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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, March 17, 1997, at 2 p.m.

Senate

FRIDAY, MARCH 14, 1997

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Wait for the Lord, be of good courage, and He shall strengthen your heart; wait I say, on the Lord.—Psalm 27:14.

Let us pray.

Gracious Father, in this world of instant everything, fast foods, and shallow relationships, there are times we become very impatient when anything or anyone causes us to wait. We hate long lines, delayed flights, and tardy friends. Sometimes we get stressed out with exasperation. Then we worry about burnout. Neither the pout nor the shout seems to get things moving the way we want and when we want them.

Father, we confess that waiting is not easy for us. Often we turn to false hopes for quick, easy answers. Graciously You wait for us to realize that nothing or no one can be a source of lasting hope except You. It dawns on us that what we thought were waiting times are really times during which You wait for us to want You and Your guidance above all else.

Now in the quiet of this moment, we need to experience a hush instead of a rush. Your timing is perfect. Help us to realize that there are no unanswered prayers. A delay is not a denial if it brings us closer to You in deeper trust. Now an inner glow comes from living in the flow of Your peace. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able chairman of the Judiciary Committee is recognized.

SCHEDULE

Mr. HATCH. Mr. President, on behalf of the majority leader, today the Senate will begin consideration of Senate Joint Resolution 22, the independent counsel resolution. The majority leader has announced that no rollcall votes will occur today or during Monday's session of the Senate.

For the information of all Members, the next rollcall vote will be at approximately 2:45 on Tuesday, March 18. That rollcall vote will be on passage of Senate Joint Resolution 18, the Hollings resolution on a constitutional amendment on campaign expenditures.

With respect to the order reached last night relative to the independent counsel resolution, no amendments will be in order during today's session to Senate Joint Resolution 22. Amendments may be offered to the independent counsel resolution beginning at 3 p.m. on Monday. Senator LOTT has indicated that it is his hope he and the Democratic leader can reach an agreement as to when the Senate will complete action on Senate Joint Resolution 22.

I thank my colleagues for their attention.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The distinguished Senator from Montana is recognized.

Mr. HATCH. Will the Senator tell me how much time he will take, approximately?

Mr. BAUCUS. Seven minutes.

(The remarks of Mr. BAUCUS pertaining to the introduction of S. 443 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under previous order, the leadership time is reserved.

APPOINTMENT OF AN INDEPENDENT COUNSEL TO INVESTIGATE ALLEGATIONS OF ILLEGAL FUNDRAISING

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S.J. Res. 22, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 22) to express the sense of the Congress concerning the application by the Attorney General for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I rise today to speak on Senate Joint Resolution 22 which expresses the sense of the Congress that the Attorney General should apply for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Under Federal law, the Attorney General may apply to the special division of the Court of Appeals for the D.C. Circuit for appointment of an independent counsel whenever, after completion of a preliminary investigation, she finds that a conflict of interest exists or when she finds evidence that a specific category of individuals within the executive branch may have violated Federal law. The appointment of an independent counsel is a serious matter and one which the Attorney General should only initiate when necessary. That is why I, and many others, had refrained from joining the assortment of calls for Attorney General Reno to appoint an independent counsel in connection with the 1996 Presidential campaign.

Yet, yesterday, all 10 Republicans on the Judiciary Committee felt the time had come to request such an appointment. We sent a letter to the Attorney General, as authorized by the independent counsel statute, requesting that she make an application for an independent counsel. I ask unanimous consent that a copy of our letter to the Attorney General be printed at the appropriate place in the RECORD.

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

(See exhibit 1.)

Mr. HATCH. We did that with due deliberation, without any desire to hurt anybody and without any desire to do other than to help the Attorney General make this decision.

I must confess to a degree of frustration with the Independent Counsel Act. Did I appreciate having to send our letter? Certainly not. However, the law sets forth a specific process by which Congress is to request that the Attorney General begin the process by which an independent counsel is appointed, and this process requires the Judiciary Committee to make what the other party will inevitably characterize as partisan charges in order to trigger the Attorney General's responsibilities. In order for Congress to trigger the most preliminary steps for the Department of Justice to take to consider the need for an independent counsel, the law essentially provides that the party not in control of the executive branch make specific charges when and if the Attorney General fails to act on her own. I would have preferred to have had the Attorney General seek an independent counsel on her own. But she has not done so. At the very least, I would have preferred that she conduct a preliminary investigation on her own. But she has refused to do even this. I would have preferred to have requested that she seek an independent counsel without having to set forth, in such a public manner as the law requires, the specific and credible evidence which warrants such an appointment. But in order for us to require the Attorney General to take certain minimal steps toward investigating whether an independent counsel is warranted, we were required by law to send our letter. In short, the Independent Counsel Act is the law of the land and, notwithstanding its relative flaws, we on the Judiciary Committee have an obligation to abide by it.

At last week's Judiciary Committee executive business meeting, I had hoped to vote on a resolution expressing the committee's sense that an independent counsel should be appointed, and directing that I draft and circulate a letter requesting that the Attorney General apply for such an appointment. I had been led to believe that a committee vote on a resolution calling for an independent counsel would have broad bipartisan support. Yet, my colleague, Senator LEAHY—the committee's ranking member—indicated that, in light of the short notice they received about the proposed resolution, he and his colleagues wished to hold the resolution over until the committee's next business meeting. I readily acceded to their request.

It was not an unreasonable request. And besides, I was asked to begin this process just an evening before myself, and I had not had the opportunity to discuss it with Senator LEAHY. So there was absolutely no offense. It was something I was willing to do and readily did because I thought it was a reasonable, decent request.

Without getting into the details of our ensuing discussions, it became clear that it would be difficult, if not impossible, to formulate a resolution on which both sides of the aisle could agree. Furthermore, I felt it was best to avoid a prolonged discussion of this matter in committee given that it was unlikely consensus could be reached. Accordingly, I decided to proceed directly to drafting and circulating a letter to the Attorney General as I had originally planned. The letter went through a number of variations. We tried to please people, we tried to resolve problems, and I think we have. Unfortunately, we were unable to reach agreement with our colleagues on the other side of the aisle because we could not reach agreement on whether the committee should actually request the appointment of an independent counsel. Accordingly, I circulated a letter to all members of the committee and a majority of the committee's members signed on.

I remain persuaded that the appointment of an independent counsel is both called for under the independent counsel statute and responsive to the views of most Americans, who would like to be assured that these very serious allegations are investigated in a fair and thorough way, and without any real or apparent conflict of interest.

I am hopeful that Attorney General Reno, for whom I continue to have great respect, will appreciate the concerns set forth in our letter, and will agree that an independent counsel should be appointed forthwith to investigate these matters.

Recent developments have, I believe, made clear that a thorough Justice Department investigation into possible fundraising violations in connection with the 1996 Presidential campaign will raise an inherent conflict of interest, and certainly raises at least the appearance of such a conflict, and that the appointment of an independent counsel is therefore required to ensure public confidence in the integrity of our electoral process and system of justice.

Madam President, recent revelations have demonstrated how the DNC was, as the New York Times wrote, ''virtually a subsidiary of the White House.'' That was on February 27, 1997, just a few weeks back. Without restating the points covered in our letter and without questioning in the slightest the integrity, professionalism or independence of the Attorney General or the individuals conducting the present Justice Department fundraising investigation, the fact that the Department's investigation will inescapably take it to the highest levels of the executive branch presents an inherent conflict of interest calling for the appointment of an independent counsel under title 28 United States Code section 591(c)(1).

