Mr. GORTON. Would the Senator from Michigan yield for a unanimous-consent request?

Mr. LEVIN. I would be happy to.

Mr. GORTON. I ask unanimous consent, Madam President, that I be permitted to speak in morning business at the conclusion of the remarks of the Senator from Michigan.

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

The Senator from Michigan.

THE INDEPENDENT COUNSEL LAW

Mr. LEVIN. Madam President, I want to speak today about the independent counsel law and the political pressure being put on the Attorney General to appoint an independent counsel in the campaign fundraising investigation.

One Member has called on the Attorney General to resign. Some Members of the House are threatening impeachment proceedings against the Attorney General unless she reaches their conclusion on the appointment of an independent counsel.

For 18 years I served as either the chairman or ranking Democrat on the subcommittee of the Governmental Affairs Committee with jurisdiction over the independent counsel law. I have been actively involved in three reauthorizations of this important statute. And having experienced and studied the history of this law, I am deeply disturbed by this type of pressure being exerted.

Politically motivated attempts to intimidate the Attorney General runs directly counter to the fundamental purpose of the independent counsel law and counter to our constitutional system that makes the prosecution of crimes the sole responsibility of the executive branch.

The independent counsel law was enacted in the aftermath of Watergate. The Watergate committee recommended, and the Congress agreed, that we need a process by which criminal investigations of our top Government officials should be conducted in an independent manner as free as possible from any taint of favoritism or politics.

This was necessary, we decided, in order to maintain the public's confidence in one of the basic principles of our democracy, that this is a country that follows the rule of law. So we established a process whereby the Attorney General would follow certain established procedures in reviewing allegations of criminal wrongdoing by top Government officials and decide at certain stages whether to ask a special Federal court to appoint a person from the private sector to become a Government employee to take over the investigation and conduct it independently from the chain of command at the Department of Justice.

We wanted the public to have confidence that the investigations into alleged criminal conduct by top Government officials were no less aggressive and no more aggressive than similar investigations of average citizens. We particularly wanted to remove partisanship from the investigative and prosecutorial decisionmaking process.

We established the requirement that if the Attorney General receives specific information from a credible source that a crime may have been committed by certain enumerated top Government officials, the Attorney General has to conduct a threshold inquiry lasting no more than 30 days to determine if the allegation is frivolous or a potential legal problem. The top officials who trigger this so-called mandatory provision of the act are the President, the Vice President, Cabinet Secretaries, Deputy Secretaries of the executive branch departments, plus very top White House officials who are paid a salary at least as high as Cabinet Secretaries or Deputy Secretaries and the chairman and treasurer or other top officials of the President's campaign committee.

If, after the threshold inquiry, the Attorney General determines that there is specific information from a credible source that a crime may have been committed by a covered official, the Attorney General must then conduct a preliminary investigation lasting no more than 90 days in which she gathers evidence to determine whether further investigation is warranted. If after the conclusion of the 90-day period the Attorney General determines that further investigation is warranted with respect to a covered official, then she must seek the appointment of an independent counsel from the special court made up of three article III judges appointed for 2-year terms by the Chief Justice of the Supreme Court.

In crafting the independent counsel law, we contemplated a role for Congress with respect to the appointment of an independent counsel in a specific case. We included a provision that is tailored to the purposes of the statute. The independent counsel law explicitly provides that the appropriate avenue for congressional comment on the appointment of an independent counsel is through action of the Judiciary Committee.

The law provides that either a majority of the majority party or a majority of the minority party of the members of the Judiciary Committee may request the Attorney General to appoint an independent counsel.

Upon receipt of such a letter, the law provides that the Attorney General must respond in writing to the authors of the letter explaining ''whether the Attorney General has begun or will begin a preliminary investigation'' under the independent counsel law, setting forth ''the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.''

The Attorney General is not obligated to trigger the statute when she receives such a letter. She is not required to initiate a threshold inquiry or conduct a preliminary investigation. She is only required to respond within 30 days. That is the process that we provided for in the independent counsel law for Congress to express an opinion in triggering the statute. That is how the procedure works.

The Attorney General has the sole discretion to determine if the statute is triggered and if an independent counsel should be appointed. That is a constitutional requisite of the statute, and without that discretion, the Supreme Court has said that the separation of powers principle is violated. Congress has the very specific way I indicated to express its opinion on the subject to the Attorney General. In the last analysis, as our chief law enforcement officer, it is her decision alone to make.

While the independent counsel law was designed to make sure that a covered official doesn't get preferential treatment with respect to a criminal investigation, equally important was the concern that the official not suffer worse treatment or a selective process prosecution that would not be applied to an ordinary citizen. In the din surrounding these calls for the Attorney General to seek the appointment of an independent counsel, that very important feature has been lost.

In 1981, our subcommittee that has jurisdiction over the independent counsel law held the first oversight hearings on its implementation. We had a number of knowledgeable witnesses, and we had several years of experience with the statute to review.

