PREPARED STATEMENT OF CHAIRMAN FRED THOMPSON
INDEPENDENT COUNSEL REAUTHORIZATION HEARING
FEBRUARY 24, 1999

The Committee on Governmental Affairs today begins a series of hearings into reauthorization of the Independent Counsel Act. That statute is set to sunset on June 30. The Committee's hearings will undertake a comprehensive examination of the statute, which has now existed for more than 20 years. Today, our witnesses will describe the purposes that the Independent Counsel Act was designed to achieve and how well it has accomplished those purposes.

The idea for the Independent Counsel Act can be traced back to the final report of the Senate Watergate Committee, although that report recommended the creation of a permanent office, rather than an incident by incident appointed individual. Former Senator Howard Baker, who of course was the Vice Chairman of that committee, is here, as is former Attorney General Griffin Bell, the first attorney general who implemented the statute. Also with us today is a panel of former independent counsel to offer their views on the statute and to make recommendations.

In future sessions, the Committee will hear -- for the first time in reauthorization hearings of the act -- from former targets of independent counsel and their lawyers. The Committee will not only hear proposals to amend the statute, but it will consider testimony on alternatives to the statute from individuals who have prosecuted politically sensitive cases outside the framework of the Independent Counsel Act. We are working to schedule testimony by former Independent Counsel Lawrence Walsh and current Independent Counsel Kenneth Starr. The appearance of these two witnesses will give Committee members the opportunity to propose first hand their questions concerning these two investigations.

I have long had concerns about the operation of this law. I am not of the view expressed by some that the Independent Counsel Act was a smashing success until 1994, at which time unprecedented and unforeseeable problems arose. Many of the criticisms now raised about the statute are not new. Some of the criticisms, such as cost, were the subject of prior amendments to the statute that were made in earlier reauthorizations. Yet, despite those amendments, the same criticisms remain. The tinkering approach of earlier reauthorizations will not pass muster this time. Of course, the difference between tinkering and radical change is in the eye of the beholder. I have not made any final decisions whether to favor radical change to the existing statute, go back to the prior system that worked in Watergate, or consider a new alternative. All of these positions will be represented in these hearings. I do think that the burden of persuasion rests with those who desire to retain the statute, even with significant changes.

Many people have complained that the statute has a hair trigger for requiring the appointment of an independent counsel. There may be validity to that view. But at the same time, the total discretion placed in the Attorney General means that no remedy can overturn a determined refusal to seek an independent counsel even when such an appointment is clearly required. The President's involvement in illegal campaign fundraising was in part what convinced Congress of the need to enact this law. Yet, when that situation recently arose, the Attorney General refused to seek that appointment, adopting an interpretation both of the election laws and the Independent Counsel Act that none of her predecessors had ever taken. As a result, the statute was turned

from a sword to make sure high-level wrongdoing is addressed to a shield from the prosecution of wrongdoing.

While this is a subject that can raise contentious issues, I appreciate the cooperation of the ranking member, Sen. Lieberman. We have worked in a bipartisan way to set up these hearings, and he and I are equally committed to addressing reauthorization in a serious and civil way.