Further, the answer to whether criminal wrongdoing has occurred will of necessity turn on the resolution of disputed factual, legal, and state of mind determinations. In particular, I would note that there remains the significant factual question of the extent to which the allegedly improper fundraising activity was, in fact, directed toward benefiting Federal campaigns, especially when some of this activity was, by admission, paid for by the Clinton-Gore campaign. Because the inquiry necessary to make these determinations will inescapably involve high level executive branch officials, they should, I believe, be left to an independent counsel in order to avoid a real or apparent conflict of interest. Moreover, where individuals covered by the independent counsel statute are involved, as they plainly were here, see title 28 United States Code section 591(b), the Ethics in Government Act requires that these inquiries be conducted by an independent counsel.

In any event, both prudence and the American people's ability to have confidence that the investigation remains free of a conflict of interest, warrants the appointment of an independent counsel.

More importantly, the emerging story regarding the possibility that foreign contributions were funneled into U.S. election coffers to influence U.S. foreign policy further highlights the conflict of interest the Attorney General's ongoing investigation inescapably confronts. I delivered a floor speech earlier in the week spelling out my concerns, so I will not restate them here. They are detailed in the letter which I have placed in the RECORD. It is clear, however, that these issues cannot be properly investigated without a conflict of interest, since investigating

most of these questions will require inquiring into the knowledge and/or conduct of individuals at the highest levels of the executive branch. Moreover, several of the principal figures in this investigation, including the Riadys and the Lippo Group and Charlie Trie, reportedly have longstanding ties to our President.

Indeed, the conflicts at issue here are precisely the sort of inherent conflict[s] of interest to which the Attorney General testified during Senate hearings in 1993 on the reenactment of the Independent Counsel Act. Avoiding an actual or perceived conflict of interest was the basis, not just for the application for the appointment of an independent counsel to investigate James McDougal, but also for the recent requests to extend that counsel's jurisdiction to include the investigations of Anthony Marceca and Bernard Nussbaum. As the Attorney General herself testified, applying for an independent counsel, and our request that she make such application, in no way detracts from the integrity and independence of the Attorney General or the career prosecutors presently investigating these allegations.

A final point should be made. Some of my Democrat colleagues have written to the Attorney General urging her, should she decide to apply for an independent counsel, to request an independent counsel who will investigate the full scope of fundraising irregularities. They argue that she should avoid partisanship by instructing the independent counsel to investigate Republicans who have skirted the spirit of the law. I appreciate what my colleagues are trying to do, and their loyalty to their political party is duly noted by me. But, as I discussed a moment ago, the appointment of an independent counsel is a very serious matter and partisan proportionality should not even be the slightest consideration. Would these Senators have sent this letter had the majority not sent our letter to the Attorney General? I think we all know the answer to that question.

Furthermore, they fail to even suggest that the Republican activities to which they refer independently warrant an independent counsel. Accordingly, I expect the Attorney General, who is a woman of integrity, will give their letter the consideration it deserves.

In closing, Attorney General Reno has appointed four independent counsels to date. It is the sense of the majority of the members of the Judiciary Committee that the need to avoid even the appearance of a conflict of interest, and thereby to ensure the public's confidence in our system of justice, requires an independent counsel in connection with the 1996 Presidential campaign. Should the Senate vote on Senate Joint Resolution 22, I will be voting in support of the resolution, and I think rightly so.

I call upon my friends on the other side of the aisle to consider voting for it as well. Voting that the Attorney General appoint an independent counsel in this case appears to me to be the right thing to do. Keep in mind, I have held off making this request for a lengthy period of time, knowing my constitutional duty and our constitutional duties here, because I wanted the Attorney General to have enough time, and those who are working with her who are people, I believe, of substance and integrity, to investigate and look into this and resolve these matters. But as these matters have accumulated, as the allegations have mounted up, as newspaper upon newspaper has written about them, it is clear that there is at least an appearance of a conflict of interest, and, therefore, it left us with no alternative other than to request this, even though, to repeat, I wish no one any harm. I certainly hope that these allegations are untrue, I hope they can be proven to be untrue, and my prayers will be in that regard.

Having said all of that, I do hope that the Attorney General will take the necessary step to apply for the appointment of an independent counsel and that one will be appointed. Then perhaps we can resolve these matters once and for all in an independent, reasonable way that I think will be for the benefit of everybody.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 13, 1997.

Hon. JANET RENO,
Attorney General of the United States, U.S. Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: This letter serves as a formal request, pursuant to 28 U.S.C. §592(g)(1), that you apply for the appointment of an independent counsel to investigate possible fundraising violations in connection with the 1996 presidential campaign. The purpose of this letter is not to provide an exhaustive list of the particular allegations that, we believe, warrant further investigation. Indeed, since the Department of Justice has been conducting an extensive investigation into fundraising irregularities for several months now, you presumably have far greater knowledge than do we of the various matters that are being, and will need to be, investigated, and we presume that your judgment as to the necessity of an independent counsel is based on all of the information before you. Rather, the purpose of this letter is to articulate why we believe this investigation should be conducted by an independent counsel. As you know, the Senate Committee on the Judiciary has, to date, refrained from joining the assortment of other individuals who have called upon you to initiate an independent counsel appointment. Recent developments over the past few weeks, however, have persuaded us that such an appointment is now necessary.

When you appeared before the Senate in 1993 when we were considering reenactment of the Independent Counsel statute, you stated

''there is an inherent conflict of interest whenever senior Executive Branch officials are to be investigated by the Department of Justice and its appointed head, the Attorney General. The Attorney General serves as the pleasure of the President. Recognition of this conflict does not belittle or demean the impressive professionalism of the Department's career prosecutors, nor does it question the integrity of the Attorney General and his or her political appointees. Instead, it recognizes the importance of public confidence in our system of justice, and the destructive effect in a free democracy of public cynicism.''

You further testified that—

''It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor. * * * The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent * * * the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.''

We believe, that, in light of recent developments, a thorough Justice Department investigation into possible fundraising violations in connection with the 1996 presidential campaign will raise an inherent conflict of interest, and that the appointment of an independent counsel is therefore required to ensure public confidence in the integrity of our electoral process and system of justice.

First, recent revelations have demonstrated how officials at the highest level of the White House were involved in formulating, coordinating and implementing the DNC's fundraising efforts for the 1996 presidential campaign. Recent press reports, the files released by Mr. Ickes, and public statements by very high ranking present and former Clinton Administration officials indicate how extensively the Administration was involved in planning, coordinating, and implementing DNC fundraising strategy and activities. All this has led The New York Times to a conclusion which we find hard to challenge; namely, that ''the latest documentation shows clearly that the Democratic National Committee was virtually a subsidiary of the White House. Not only was [President] Clinton overseeing its fund-raising efforts, not only was he immersed in its ad campaigns, but D.N.C. employees were installed at the White House, using White House visitors' lists and communicating constantly with [President] Clinton's policy advisers.'' The New York Times, February 27, 1997. As a consequence, we believe that a thorough investigation of all but the most trivial potential campaign fundraising improprieties necessarily includes an inquiry into the possible knowledge and/or complicity of very senior white House officials in these improprieties. We believe that, without questioning in the slightest the integrity, professionalism or independence of the Attorney General or the individuals conducting the present Justice Department fundraising investigation, the fact that the Department's investigation will inescapably take it to the highest levels of the Executive Branch presents an inherent conflict of interest calling for the appointment of an independent counsel under 28 U.S.C. §591(c).