One of the cases that the subcommittee reviewed at the time was the case of Hamilton Jordan and Tim Kraft, top White House officials in the Carter administration, who were accused of using a controlled substance at a party in violation of the criminal code. Then Attorney General Benjamin Civiletti testified at the time that under ordinary circumstances the Department of Justice, exercising its discretion on when to prosecute, would not generally prosecute a case such as that against a regular citizen even though there might have been a violation. But because the law at the time didn't permit the Attorney General to consider prosecutorial policies of the Department in deciding whether or not to seek appointment of an independent counsel, the Attorney General felt obligated to seek appointment of independent counsels in those two cases.

Here is what then Attorney General Benjamin Civiletti told our subcommittee in 1981 about this decision:

In normal circumstances, the Department does not investigate or prosecute every possible felony or every possible fact, or circumstance that comes to its attention. Historically, and within the law, it exercises

discretion. It stays its hand in individual cases, not for the purpose of advancing or threatening personal interests, but for the purpose of doing justice and advancing the common good.

This discretion is one of the great prerogatives that devolves upon the Department of Justice and the Executive under the common law. It is enormously important, and it is honored every day in every U.S. attorney's office in tradition and in practice.

Any discretionary power, of course, can be abused. And if the Department's investigatorial and prosecutorial discretion should be exercised capriciously or irregularly, it would threaten and not advance the interests that it is designed to serve.

For that reason, over the years we have developed guidelines that structure and restrain the exercise of our discretion in individual cases, thereby introducing a measure of principle and regularity into a sensitive and subjective process.

Attorney General Civiletti went on to say the following:

In some instances these guidelines take the form of explicitly written standards concerning specific statutes and specific kind of offenses and procedures. In other instances they are unwritten understandings or policies that are followed within the Department.

What's the point of the reference to regularity if the purpose of the special prosecutor provisions is to ensure that the high officers in the Government will receive an impartial treatment at the hands of the Department of Justice?

His answer:

I am not sure that the statute goes as far as it might to accomplish that objective because the special prosecutor is given the freedom to disregard the standards, the limits, the discretionary judgments that have been entered over the last 100 years in the Department of Justice, and set about on his own course, which for each special prosecutor could be entirely different under different standards and promote great misfortune to the subject of the particular investigation.''

Now, in light of Attorney General Civiletti's testimony, the subcommittee decided to amend the independent counsel law to require—and it is a requirement; it is not discretionary—to require that the Attorney General follow policies of the Department of Justice relative to the question of whether to prosecute a case even where evidence of a violation may exist.

We concluded that it was important to not let the independent counsel law be used as a weapon to punish a top official who would not otherwise be subject to prosecution if he were a regular citizen. Senator Cohen, with whom I cosponsored the 1982 reforms, and I were both clear that the purpose of the independent counsel law is to provide for criminal investigation of a top government official in a manner no better and no worse than anybody else.

We are not just talking about the written policies of the Department of Justice. Congress specifically rejected that limitation and included language in the statute requiring the Attorney General to follow both the written and unwritten policies of the Department of Justice.

Section 592(c)1 of the independent law reads as follows:

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

So we have an independent counsel statute where the Attorney General has the sole discretion whether to seek appointment of an independent counsel, but she has no discretion whether to apply the Department of Justice policies in making that decision. She must do so.

Now, what is the Justice Department's policy with respect to what has become the primary allegation against the President and Vice President—making fundraising phone calls out of the White House? It is alleged by some that the conduct falls under an obscure statute, 18 USC 607, which makes it unlawful for a person to solicit or receive a contribution, as defined by the Federal Election Campaign Act, in any Federal room or building. Here is what the statute says:

It shall be unlawful for any person to solicit or receive any contribution within the meaning [of the Federal Election Act] in any room or building occupied in the discharge of official duties by any [Federal employee] or in any navy yard, fort or arsenal.

This statute has several elements, and I would like to discuss the key elements. The first element is whether there are certain requirements with respect to the solicitor of the contribution referred to in the statute and with respect to the person being solicited. As many commentators and legal experts have noted, this law was enacted to protect Federal employees from political pressure by their fellow workers and bosses. It was part of the Pendleton Act, which was a major effort in reforming the civil service system enacted in the late 1800's. It is directed at preventing a Federal employee from being pressured at work to make a political contribution, at preventing a sort of ''shake-down'' by a Federal employees' superiors. And it is placed in the part of the United States Code that addresses what Federal employees can and cannot do.

So, some have argued that either the solicitor is required to be a Federal employee or the person being solicited is required to be a Federal employee, or both. Some have argued that in order to cover the President and Vice President or Members of Congress, they would have to be specifically mentioned. That is an ambiguity that the Watergate Special Prosecution Force wrestled with when it recommended in the 1970's that Congress amend the statute ''to clarify the question of its applicability to elected as well as appointed officials.'' We didn't take them up on their suggestion, by the way, so that question has never been answered specifically in the law.

The Justice Department's prosecution manual on prosecuting under section 607 apparently tried to answer this question, since it now says that ''The employment status of the parties to the solicitation is immaterial; it is the employment status of the persons who routinely occupy the area where the solicitation occurs that determines whether section 607 applies.'' Yet, the discussion of section 607 in the manual still refers to section 607 under the title ''Patronage Crimes.''

