trying to do these many months. They have worked hard to listen to the concerns of the Administration, other Senators, religious organizations of every denomination, the business community, and other interested parties. They have tried to develop a bill that will help the United States protect those in danger of persecution for their faith, while taking into account the broad and deep requirements of U.S. foreign policy interests. I think they have succeeded.

Evidence of their success is in the broad and diverse coalition of religious organizations and human rights groups who have worked tirelessly to support the bill. Further evidence of this success, I believe, will be evident by the overwhelming support I expect the Senate will demonstrate when it votes shortly. And perhaps the most impressive evidence of their success is that earlier today, National Security Adviser Sandy Berger informed the Minority Leader that the Administration now supports the bill as drafted. After so many months, we know that the President will sign this bill, and it will become law.

I yield the floor.

Mr. NICKLES. Mr. President, I know the Senator from Connecticut will be here shortly. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Senator from Indiana.

Mr. COATS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COATS. Mr. President, I know our colleague, Senator LIEBERMAN, is on his way over to speak on this bill. I want to take this opportunity to say how much his presence and his involvement on this issue was necessary to our forging a bipartisan consensus on this.

I think it is important that we speak with one voice as a nation on an issue as critical as religious persecution. It was the work of Senator LIEBERMAN, primarily on the other side of the aisle, that allowed us to address some of the concerns of some of our colleagues—many of them legitimate concerns—and to work through the process, convince his colleagues that what we were attempting to do was done in a way that addressed their concerns. Really, without his help we could not have forged this bipartisan consensus. So while he is not here for me to praise him personally, I just want to let the Record show that the combination of Republicans and Democrats, liberals and conservatives, and everybody in between, resulted in a consensus bill that I think sends a very, very important message and, really, a beacon of hope and light.

I am hoping the vote tomorrow will be unanimous, and I think it may be. A lot of that credit goes to Senator LIEBERMAN and also, as I said earlier, a lot of that credit goes to the bill's chief sponsor here in the Senate, Senator NICKLES, who patiently worked through trials and tribulations, weeping and wailing and gnashing of teeth, in order to pull this together and get everybody on board. That appears to be what we have, and we are looking forward to a solid vote tomorrow. Again, my compliments to all of those who played such an important role in that.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague from Indiana for his compliments. I want to reiterate my statement that Senator COATS was there from the beginning, and he was there at almost every meeting saying, ''Let's get this done,'' and, ''Let's forge the consensus,'' ''Let's make the compromise,'' and he helped make it happen.

He is also very correct in complimenting Senator LIEBERMAN for making it happen. I mentioned that earlier. Senator LIEBERMAN has been with us on this bill for a long time. He has worked with us. He has helped us craft the bill and helped make compromises to make sure it is enacted.

I also thank our colleague from California, Senator FEINSTEIN, whom we met with last night at length to be sure, again, that this bill would be acceptable and we could get it through. We did. We made a change. We changed the waiver provision from ''national security'' to ''important national interests,'' which, again, is something the administration wanted.

I think it is still compatible with our goals and objectives of passing a good bill that will help move countries, that have been persecuting people because of their religious beliefs, away from that behavior.

I thank my colleague from California for her work, and also the Senator from Delaware, Senator BIDEN, who worked with us, as well, in negotiating with us, and helped us craft a package that I am confident we will pass tomorrow with an overwhelming vote.

I am confident the House, likewise, will pass the bill, as we will pass it in the Senate, and this bill will be on the President's desk and will become law. As a result, I think it will save lives and it will help alleviate persecution of individuals because they are practicing their faith.

Again, I thank all of our colleagues on both sides of the aisle for making this happen.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, as I indicated before to the majority leader, I have about a 30-minute speech for morning business. He indicated that I could do this at the end of the proceedings tonight. But since the floor is now not occupied—I understand Senator LIEBERMAN may be on his way—I thought I would proceed now, and it is my intention to do so. If Senator LIEBERMAN comes, then we will try to make whatever accommodation we can.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDEPENDENT COUNSEL LAW AND KENNETH STARR'S INVESTIGATION

Mr. LEVIN. Mr. President, as one who three times in the last 15 years helped to reauthorize the independent counsel law, I have been giving a great deal of thought to the way in which the independent counsel statute has functioned in Kenneth Starr's investigation of President Clinton.

The important purpose behind the statute was to have an objective person investigate credible allegations of violations of criminal law against top Administration officials in order to give confidence to the public that the Attorney General, an appointee of the President, was not put in the position of investigating those allegations.

But what if the person selected to investigate those allegations by the special court, the three-judge court that appoints independent counsels, violates the restrictions in the very act creating him? What could be done to rein in such an independent counsel?

Some will dismiss these questions and more specific ones related to Mr. Starr's investigation of the President as defending the President's actions, actions which were irresponsible and immoral, and which by the President's own acknowledgment, hurt those closest to him and which damaged the body politic of the nation. But dismissing such questions would be wrong, because the actions of the independent counsel in this case, and the implications his actions have on the future of the independent counsel law and, indeed, upon the rule of law, demand our attention as well.

The authors of the law in 1978 attempted to put limits on the independent counsel in the law itself and provided, for instance, that the independent counsel must follow the policies of the Justice Department and that the Attorney General could fire an independent counsel for cause.