Moreover, these revelations raise new questions of possible wrongdoing by senior White House officials themselves, including but not limited to whether federal officials may have illegally solicited and/or received contributions on federal property; whether specific solicitations were ever made by federal officials at the numerous White House overnights, coffees, and other similar events, and whether these events themselves, often characterized in White House and DNC memoranda as ''fundraising'' events, constituted improper ''solications'' on federal

property; whether government property and employees may have been used illegally to further campaign interests; and whether the close coordination by the White House over the raising and spending of ''soft''—and purportedly independent—DNC funds violated federal election laws, and/or had the legal effect of rendering those funds subject to campaign finance limitations they otherwise would not be subject to. It seems to us that, even accepting the narrow constructions of some of the governing statutes that have been suggested—which are not necessarily the constructions an independent counsel would render—the answer to whether criminal wrongdoing has occurred will of necessity turn on the resolution of disputed factual, legal, and state of mind determinations. Because the inquiry necessary to make these determinations will inescapably involve high level Executive Branch officials, we believe they should be left to an independent counsel in order to avoid a real or apparent conflict of interest. Moreover, where individuals covered by the independent counsel statute are involved, as they plainly were here, see 28 U.S.C. §591(b), the Ethics in Government Act requires that these inquiries be conducted by an independent counsel. Whether the Act simply permits or requires the appointment of an independent counsel, however, we believe that prudence and the American people's ability to have confidence that the investigation remains free of a conflict of interest, requires it.

Second, the emerging story regarding the possibility that foreign contributions were funneled into U.S. election coffers to influence U.S. foreign policy further highlights the conflict of interest your ongoing investigation inescapably confronts. A March 9, 1997, Washington Post article quoted ''U.S. government officials—presumably familiar with the Department's ongoing investigation—as stating that investigators have obtained '''conclusive evidence'' that Chinese government funds were funneled into the United States last year,'' and quoted one official as stating that ''there is no question that money was laundered.'' This article reported that U.S. officials described a plan by China ''to spend nearly $2 million to buy influence not only in Congress but also within the Clinton Administration.'' If the FBI truly is investigating these allegations, as is reported, and this investigation extends to high level Executive Branch officials, it raises an inherent conflict of interest.

Moreover, a closer look at the activities and associations of some of the particular individuals who are reported to be the principal figures in the ongoing investigation further illustrates why this investigation ultimately must involve high levels of the Executive Branch. Especially troubling is the information revealed to date regarding the Riady family and their associate, Mr. John Huang, but serious questions are also raised by the activities and associations of Mr. Charles Yah Lin Trie, Ms. Pauline Kanalanchak, and Mr. Johnny Chung, among others. Taken together, these reported events raise a host of serious questions warranting further investigation: To what extent were illegal contributions from foreign sources, in particular China, being funneled into the United States, and with whose knowledge and involvement? To what extent was U.S. policy influenced by these contributions, and with whose knowledge and/or involvement? To what extent were the decisions to hire Huang at the Commerce Department, to support most-favored-nation status for China and Chinese accession to the World Trade Organization, or to normalize relations with Vietnam, influenced by contributions, and with whose knowledge and/or involvement? To what extent was the standard NSC screening process for admission to the White House waived or modified so as to permit special access to large donors and their guests where it would ordinarily be denied, and with whose knowledge and/or involvement? To what extent was John Huang placed at the DNC to raise money in exchange for past and future favors, and with whose knowledge and/or investment?

It is evident that these questions cannot be properly investigated without a conflict of interest, since investigating most of these questions will require inquiring into the knowledge and/or conduct of individuals at the highest levels of the Executive Branch. Moreover, several of the principal figures in this investigation, including the Riadys and the Lippo Group and Charlie Trie, reportedly have longstanding ties to President Clinton.

Indeed, the conflicts at issue here are precisely the sort of ''inherent conflict[s] of interest'' to which you testified during Senate hearings in 1993 on the re-enactment of the Independent Counsel Act. Avoiding an actual or perceived conflict of interest was the basis not just for your application for the appointment of an independent counsel to investigate James McDougal, but also for your recent requests to extend that counsel's jurisdiction to include investigations of Anthony Marceca and Bernard Nussbaum. The same concern warrants your application for an independent counsel here, where public confidence can be assured only by the appointment of an independent counsel to investigate any alleged wrongdoing in connection with DNC, Clinton Administration, and Clinton/Gore Campaign fundraising during the 1994–1996 election cycle. As you yourself testified, applying for an independent counsel, and our request that you make such an application, in no way detracts from the integrity and independence of the Attorney General or the career prosecutors presently investigating these allegations.

Pursuant to the statute, please report back to the Committee within 30 days whether you have begun or will begin a preliminary investigation, identifying all of the allegations you are presently investigating or as to which you have received information, and indicating whether you believe each of these allegations are based on specific information from credible sources, and either pertain to a covered individual or present a conflict of interest. Please also provide your reasons for those determinations. See 28 U.S.C. 592(g)(2). In the event you conduct a preliminary investigation, but do not apply for the appointment of an independent counsel, or apply for an independent counsel but only with respect to some of the various allegations on which you have received information, please identify all those allegations which in your view do not warrant appointment of an independent counsel, and explain your view whether those allegations warrant further investigation, pertain to a covered individual, and/or present a conflict of interest See 28 U.S.C. §592(g)(3).

Sincerely,

Orrin G. Hatch, Charles E. Grassley, John Ashcroft, Spencer Abraham, Mike DeWine, Strom Thurmond, Arlen Specter, Jon Kyl, Fred Thompson, Jeff Sessions.

Mr. HATCH. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAMS). Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the first comment this morning is that everybody wishes the President well in his upcoming surgery. It is almost like those in some of the terrorist groups that go out and kneecap somebody and then send flowers to them in the hospital. I am not suggesting that there is hypocrisy in it, but I am waiting for all of the requests for special counsel and for some of my friends on the other side to ask for a resolution to spend money to send Senators in surgical gowns out to Bethesda to make sure the President really is out there having an operation.

It has reached that kind of a level around here. For some of my colleagues, if President Clinton were to walk across the water to save somebody from drowning, the headline in their statement would be, ''It proves he can't swim.''

When I hear some of the statements being made, I am reminded of a what a former Republican President—who, incidentally, was one of the best fundraisers I have ever known—said, ''Well, there you go again.''

Some in the Congress simply cannot avoid the temptation to jump the gun, draw the most negative possible inferences, and take every opportunity to discredit those who serve in the Government, and, as one who has served for years in law enforcement, they also take every possibility to discredit those who serve in law enforcement, and demand yet another costly, time-consuming, largely unaccountable and potentially destructive independent counsel investigation so long as it is limited to only investigating a Democratic President.

Senate Joint Resolution 22 does not advance the administration of justice. I think it is a kind of partisan effort at political spin. It comes at the end of a week during which the Senate rejected the majority leader's version of a resolution to restrict the Governmental Affairs Committee investigation. That resolution, before it passed, was altered during our floor debate to include examination of improper as well as illegal fundraising activities and finally to include such activities in congressional as well as the Presidential campaign. It then passed 99 to nothing.

The joint resolution before us is a similarly ill-conceived effort. It was introduced before the Rules Committee or the Senate moved to consider, amend and reamend the funding resolution for the Governmental Affairs Committee. It was introduced before the Judiciary Committee met on a committee resolution on March 6. It was introduced before the Republican and Democratic members of the Senate and House Judiciary Committees sent letters to the Attorney General. Those letters are the congressional actions contemplated by the independent counsel law. This resolution is not.

In fact, this resolution, if it were introduced as a bill rather than merely a sense of the Senate resolution and then passed as a law, would not pass constitutional muster.

It is very, very easy to stand here and say go out and look at the President; do not look at anything we do. Whatever you do, do not look at the House or Senate Members of Congress. But let us go after the President.