But following these most recent guidelines by the Justice Department, it seems most likely that the statute could apply to private persons as well as Federal employees and to Members of Congress and the President and the Vice President as well as appointed officials, whether they are the ones making the solicitation or the ones being solicited. But there is still some uncertainty about this.

The next element of the statute is clear. It relates to the solicitation or receipt of a campaign contribution. And the question here is where and when does a solicitation occur. Does it occur when the request is made or when the request is received? There is a Supreme Court case on this very issue which concludes that the solicitation occurs when and where the solicitation is received. In the 1908 case of U.S. versus Thayer, the Supreme Court considered a solicitation conducted through the mail. The Court had to decide whether the solicitation occurred at the place the soliciting person mailed the letter or where the solicitation was received. The Court held, in an opinion written by Justice Holmes, that the solicitation occurred where the employee received the letter, which was his place of work. By analogy, then, with respect to a phone call, the solicitation would occur not from where the call is made but where the call is received.

The solicitation addressed by this statute has to occur where Federal employees are carrying out their official duties. That is what the purpose of the statute is. Section 607 says the solicitation has to occur ''in any room or building occupied in the discharge of official duties by any person'' mentioned in section 603, which means, by Federal employees. We recognize this purpose in the Senate when we described this law in our own Senate Ethics Manual. The September 1996 Senate Ethics Manual says:

The criminal prohibition at section 607 was originally intended and was historically construed to prohibit anyone from soliciting contributions from federal clerks or employees while such persons were in a federal building. In interpretations of this provision, the focus of the prohibition has been directed to the location of the individual from whom a contribution was requested, rather than the location from which the solicitation had originated. . . The Department of Justice has noted that the statute was intended to fill a gap in protecting federal employees from assessment by prohibiting all persons from soliciting such employees while they are in a federal building.

In the 1954 case of United States versus Burleson, the U.S. District Court for the Eastern District of Tennessee

threw out a case brought under section 670 because the court determined that the elements of the statute had not been met since Federal employees were solicited at the facility of a Federal contractor, not on Federal property. That, the court said, was dispositive of the case.

The Department of Justice has adopted this approach as part of its prosecutorial policy with respect to this statute. As the American Law Division and the Congressional Research Service concluded in its report on section 607 in March of this year:

> There is no indication from reported cases or Department of Justice material on the statute that there has ever been enforcement of the statute, in the more than 100 years of its existence, in such a manner as to suggest an interpretation of the law as applying to solicitations made by mail or telephone from a federal building to someone not in a federal building.

Now, that is our own Congressional Research Service saying that the policy of the Department of Justice is to not bring a section 607 case unless the person being solicited is located at a Federal workplace.

A third element of section 607 which has been the subject of discussion is the requirement that the solicitation referred to in the statute be a so-called hard money contribution, a contribution covered by the Federal Election Campaign Act, and not a soft money contribution, a contribution outside of the legal limits of our Federal campaign laws.

Ever since the Attorney General referred to this issue in her letter to the Judiciary Committee, commentators and Members have been working mightily to show that the Vice President was actually raising hard money, and thus covered by the statute, and not just soft money, which others have claimed was the case.

Now, it is hard to imagine that the Vice President thought he was raising hard dollars since the amounts of the solicitation were for far more than the limits for hard money. But even if one could show the intent to solicit hard money contributions, it would seem that the second hurdle to prosecution would be controlling. The Department of Justice has simply not prosecuted conduct where the person being solicited is not on Federal property at the time of the solicitation. The issue of whether the solicited money ended up in a hard money or soft money account would not even need to be addressed under the facts as we know them.

Parenthetically, if the hard money/soft money distinction were controlled, look at what some of us would be seeking to enforce—a statute that makes it a crime for a person to solicit $1 for his or her campaign, but makes it perfectly legal for that same person to solicit a million dollars or more from that same person for a political party which is totally committed to his or her election and will not only spend the money raised, but might even go into debt for that purpose. Now, that is an absurd interpretation that some Members of Congress are not only trying to uphold but, indeed, say is required.

Because the Attorney General raised this issue in her letter to congressional leaders about triggering the Independent Counsel Act, she should make clear what the policy of the Department of Justice is with respect to that, as well as the other elements of this possible crime.

Former U.S. Attorney Joseph DiGenova was straightforward in his assessment of how the Department of Justice should handle possible prosecution of the President or Vice President under section 607 when he said on a recent television show that no prosecutor in his or her right mind would bring a prosecution for those phone calls under this statute with the facts as we know them regarding the President and the Vice President. Other commentators have made similar arguments.

I ask unanimous consent that the following columns be printed in the RECORD immediately following my remarks: Articles by Richard Cohen, E.J. Dionne, Jr., Philip Heyman, and William Raspberry.

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

(See exhibit 1.)

Mr. LEVIN. If we take these elements and apply them to the case of the President or Vice President making phone calls from the White House, it becomes clear to me that the facts do not fit the statute.

Any phone calls they may have made, would have been solicitations made at the place where the person being called was located. We know that from the Supreme Court's decision in U.S. versus Thayer. And we know for section 607 to apply, that location has to be a location where Federal employees are performing their official duties.

