

**Senator Joseph Lieberman**

**Independent Counsel Law Reauthorization**

Hearing Statement

March 24, 1999

Thank you Mr. Chairman. I appreciate the fine work you and your staff have been doing in putting together such an informative series of hearings, and this hearing is no exception. We are joined this morning by an illustrious group of witnesses. Their knowledge of the Independent Counsel statute, and their personal experiences with it, make their testimony very valuable, and I am looking forward to hearing from them.

I wish to recognize first of all Lawrence Walsh, whose impressive career of public service dates back to 1935. His accomplishments are so extensive and varied I can only touch on the highlights. Mr. Walsh was born in Nova Scotia, the grandson of a sea captain and the son of a family doctor. Raised in Queens, Mr. Walsh became an attorney during the depths of the Great Depression. He spent six years working as a prosecutor in New York, four of them assisting in District Attorney Thomas Dewey's historic crusade against the New York underworld and the Democratic political machine. He helped to prosecute the corrupt chief judge of the United States Court of Appeals for the Second Circuit, as well as leaders of the German-American Bund, the pro-Nazi organization that flourished in the period before the Second World War.

After working in private practice and in Governor Dewey's administration, Mr. Walsh was appointed by President Eisenhower to be a United States District Judge in 1954, and in 1958 he left the bench to serve as Deputy Attorney General. At the end of the Eisenhower administration Walsh returned to the private sector, although he continued to accept various public responsibilities and was the President of the American Bar Association in 1975 and 1976. Mr. Walsh remained a prominent Republican throughout, although by the mid-1980's he had moved to his wife's hometown, Oklahoma City, for what should have been a well deserved, peaceful retirement from the rigors of public service.

Instead, Mr. Walsh accepted the call once again when he was appointed in December of 1986 to serve as Independent Counsel in the Iran-Contra investigation. The investigation that followed is well documented, best of all in Mr. Walsh's own book. It has its supporters, and it has its detractors. The criticisms that Mr. Walsh continued his investigation for too long, that the total costs were too high, that certain of his actions were injudicious, are well known. But I personally do not doubt for a second that Mr. Walsh was motivated at all times by what he perceived to be in the public interest.

Mr. Walsh, a Republican for fifty years and a supporter of President Reagan's Central American policies at the time he was appointed, followed the trails where they led him. And while it's true that his investigation was the costliest of all the Independent Counsel investigations thus far, I believe that the misconduct Mr. Walsh was investigating was also the most serious. It involved a

coordinated covert operation to send arms to Iran, and to use the proceeds to purchase arms for the Nicaraguan Contras in clear violation of the Boland Amendment. Numerous government officials plead guilty or were convicted, and the investigation would have been far more successful in ferreting out the truth about who was ultimately responsible had Mr. Walsh not been hampered by agencies' refusal to release classified information, and by possibly premature grants of immunity by Congress. I cannot think of a witness more qualified to testify about the Independent Counsel statute.

Sam Dash is another witness whose long years of support of the Independent Counsel statute rival his profound accomplishments in public service. Many of us know him as Chief Counsel to the Watergate Committee, where he was instrumental in formulating the first proposal for an Independent Counsel statute. The recommendations contained in the Watergate Committee's final report describe a statute remarkably similar to the one finally enacted five years later.

But Mr. Dash has also served the nation in many other capacities. A World War II veteran, Mr. Dash has served as District Attorney of Philadelphia, has been a committed supporter of reforms in our criminal justice system as well as an ardent advocate for international human rights abroad, and has been a law professor here at Georgetown for many years. More recently Mr. Dash encountered controversy of a type he may not have wished for when he agreed to serve as Ethics Counsel for Kenneth Starr's investigation. His experiences with the Independent Counsel statute, therefore, are bookends to twenty five years of legislative history.

Our other two witnesses, Professors Julie O'Sullivan and Ken Gormley, have some catching up to do, but they are well on their way to distinguishing themselves with their thoughtful writings on the Independent Counsel statute.

All of today's witnesses call for changes to the Independent Counsel statute, some of them fairly radical. Professor O'Sullivan, alone among the three, would prefer that it lapse altogether, but she still offers helpful suggestions should the statute be retained in some form. A common theme that our witnesses can speak to today is the politicization of criminal investigations which were supposed to be unimpeded searches for the truth. This problem is not unique to Independent Counsel investigations, but does the damage caused by political attacks from one side or the other defeat the very purposes of the statute?

Reauthorization of the statute is so controversial right now largely because Independent Counsel have become wrapped up in highly politicized investigations, most recently, one that threatened, for the first time, to bring down a sitting President. The wounds from these battles have not yet healed. With time, they will. In the meantime, I hope we keep our minds, and our hearts, open to the possibility that participants in these struggles were doing their best to serve the interests of justice.