Mr. President, what we are saying is that our regular law enforcement agencies cannot do the job. We in Congress can. That is a laugh. As I said, I spent nearly 9 years in law enforcement. I know that the Attorney General and the others in law enforcement here have the independence to do what needs to be done. But I also know that it is the height of hypocrisy to say look at them; do not look at us.

The American people, the public, want more than anything else real campaign reform. The Republican leadership of the House and Senate could bring campaign reform measures to the floor today and ask us to have votes on them. Instead, they want to spend days and days and days bashing the President. Even while he is lying in the hospital in Bethesda for surgery, they will spend days bashing him, hoping that nobody will notice the tens of thousands of dollars we will spend in this Chamber in this debate and the printing costs of it all. They are hoping that maybe the American public will not ask the question: If you have all that time and money and effort to spend, why not debate real campaign finance reform and vote on it—campaign finance reform that would apply not just to the President and Vice President but would apply to every Democrat, Republican and Independent in the House and Senate and every Democrat and Republican and every Independent who might challenge an incumbent.

The fact is that if you took a poll today and asked the American public, do you want real campaign finance reform, the response would be a resounding yes. I hope the America public will ask the Republican leadership of the Senate and the Republican leadership of the House, because they are the ones responsible for setting the legislative agenda, when are you going to bring campaign finance reform to the floor? The President has said he will sign the bill. Unlike the last strong, tough campaign finance reform bill that was passed by the House and Senate and went to the White House for signature and was vetoed by the former President, this President has said he will sign such a bill.

It is going to be easy during the vacation set up in a week for the House and Senate, for Members to go home and give wonderful speeches and say we are in favor of campaign finance reform. We are all in favor, just like we are in favor of God and motherhood. But I hope people ask, but have you voted on it? When are you going to vote on it? Bring it up and have a vote on real campaign finance reform.

Now, some Members will vote against it and some Members will vote for it. But at least the American public will know how their Member of the House and their Senators voted. That is all we are asking.

I understand and I have great respect for some Senators who do not want to vote for a campaign finance reform bill, even those who oppose campaign finance reform legislation. I do not question their motives. Let them vote against it. But I also respect those such as Senator FEINGOLD and Senator MCCAIN who have brought forward a campaign finance reform bill, and they ought to have a vote on it. That is all I am asking. Stop the smokescreens of Friday afternoon talks about investigating the President. I am sure they will pause at some point to wish him well during his surgery this afternoon and then they will go right back to bashing him.

Why not say here, Mr. President, we will actually do what we are hired to do, what we are elected to do, what we are paid to do. We will pass a campaign finance reform law.

In fact, while we are at it, maybe we ought to pass the chemical weapons treaty.

While we are at it, maybe we ought to pass a budget. My good friends on the other side of the aisle criticize the President's budget. Well, they have a majority of the votes in the House and Senate to pass their own. In fact, the law requires them to do it shortly after the vacation. Let us see if they will pass one.

It occurs to me the kind of votes necessary to pass a budget are the kind of votes that might cause some political pain on the right and the left, and maybe that is why we do not actually vote on those kinds of things. It occurs to me that if we passed a bill on campaign finance reform, it would actually cause some pain, especially for those of us who are incumbents, and maybe that is why the leadership will not bring that bill to the floor. It occurs to me that the reason these resolutions about investigations are very carefully aimed at the President and exclude any consideration of possible improper activity on the part of Members of Congress is that maybe—maybe—some who are supporting them want to make sure no gaze of a special prosecutor is directed at activities of Members of Congress.

There are only 100 people at any one time who are given the opportunity to be in the Senate. I do not question the fact that you have to have some partisan motivations to get elected in the first place. But when you are here and take an oath of office, an oath to uphold the Constitution, to represent the whole country and to uphold the Constitution of the United States, let us not have partisan games that are more reflective of somebody running for some minor county office somewhere. We are supposed to be reflecting the interests of all of the United States. We are supposed to be reflecting the interests of all people. What we do as the Senate should reflect the conscience of the United States. The Senate should be, and at times has been, the conscience of this great country. But, when we engage in partisan games aimed at sliming the President, but at the same time protecting every single thing we do, that is not representing the conscience of the United States. That is not rising to the level of what the U.S. Senate should be.

If Members want to investigate the President on fundraising activities, then be honest enough to say we will apply the same searchlight, the same magnifying glass, the same standards to ourselves. Do not give a hypocritical image of the U.S. Senate to the American people by saying we will go after the President but we will make sure that nobody looks at us, nobody asks us if any of us had done the exact same things we are asking the President not to do. That is not showing the kind of respect we should have for this Senate, for this body, for the precedents we establish here.

This resolution before us is not authorized by the independent counsel law. If it were a separate bill, it would not pass constitutional muster. It is an inappropriate effort to pressure the Attorney General to prejudge these matters. It would pervert the independent counsel process under the law. The independent counsel law was designed to protect the independence of investigatory and prosecutorial decisions, including those of the Attorney General. This resolution would say that Congress does not want the Attorney General to be independent. The resolution says that we want to step in and tell her what to do and how to do it. The independent counsel law was passed to ensure that investigative and prosecutorial decisions are made without regard to political pressure, but this action by the Senate would subvert that purpose by subjecting the critical initial decisions about invoking the law to just such political pressure.

We are saying to the Attorney General, do not you use any of your judgment. We will tell you what you have to think. When I was a prosecutor, I know what I would have told any legislative body that told me how to exercise my prosecutorial discretion. It is not Congress' place to determine whether and when to bring criminal charges. As a former prosecutor, I say this body is ill-suited to that purpose. The administration of justice is ill-served by efforts to intimidate a prosecutor to begin a case, just as it would be ill-served by the legislature trying to intimidate a prosecutor to end a case.

This resolution will serve only to undermine the investigation that the Attorney General now has underway. It will undercut the independent counsel law and I believe it further erodes public confidence in Government's ability

to do its job. We ought to do our job and let the Attorney General do hers.

Part of our job would be to pass campaign finance reform. But you see absolutely no effort by the Republican leadership to bring such a bill to the floor for a vote. Part of our job would be to vote up or down on the chemical weapons treaty, but you see no effort on the part of the Republican leadership to bring that to a vote. Part of our job would be to pass a budget, vote it up or down, but you see no effort on the part of the Republican leadership to bring that to a vote on the floor. What this resolution does is take the Senate down another detour, away from the critical work that we should be doing and is being left undone.

I have been here 22 years. I have been proud to work with Republicans and Democrats on major legislation. On the floor of the Senate during last year's Presidential election, I took the floor of the Senate to praise the former Republican leader, Senator Bob Dole. I praised him during the height of the Presidential election year, saying he is a man I had worked with closely for bipartisan solutions on farm bills, on hunger issues, on school lunch, school breakfasts, and the Women, Infants, and Children Programs. We forged a bipartisan consensus, just as I have been proud to do with so many other Members on the Republican side, and just as so many real leaders in the Republican Party have done as they have worked with Members of the Democrat side to form a bipartisan consensus on issues that are most important to the United States of America.

Unfortunately, when you have things like this resolution, which are so blatantly partisan, where little effort is made to bring about a bipartisan resolution, we find ourselves going further away from the kind of bipartisan approach to the Nation's problems that we heard so much about when this session was beginning.

It is almost as though some go out and have a pollster ask, ''What do you American people want of us?'' They will get back from the pollster that the people want us to work together, they want us to have bipartisan solutions, they want us to show more civility, they want us to work together in the interests of the country. So what do these well-informed legislators proceed to do? They go on the Sunday talk shows and have weekend press conferences and say that it is a new day, that there is an effort for bipartisan consensus. They say what they think the people want to hear.