In applying the prosecutorial policy and practice of the Department of Justice in this case, with respect to this law, the Attorney General, may well and properly find that she would not prosecute a noncovered official under these facts. If so, she is not allowed by law to seek the appointment of an independent counsel.

Madam President, the pressure being put upon the Attorney General to appoint an independent counsel is undermining the basic principle of this law and the nonpartisan spirit which has been so important to its operation. The effort to shoehorn the conduct of the President and Vice President into the prohibitions of an arcane law, never used under similar circumstances, violates our understanding of the criminal justice system—just as it would if cases had been brought against Senators who have already made similar calls from their Senate offices.

One Senator was reported in the Wall Street Journal several years ago as saying he ''figures he spends two hours a day dialing for cash from his Washington home, his car, and his mobile phone;'' he says he can even place calls from his Senate office. ''I do it wherever I am,'' the Senator is quoted as saying. ''I can use a credit card. * * * As long as I pay for the calls, I can make calls wherever I want to call.''

Another of our colleagues was reported, when phoning to remind potential donors of a fundraiser, to have left a recorded message on an answering machine to call him at his Senate office for more information.

And, a third Senator's signature appeared on a solicitation letter in which potential contributors were invited to call his Senate office with questions about the fundraising solicitation. Have these Members been criminally prosecuted for a violation of section 607? No. Should they have been? No. The judgment of the Attorney General not to prosecute in these visible cases is further evidence that there has not been a policy to prosecute under section 607 when a solicitation is made to a person not on Federal property when solicited.

When President Reagan was in the White House, he called the Republican Eagles who were meeting in a Government building—the auditorium at the Commerce Department. The President called and among his remarks, he said the following:

> I am genuinely sorry I couldn't be there in person with you today. . . . but we have the Eagles down to the White House quite often so I will be seeing you soon. In the meantime I'm sending Secretary Schultz, Secretary Regan and other members of the Cabinet over to keep you abreast of what's going on. In fact you will be seeing more of my Cabinet today than I will. . . . Let me say to you Eagles how important your contributions are to the Republican Party. . . . [T]o keep a lamp burning, we have to keep putting oil in it. You there today help to keep the light of the Republican Party burning brightly.

That call was made 15 years ago in September 1982. And here, with this call, the persons being urged on were actually in a Federal building—just what section 607 seems to cover. And it's very likely that the contributions referred to were hard money contributions. But should there have been an independent counsel appointed to investigate President Reagan to determine whether or not he violated section 607? No—it shouldn't have happened then and shouldn't happen now. But where were the threats, where was the orchestrated chorus then?

If we don't want our President or Vice President making fundraising calls, then we should pass a law to that effect and make it explicit. If its OK for them to make them from their taxpayer subsidized home or cars but not from their offices, then make it clear in the law. I question whether we really want criminality to hinge on whether the President makes a fundraising call from the Oval Office or from his upstairs office in the family section at the White House or from his car or from the phone booth on the corner? I, for one, would rather the President or Vice President not make fundraising

calls, period. That's what we intended when we enacted public financing of our Presidential campaigns—but the soft money loophole changed all that. We've got to fix that. We should eliminate the soft money loophole—not utilize an ambiguity surrounded by a technicality to push the President or Vice President into an independent counsel investigation as if it is intended to be some form of punishment. The independent counsel process was never intended to be used this way.

Madam President, the Attorney General has a job to do. It has been given to her by the Constitution and the independent counsel law. She is now required to act to the best of her ability to follow the law—to conduct a thorough criminal investigation of all of the allegations; to follow the evidence wherever it leads; to follow the requirements of the independent counsel law—and this has too often been forgotten—including the requirement that she follow Justice Department discretionary policies about whether to prosecute when deciding whether to seek an independent counsel.

The political pressure on the Attorney General does a disservice to the Nation which is awaiting an objective and fair review. The political pressure on the Attorney General undermines the independent counsel law, which is dependent upon an application free from partisan pressure. If she finds that the criteria for triggering the independent counsel law has been met and that the Justice Department practice has been to prosecute in a case similar to this, so be it. But if she finds the criteria haven't been met, or if she finds that there has not been a policy of prosecution under section 607, so be it.

If those calling for an independent counsel want the Attorney General to follow the letter of the law with respect to section 607 because they think it means a possible criminal investigation and prosecution—and I have already shown why I disagree with that position—then they also have to urge the Attorney General to follow the letter of the law with respect to the appointment of an independent counsel. And the letter of that law has required, since 1982, that the Attorney General follow the policies and practices of the Department of Justice in determining whether independent counsel should be appointed. Again, it has not been the policy or practice of the Department of Justice to prosecute a solicitation under section 607 if the person being solicited is not on Federal property. If the Attorney General agrees, then she is not permitted to seek an independent counsel under the 1982 amendment to the independent counsel law.

Those urging the independent counsel appointment can't have it both ways. If they look at the spirit of section 607, or if they look at its letter, the Attorney General would be on firm ground should she seek not to appoint an independent counsel.

Madam President, I thank the Chair and I yield the floor.