The Supreme Court in Morrison v. Olson upheld the constitutionality of the independent counsel law in large part because of those provisions, stating that:

> . . .the Act does give the Attorney General several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel. Most importantly, the Attorney General retains the power to remove the counsel for ''good cause,'' a power that we have already concluded provides the Executive with substantial ability to ensure that the laws are

''faithfully executed'' by an independent counsel. . . . In addition . . . the Act requires that the counsel abide by Justice Department policy unless it is not ''possible'' to do so.

During each of the reauthorizations of the law, in 1983, 1987, and 1994, Congress was concerned about the potential for an open-ended, unlimited investigation by an independent counsel, and we adopted various restrictions in an effort to prevent that. We added, for example, a number of budgetary restrictions, reporting requirements, and a biannual GAO audit. And, we gave the Special Court the authority to terminate an independent counsel if it found the independent counsel's work to be ''substantially completed.''

Those of us involved in those reauthorizations worked in a bipartisan manner to put additional checks and limits on these investigations. We did so in the hope that we could preserve the core principle of the law—that someone outside of the Department of Justice could investigate credible allegations of criminal violations by high level Executive Branch officials.

Our goal has always been to have independent counsels be like ordinary prosecutors, treating high-level government officials no better and no worse than a U.S. Attorney would treat a private citizen. The specific questions that need to be addressed are whether Mr. Starr has met that standard or whether he has violated important requirements of the independent counsel law, whether he has ignored his responsibility not to abuse the grand jury process and whether he has carried out the duty of all prosecutors as established by the Supreme Court not just to prosecute but to prosecute fairly.

ROLE OF PROSECUTOR

A prosecutor's responsibility is unique in our criminal justice system. As articulated by Justice Sutherland in the 1935 Supreme Court case of Berger v. the United States, a prosecutor's responsibility is not to do whatever it takes to get a conviction, but to ''do justice.'' Justice Sutherland wrote:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. . .He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.

THE STARR REPORT

Let me address first Mr. Starr's decision to include in his report graphic details of the sexual encounters between the President and Ms. Lewinsky. Mr. Starr argues that he had to be so graphic in order to rebut the President's contention that the President didn't have ''sexual relations'' with Ms. Lewinsky as defined in the Paula Jones case. But that claim is a pretext, not a reason. There is no justification for Mr. Starr's inclusion of each and every detail of these sexual encounters in the report. He could have easily referred the readers to pages in the record to support his assertions. I've never read a document by a prosecutor that is so needlessly salacious.

Mr. Starr's report also violated the fairness expected by the American people by presenting information on possible impeachable offenses in a biased and prejudicial manner. Under the Constitution, the House has sole responsibility to decide whether or not the President should be impeached. The independent counsel does not have a statutory responsibility to argue for impeachment. His responsibility is to forward ''information'' to the Congress that ''may constitute grounds for an impeachment.'' The independent counsel law says:

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 (the independent counsel law) that may constitute grounds for an impeachment.

That's it. That's the extent of the independent counsel's responsibility. The law doesn't give an independent counsel the responsibility to argue for impeachment. But the report in effect did that. The independent counsel law doesn't give the independent counsel the responsibility to draw conclusions from the information he presents to Congress. But the report did that as well. For example, in the introduction to the report, Mr. Starr states unequivocally that ''(t)he information reveals that President Clinton'', and then it lists seven conclusions such as: ''lied under oath. . .''; ''attempted to obstruct justice. . .''; ''lied to potential grand jury witnesses.''

In other parts of the report, Mr. Starr makes conclusory statements such as these: ''the President's testimony strains credulity''; ''the President's denials—semantic and factual—do not withstand scrutiny''; ''the President's claim . . .is belied by the fact . . .''; ''the President could not have believed that he was 'telling the truth. . .;'" ''the President lied under oath three times.''

The report not only is full of conclusions and arguments, it is also biased in its presentation because it omits exculpatory evidence. For instance, the report omits Ms. Lewinsky's clear statement before the grand jury that ''no one ever asked [her] to lie'' and she ''was never promised a job'' for [her] silence. (Appendices, Part 1, page 1161.) The report doesn't mention that Ms. Lewinsky testified that when she asked President Clinton whether she should get rid of his gifts to her in light of the Jones subpoena, his response was, ''I don't know, '' and that she left his office without ''any notion'' of what she should do with the gifts. (Appendices, Part 1, page 1122.) The report omits Ms. Lewinsky's statement that when she asked the President if he wanted to see her affidavit in the Paula Jones case before she filed it, he said he didn't want to see it. (Appendices, Part 1, page 1558)

GRAND JURY REPORT IN WATERGATE

Contrast the Starr report with the grand jury report in the Watergate case in 1974 to the House Judiciary Committee which was then investigating the possible impeachment of Richard Nixon. Judge Sirica was asked to rule on whether the grand jury's evidence in the Watergate matter could be forwarded to the House of Representatives since it was engaged in impeachment proceedings. Judge Sirica approved the transmittal of the grand jury report in the Watergate matter, because he determined that:

It draws no accusatory conclusions. . . It contains no recommendations, advice or statements that infringe on the prerogatives of other branches of government. . ..It renders no moral or social judgments. The Report is a simple and straightforward compilation of information gathered by the Grand Jury, and no more. . . The Grand Jury has obviously taken care to assure that its Report contains no objectionable features, and has throughout acted in the interests of fairness. The Grand Jury having thus respected its own limitations and the rights of others, the Court ought to respect the Jury's exercise of its prerogatives. (In re Report and Recommendation of June 5, 1972, Grand Jury Concerning Transmission of Evidence to the House of Representatives, U.S. District Court, District of Columbia, March 18, 1974.)