But do we see a bipartisan effort on a budget resolution? No. Do we see a bipartisan effort on a chemical weapons treaty? No. Do we see a bipartisan effort to confirm Federal judges?

There has not been one single judge confirmed yet this Congress. You know, there is a heck of a lot more effort given to somehow influencing the appointment of an independent counsel or special prosecutor, by this body, than there is to considering and confirming Federal judges. Not one single Federal judge has been confirmed by this Congress. Not one court of appeals judge was confirmed in the last session of Congress. The Chief Justice of the United States, a conservative Republican, appointed first by one Republican President as a member of the Supreme Court and subsequently by another Republican President as Chief Justice, has said we have reached a crisis situation. There are nearly 100 vacancies in our Federal courts. Justice is not only delayed, justice is denied to American people—all American people, Republicans and Democrats alike.

Everybody knows it is a crisis. But this Senate, with all the talk about bipartisanship, has not confirmed one single Federal judge. In fact, I think there is only one scheduled for consideration by the Senate. At this rate—I am 56 years old—through normal attrition and all, if we keep on at this rate, when I am 156, instead of 100 vacancies we will have 300 or 400 vacancies.

This is not the way to show any kind of bipartisan consensus. If we spend one-tenth as much of an effort at confirming Federal judges that we are supposed to, that we are paid to do, that we are elected to do we might begin to fulfill our responsibilities. If we spend one-tenth the effort on confirming judges that we spend on cranking up more and more multimillion dollar investigations of the President, we might accomplish something. But, obviously, that is not intended in this new era of bipartisanship.

We spent the first 2 months of this year debating a proposed constitutional amendment that is unnecessary, unsound, and unwise, but a bumper-sticker approach to the problems of budget deficits and the need to balance our Federal budget. We have not spent 38 seconds on this floor actually debating a real budget. We have not spent 21 seconds; we haven't spent a nanosecond. We spent 2 months talking about something that might take effect in the next century. But we have not spent 2 seconds debating something that will take effect this year.

Mr. President, I fear for the Senate. I am proud of the Senate. I am proud of being here for 22 years. I am proud of serving with great Republican leaders and great Democratic leaders. I am proud of serving with men and women from both the Republican and Democratic side whom I consider true national leaders.

What makes me proud is they have come together for the best interest of the United States, not leaving behind their party allegiances, but being first and foremost Americans and U.S. Senators and doing what is best for the country. I do not see that happening now, Mr. President. It fills this Senator with a great deal of sorrow.

This is not the way we do things in my State. In my State, we will fight for our elections. Some win, some lose. Then we come together as Republicans and Democrats for what is best for Vermont. We, U.S. Senators, 100 of us having a chance to represent more than 250 million Americans, ought to do what is best for this country. A quarter of a billion Americans expect the 100 men and women of this body to do that, and we are not bringing together the bipartisan consensus we used to and that we need to achieve.

I talked about the bumper-sticker sloganeering of the constitutional amendment. It failed here. In the House, they have not even had a committee markup. The Republican Party decided not to do that. For whatever their reasons are, I hope now, after spending months on that ill-fated effort, we can actually debate and pass a budget. I tell my friends on the other side of the center aisle that if they really want to work on a bipartisan budget, we can. For that matter, they do not have to ask for a single Democratic vote. There are enough Republicans in the House and Senate to pass a budget, as the law requires, by April 15, if they really want to.

Mr. President, I have talked about judicial vacancies. Twenty-five percent of the current vacancies have persisted for more than 18 months. A quarter of the judicial vacancies in this country have been there for a year and a half. This is justice delayed, this is justice denied, this is wrong.

I have served here twice in the majority and twice in the minority. I have served here when the President of the United States was President Gerald Ford, then President Carter, then President Reagan, then President Bush, and now President Clinton. Never in my memory, under Republican Presidents or Democratic Presidents, with Republican Senates or Democratic Senates, never has the leadership of this body ever allowed a situation when judicial vacancies would exist in this number for this long. Never.

Republican leaders like Howard Baker or Bob Dole or Hugh Scott, Democratic leaders like Mike Mansfield or BOB BYRD or George Mitchell or TOM DASCHLE never countenanced such a thing. Never would these great leaders have done this. Never have they allowed the Federal judiciary to get in such an abysmal state, when the Chief Justice has to say it is a crisis, when the Chief Justice says: ''It is hoped that the Administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.'' And yet, we have to tell him today that we are not doing it, we are not doing our job.

A little over a year ago, the Republican majority of the House and Senate closed down the whole Government, for days on end, weeks on end, to make a political point. The political point is that they wasted hundreds and hundreds of millions of dollars of the taxpayers' money and the American public found out the Speaker of the House, at

one point, had to go out the back door of Air Force One—obviously, the kind of affront that they felt justified wasting hundreds of millions of dollars of taxpayers' money.

They were making a political point and the Government was closed down. Some say billions of dollars were wasted. It was an enormous inconvenience to the American taxpaying public who were wondering what was going on.

Having had this failed experience of closing down the executive branch of Government, it appears they now want to close down the judicial branch of Government. This is the kind of capricious meanness that you see in a schoolboy plucking the wings off a fly. This is beneath the dignity of the U.S. Senate. This is beneath the dignity of being a U.S. Senator. This is beneath the dignity of our Constitution. This is wrong. This has never been done. It was never done under the leadership of Senator Baker and Senator Dole, under the leadership of Senator Mansfield, Senator BYRD, Senator Mitchell, or Senator DASCHLE. I doubt if it was ever done under the leadership of those who came before them.

The Senate is not fulfilling its constitutional responsibility. It is interfering with the President's authority to appoint Federal judges. It is hampering the third, coequal branch of our Government.

The Republicans controlling the 104th Congress shut down the executive branch, this Congress they seem intent on shutting down the judicial branch for political gain. It is a scandal in the making. It is high time for the Senate to do its duty to consider and confirm judges to the vacancies that have persisted for so long.

Instead, they bring to the Senate floor this resolution and say, ''Hey, Mr. President, I hope you enjoy your time in Bethesda. Turn on C–SPAN. We're going to stand here and bash you for a day or two or three.''

I suggest this: If you want to do that—if the leadership figures that the only thing to do, because they cannot pass a budget, cannot ratify a treaty, cannot pass anything else that might significantly improve the lives of the American people—if, instead, they want to use this Senate to bash the President, could we have maybe an hour every day to do the people's business? Maybe an hour a day? For 10 hours, they can bash the President and 1 hour each day we could actually debate their budget resolution, if they had a budget resolution. For 10 hours a day, bash the President, an hour a day actually consider and confirm Federal judges.

It is getting a little ridiculous. Do people know that we get paid $133,000 a year, and we have not had 1 second of debate on the budget resolution that the Republican leadership of the Senate and the House are supposed to bring before us for a vote? Do they know that we get paid $133,000 a year, but if you want to litigate a case in a Federal court, you probably cannot get before a Federal judge because of the vacancies that our inaction is perpetuating?

Do they know how much it is costing to do the bashing per page of the CONGRESSIONAL RECORD? Maybe it is a sort of full-employment opportunity for printers. As a printer's son, maybe I ought to be happy, but I do not think this is what my father would think was the best thing for this body to do.

So, Mr. President, some of this could be humorous if it were not for the enormous cost to the taxpayers, if it were not for the fact that we are not doing what we are supposed to do, if it were not for the fact that the kind of bipartisanship that has always made me proud to be a Member of the U.S. Senate has broken down more than I have ever seen before. Maybe it would be funny if so many people were not hurt.