EXHIBIT 1

[From the New York Times, Sept. 21, 1997]

DON'T MAKE GORE THE FALL GUY

(By Philip B. Heymann; Philip B. Heymann, a former Deputy Attorney General in the Clinton administration, is a professor at Harvard Law School and the Kennedy School of Government)

CAMBRIDGE, MA.—I have publicly supported those who have called for Attorney General Janet Reno to appoint an independent counsel to investigate the campaign donations intended for the 1996 Presidential campaign.

I have also argued that both the Democratic and Republican parties turned donations intended and used for campaigns, which are strictly regulated, into what looked like unregulated ''soft money,'' not to be used for campaigns, by running it in and out of their national parties.

From a prosecutor's point of view, it would be absurd to reject these arguments and instead decide to single out Vice President Al Gore for investigation by an independent counsel. Making phone calls soliciting donations from a Government office rather than some private location is not an adequate basis for prosecution in this case.

Most prosecutors won't bring a case if three conditions apply: when there are serious doubts about whether a law technically covers the conduct in question, when the main purpose of the statute was not violated, and when the conduct is not inherently immoral. All three conditions apply to the facts of the Gore allegations.

When it comes to whether the law—Section 607 of the Federal Criminal Code—technically applies to Mr. Gore's phone calls, much remains uncertain. It is ''unlawful,'' the section says, ''for any person to solicit or receive any contribution . . . in any [Federal Government] room or building occupied in the discharge of official duties.''

Fair enough. But to violate the law, must the person solicited be in a Federal building? In the 100 years since the law was enacted, it has never been applied unless the person solicited was on Federal property.

Must the person solicited be a Federal employee? After all, the main purpose of the statute was to protect Federal employees against being dunned by their bosses. In 1979, the Justice Department's Office of Legal Counsel concluded that ''compelling arguments can be marshaled on either side of this issue.'' By now, the statute probably also applies to solicitation of non-employees, but the law has never been spelled out.

Does the statute cover the President and the Vice President? The wording specifically includes members of Congress and fails to mention the President and the Vice President, but again, the law is unclear. The Justice Department's Office of Legal Counsel has said that there are differences of opinion but that the law probably applies.

One thing is certain: the Vice President's actions were not inconsistent with the only plain purpose of this statute. Section 607 was drafted to protect Federal employees from being coerced into giving money. Since Mr. Gore was soliciting campaign money from outside sources, he did not violate the law's main purpose.

It is almost impossible to think of a reason that would lead to care whether the Vice President made calls from working quarters in the White House (where they may be forbidden) or the living quarters of the White House (where they are permitted) or from some nearby private location or cellular phone.

Of course, in a larger sense, an overriding purpose of many of our campaign finance laws is to prevent the purchase of access and influence. But where Mr. Gore made the phone calls is irrelevant to that purpose. The solicitations are either right or wrong, or either consistent or inconsistent with our statutes, without regard to where they took place.

In sum, it is hard to justify calling for prosecution of Mr. Gore. There is no obvious violation of the purpose of the law or claims on our sense of morality. Even if one tries to justify a prosecution on the grounds that the violation was a willful disregard of Section 607, this provides very frail support in a case where so many uncertainties remain about the law's scope.

So why are so many people calling for prosecution? First, because it would destroy the Democratic front-runner for President. Political figures of both parties have long urged prosecutions to knock off their current or potential opponents. It remains a very bad idea to bend general standards of prosecution either to reach or to avoid political figures.

Second, the Independent Counsel Statute denies the Attorney General the power to exercise even the most obvious of prosecutorial discretion unless she is prepared to say that the Justice Department would, as a matter of policy, never bring a prosecution in these circumstances.

But there is a third and final reason. Attorney General Reno has painted herself into a corner. In 1996, access was sold on a scale we haven't seen since 1972. Presidential campaigns solicited money from corporations and unions, which are forbidden to contribute to campaigns. And from individuals, they asked for donations in excess of what they are allowed to give. Hundreds of millions of dollars from these sources was given to the national parties, which then spent it as the Presidential campaigns directed.

This strategy to evade campaign finance laws was so transparent that the Justice Department could easily have dismissed the notion that the donations were given to political parties for noncampaign purposes. That conclusion would have meant that the donations were in violation of the law, and required the appointment of an independent prosecutor to investigate.

But instead, the Justice Department concluded there were no violations and accepted the parties' claims that they were technically within the law.

Now the Attorney General may find that the Vice President's phone calls from the White House technically violate Section 607, but still do not warrant appointment of an independent counsel. But it would be hard for the Attorney General to explain this decision credibly. Some will ask, if a technicality can be used to protect the President, isn't a technicality enough to prosecute the Vice President?

There is a compelling response to this question. Even if the Vice President's calls violated Section 607, that remains a case that few prosecutors would bring. What does warrant an independent counsel is the thorough evasion of our Federal election laws by dozens of politicians, including both Presidential candidates.

I continue to support calls for an independent counsel to investigate solicitation of donations from forbidden contributors. But Mr. Gore should not be made the scapegoat, simply because the Attorney General has not been willing to appoint an independent prosecutor for these allegations. Besides being unfair, that would simply deflect public attention from the real issue.