What a far cry the Watergate grand jury report was from Mr. Starr's. The Starr Report violates almost every one of the standards laid out by Judge Sirica in the Watergate case.

Even prior to the report Mr. Starr acted in other ways inconsistent with the independent counsel law and the rules governing the grand jury.

VIOLATIONS OF THE INDEPENDENT COUNSEL LAW

No person is above the law. That principle is the touchstone of our system of government. And the rule of law holds true for both the prosecutor and the prosecuted. Kenneth Starr has placed himself above the law in a number of ways even before he sent his report to Congress.

EXCEEDING LIMITED JURISDICTION

The Supreme Court was clear in 1988 when it reviewed the constitutionality of the independent counsel law that the specific and narrow jurisdiction granted to each independent counsel by the appointing court is key to the law's constitutionality. The Supreme Court in Morrison v. Olson held that, ''the independent counsel is an inferior officer under the Appointments Clause, with limited jurisdiction and tenure and lacking policymaking or significant administrative authority.'' ''Limited jurisdiction.'' ''Lacking policymaking authority.'' Did Kenneth Starr respect this limitation in the law that created his office? I believe not.

Again, the most fundamental limit in the law is that an independent counsel can investigate only that which is within the scope of jurisdiction granted by the court that appoints him.

Mr. Starr was appointed to office in August 1994 to investigate Whitewater.

Three months earlier, in May of 1994, Paula Jones had filed her civil law suit against the President accusing him of sexual harassment. Mr. Starr's grant of authority was completely unrelated to the Paula Jones case and made no reference to it.

But in April of 1997, according to a June 25, 1997, article by Bob Woodward and Susan Schmidt in the Washington Post, FBI agents and prosecutors working for independent counsel Starr questioned Arkansas state troopers about their knowledge of any extramarital relationships Mr. Clinton may have had while governor and questioned a ''number of women whose names have been mentioned in connection with President Clinton in the past.'' The two troopers who served on the governor's personal security detail, Roger Perry and Ronald Anderson, are quoted in the article as follows:

''In the past, I thought they were trying to get to the bottom of Whitewater,'' Perry said in an interview with The Washington Post. ''This last time, I was left with the impression that they wanted to show he was a womanizer. . ..All they wanted to talk about was women.'' He said he was interviewed in April (1997) for more than 1½ hours by an attorney in Starr's office and an FBI agent.

Perry, a 21-year veteran of the Arkansas state force, said he was asked about the most intimate details of Clinton's life. ''They asked me if I had ever seen Bill Clinton perform a sexual act,'' Perry said. ''The answer is no.'''

. . .. . .''They asked me about Paula Jones, all kinds of questions about Paula Jones, whether I saw Clinton and Paula together and how many times,'' Perry said.

. . ..Anderson said he refused to answer the questions about personal relationships Clinton may have had with women. ''I said, 'If he's done something illegal, I will tell you. But I'm not going to answer a question about women that he knew because I just don't feel like it's anybody's business. . .'''

What justification did Mr. Starr provide to support these inquiries in April of 1997? The Washington Post said deputy Whitewater counsel John Bates defended Mr. Starr's action by saying that the purpose, as restated by the Post, ''is to ensure that a full and thorough investigation is conducted that leaves no avenue unexplored.''

Mr. Starr's appointment was completely unrelated to the Paula Jones case. Yet here he was inquiring in significant detail in April 1997, leaving ''no avenue unexplored,'' about possible relationships Mr. Clinton had with various women, including Paula Jones. And the New York Times reported on Sunday, October 4th, that contrary to Mr. Starr's statements in his report to the House that his office first learned of the Lewinsky affair from Linda Tripp on January 12th, the Starr office had been contacted by Jerome Marcus, a Philadelphia lawyer with ties to the Paula Jones legal team, at least a week earlier. The earlier contact between Mr. Marcus and Mr. Starr's office has now been confirmed by Mr. Starr's spokesman. The call from Mr. Marcus and his relationship to the Jones case was not, according to the New York Times, disclosed to the Justice Department when Mr. Starr sought to expand his jurisdiction.

So when, on January 12, 1998, Linda Tripp, who had been subpoenaed in the Paula Jones lawsuit, contacted Mr. Starr's office and told the office she had tapes of Monica Lewinsky describing an affair with President Clinton, the Starr office had already gone beyond its jurisdiction into the Paula Jones case.