The Attorney General will look into any issues that there may be at the White House. She will report back to us, as she is required to do. We can look at that report and we can determine whether we agree with it or not. But as a former prosecutor, I must tell you, I find it very offensive to tell a prosecutor, ''Here is what you must do and must not do. Here are the conclusions you must reach and must not reach.''

That is basically what this resolution is saying and it is also saying: ''Oh, by the way—by the way—there's one thing thou shalt not do. Thou shalt not ask any question of a Member of Congress. We, the Republicans, who control the majority in the Congress, are saying, thou shalt not ask questions of us, what we might have done in fundraising.'' I will guarantee you, Mr. President, when we bring up an alternative resolution which calls on the Attorney General to look at Members of Congress, that in lockstep the Republican majority will vote that down. A herd of elephants will trample that into the dust.

Why is that? They say, go investigate the President. We have already spent $30, $40 million investigating the President and found nothing that says he has done anything wrong. We have already spent about $30, $40 million on a special prosecutor, who also goes out and gives speeches to organizations that seek to defeat the President. We spent $30, $40 million on a special prosecutor who has clients whose PAC's have worked very hard to defeat the President. We spent $30, $40 million on a special prosecutor who would not recognize a conflict of interest if it hit him up alongside the head.

Now they say, ''Let's just go after the President some more, but, please, make sure you understand what we are saying: Don't touch us.'' It reminds me of the tax debate where the distinguished former chairman of the Finance Committee, and one of the real giants of the Senate, Russell Long, in debate said, ''The kind of taxes we want are, don't tax me, don't tax thee; tax the man behind the tree.'' Well, in this case, my good friends on the Republican side want to hide behind that tree and say, ''Investigate everybody on the other side of the tree. Don't look at us.''

I would like to think, Mr. President, this is because all the Members who are going to vote against any investigation of the Senate or the House, all the Members who want to block that, are as pure as Caesar's wife. I would like to follow that analogy, Mr. President, but I could not do it with a straight face.

It is really very blatant what is going on here. The majority does not want to have a vote on a budget. The majority does not want to have a vote on a chemical weapons treaty. Lord knows, the majority does not want to do anything significant in filling the 100 vacancies now persisting in the Federal courts. And those vacancies will grow just through the normal retirements, deaths, and so forth. But let them pound the President.

Oh, I would not be surprised if at some point in here we will probably have a resolution calling for the President's speedy recovery from the surgery this afternoon, but they will just pound the heck out of him in the meantime.

You know, Mr. President, I am not sure anybody is fooled by this. If it was just a silly partisan exercise, it would be one thing. At most, it would be an embarrassment to the U.S. Senate. But it goes beyond that. Because now we find that not only—not only—has there been an unprecedented attack on the Constitution by blocking Federal judges, but now the other shoe has dropped. We have heard from Members in the other body that they want the impeachment of judges. If they disagree with their decision, they want them impeached.

I say to my friends on the other side who are calling for impeachments, they should take the time—I was going to say to ''reread'' a history book, but I think that might be presupposing to say ''reread'' one—but go and read a history book. And I cannot say ''reread'' the Constitution, because that also presupposes they read it. Read the Constitution.

This Nation, the greatest democracy that history has ever known, the most powerful nation on Earth and still remaining a democracy, is here because of the independence of the three branches of Government: The legislative, the executive, and the judiciary.

Mr. President, everywhere I go in this country and throughout the world I find such enormous respect for our independent Federal judiciary. Look at some of the countries that are seeking democracy. One of the biggest problems they have is that they have never had an independent judiciary. We pride ourselves on our independent judiciary. But for us to say, ''I disagreed with a decision, impeach him,'' it is like Alice in Wonderland, the queen saying, ''Off

with their heads, off with their heads.'' It is that silly.

There are, after all, appellate courts. I have tried cases. I have won some and I have lost some. I have known I could always appeal. That is what you do. If a judge rules differently than you like, appeal the decision. Do not say ''Oh, we'll impeach them.'' What kind of respect do you think there will be for our Federal courts if that could be done?

This makes me think, Mr. President, of those who had billboards out ''Impeach the Supreme Court'' because the Court ruled against segregation. It was wrong then for those who wanted to violate the independence of our courts because the courts dared point their finger at the sin and the stain of segregation. It was just as wrong then as it is today.

If my friends on the other side persist in destroying the independence of our Federal judiciary, what kind of a legacy do they leave their children and their children's children?

My children will live most of their lives in the next century. I think to myself every day, what kind of a century will we give to them if, after 200 years of building up the greatest democracy history has ever known, we start with this piece and this piece, tearing down what made it a great democracy, tearing down the Constitution, tearing down the independent judiciary, and, yes, Mr. President, tearing down the Senate and tearing down the House by our own statements and by our own actions? That is wrong.

Mr. President, before this gets any further out of control, I pray that Republicans and Democrats will start coming back together as we did under the great leaders with whom I have had a privilege to serve—Senator Mansfield, Senator BYRD, Senator Mitchell and now Senator DASCHLE, and on the other side, Senator Baker and Senator Dole. These were men who were willing to fight for their partisan beliefs but who knew that there were some issues where the American people have to be heard first and foremost and that we needed to come together.

I pray that our Members might pause here today—at least let the President of the United States go to surgery this afternoon without us trying to tear him apart—and ask ourselves, Republicans and Democrats alike, what are we doing to the Senate? What are we doing to the House? What are we doing to our Federal Judiciary? What are we doing to the protection of our Constitution when we say judges should be impeached not for high crimes and misdemeanors, as the Constitution speaks of, but because we disagree with them?

If anybody has ever tried cases, and I have tried a lot of cases, you will find judges to disagree with. The other side might be delighted. The next week the judge may agree with you and the other side is angry. That is the way it works. I tried a lot of cases in the appellate court and I have tried a lot of cases in trial courts. However, sometimes I disagreed with a determination.

Mr. President, when I began this statement there were no other Senators on the floor seeking recognition. I now see my distinguished colleague from Rhode Island and will suspend my remarks at this point to allow him an opportunity to be heard.

I do ask unanimous consent that a copy of the March 13 letter to the Attorney General that is signed by seven Democrats serving on the Senate Judiciary Committee be printed in the RECORD. It has been quoted already today, but out of context, so I feel compelled to include the complete letter in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 13, 1997.

Hon. JANET RENO,
Attorney General of the United States.
U.S. Department of Justice,
Washington, DC.

DEAR MADAM ATTORNEY GENERAL: We expect that certain Republican members of the Senate Committee on the Judiciary have forwarded to you a letter, purportedly pursuant to 18 U.S.C. §592(g)(1), that you apply for the appointment of an independent counsel to investigate ''possible fundraising improprieties in connection with the 1996 presidential campaign.'' We will leave it to you to evaluate and respond to that letter in accordance with your statutory responsibilities to determine whether grounds to investigate were furnished in that letter. Rather than provide specific information and credible sources the Republican letter appears to us to be a political document that strings together a series of negative inferences, unanswered questions and damning conclusions.

We, the undersigned members of the Committee on the Judiciary, are concerned about illegal and improper fundraising and spending practices in Federal election campaigns and the need for campaign finance reform. Whereas press accounts and reported allegations of improper fundraising in Federal campaigns undermine public confidence in the integrity of our electoral process, we want to do all that we can to restore public confidence and get to the bottom of such alleged wrongdoing as soon as possible.