[From the Washington Post, Sept. 23, 1997]

WHO NEEDS AN INDEPENDENT COUNSEL?

(By Richard Cohen)

If President Clinton had some gumption and, maybe more important, a taste for confrontation, he would call in the press, order up the TV networks and announce he was pardoning both himself and Al Gore for anything relating to campaign fund-raising. He would do that, he would solemnly announce, so that Congress would write a law that makes some sense.

The current laws do not. In fact, there is something downright absurd about marshaling the Justice Department and then maybe an independent counsel to look into whether Clinton and Gore actually asked someone somewhere to make a political donation. This, we are told, might be a felony—like, say, armed robbery. As anyone can see, it is actually an absurdity.

What do we care—Mr. and Mrs. USA—whether Gore or Clinton was in the business section of the White House when he picked up the phone or upstairs in the private quarters? What do we care whether Gore was in his office or ducked across the street to a pay phone? What do we care whether he used a credit card or called collect? Yet these are some of the very issues involved in this molehill-into-a-mountain scandal.

As everyone but congressional Republicans seems to know, the law involved was designed to stop elected federal officials from putting the arm on their own staffs. This was once a routine practice and, indeed, is not unknown to this day. In some jurisdictions, county or municipal workers are expected to make political donations to the reigning organization. Senate Republicans in need of some pointers can ask Al D'Amato how this is done.

If Clinton or Gore had done something along those lines, an independent counsel would be justified. Or had either one of them—or anyone within a mile of Clinton—offered a job or a government program in exchange for a contribution, that too would be serious stuff. Then it would not matter if the call was made from the presidential shower or the Situation Room—with a Donald Duck phone or the vaunted red one. A crime would have been committed.

But in the absence of any such accusation, the Republicans press ahead anyway—and, in the process, do the White House a favor. The question of who called whom where obscures the uncontested fact that Clinton cheapened the White House with his greed for campaign bucks. The coffees, the sleepovers, the Lincoln Bedroom for the campaign version of frequent flyer miles—all these turned what used to be called The People's House into a bed and breakfast for fat cats.

Sooner or later the public—but probably never the press—is going to understand that the Republicans are calling for an independent counsel for what, in essence, may not be a crime and should not be a crime anyway. Back in 1975, that was the conclusion of four Watergate special prosecutors—Archibald Cox, Leon Jaworski, Henry Ruth and Charles Ruff. In a report, they said the law was so confusing and antiquated that Congress ought to change it. Congress, of course, has done nothing of the sort.

What's more, if an independent counsel is summoned, the result will be a partisan donnybrook. Attorney General Janet Reno will have to turn the matter over to a three-judge panel headed by the toxically partisan David B. Sentelle. (He supposedly named his daughter Reagan after you-know-who.) He is the same appellate judge whose panel fired Robert Fiske and replaced him with Kenneth Starr, a frank ideologue himself. Starr has since conducted an open-ended investigation of Whitewater, which has so far produced nothing more than questions about his competence. He seems lost in Arkansas.

The GOP has a case to make about the way this White House raised money. But for a party whose sole attribute is a belief in less government, it is awfully quick to bring in the government's heaviest guns to swat what is, after all, a mere gnat of an alleged infraction. Once summoned, though, the Lord High Independent Counsel can do pretty much what he or she wants. That would mean, among other things, that Gore would have to spend more and more time in the attic, searching for old records, canceled checks and high school yearbooks. He has already had to hire two criminal lawyers.

The whole thing is a study in disproportion, in a madness that, in other places, would entail an examination of the water supply. Campaign financing badly needs reform but, rather than do that, congressional Republicans are trying to lynch Clinton and Gore for what, it appears, is their most serious offense: winning the last election. No independent counsel is going to change that.

[From the Washington Post, Sept. 30, 1997]

RENO'S BURDEN

(By E.J. Dionne, Jr.)

The issue of whether Attorney General Janet Reno should recommend an independent counsel to investigate fund-raising by President Clinton and Vice President Gore is hopelessly ensnared in politics, weird legal interpretations and Washington power games.

If Reno fails to name a counsel, Republicans are talking about impeaching her. If she names a counsel, she will be seen as bowing to threats and falling into a trap she built for herself. Neither is a good option.

Reno should never have declared that Vice President Gore was legally untouchable if he was raising ''soft'' money in those telephone calls from his office, but under suspicion if he raised ''hard'' money.

This casuistic distinction between the first kind of money, which goes to general party purposes, and the second kind, which can be spent directly on candidates, was blown away when Bob Woodward of The Post reported that the Democratic National Committee put some of the money Gore raised into ''hard money'' accounts.

Reno acknowledged she learned this from The Post, not from her investigators, and was forced to reexamine her position on whether a counsel should be named.

But whether the money was ''soft'' or ''hard,'' those phone calls, on their own, don't justify an independent counsel. That's especially true given widespread disagreement over whether the 1883 law they purportedly violated even applies in this case. And as Phil Kuntz reported recently in the Wall Street Journal, Sen. Phil Gramm was quoted in 1995 saying that he placed fund-raising calls, on his credit card, from his Senate office. He later denied explicitly soliciting money. The Justice Department, wrote Kuntz, ''considered and decided against pursuing'' the case.