Ms. Tripp apparently told Mr. Starr's office on January 12, 1998, that she had tapes of several recorded telephone conversations containing allegations that the President had told Ms. Lewinsky to lie in the Paula Jones case. (Ms. Lewinsky later testified before the grand jury that she was lying to Ms. Tripp when she had said that on the tape.) Because secretly tape-recording phone conversations is a felony under Maryland law (Md. Code Ann. Section 10–402), Ms. Tripp discussed immunity from prosecution for her own actions. According to the FBI summary of Ms. Tripp's interview with Starr's office on January 12th, independent counsel Starr not only discussed with Ms. Tripp a grant of immunity under federal law and promised Ms. Tripp that his office ''would do what it could to persuade the State of Maryland from prosecuting Ms. Tripp for any violations of that state wiretapping law'' (Page 223 of the Appendices to the Starr Report), Starr's office actually promised Ms. Tripp immunity. ''OIC attorneys. . .advised Tripp she would be granted federal immunity by the OIC for the act of producing the tapes to the OIC.'' (FBI 302, interview with Linda Tripp, 1/12/98)

Again, with no jurisdiction to investigate matters involving the Jones case, Mr. Starr instructed FBI agents to equip Ms. Tripp with a hidden microphone and surreptitiously record a four-hour conversation with Ms. Lewinsky the following day, January 13th.

Where did Mr. Starr get the authority to enter into immunity negotiations with Ms. Tripp on January 12th? Where did Mr. Starr get the authority to instruct FBI agents to wire Ms. Tripp and tape her conversation with Ms. Lewinsky? Mr. Starr didn't have the authority and he didn't have the jurisdiction on January 12th. (He didn't receive the authority and jurisdiction until days later when he went to the Attorney General to obtain it.) He thereby ignored the statutory limitations on his authority—the limits that confined him to matters involving Whitewater and investigations into the White House use of FBI files and the White House Travel Office which by that time the court had also authorized. In doing so, he used some of the most powerful tools given to a prosecutor—immunity from criminal prosecution and electronic surveillance by the FBI—to expand his reach beyond what the law permitted him to do.

It was only after he gave immunity to Ms. Tripp and used FBI agents to monitor four hours of conversation between Ms. Tripp and Ms. Lewinsky on January 13th that independent counsel Starr sought authority to expand his jurisdiction. On Thursday, January 15, he contacted Attorney General Reno's office on an emergency, expedited basis to get her to request the special court to authorize the added jurisdiction. The emergency was apparently caused by the threat of a story about the Lewinsky affair becoming public in an upcoming ''Newsweek'' article.

A letter by Mr. Starr to Steve Brill, publisher of ''Brill's Content,'' in March 1998 suggests that Mr. Starr based his request for expanded jurisdiction primarily on the FBI tape between Ms. Lewinsky and Ms. Tripp (again, a tape that the Starr office had no authority to obtain). The special court granted Mr. Starr jurisdiction in the Lewinsky matter on January 16th.

(2) Failure to Follow Justice Department Policies

Mr. Starr also violated the independent counsel law's requirement that he follow the policies of the Department of the Justice. 28 U.S.C. 594(f)(1) states that independent counsels ''shall'' comply with the ''written or other established policies of the Department of Justice.'' The only exception to this rule is where compliance with Departmental policies would be ''inconsistent with the purposes of the statute'' such as, for example, compliance with a policy requiring the permission of the Attorney General personally to take a specific act. Barring this exception, the law is clear that independent counsels must comply with Justice Department policies.

The Supreme Court placed great emphasis on the law's requirement that an independent counsel is bound by the policies of the Department of Justice and that the independent counsel law ''does not include any authority to formulate policy for the Government or the Executive Branch.''

Yet there are at least five instances in which Mr. Starr appears to have failed to follow Justice Department policy: discussing immunity with Ms. Lewinsky without contacting her attorney of record; subpoenaing the Secret Service; subpoenaing news organizations; subpoenaing Ms. Lewinsky's mother; and subpoenaing the notes of the attorney for the late Vince Foster (arguing that the attorney-client privilege terminates upon the death of the client).

First, when Mr. Starr confronted Monica Lewinsky on the afternoon of January 16th he acted inconsistently with Justice Department policy. 28 CFR 77.8 explicitly prohibits federal prosecutors from offering an immunity deal to a target without the consent of the target's legal counsel. Yet Mr. Starr's staff, knowing she was represented by counsel, confronted Monica Lewinsky in their first contact with her, outside the presence of her counsel, for the express purpose of offering

her an immunity deal. Indeed, the independent counsel's office made immunity contingent upon her not contacting her counsel. (Appendicies, Part 1, pages 1143–1154)

Until recently, our understanding of what happened on January 16th when Ms. Lewinsky was first confronted by Mr. Starr's office was based on speculation, but now we have a description of what happened under oath from Ms. Lewinsky herself. It's a description of the intimidation of a woman whose crime was having a consensual affair with the President and trying to cover it up. I want to read from the grand jury transcript, because Ms. Lewinsky's description is so chilling and speaks for itself.

LEWINSKY TRANSCRIPT

Juror: . . .I guess the other thing that we wanted to ask you a little bit about is when you were first approached by Mr. Emmick and his colleagues at the OIC. Can you tell us a little bit about how that happened?. . .