Should you determine that an application for appointment of an independent counsel is appropriate, we request that your application avoid partisanship and include the full scope of fundraising irregularities. The written request from our Republican colleagues focuses entirely on allegations of fundraising irregularities by the 1996 Clinton/Gore Presidential Campaign and by the Clinton Administration, with a primary focus on two areas: first, whether senior White House officials and other Executive Branch officials ''improperly solicited and/or received contributions on federal property''; and second, whether foreign contributions ''were funneled into U.S. election offers to influence U.S. foreign policy.''

In addition to the areas outlined by our Republican colleagues, we request that you also examine additional items. *First,* revelations in the press have been rampant about Republican campaign fundraising improprieties, including soliciting contributions on federal government property. Other Republican fundraising activities also raise significant questions about the appearance of conflicts of interest and whether any quid-pro-quo is involved in legislative activities. Additional revelations raise questions about how Republicans have in some instances violated campaign finance laws and in other instances skirted the spirit, if not the letter of the law, by using not-for-profit organizations to funnel money for use in campaigns without the reporting requirements and limitations that apply to formal campaign committees. *Second,* we are concerned about the possibility that foreign governments are seeking to influence our domestic and foreign policy through campaign contributions, including to congressional candidates for federal office.

We understand that you have already formed a Task Force of experienced prosecutors from within the Public Integrity Section of the Criminal Division to investigate whether criminal conduct took place in 1996 federal election campaigns and that the Task Force is already well underway in its investigation. We further understand that over thirty special agents from the Federal Bureau of Investigation have been assigned to work on this investigation. Indeed, the press has reported that this Task Force has already served subpoenas and presented testimony to a grand jury. We appreciate your pressing forward without delay and credit your past statements that you are continuing to evaluate whether you need apply for the appointment of an independent counsel. We also appreciate that appointment of an independent counsel is not always a panacea. We believe that the cost and delay of independent counsels have not always been justified, that they have not been accountable and that the judicial panel responsible for appointing such an independent counsel in these circumstances may well have its own conflict of interest. Most importably, we understand that were you to shift your approach at this point in order to conduct a preliminary investigation under the independent counsel law, you would have no authority to convene grand juries or issue subpoenas. Thus, the work being done by the current Task Force would have to cease abruptly and the matter would go forward with less authority and fewer investigative powers and options.

The decision to invoke the independent counsel process in a particular matter rests with you and not with the United States Congress or any member or members thereof. You have demonstrated your willingness to invoke the independent counsel law in the past and we have the utmost confidence that you will invoke the law again, if and when the legal standards have been met in a particular matter. These standards are clearly set forth in the independent counsel statute. You must invoke the independent counsel process when there is specific information from a credible source that a crime may have been committed by enumerated ''covered persons'', under 28 U.S.C. §591(a). You may exercise your discretion to invoke this process when there is specific information from a credible source that a crime may have been committed by any other person and where the Justice Department has a personal, financial or political conflict of interest, under 28 U.S.C. §591(c)(1); or when there is specific information from a credible source that a crime may have been committed by a member of Congress and where it would be in the public interest to do so, under 28 U.S.C. §591(c)(2).

Partisan requests for invocation of the independent counsel process give the appearance of attempting politically to influence a decision by the Attorney General whether to invoke the independent counsel process in a particular matter. To our mind, this will result in further undermining the public confidence's in the integrity of government, the independent counsel process and in the criminal justice system as a whole. Consequently, we urge you to exercise your best

professional judgment, without regard to political pressures and in accordance with the standards of the law and the established policies of the Department of Justice, to determine whether the independent counsel process should be invoked, pursuant to 28 U.S.C. §591(a) or (c), to investigate allegations of criminal misconduct by any government official, member of Congress or other person in connection with the 1996 federal election campaigns.

Only this week the Senate authorized the Governmental Affairs Committee to begin its investigation into illegal and improper fundraising activities in the 1996 federal election campaigns. We are sure that you, as well as we, will monitor that investigation and those hearings closely to determine whether grounds for application for the appointment of an independent counsel arise.

In conclusion, please report back to the Committee, identify the allegations you are presently investigating, and indicate whether you have begun or will begin a preliminary investigation as limited by the independent counsel law, indicate whether you believe these allegations to which we have referred are based on specific information from credible sources, and indicate whether these matters present a conflict of interest with respect to a covered person or, with respect to members of Congress, whether it would be in the public interest to apply for the appointment of an independent counsel. Please also provide your reasons for those determinations. In the event you conduct a preliminary investigation, but do not apply for the appointment of an independent counsel, or apply for an independent counsel, but only with respect to some of the various allegations on which you have received or developed information, please identify all those allegations which in your view do not warrant appointment of an independent counsel, and explain your view whether those allegations warrant further investigation, pertain to a covered individual, present a conflict of interest or with respect to members of Congress, why the public interest is served by proceeding in the manner that you have chosen.

Sincerely,

HERB KOHL,
PATRICK J. LEAHY,
RICHARD J. DURBIN,
DIANNE FEINSTEIN,
JOSEPH R. BIDEN, Jr.,
EDWARD M. KENNEDY,
ROBERT TORRICELLI,
U.S. Senators.

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the RECORD, not introduced, but printed in the RECORD, a copy of a joint resolution which is very close to one that will be introduced by this side as an amendment during this debate.

There being no objection, the material was ordered to be printed in the RECORD, a follows:

S.J. RES. —

Whereas the independent counsel law was created to restore public confidence in the criminal justice system after the abuses of the Watergate scandal;

Whereas the decision on whether to invoke the independent counsel process in a particular matter rests by constitutional necessity with the Attorney General and not with the United States Congress;

Whereas the law provides, in section 591(a) of title 28, United States Code, that the Attorney General must invoke the independent counsel process where there is specific information from a credible source that a crime may have been committed by a covered person;

Whereas the law provides, in section 591(c)(1) of title 28, United States Code, that the Attorney General may invoke the independent counsel process where there is specific information from a credible source that a crime may have been committed by any other person and where the Justice Department has a personal, financial, or political conflict of interest;

Whereas the law provides, in section 591(c)(2) of title 28, United States Code, that the Attorney General may invoke the independent counsel process where there is specific information from a credible source that a crime may have been committed by a Member of Congress and where it would be in the public interest to do so;

Whereas the Attorney General has invoked the independent counsel law in the past, and has stated that she will invoke the law again if and when the legal standards have been met in a particular matter;

Whereas the independent counsel law was never intended to be used in a partisan manner, and such a misuse of the law would damage public confidence in the criminal justice system; and

Whereas it would be unprecedented and inappropriate for the Congress to cast a vote which would have the appearance of attempting to politically influence a decision by the Attorney General on whether to invoke the independent counsel process in a particular manner: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the Attorney General should exercise her best professional judgment, without regard to political pressures and in accordance with the standards of the law and the established policies of the Department of Justice, to determine whether the independent counsel process should be invoked, pursuant to section 591(a) or (c), to investigate allegations of criminal misconduct by any government official, Member of Congress, or other person in connection with any presidential or congressional election campaign.

Mr. DODD. Mr. President, the resolution that is before us, and is the question of whether or not there ought to be an independent counsel.

Let me suggest here that there are three or four other items I want to talk about later. I am also interested in talking about the investigation that will be moving forward now as a result of last week's vote; the Federal Election Commission and some idea on a piece of legislation I will introduce with regard to that, and then the proposed McCain-Feingold legislation. I presume this has been somewhat confusing to someone watching this out there, with all these various resolutions and debates going on. But they are issues all related to the same subject matter.

