Given the inevitable split of public opinion as to whether a special prosecutor in any case -- particularly one involving the President or a high administration official -- is motivated by political bias, an existing independent counsel is almost never the best choice for a new investigation.

Therefore, section 593(c) should be revised to give the attorney general a full 90-day period in which to complete her preliminary investigation, when the independent counsel seeks to expand jurisdiction. Section 593(c) should also be amended to strike the language that requires the attorney general to "give great weight to any recommendations of the independent counsel" in this regard. In its place, language should be inserted stating that "there exists a presumption *against* expansion of jurisdiction into subjects unrelated to the original grant of jurisdiction to the independent counsel by the special court." If a new subject arises that warrants investigation, a new independent counsel should be appointed (assuming that the usual high hurdles can be met) in order to ensure absolute neutrality.

In making a determination whether expansion of jurisdiction is appropriate, the attorney general should be required to take into account the "degree of relatedness" between the two matters. The

more remote the connection between the new matter and the independent counsel's original charter, the stronger the presumption should be against expanding jurisdiction. The attorney general's determination, in the event she decides not to expand jurisdiction, should be final and non-reviewable. In the event that the attorney general recommends expansion, the special court should be permitted to review this recommendation and determine for itself whether an enlargement of the jurisdictional boundary lines is prudent.

Once the existing presumption is switched in this fashion, facile expansions of jurisdiction will be eliminated, and one of the greatest deficiencies of the statute will be corrected.

B. The Duration of Investigations Should Be Controlled Through Periodic Review.

One recurrent criticism of the statute, after 20 years, is that there is no realistic limitation upon the length of time a particular investigation may take. Some commentators have proposed statutory caps on investigations, in order to deal with this perceived flaw.

Yet the idea of a rigid time-limit on investigations is unsatisfying. If arbitrary time limits are placed on investigations, targets of investigations and their political allies will easily find creative ways to sabotage the work of a special prosecutor by stalling until the deadline ticks to a close. The nature of a criminal investigation is such that its precise duration can never be mapped out in advance. The Teapot Dome Scandal of the 1920s took nearly six years to investigate, from start to finish. Watergate took 2 ½ years, from the time Archibald Cox was appointed until the time the Special Prosecution Force's final report was issued in October of 1975.

Rather than placing artificial time limits upon the duration of an independent counsel's work, the simpler (and more sensible) approach is for Congress to insert teeth into the existing provision that requires the special court to review the status of an independent counsel investigation every two years. Section 596 of the statute already mandates that the special court periodically assess the independent's counsels work and determine if it is "substantially completed," allowing the court to terminate an office once its work has reached substantial completion. By ensuring that periodic reviews actually take place, and by establishing concrete standards by which the court must make its assessment (as discussed in the next section), Congress will strengthen the incentive for the independent counsel to wrap up his or her work expeditiously, and avoid being terminated for over-staying his or her welcome.

In assessing whether an investigation is "substantially completed" under section 595, Congress should require the special court to evaluate the following factors: 1) The amount of work that has been completed by the independent counsel and the amount of remaining work that he or she can reasonably anticipate; 2) The amount of remaining work that relates to the subject matter of his or her original jurisdictional statement, and the amount of remaining work that is peripheral (the more work that is peripheral, the more reason to conclude that the assignment is "substantially complete"); and 3) The amount of remaining work that could be completed by the Justice Department without the danger of conflict or appearance thereof.

The statute should authorize the special court to seek input from the attorney general and the independent counsel, in determining whether the above criteria compel a conclusion that a

special prosecutor's assigned task is near completion. In this way, lingering investigations will be brought to a definitive close, and artificial time limits will become unnecessary.

C. Each Independent Counsel Should Be Required to Work Full-Time.

Another controversy that has reached a crescendo in recent years relates to the question of whether a special prosecutor must work full-time. Although some special prosecutors have not undertaken their positions in a full-time capacity, it is wise to build such a requirement into the statute.