Sen. Mitch McConnell (R-Ky.), who has threatened Reno with impeachment, urged the Senate Ethics Committee not to pursue Gramm, according to Kuntz, because so many other senators were probably guilty of the same thing. So Reno can't hang her decision on the phone calls.

But, yes, there are broader and much more troubling questions about the ways Democrats ripped apart the campaign law in 1996. So assume Reno seeks an independent counsel. Who picks the counsel? None other than the three-judge panel headed by Judge David Sentelle.

Judge Sentelle's panel, you'll recall, dismissed the original Whitewater counsel, Robert Fiske, and appointed Kenneth Starr. Sentelle thought the fact that Reno had picked Fiske raised the appearance of conflict of interest.

But appearances didn't seem to bother Judge Sentelle when he lunched with Sens. Jesse Helms and Lauch Faircloth, both North Carolina Republicans, shortly before he replaced Fiske. The same Sen. Faircloth had accused Fiske of a ''cover-up.'' Five past presidents of the American Bar Association issued a statement saying the meeting was ''unfortunate, to say the least'' and gave rise ''to the appearance of impropriety.''

''Sentelle has polluted the waters,'' said Fred Wertheimer, president of Democracy 21 and a fierce critic of both parties' 1996 fund-raising tactics. ''The notion of the independent counsel is to depoliticize the process, and the Republicans in Congress want to turn it into a political process.''

Reno may have good reasons for dragging her feet on the independent counsel. Perhaps she's not happy with the Starr investigation or thinks she appointed too many counsels in Clinton's first term. It's possible she doesn't trust Judge Sentelle and—like many Democrats—has developed doubts about the independent counsel law.

If any of this is true, she should come right out and say so. In the current issue of the conservative American Spectator, former Reagan Justice Department official Terry Eastland has it right on this point. ''there would be nothing necessarily wrong if Reno had changed her mind about the [independent counsel] law . . . and tried to reshape her enforcement of it accordingly,'' he writes. ''But this would be vital information, something worth knowing and evaluating.''

Similarly, Eastland said in an interview, if Reno doesn't trust the Sentelle panel, ''that's the kind of thing that has to be candidly stated and argued for.''

An intriguing alternative to turning to Judge Sentelle comes from Wertheimer and from columnist Al Hunt: Reno should appoint her own counsel within the Justice Department, someone ''of unimpeachable reputation, and give that person the charter to do the job'' of investigating all finance abuses in 1996, Republican as well as Democratic.

This idea, at least, would require Reno to say exactly what she's thinking and why. Whatever she does, Reno shouldn't let herself be railroaded by Republicans with obvious partisan motives. But she also has to restore confidence in the way the 1996 finance abuses are being investigated.

[From the Washington Post, Sept. 23, 1997]

CAMPAIGN FINANCE OVERKILL

(By William Raspberry)

I make no excuse for President Clinton or Vice President Gore. Indeed, I'm quite prepared to accept that they violated—knowingly violated—federal law with regard to campaign fund-raising.

Still, the hearings before Sen. Fred Thompson's Governmental Affairs Committee make me a little uneasy. The prospect of an independent counsel investigation, given the tendency of those things to get out of hand, is positively chilling.

If that sounds like partisan irresolution, it gets worse. I don't like the idea of high officials getting away with law violations, and yet I can't imagine what punishment of the alleged violations I would accept as equitable.

A bad analogy might demonstrate my dilemma. Say your state—for reasons you don't comprehend and which may not in fact make much sense—has enacted a 28-mph

speed limit on an unremarkable two-mile strip of interstate highway. What do you do with motorists who come zooming through at, say, 32 mph?

You don't want to send the message that anyone can violate the speed laws with impunity; speed kills, and you have to believe that those who enacted the limits did so in the interest of public safety.

On the other hand, how many licenses would you snatch, and how many drivers would you send to jail for doing something that (it seemed to you) endangered the public not a whit?

Laws ought both to have some purpose and to advance that purpose. The purpose of the fund-raising laws is clear and commendable; to prevent the buying and selling of public office. But how does the law that has Al Gore in such trouble advance that purpose? It forbids solicitation or receipt of contributions in any federal ''room or building occupied in the discharge of official duties.'' Did Gore solicit campaign contributions from his office phone? Sure he did. Clinton, too. Would the republic have been more secure if they had toddled off to the corner drugstore to make the calls? (Waiting until they got home after work would have been no solution; both live in buildings ''occupied in the discharge of official duties.'')

People who study these things say the prohibition, part of the civil service reform of a century ago, was designed to keep public officials from pressuring their staffs into making contributions. It did not contemplate telephoned solicitations made to private citizens.

But that's not all that bothers me about the investigations. Thompson's hearings are supposed to have some legislative purpose and, in truth, one keeps hearing about the need for campaign finance reform. But one could be forgiven for wondering if the true purpose isn't to bolster Republican Thompson's own presidential prospects and to destroy Democrat Gore's.