Mr. Emmick: Maybe if I could ask, what areas do you want to get into? Because there's—you know—many hours of activity—

Juror: Well, one specific—okay. One specific question that people have is when did you first learn that Linda Tripp had been taping your phone conversations? [Ms. Lewinsky answers that she learned when she was, and these are her words, ''first apprehended.'' The transcript continues.]

Mr. Emmick: Any other specific questions about that day? I just—this was a long day. There were a lot of things that—

A Juror: We want to know about that day.

A Juror: That day.

A Juror: The first question.

A Juror: Yes.

A Juror: We really want to know about that day.

Mr. Emmick: All right. . . [Ms. Lewinsky then describes meeting Ms. Tripp at the Ritz Carlton.]

Ms. Lewinsky: She was late. I saw her come down the escalator. And as I—as I walked toward her, she kind of motioned behind her and Agent———and Agent———presented themselves to me and——

A Juror: Do you want to take a minute?

Ms. Lewinsky: And flashed their badges at me. They told me that I was under some kind of investigation, something to do with the Paula Jones case, that they—that they wanted to talk to me and give me a chance, I think, to cooperate, maybe. . . I told them I wasn't speaking to them without my attorney. They told me that that was fine, but I should know I won't be given as much information and won't be able to help myself as much with my attorney there. So I agreed to go. I was so scared.

(The witness begins crying.) [Then Ms. Lewinsky becomes so upset with Mr. Emmick, an attorney with Mr. Starr who was present when Ms. Lewinsky was confronted by Mr. Starr's office on January 16th, that she asks him to step out of the grand jury room, which it appears he finally does. Ms. Immergut, another attorney with Mr. Starr's office then takes over the questioning of Ms. Lewinsky and it turns into a question/answer format.]

Q: Okay. Did you go to a room with them at the hotel?

A: Yes.

Q: And what did you do then? Did you ever tell them that you wanted to call your mother?

A: I told them I wanted to talk to my attorney.

Q: Okay. So what happened?

A: And they told me—Mike (Emmick) came out and introduced himself to me and told me that—that Janet Reno had sanctioned Ken Starr to investigate my actions in the Paula Jones case, that they—that they knew that I had signed a false affidavit, they had me on tape saying I had committed perjury, that they were going to—that I could go to jail for 27 years, they were going to charge me with perjury and obstruction of justice and subornation of perjury and witness tampering and something else.

Q: And you're saying ''they'', at that point, who was talking to you about that stuff?

A: Mike Emmick and the two FBI guys. And I made Linda stay in the room. And I just—I felt so bad. [She then discusses why she feels bad and the question/answer session continues.]

Q: I guess later just to sort of finish up. I guess, with the facts of that day, was there a time then that you were —you just waited with the prosecutors until your mother came down?

A: No.

Q: Okay.

A: I mean, there was, but they—they told me they wanted me to cooperate. I asked them what cooperating meant it entailed, and they told me that—they had—first they had told me before about that—that they had had me on tape saying things from the lunch that I had had with Linda at the Ritz Carlton the other day and they—then they told me that I—that I'd have to agree to be debriefed and that I'd have to place calls or wear a wire to see—to call Betty and Mr. Jordan and possibly the President. And—

Q: And did you tell them you didn't want to do that?

A: Yes. I—I—I remember going through my mind, I thought, well, what if—you know, what if I did that and I messed up, if I on purpose—you know, I envisioned myself in Mr. Jordan's office and sort of trying to motion to him that something had gone wrong. They said that they would be watching to see if it had been an intentional mistake. Then I wanted to call my mom and they kept telling me that they didn't—that I couldn't tell anybody about this, they didn't want anyone to find out and that they didn't want—that was the reason I couldn't call Mr. Carter [Ms. Lewinsky's attorney of record at the time], was because they were afraid that he might tell the person who took me to Mr. Carter. They told me that I could call this number and get another criminal attorney, but I didn't want that and I didn't trust them. Then I just cried for a long time.

A Juror: All while you were crying, did they keep asking you questions? What were you doing?

Mr. Lewinsky: No, they just sat there and then—they just sort of sat there.

A Juror: How many hours did this go on?

Ms. Lewinsky: Maybe around two hours or so. And then they were—they kept saying there was this time constraint, there was a time constraint, I had to make a decision. And then Bruce Udolf came in at some point and then—then Jackie Bennett came in and there were a whole bunch of other people and the room was crowded and he was saying to me, you know, you have to make a decision. I had wanted to call my mom, they weren't going to let me call my attorney, so I just—I wanted to call my mom and they—Then Jackie Bennett said, ''You're 24, you're smart, you're old enough, you don't need to call your mommy.'' And then I said, ''Well, I'm letting you know that I'm leaning towards not cooperating.'' you know. And they had told me before that I could leave whenever I wanted, but it wasn't—you know, I didn't—I didn't really know—I didn't know what that meant. I mean, I thought if I left then that they were just going to arrest me. And so then they told me that I should know that they were planning to prosecute my mom for the things that I had said that she had done.

(Ms. Lewinsky begins crying; Ms. Immergut asks if Ms. Lewinsky wants to take a break, and she says she does. The questioning then resumes.)

A Juror: Monica, I have a question. A minute ago you explained that the reason why you couldn't call Mr. Carter was that something might be disclosed. Is that right?