A commitment to work full-time as an independent counsel has many things to recommend it. First, an attorney general is not permitted to engage in private legal practice, during the term of his or her office. There is no reason to permit independent counsels, who stand in the shoes of the attorney general and wield extraordinary power in cases of critical importance, to live by a different set of rules. Second, such a requirement would boost public confidence in the independent counsel's office, something that is desperately needed at this stage of American history. Third, such a requirement would help screen out frivolous cases. Few prominent attorneys would drop their careers and make financial sacrifices to work on marginal cases that were not of sufficient public import. Just as importantly, a full-time requirement for independent counsels would bring investigations to a close much more swiftly. Archibald Cox was paid a salary of $38,000 per year as Watergate Special Prosecutor, and took a leave from his tenured position on the Harvard Law School faculty to accept the post. Leon Jaworski, who succeeded Cox as Watergate Special Prosecutor, likewise left behind his lucrative Texas law firm practice to re-locate to Washington throughout the duration of his service. In each case, the special prosecutor had a powerful incentive to complete the investigation, wrap up his work, and go home.

It is wise and appropriate to give the same incentive to each independent counsel, so that investigations do not linger beyond their useful lifetimes.

D. The Independent Counsel Should Be Distanced From the Impeachment Process.

Section 595(c) of the independent counsel statute mandates that "an independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment." This referral provision, which has been contained in the statute since its adoption in 1978, was added to ensure that the product of an independent counsel's work would be available to Congress in the event that a criminal investigation led to an impeachment inquiry. Yet as recent events have highlighted, the referral provision is troublesome as a policy matter and leads to a host of constitutional and legal nightmares.

First, the referral provision turns the independent counsel into a pre-impeachment deputy for the House of Representatives, causing him (and the executive branch) to perform political functions that the Framers carefully reserved to Congress.

Second, as applied to a sitting President, it is highly questionable whether a President can be criminally prosecuted while in office. The referral provision thus encourages a premature use of the grand jury and the independent counsel's extraordinary prosecutorial power, again in order to facilitate a purely political process.

Third, Section 595(c) forces the independent counsel to wear two incompatible hats: One as a detached criminal prosecutor hired to conduct a neutral criminal investigation on behalf of the executive branch, and the other as a pre-impeachment deputy for the House of Representatives, gathering evidence that may be relevant to Congress's impeachment work. The latter job inevitably clashes with the prosecutor's ability to handle his or her criminal case in a responsible fashion. Good prosecutors stay far away from the political process, in order to avoid destroying their criminal cases. They do so in order to avoid the danger that pretrial publicity may make it impossible to find an impartial jury; in order to avoid shattering the secrecy of grand jury proceedings; in order to ensure that defendants are guaranteed a fair trial and procedural due process; and in order to eliminate any contention that the prosecutor has exhibited bias or conflicts-of-interest with respect to the targets of the investigation. The impeachment referral provision thus interferes with the special prosecutor's foremost duty to act as a responsible prosecutor, and jeopardizes the integrity of his work.

Fourth, Section 595(c) also disrupts the work of the grand jury, which (in effect) is encouraged to accuse public officials of wrong doing without indicting -- something that is generally disfavored in American jurisprudence.

Finally, the impeachment referral provision causes Congress to evade its own constitutional responsibility for initiating impeachment proceedings, and allows the House of Representatives to pass off this duty to an outside entity, thus sidestepping the political accountability that was an essential ingredient of the Framers' impeachment plan.

For all of these reasons, the impeachment referral provision is inconsistent with the proper functioning of the independent counsel's criminal investigation. It is also inconsistent with Congress's independent duty under the Constitution to initiate and conduct its own independent impeachment inquiry, within the distinct political arena.

It is therefore essential that the impeachment referral provision of Section 595(c), which caused so many uncomfortable moments for both Independent Counsel Kenneth Starr and the House of Representatives during the Monica Lewinsky investigation, be eliminated entirely.

E. The Final Reporting Requirement Should Be Sharply Limited.

Section 594(h) of the statute requires that, before the office of independent counsel is terminated, such counsel must "file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought." This section requires (in effect) that every special prosecutor, prior to leaving office, must fully explain the work history of his or her operation, and justify his or her actions.