Mr. President, let me just briefly say, with regard to the resolution before us, as someone who appreciates the role of having a statute dealing with independent counsel, I, for one, along with others—and I am not alone in this regard—have expressed some reservations and concerns about the independent counsel route generally, putting aside any specific matters. I was one who voted against establishing an independent counsel in the case of former President Bush when there were allegations raised involving Iran and Iran-Contra. I felt that those motivations were purely political. There were those in my party, principally in my party, who pushed a resolution, and I felt it was unwarranted. If felt it was politically motivated, and voted against it.

I felt that the independent counsel's Iran-Contra investigation went on way too long. It went on for years and cost an incredible amount of money.

So I am leery of this general approach because of how it is self-sustaining and goes on indefinitely. The passage of the statute was to try and do something to take politics out of this a bit, to set some very clear guidelines so we would not be involved in partisan debate over whether or not there ought to be an independent counsel.

Obviously, Members are going to express themselves on the issue, and I understand that. But with the independent counsel law we tried to remove the political debate in deciding these issues. I urge my colleagues in this matter to allow the Attorney General to make her decision. She is about as independent as any Attorney General we have had and certainly has not been intimidated by invoking the independent counsel statute in the past, as expressed by the Senator from Vermont.

I want to express the worrisome feelings I have about this. We have seen independent counsel investigations go on way too long. They are self-fulfilling. Today, we have the Justice Department, the FBI looking at the matter that is the subject of the request that an independent counsel become involved.

Mr. LOTT. Mr. President, I today join the majority of members of the Judiciary Committee in calling on the Attorney General to begin the process for the appointment of an independent counsel to investigate possible violations of Federal law in connection with fundraising and other activities during the 1996 Presidential election campaign.

The independent counsel statute—28 United States Code section 591 and following—provides that the Attorney General shall conduct a preliminary investigation, which is defined as ''such matters as the Attorney General considers appropriate in order to make a determination, whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law, when she receives information sufficient to constitute grounds to investigate'' whether certain persons violated any Federal criminal law other than a class B or C misdemeanor. These persons include:

First, President and Vice President;

Second, persons working in the Executive Office of the President paid at or above level II;

Third, chairman and treasurer of the President's reelection committee, or any officer of the reelection committee exercising authority at the national level during the President's term.

The test of the sufficiency of the information received is whether or not it is specific and credible. The Attorney General has 30 days to review this information to make the determination. This is a very low threshold test. The only way she can avoid a preliminary investigation is to determine that the information is not credible or not specific. If she finds she is unable to determine within 30 days if the information is credible and specific, she still has to begin the investigation.

Further, if the Attorney General determines that an investigation or prosecution by the Department of Justice of any other person may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation. Although this would seem to be more discretionary than the shall language otherwise in the statute, Attorney General Reno understands the importance and the necessity of the independence of the investigation into such matters. As she testified before the Judiciary Committee in 1993 when that committee was considering reenactment of the independent counsel statute:

There is an inherent conflict of interest whenever senior Executive Branch officials are to be investigated by the Department of Justice and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President. Recognition of this conflict does not belittle or demean the impressive professionalism of the Department's career prosecutors, nor does it question the integrity of the Attorney General and his or her political appointees. Instead, it recognizes the importance of public confidence in our system of justice, and the destructive effect in a free democracy of public cynicism.''

She further testified:

It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor . . . The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent . . . the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.

Despite the fact that high-level executive department officials and other covered persons have been implicated in possible violations of Federal law, the Attorney General seems to have ignored her own warnings about the appearance of a conflict of interest or impropriety and has chosen not to initiate the procedure leading to the appointment on her own. In light of this decision, it is left to the Senate, through the action of its Judiciary Committee, to pursue the appointment of an independent counsel.

This action has been initiated by written request to the Attorney General. Under the independent counsel statute, the Attorney General has 30 days after receipt of the request to report if the preliminary investigation has begun—and the date it began—or that it will not begin. She must give her reasons for either beginning or choosing not to begin the investigation.

I am confident that Attorney General Reno will heed her own words in her testimony before the Judiciary Committee and seek to avoid even the appearance of impropriety in this investigation.

There is sufficient specific and credible evidence now to initiate the process now. To do otherwise or to delay action will call the Attorney General's decisionmaking process into question. That is specifically the effect that must be avoided here. There should be no appearance of impropriety in the decision of whether to appoint an independent counsel and I am confident, upon consideration, the Attorney General will see the wisdom in expediting the decision to ask for the appointment of such independent counsel.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, there are two items I will address this morning. I will not be long. I know the distinguished Senator from Rhode Island is waiting to speak.

COMMUNICATIONS DECENCY ACT: COMPELLING INTEREST STATEMENT

Mr. COATS. This coming Wednesday, Mr. President, March 19, the Supreme Court is scheduled to hear oral arguments on the constitutionality of the Communications Decency Act. This act was passed by this Senate in the last Congress by an overwhelmingly bipartisan vote of 84–16. The previous Senator talked of cooperation between parties, and there certainly was a significant degree of cooperation on this issue. We worked on a bipartisan basis, securing 84 votes for its passage. Eventually, Congress passed the act as part of the historic telecommunications reform legislation.

The Communications Decency Act, passed by Congress by an overwhelming, bipartisan margin, and signed by the President, simply extends the principle that exists in every other medium of communication in our society, a principle which has been repeatedly upheld as constitutional by the Supreme Court.

Stated simply, this principle holds that it is the responsibility of the person who provides material deemed pornographic, that it is that person's responsibility to restrict access by minors to that material. The foundation of the principle is articulated clearly in the case New York versus Ferber, and I quote from that case: ''It is evident beyond the need for elaboration that the State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling.'' Let me repeat that judicial decision again, New York versus Ferber. ''It is evident beyond the need for elaboration that the State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling.''

This principle of compelling interest is the basis on which the Communications Decency Act was constructed. That is why we believe it is constitutional and the Court will hold it so after it hears the arguments next Wednesday. There is a long history of court decisions which recognize the interest of the State in safeguarding the psychological and physical well-being of minors. Mr. President, I have a copy of a brief in support of the Communications Decency Act. It was filed by a number of organizations: Enough is Enough, the Salvation Army, the National Political Congress of Black Women, the National Council of Catholic Women, Victims Assistance Legal Organization, Childhelp USA, Legal Pad Enterprises, Inc., Focus on the Family, the National Coalition for the Preservation of Family, Children and Family, Citizens for Family Friendly Libraries, Computer Power Corp., Help Us Regain the Children Organization—I am just reading some of these here—Mothers Against Sexual Abuse, National Association of Evangelicals, One Voice/American Coalition for Abuse Awareness, Religious Alliance Against Pornography, Lenore J. Weitzman, Ph.D., and so forth, a whole series of groups that have filed this brief. I commend these organizations for their leadership. I will be drawing on some of their comments in the brief during my remarks.

Mr. President, it is now beyond question that exposure to pornography harms children. A child's sexual development occurs gradually throughout childhood. Exposure to pornography, particularly the type of hard-core pornography currently available on the Internet, distorts the natural sexual development of children. Essentially, pornography shapes children's sexual perspective by providing them distorted information on sexual activity. The type of information provided by pornography does not provide children with a normal sexual perspective.

As stated in the brief, pornography portrays unhealthy or antisocial kinds of sexual activity such as sadomasochism, abuse, and humiliation of females, involvement of children, incest, voyeurism, bestiality, torture, objectification and is readily available on the Internet.

The Communications Decency Act is designed, as I said, to employ the same restrictions that are currently employed, and have been held constitutional, in every other medium of communication.

Why do we need these protections? Let me quote Ann Burgess, professor of nursing at the University of Pennsylvania, when she states that children generally do not have a natural sexual