Ms. Lewinsky: It was—they sort of said that—you know, I—I—I could call Frank Carter, but that they may not —I think it was that—you know, the first time or the second time?

A Juror: Any time.

Ms. Lewinsky: Well, the first time when I asked that I said I wasn't going to talk to them without my lawyer, they told me that if my lawyer was there they wouldn't give me as much information and I couldn't help myself as much, so that —

A Juror: Did they ever tell you that you could not call Mr. Carter?

Ms. Lewinsky: No. What they told me was that if I called Mr. Carter, I wouldn't necessarily still be offered an immunity agreement.

A Juror: And did you feel threatened by that?

Ms. Lewinsky: Yes.

What could be clearer than that? If Ms. Lewinsky called her lawyer, she wouldn't necessarily still be offered an immunity agreement and she felt ''threatened.'' That's what Monica Lewinsky testified to under oath about what happened on January 16th when she was confronted by independent counsel Starr's office.

Look how Mr. Starr described the same event in his June 16th letter to Steven Brill months before Ms. Lewinsky's grand jury testimony was publicly released:

''Ms. Lewinsky was asked to cooperate with the investigation. She telephoned her mother, Marcia Lewis, who took a train from New York City to confer with her daughter. During the five hours while awaiting her mother's arrival, Ms. Lewinsky drank juice and coffee, ate dinner at a restaurant, strolled around the Pentagon City mall, and watched television. She was repeatedly informed that she was free to leave, and she did leave several times to make calls from pay telephones. After her mother arrived, discussions resumed with agents and attorneys. Ms. Lewinsky, after talking with another family member by phone, chose to retain William Ginsburg, a longtime family friend who specializes in medical malpractice law in Southern California. As they left the Ritz Carlton, both Ms. Lewinsky and Ms. Lewis thanked the FBI agents and attorneys for their courtesy. Recent media statements by one of her attorneys alleging that she was mistreated are wholly erroneous.''

That's what Mr. Starr says happened. The discrepancy is enormous. Ms. Lewinsky ''was so scared''; she was told she faced 27 years in prison; at one point she was told she couldn't call her own attorney; at another point she was told that if she called her lawyer, an immunity offer would not be likely; she cried for long time; she felt if she left the room she would be arrested; and she felt ''threatened.'' All of this occurred without the knowledge or presence of her attorney of record in

apparent violation of Justice Department policy.

Consider also what Mr. Starr's office was trying to get Ms. Lewinsky to do. She says under oath, before the grand jury, that they wanted her ''to agree to be debriefed and that [she'd] have to place calls or wear a wire to . . . call Betty and Mr. Jordan and possibly the President.'' In a letter from Mr. Starr to Steven Brill, Mr. Starr said, ''This is false. This Office never asked Ms. Lewinsky to agree to wire herself for a conversation with Mr. Jordan or the President.'' Mr. Starr goes on to criticize Mr. Brill for making such a claim by saying, ''You cite no source at all; nor could you, as we had no such plans.''

But a memo from Starr's office itself of an interview with Ms. Lewinsky provides confirmation that Ms. Lewinsky was asked on January 16th to wear a wire. The relevant part of the interview summary says:

> ''Lewinsky, who was 24 years of age when approached by the OIC on January 16, 1998, was not prepared to wear a wire and/or record telephone conversations. The request to do so was a lot to handle that day and Lewinsky relied on her advisors, who included her parents and Bill Ginsberg.'' (Appendices, Part 1, page 1555)

In Mr. Starr's report to the House of Representatives he states, ''In the evaluation of experienced prosecutors and investigators, Ms. Lewinsky has provided truthful information.'' If Ms. Lewinsky is telling the truth when she swore that Mr. Starr's office tried to get her to tape phone conversations with Mr. Jordan or the President, then Mr. Starr was not speaking truthfully in his letter. And if Ms. Lewinsky is telling the truth that would mean Mr. Starr intended to surreptitiously record the President of the United States in order to develop evidence against him. The second example of Mr. Starr acting inconsistently with Department of Justice policy involves the testimony of the Secret Service in the Lewinsky matter. Over the strong objection of the Justice Department and for the first time in the nation's history, Mr. Starr asked a federal court to force Secret Service personnel to disclose how they operate and what they have observed of the President in the course of protecting him. No federal prosecutor had ever before asked a court to compel such testimony from a Secret Service agent, according to the Justice Department.

Discounting arguments regarding the safety of the president and effective operation of Secret Service personnel, Mr. Starr issued subpoenas which were in violation of Justice Department policy and in violation of Mr. Starr's legal obligation to comply with Justice Department policy. Moreover, Mr. Starr argued in his report to the House that the President's ''acquiescence'' in the Justice Department's opposition to the Secret Service subpoenas was evidence of obstruction of justice on the part of the President presumably because, Mr. Starr argues, the Justice Department's opposition to the Secret Service subpoena was ''interposed to prevent the grand jury from gathering relevant information.'' This claim by Mr. Starr is so preposterous, particularly in light of the letter of support for the position of the Secret Service from former President Bush, that it lays bare the excessive zeal of this investigation.

The fact that the court eventually upheld the subpoenas issued by Mr. Starr does not vindicate his position. His pursuit of subpoenas of Secret Service agents may not have violated the law, but it violated the policy of the Justice Department which Mr. Starr is bound to follow under the clear requirements of the independent counsel law.