This is a daunting, costly, and time-consuming task. Most independent counsels will tend to err on the side of over-completeness, preparing vast reports that leave no stone unturned, in order to

justify their work and defend their reputations in politically-charged investigations. Lawrence Walsh's Iran-Contra investigation report, which consisted of three bound volumes comprised of nearly 1500 pages, kept his office working long after the subjects of the investigation had left office.

Not only is the final reporting requirement costly and time-consuming, but it raises serious concerns about basic fairness. Criminal investigations are traditionally shielded from blow-by-blow accounts and detailed public scrutiny. Particularly where no indictment is lodged and no prosecution is commenced, there is a tradition in the American criminal justice system that prosecutors remain circumspect and silent, in order to safeguard the reputation and privacy of those individuals under investigation. The "final report" requirement casts these cautions to the wind, and forces an independent counsel to air the dirty laundry of his targets.

Congress should dramatically shrink the scope of information that must be provided at the conclusion of the independent counsel's work. Since the independent counsel must provide periodic reports to the special court at 6-month intervals, accounting for each expenditure, the court will have ample chance to become familiar with the nature of the work being performed by the independent counsel's office. At the conclusion of the investigation, the statute should require nothing more than a reckoning of expenditures, a review of personnel information, and a concise summary of the work performed by the office. If the special court wishes to obtain further information on particular subjects, the statute should authorize the court to request additional details from the special prosecutor. Yet the presumption should be toward a lean, straight-forward report. Grand jury information and other material generally shielded from public disclosure should be excluded from the principal report. If the court determines that such confidential information is essential to complete its own review, Congress should permit the independent counsel to provide a sealed, supplemental report to the court containing such information. A short and pithy report -- in conjunction with the budget reports periodically supplied to the special court -- will more than suffice to inform the court in most investigations.

This approach will not only save taxpayers enormous costs, but it will allow independent counsels to wrap up quickly and return to their chosen professions.

III. **REFORMS RELATING TO THE DUTIES OF THE SPECIAL COURT.**

One of the great failures of the independent counsel statute in recent years has been that the body that Congress envisioned acting as a moderating and restraining influence on special prosecutors -- the special three-judge panel -- has all but relinquished any meaningful role in the process. In the debates that shaped the original statute, Congress settled upon the judiciary to appoint and monitor this special prosecutor because it believed that the special three-judge panel could act as a wise and moderating influence in politically treacherous cases. The courts appeared to be the safest haven to locate the appointment and oversight power, with respect to the special prosecutor, in order to avoid any possible corruption of the process.

Congress's specific purpose in investing a three-judge panel with the power to appoint and monitor the special prosecutor was to shift this duty away from the Justice Department (where potential conflicts existed), and move it down Constitution Avenue to the special court. After all, Watergate's special prosecutor Archibald Cox had been fired by President Nixon because he was

an appointee of the executive branch, directly accountable to Attorney General Elliot Richardson. The whole point of the new legislation was to fight off potential conflicts and prevent incidents like the "Saturday Night Massacre" from recurring, by moving oversight responsibility to a neutral court.

There is no indication that Congress in the 1970's intended the court to remain invisible. Elliot Richardson, as the Attorney General overseeing the Watergate case, had played a cautious but essential role in interfacing with, and maintaining a check over, special prosecutor Cox. Congress seemed to envision that a similar oversight function would be carried out by the special court under the statute. This was the only guarantee, layered into the statute, that the special prosecutor would not become an unaccountable fourth branch of government. Someone had to mind the store. The "someone" to whom the special prosecutor was meant to be answerable was the three-judge panel, in conjunction with the attorney general whose direct control was filtered through the special court. Unfortunately, the court has managed to shrink its own role in the process to almost nothing. After appointing an independent counsel and establishing his or her jurisdiction, the court has done little more than rubber-stamp those special prosecutors' actions.