That is, perhaps, a small point. This isn't: The Supreme Court has said money is speech. If that makes sense (and it does to me), how can it make sense to put arbitrary limits on the amount of speech that's permissible?

That's not a trick question; it worries me a lot. It's inconceivable that there should be limits on the amount of time, doorbell-ringing, envelope-stuffing or other forms of political ''speech'' supporters can contribute to candidates of their choice. Why should we countenance limits on money speech?

The obvious answer is that we don't like the idea of rich people buying influence over public officials or otherwise subverting the government to their private purposes. (It's easy, though not necessarily fair, to assume that the purposes of the rich are more likely to be against the public interest than are the purposes of, say, organized labor.)

Maybe there's no way out of the dilemma. Either we allow free speech in all its forms, or we arbitrarily limit it for people we don't trust. The latest attempt to split the difference—allowing larger amounts of ''speech'' on behalf of political parties and smaller amounts for candidates—has pretty much come a cropper. Soft money/hard money indeed!

Public financing of campaigns is the most frequently offered solution. But how do you ensure fairness to lesser-known candidates, and how do you ensure the free speech rights of those who talk with their pocketbooks?

We have two things going on at the same time: a serious campaign-finance dilemma and a juicy campaign-finance scandal.

Guess which one will get the attention.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized for 10 minutes.

RETURNING MORE FREEDOM TO OUR LOCAL SCHOOLS

Mr. GORTON. Madam President, yesterday, President Clinton assailed my proposal to give more money to schools all across the country and restore authority for directing those funds to parents and teachers and school board members. The debate about the future of our public schools is vitally important to the future of this country. A front-page Washington Post article today notes: ''. . .more parents than ever are choosing alternatives to public education for their children. . .'' and are doing so in such great numbers that the phenomenon is starting to resemble a revolution. We should read this as a warning signal that parents are beginning to lose faith in their public schools. We must act decisively to restore that faith, improve education, and prepare our children for their future. More of what we are doing now is not enough.

On one point, the President and I do agree: We can improve public education. We part company, however, on who can best make decisions to improve our public schools. I believe that parents and teachers and local school board officials will make the greatest strides in improving education because they are in our homes and classrooms and high schools with our kids. But with his remarks yesterday, President Clinton says to parents and teachers: I don't trust you.

I find it remarkable that the President believes that restoring decision-making authority to parents and teachers and our elected school board members is somehow dangerous. The Gorton education reform amendment increases the amount of money school districts have to work with, thus, expanding the programs they can target to both disadvantaged and high-achieving students.

A recent study found that if Federal education funds for kindergarten through high school are sent directly to school districts, as the Gorton education reform amendment proposes, school districts would receive an additional $670 million. Why would they receive more? Because the funds would bypass the Department of Education and State educational bureaucracies and save that amount in administrative application and compliance costs. Washington State school districts would receive $12.5 million more to target to their most needy students; Arkansas schools would receive $7 million in increased education funds; Mississippi would get $9 million to target disadvantaged students and other school programs.

President Clinton and opponents of giving parents and teachers a larger role in our children's education presume that local school districts will act irresponsibly if Federal strings disappear. This adds insult to injury. How can the President say with a straight face that programs would be ''abolished'' just because a bureaucrat does not direct them? Those who share the schools and classrooms with our children every day are not going to squander an opportunity to use an increase in Federal funds to address the problems they see every day.

It is also extremely disingenuous to state that my proposal would somehow ''close the Department of Education,'' as President Clinton suggested yesterday. Higher education and dozens of functions relating to education in general will remain in the Department—perhaps too many such functions—but hundreds of bureaucrats who now write rules and regulations to inflict on every school in America will go, and their salaries will be used to hire new teachers and provide better education in every school in our Nation.

Just on Sunday, Madam President, the Columbus Dispatch, in an editorial, summarized the dispute in this fashion:

> It's hard to see what the U.S. Department of Education has accomplished in its 20 years of existence to improve this country's system of schooling. The Senate's block grant approach is worth a try.

The will to change and improve our public school system and restore parents' faith in the quality of education it can provide to our kids is there. It is at home in our cities and towns and communities. Will we untie parents' and teachers' hands and let them do their jobs? The biggest point I believe today's Washington Post article makes clear is that parents are not turning to the Federal Government to improve their kids' education—parents and teachers are coming up with alternative solutions because they want the best possible education for their kids.

We must return and restore more freedom, not less, to our local schools, so that we can restore the public's faith in public education.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Senator from Ohio.

CAMPAIGN FINANCE REFORM

Mr. GLENN. Mr. President, I want to address the campaign finance matter that we have been involved with this year. I would like to start off by saying that I think sometimes we give the impression, with all of our horror stories about some of the things that have happened in campaign finance over the past few years, both on Capitol Hill and in the Presidential elections in both parties—that we sometimes emphasize to the point where we might add to the cynicism of the people of this country instead of helping placate or correct some of the reasons for that kind of cynicism.

I want to add that I think the majority of elected officials here in Washington, the majority of the people that run for office, whether high political office here in Washington, in the Congress, or even running for the Presidency or Vice Presidency, or the people