Third, Mr. Starr issued subpoenas to news organizations to obtain nonpublic information from their news gathering efforts despite Justice Department regulations which caution federal prosecutors to take a number of steps before subpoenas are issued in order to safeguard freedom of the press. The regulations require trying elsewhere for the information, negotiating voluntary agreements to provide the information first, and, in a final provision that one court held was not binding on Mr. Starr, obtaining the Attorney General's permission prior to issuing a subpoena. Despite the established policy discouraging media subpoenas, independent counsel Starr issued subpoenas to news organizations on several occasions. When ABC News objected to one such subpoena, Mr. Starr stated in a court pleading that the Justice Department's ''regulations of this type do not govern an Independent Counsel.''

The fourth example of Mr. Starr not following Justice Department policy is the subpoena to Monica Lewinsky's mother. He issued this subpoena despite the U.S. Attorneys' Manual policy that ''the Department will ordinarily avoid seeking to compel the testimony of a witness who is a close family relative of . . . the person upon whose conduct grand jury scrutiny is focusing.''

And fifth, in this same vein, but not related to the Lewinsky matter, Mr. Starr subpoenaed the notes of the late Vince Foster, arguing in an unprecedented case before the Supreme Court that the attorney-client privilege expires upon the death of the client. The Justice Department's general policy is that federal prosecutors ''will respect bona fide attorney-client relationships, where possible, consistent with its law enforcement responsibilities and duties.'' The Supreme Court rejected Mr. Starr's policy-setting position.

Violating the independent counsel law's limited grant of authority, ignoring established Justice Department policies (indeed making the claim that the independent counsel isn't governed by the Justice Department policies even though the independent counsel law says he is), Mr. Starr has made a mockery of the independent counsel process and the statutory constraints designed to insure that the independent counsels obey the same rules that apply to all other federal prosecutors.

USE OF THE GRAND JURY

I also have concerns about Mr. Starr's use of the grand jury. Was Mr. Starr properly using the grand jury when he subpoenaed a federal employee who was on his personal time when he called friends in Maryland from his home to congratulate them on demanding an investigation of Linda Tripp for possible illegal taping of telephone conversations with Ms. Lewinsky? Robert Weiner was subpoenaed within 24 hours of the calls and wasn't even interviewed first or contacted by the independent counsel as an initial step. Among other questions, prosecutors asked him to reveal the future plans of Maryland Democrats. How could that possibly be an appropriate use of the grand jury?

Was Mr. Starr properly using the grand jury when he subpoenaed Sydney Blumenthal to testify before the grand jury on what he was telling reporters about Mr. Starr's office because Mr. Starr believed Mr. Blumenthal was trying to intimidate his staff? The answer is, ''no.'' A person should be able to criticize a prosecutor to the press without fearing a grand jury subpoena.

There are numerous allegations that Mr. Starr and his staff inappropriately revealed grand jury information to third parties in violation of rules governing grand jury secrecy. Rule 6(e) of the rules of federal criminal procedure prohibit prosecutors and grand jurors from discussing the proceedings before the grand jury.

Mr. Starr has explained communicating with the press in the August 1998 edition of ''Brill's Content'' as ''countering misinformation that is being spread about our investigation in order to discredit our office and our dedicated career prosecutors.'' Mr. Brill also quotes Mr. Starr as saying that as long as the independent counsel is providing reporters with information about ''what witnesses tell FBI agents'' or the independent counsel's office ''before they testify before the grand jury'' it is not subject to Rule 6(e). If such a standard were adopted, there would be little practical restraint on the grand jury information a prosecutor could discuss with the press.

Allegations of improper leaks by the Starr office were presented to Judge Norma Holloway Johnson, and the Associated Press reported in August of this year that Judge Johnson ruled that there is a prima facie case of violations of the grand jury secrecy rules. The Associated Press further reported that ''the U.S. Court of Appeals rejected Starr's efforts to stop Johnson's investigation, allowing her to continue to collect evidence and hold a hearing to determine if Starr's office should be punished.''

CONFLICTS OF INTEREST

Finally, there are the apparent and real conflicts of interest Mr. Starr has

created in the operations of his office. It started at the time of his appointment. Mr. Starr was an active partisan who had served as Finance Chair for a Republican Congressional campaign in Virginia and who had himself recently contemplated a run for the Republican nomination to the U.S. Senate in Virginia. Within weeks of the filing of the Paula Jones civil suit in May 1994, Mr. Starr appeared on television and espoused a legal position against the President. (He also began discussions with the Independent Women's Forum about filing a legal brief on Paula Jones' behalf in opposition to efforts by the President to have the litigation postponed.)

The appointing court informed my staff it was not aware at the time of the appointment that Mr. Starr had expressed a position against the President in the Paula Jones case. As senior Democrat on the Senate subcommittee charged with oversight of the independent counsel law, I urged the court shortly after Mr. Starr's appointment to make a fuller inquiry into Starr's apparent lack of objectivity about the President and based upon what the court learned, reconsider Mr. Starr's appointment. The court issued an order stating that, once it had exercised its appointment authority, it was without power to reconsider appointment of an independent counsel. The New York Times called on Mr. Starr to withdraw, while five past presidents of the American Bar Association warned the court that it needed to repair its appointment procedures to ensure a selection process with the reality and appearance of objectivity.