It is true that if a special court became unduly immersed in the workings of the special prosecutor, this would create separation of powers problems. That point was made by Chief Justice Rehnquist in *Morrison v. Olson*, when the Chief Justice warned against allowing the special court to "supervise" the independent counsel in the exercise of his or her investigative or prosecutorial powers. Yet Chief Justice Rehnquist also acknowledged that a number of functions of the special court legitimately -- and necessarily -- interfaced with the prosecutor's work. A certain amount of interplay between various branches of government is not only common, but an essential part of the American scheme of government. (As James Madison discussed in *Federalist* No. 47.)

Unfortunately, the wishy-washy language of the statute has contributed to the court's abdication of responsibility under the independent counsel law. The statute fails to spell out even the most basic duties of the three-judge panel. It also fails to explain how the court is supposed to carry out those duties that are listed in the statute. In reforming the independent counsel law, Congress must face and resolve this fundamental question: Is the special court the monitor of the special prosecutor, or is no branch of government the monitor? Does the court have a role after the independent counsel is appointed, or none at all? If the latter, the statute must be junked as patently unconstitutional, since no branch of government is minding the store. If the former is true (as Congress in the 1970's seems to have intended), Congress must carefully spell out the courts' powers and responsibilities in painstaking detail, or the judiciary will continue to bury its head in the sand.

It is not necessary to broaden the powers of the special court in order to make it operate properly. Rather, its duties must be spelled out more clearly so that it is empowered to carry out the functions that Congress has already given it, and that the Supreme Court has already affirmed. At least three adjustments are essential to make the special court more effective.

A) <u>Authorize the Special Court to Consult With the Attorney General in Selecting an Independent Counsel</u>.

Some observers have questioned the secretive nature of the appointive process, and the political overtones of that process. Some would change the system to allow the President to nominate five or ten potential independent counsels, to be confirmed by the Senate. From this list the special court would then be required to select its appointee.

But such efforts to squeeze every drop of political influence from the selection process are impractical and yield undesirable results. The prospect of allowing the President himself to appoint an independent counsel defeats the whole purpose of the statute. It heightens the public perception that the decks are being stacked from the start. President Ford submitted such a proposal in 1976, and Congress definitively rejected it in the form of S. 495. Moreover, few lawyers of the caliber sought for high-profile special prosecutor investigations will commit to being considered for such a position until they know the precise circumstances, the timing, and all of the nuances of the case. The better approach is to allow the special judicial panel to choose the independent counsel as it sees fit, but to amend Section 593(b) to specifically authorize the court to consult with the attorney general in making its selection.

As drafted, Section 593(b) sets no real ground rules for the selection process. The special panel simply gathers recommendations from a wide variety of sources and makes its decision. Such an informal process is perhaps inevitable. However, the statute should build in an ounce of prevention by specifically authorizing the three-judge panel to obtain input from the attorney general before making its selection. First, this will help to ensure that an individual perceived to be biased against the President or other target will not become the court's appointee. Since the purpose of the statute is to select an independent counsel who is *perceived* to be independent by all concerned, it can only enhance that goal if the attorney general is permitted to raise red flags with respect to potential special prosecutors who may be viewed as politically tainted. Congress in the 1970's built the independent counsel statute so that the special court and the attorney general would be in a position to cautiously interact. That was a healthy thing. The attorney general is meant to provide input at appropriate stages under the statute. The critical appointment decision is one of those stages. Ultimately, the special court must (and will) decide whom to appoint, unconstrained by political shackles. Yet this decision should be informed by the same relevant facts that the attorney general would have at her disposal in seeking to select an unbiased appointee.

Congress should make explicit the special court's authority to consult with the attorney general in making appointments, in order to eliminate any uncertainly on this score.

B) <u>The Court Should Be Given Express Power to Carry Out its Duties</u>.

A principal reason that the special court has shrunk from accepting any role in keeping the independent counsel law on course is that the statute itself gives scant direction as to how the court is to carry out its duties. Fearful of stepping over the boundary line by interfering with the prosecutorial function, the court has instead elected to remain passive to a point of paralysis. If the court is going to perform its statutory duties in a responsible fashion, it is essential that the three-judge panel have a means by which it can gather information, hold limited (if necessary, closed-door) proceedings, and otherwise equip itself to carry out the essential role that Congress fashioned for it.

With respect to each specifically enumerated power delegated to the court, from the beginning of an independent counsel investigation to the end, the statute should make explicit what is implicit in Congress's scheme: that the court shall possess the power to gather information, review materials *in camera*, request written input, convene limited proceedings (where necessary), and otherwise exercise those auxiliary powers that courts routinely rely upon to do their jobs properly. Rather than violate separation of powers, this limited involvement would ensure that the court possessed the tools to do its job competently, and thus protect the institutional interests of all three branches of government.

Second, it is imperative that some sort of comprehensive rules (covering filing practices, service of process, hearings, etc. in the special court) be implemented if all parties are to be treated uniformly and fairly in proceedings before that tribunal. At present, much of the interaction among independent counsel, the special court and the attorney general seems to be based upon *ad hoc*, *ex parte* contacts. To correct this flaw in the statute, Congress should authorize the Supreme Court, pursuant to its rule-making power, to establish rules and standards for the special court such that the ground rules for all litigants are clear and even-handed.

If the special court is to have some role to play (however limited) in keeping the independent counsel's investigation on track, the rules governing this secretive panel must be spelled out on paper -- like the rules governing any other judicial body.

C. The Court Should Be Granted the Power to Replace an Independent Counsel Under Certain Circumstances.

The statute never addresses whether the special court is empowered to replace one independent counsel with another, subsequent to appointment. It is thus wise for Congress to insert a provision into Section 596, specifically authorizing the court to relieve an independent counsel and substitute a different individual in his or her place, in the unusual event that the court concludes that the person originally appointed for the task is no longer capable of remaining (or appearing to remain) objective and neutral.

The legislative history makes clear that the hallmark of the independent counsel law was to foster public trust in the American system of government, by replacing the attorney general with a dispassionate outsider in certain high-profile cases. To the extent that this schema is frustrated by the appointment of a prosecutor who turns out to be biased in fact or in perception, the statute becomes a greater burden on the system than a benefit.

In every politically-charged investigation, there will inevitably be impassioned and recurrent allegations that the independent counsel is "out to get the President" or other target. This alone should not justify a "substitution." At the same time, in extreme cases the court should retain the power to assess, after receiving input from the attorney general, whether bias or the appearance thereof have crippled the particular independent counsel and rendered him or her incapable of continuing in the position. The beauty of the independent counsel law is that it enables the judiciary to select from a pool of thousands of distinguished lawyers, from across the expanse of the United States, in order to choose the very best person -- a 100 percent neutral individual -- suited for the sensitive contours of the particular case. Section 596 of the statute should be amended to facilitate that goal, by allowing the court to reassess and adjust its selection along the

way, in the unusual event that neutrality deteriorates, or the appearance of perceived bias undermines the public trust in the process.

IV. **CONCLUSION**.

There is no magical solution to resolving the defects within the folds of the independent counsel statute that have become so glaring in recent years. It is perhaps easy and tempting to scrap the statute. Yet the American society has become accustomed to, and reliant upon, special prosecutors. They will not disappear regardless of which course Congress chooses. If the independent counsel statute is simply allowed to expire in 1999, the Justice Department will necessarily revert to more *ad hoc* appointments of special prosecutors, and the public will demand more congressional appointments of special investigators, whenever allegations of serious misconduct in the executive branch arise.

In the wake of the Lewinsky affair, public trust in the American system of government has been seriously damaged, no less than it was after Watergate. Restoring that trust will not be accomplished by an abrupt return to the pre-Watergate system that caused the breach of public faith in the first instance.