While in office, Mr. Starr only reinforced the initial concerns about his impartiality and judgment. For example, one month before the 1996 election, he accepted a speaking engagement at Pat Robertson's university at the request of Pat Robertson, including a press conference with Mr. Robertson, a visible and vocal opponent of the President with a history of public statements raising questions about Vincent Foster's death, then being investigated by Mr. Starr. In 1997, Mr. Starr announced his intention to accept a position at Pepperdine University at a program funded with millions of dollars provided by Richard Scaife, another declared opponent of the President and a chief funder of several organizations working on investigations into President Clinton, including the Paula Jones case. (He subsequently reversed course and stayed in office.)

During his employment with the federal government as independent counsel, Mr. Starr continued his law practice at the firm of Kirkland and Ellis. He continued to receive his full annual remuneration as a partner and continued to handle a number of very high profile cases, a number of which involved issues where Mr. Starr represented the position directly contrary to the Clinton Administration position.

In February 1998, Mr. Starr's law firm apparently sent the Chicago Tribune copy of an affidavit of a witness in the Paula Jones case that was to be filed in that case—before the affidavit had been filed in court. While Mr. Starr's firm denied assisting Jones' legal team, it also resisted responding to a subpoena issued by the President's counsel relative to the sending of that affidavit. Also, the press reported that a former counsel to Paula Jones, Joseph Cammarata, admitted that he had sought legal advice on several occasions from one of the firm's partners, Robert Porter. So while Mr. Starr was working as independent counsel and continuing to serve as a partner at Kirkland and Ellis, one of his law partners allegedly was providing legal advice to the counsel in the Paula Jones case, in possible violation of the independent counsel law which prohibits ''any person associated with a firm with which (an) independent counsel is associated'' from representing ''any person involved in'' any investigation conducted by such independent counsel.

CONCLUSION

The position that Mr. Starr occupies is a position of public trust and duty, designed to be free from politics and partisanship, a position with powerful tools for investigation, unlimited but for the parameters of the independent counsel law and for the common sense and good judgment of the person holding the office.

Kenneth Starr has acted with no effective limits, because although he is subject to the ultimate authority of the Attorney General, given her power to fire him for cause, she is effectively powerless to rein in his excesses because her discharge of him would be so reminiscent of the ''Saturday Night Massacre'' in which Archibold Cox, the prosecutor investigating Richard Nixon, was fired. (In fact, the Attorney General has already been threatened with impeachment simply because she has taken a stand to protect her ongoing criminal investigations and prosecutions with respect to campaign finance abuses.)

I have urged the Attorney General, by letter, to go to court to enforce the requirement that Mr. Starr abide by the policies of the Department of Justice. She has not responded and perhaps could not because, I am speculating here, it could make it even more difficult for her to finally act to restrain Mr. Starr should she decide to do so, as it might appear that she was doing so under pressure.

Some Democrats are reluctant to speak out against Mr. Starr's abuses of power out of fear that they will be perceived as defending the President's actions. Some Republicans I have spoken with, who feel Mr. Starr has gone too far, won't say so publicly because of the negative reaction it might engender in some circles in which they must function.

It will be difficult in this environment to salvage the legitimate goal of the independent counsel law when it expires next year.

Any hope of achieving the radical surgery needed to prevent a prosecutor from abusing the powerful tools provided an independent counsel will depend on Democrats and Republicans who still believe in the legitimate purpose of the independent counsel law working together. Only such a bipartisan effort has a chance of stitching into the independent counsel law's fabric, now stretched beyond recognition, limits on the exercise of an independent counsel's power which are so essential in our constitutional design of checks and balances to prevent abuses in the exercise of governmental power.

Mr. President, I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER (Mr. ABRAHAM). The clerk will call the roll.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent to speak as if in morning business for approximately 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE INDEPENDENT COUNSEL

Mr. SESSIONS. Mr. President, I just had the opportunity to hear the remarks of the distinguished Senator from Michigan concerning the independent counsel.

I must say that those remarks are troubling to me and I do not believe contribute to really the kind of bipartisan effort that we need to make here in this body with regard to the delicate problem of the President's troubles.

It was raised under the pretension or the suggestion as part of an evaluation of the independent counsel but really amounted to, I think, an unfair restatement of many charges that have been made against the independent counsel, most of which I believe have already been answered, or could be answered pretty easily.

I served as a prosecutor for a number of years, and I would like just to share some thoughts.

I prosecuted a number of government officials. And it was my experience during that process that government officials, more than any other person I had the occasion to investigate, were the most aggressive and most impossible to the prosecutor. It is part of their team effort with their attorneys to attack the person who is out speaking the truth.

It is not an easy job for this independent counsel to obtain the truth. These officials don't want it out. It is not their choice. It is not their preference, or their desire, that what they may have done is revealed, particularly if what they have done may involve perjury or some illegality.

So it is not an easy thing to do. And when the independent counsel was charged with going out and finding the truth, he faced a systematic effort to