It is far more prudent to maintain some statutory mechanism, with an established set of ground rules, than return to a hit-or-miss approach that depends upon the vagaries of politics to guard against conflicts within the executive branch. There are (admittedly) different ways to construct such a mechanism. Establishing a statutory scheme by which independent counsels are appointed by the President with the advice and consent of the Senate is one approach -- but this is subject to the obvious criticism that the President will "stack the decks" from the start. Another approach is to vest the power to investigate high-level executive officials in the executive branch itself, and build a "Chinese wall" around that operation. However, such an arrangement leads full-circle to the Watergate dilemma -- the President can terminate the special prosecutor at will, creating the prospect of another "Saturday Night Massacre" which led to the adoption of the statute in the first place. A third option is to create a *permanent* special prosecutor's office, within the Justice Department or within a special agency. But this would institutionalize the position of independent counsel, and create a breed of professional bureaucrat-prosecutors whose sole mission in life (and justification for existence) was to sniff out scandal and get an occasional politician convicted. This would trivialize the statute and exacerbate its potential for fomenting political mischief. The present statutory model, which combines limited control by the Justice Department with ministerial oversight by a special judicial panel, may not be perfect. But it is better than any other system that has yet been invented.

The framework is sound. It has been hammered out through 20 years of hard work in Congress. It is an unfortunate waste of legislative ingenuity to throw away the fruits of that labor, simply because the statute has proven itself flawed. The more productive approach is to radically overhaul the statute so that it accomplishes precisely what Congress intends it to accomplish.

The major reforms outlined above would achieve that result.

The independent counsel statute should be reserved for those extreme crises in American government -- such as Watergate, Teapot Dome, and a handful of others -- that require a failsafe

mechanism to deal with percolating crises in government. The statute would be constrained in this fashion by re-tooling the triggering mechanism; sharply narrowing the category of individuals and offenses covered; reining in the special prosecutor and controlling his or her jurisdiction; restoring more power to the Justice Department; and spelling out the special courts' duties so that it could intelligently monitor cases. The statute would thus become a back-up mechanism, to deal with the infrequent case in which a) serious allegations of criminal wrongdoing at the top of the executive branch surfaced; b) those charges were well-developed; and c) a presumption was met that the executive branch would not be capable of conducting a fair and neutral investigation of itself. Independent counsels, under the plan outlined above, would become a rare species, rather than a common group of dinner guests in Washington.

* * *

I agree with those witnesses who have suggested, in testifying before this Committee, that the statute should be permitted to lapse in 1999. It is far better for this statute to expire temporarily, than for Congress to rush to meet deadlines after a draining impeachment proceeding, and thus create problems of the past anew. Without dramatic changes in the statute of the sort outlined above, few individuals worth attracting to public office -- Presidents, Vice Presidents, cabinet officers, or hundreds of other public servants -- will be willing to endure public service in the next century. That should give us great pause.

At the same time, without some device in place to deal with extreme crises that threaten the trust of the American public in their system of government, all of the well-intentioned explanations in the world will not convince the American citizenry that the process is operating fairly, when a serious scandal next strikes the executive branch. That prospect should also cause members of this Committee concern.

Burying the statute will not eliminate the need for it. It is better to build on experience, and become toughened by crises weathered in the past, than to tear down the safeguards constructed by American history and presume that they will not be needed in the future.

It is easy enough to let the statute expire. The greater challenge is to determine, through hard work, how to make the independent counsel law accomplish the laudable purposes for which Congress originally constructed it. Through the wisdom reposed in this representative body, it is possible to accomplish that end for the good of the American democratic experiment.

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Thank you for the privilege of testifying before this Committee, on a matter of such great national importance.

BIOGRAPHY - PROFESSOR KEN GORMLEY

Ken Gormley is a Professor at Duquesne University School of Law in Pittsburgh, specializing in Constitutional subjects. He joined the faculty in 1994, after teaching at the University of Pittsburgh School of Law and engaging in private practice. Professor Gormley earned his B.A.

from the University of Pittsburgh in 1977, *summa cum laude*, and was elected to Phi Beta Kappa. He received his J.D. from Harvard Law School in 1980, serving as a teaching assistant to Professor Archibald Cox in Constitutional Law. Following graduation from law school, Professor Gormley was hired as Senior Law Clerk to Honorable Donald E. Ziegler in the U.S. District Court for the Western District of Pennsylvania. In 1982, Gormley became the Director and Founder of the Mellon Writing Program at the University of Pittsburgh School of Law, a then-pilot program primarily designed to provide support for minority students and women returning to academia. From 1984 to 1985, Professor Gormley remained at Pitt Law School as a Visiting Professor, teaching Property and establishing a seminar in State Constitutional Law which gained national interest. In 1985, Gormley entered private legal practice at the firm of Mansmann Cindrich & Titus (now Titus & McConomy), specializing in litigation and appellate work. He continued to teach State Constitutional Law as an adjunct professor, and to write scholarly articles, while in legal practice. Gormley also served as a Special Clerk to Justice Ralph J. Cappy of the Pennsylvania Supreme Court (1990-91), and served as Executive Director of the Pennsylvania Reapportionment Commission (1991-92). He additionally a year teaching Constitutional Law and Civil Rights in the Department of Political Science at the University of Pittsburgh (1990-91), and another year visiting at the School of Law (1993-94). In 1994, Professor Gormley joined the faculty at Duquesne University School of Law as associate professor, and was promoted to full professor in 1997. He teaches courses in Constitutional Law, Civil Rights Litigation, State Constitutional Law, First Amendment, and Legal Writing.

In 1997, Gormley published "Archibald Cox: Conscience of a Nation" (Perseus Books 1997), the authorized biography of one of the leading lawyers and public servants of the 20th century. The *Cox* book earned Gormley glowing reviews in publications ranging from the *New York Times, American Bar Association Journal, Boston Globe*, and nearly one hundred newspapers and magazines across the country. The *Cox* biography was awarded the 1999 Bruce K. Gould Book Award for an outstanding publication relating to the law, and was recently released in paperback.

Based upon Gormley's work dealing with the independent counsel law, he became a national commentator during the Whitewater investigation headed by independent counsel Kenneth Starr, which culminated in the Monica Lewinsky scandal leading to the impeachment trial of President William Jefferson Clinton. Professor Gormley has appeared on Court-TV, ABC's *Nightline*, PBS's *Jim Lehrer News Hour*, as well as radio shows on CBS, NBC, ABC, National Radio Network of Canada, and other networks.

Gormley has also written features and opinion pieces for newspapers including the *New York Times, Los Angeles Times, Boston Globe, Newsday, Chicago Tribune, San Diego Union-Tribune, Baltimore Sun, Albuquerque Journal, Pittsburgh Post-Gazette, Pittsburgh Press* and *Pittsburgh Tribune-Review*.

In conjunction with his writing, Professor Gormley has organized numerous programs for local and national audiences, including "Charles Hamilton Houston, Thurgood Marshall, and the Civil Rights Movement" (1992); "The Saturday Night Massacre: A 20-Year Retrospect" (1993); "Learned Hand: The Myth, the Man and the Judge" (1995); "Robert F. Kennedy: Attorney General" (1997) (broadcast on C-SPAN television); and "Archibald Cox: A Tribute to a Life of Public Service" (1997) (broadcast on C-SPAN television).

Professor Gormley has lectured at various venues on the subject of Archibald Cox, the independent counsel law, and other topics. These include lectures and appearance at the Chautauqua Institution, John F. Kennedy Library (Boston), Stanford Law School, Harvard Law School, Georgetown Law School, Boston University School of Law, Chicago Bar Association, University of Nebraska School of Law, University of New Mexico School of Law, California Western College of Law (San Diego), Widener Law School (Harrisburg, PA), University of Akron Law Center, Westminster College (PA), Mercer Law School (Macon, GA), and other locations.

Professor Gormley is admitted to the bar of the Commonwealth of Pennsylvania, the U.S. District Court for the Western District of Pennsylvania, the U.S. Court of Appeals for the Third Circuit, and the Supreme Court of the United States.

Gormley serves on the Advisory Board for the Project on State Constitutional Law, State Justice Institute/National Association of Attorneys General. He is a member of the Class Committee, Harvard Law School Class of '80, and has received research grants from the Harry S. Truman Library and the John F. Kennedy Library Foundation.

In 1998, Gormley was elected Mayor of Forest Hills, Pennsylvania. He lives there with his wife Laura, and his three children Carolyn, Luke and Rebecca.