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 Pittsburgh, PA 15218
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EMPLOYMENT

September 1993-Present Associate Dean for Academic Affairs
 August 1992 - Present Associate Professor of Law
 Jan. 1989 - Aug. 1992 Assistant Professor of Law
 University of Pittsburgh School of Law
 3900 Forbes Avenue
 Pittsburgh, PA 15260
 Subjects taught: Evidence, White Collar and
 Corporate Crime; Criminal Law; Pretrial Advocacy
 (Criminal and Civil)

May 1988 -
 June 1991

Associate Independent Counsel-Iran/Contra
 555 Thirteenth Street
 Suite 701 West
 Washington, DC 20004
 Directed investigations within the jurisdiction
 of the Independent Counsel

October 1979 -
 May 1988

Assistant United States Attorney
 633 United States Courthouse
 Seventh and Grant Streets
 Pittsburgh, PA 15219
 January 1986 - May 1988 - Chief of the White
 Collar Fraud Unit
 July 1984 - January 1986 - White Collar Fraud
 Unit
 September 1981 - July 1984 - General Crimes
 Litigation Unit
 October 1979 - September 1981 - Appellate
 Section

EDUCATIONLEGAL

University of Pittsburgh School of Law
 Juris Doctor - 1979
 Honors - Finalist - Appellate Moot Court
 Outstanding Senior

UNDERGRADUATE

Wilberforce University
 Wilberforce, OH 45384
 B.S.Ed. - 1973
 Honors - Magna Cum Laude (3.7 on 4.0 scale)
 Dean's list 1969-1973
 Recipient - Vira Heinz Award 1972 -
 Travel and Study in Europe
 Alpha Kappa Mu National Honor Society

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COMMENDATIONS

1993-94 - Who's Who of American Women,
Eighteenth Edition
1992-93 - Who's Who in American Law, Seventh
Edition
May 1992 - "Exceptionally Qualified" Rating
for Judicial Office - Allegheny County Bar
Association
March 1992 - Distinguished Alumni Citation of
the Year Award - National Association for
Equal Opportunity in Higher Education
October 1988 - Wilberforce University Alumni
Association - Distinguished Service Award
June 1985 - Special Appreciation Award -
United States Department of Agriculture
December 1984 - U.S. Attorney General's
Special Commendation Award
September 1984 - Letter of Commendation by
William J. Webster, Director - FBI

PROFESSIONAL AND
COMMUNITY SERVICE

Disciplinary Board of the Supreme Court of
Pennsylvania - Member, Hearing Committee IV
American Bar Association - White Collar Crime
Committee, Criminal Justice Section
Association of American Law Schools - Minority
Law Section, Criminal Justice Section
University of Pittsburgh School of Law - Dean's
Search Committee, Appointments Committee,
Steering Committee, Colloquium Committee
Allegheny County Bar Association - Judiciary
Committee, Women and the Law Committee
Homer S. Brown Law Association
Women's Bar Association
Urban League of Pittsburgh - Board Vice-President
Program to Aid Citizen Enterprise (PACE)
N.A.A.C.P.

INSTRUCTOR

Faculty - Pennsylvania Bar Institute, Ethical
Concerns (November 1992)
Presenter - Academy of Trial Lawyers of Allegheny
County, Legal Ethics Seminar (October 1992)
Lecturer - Pennsylvania Conference of State Trial
Judges (February 1991)
Presenter - Pennsylvania Bar Association
Environmental Law Symposium (March 1992)
Instructor - National Institute of Trial Advocacy -
Mid-Atlantic Region (June 1991)
United States Department of Justice
Attorney General's Advocacy Institute
Washington, DC (May 1987; May 1985; May 1984)
United States Department of Agriculture
(October 1983; March 1985)

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PUBLICATIONS

- "Death for Drug Related Killings: Revival of the Federal Death Penalty," Chicago-Kent Law Review, Vol. 67: No. 1, p. 79 (1992)
- "Classified Information and Conflicts in Independent Counsel Prosecutions: Balancing the Scales of Justice After Iran-Contra," Columbia Law Review, Vol. 91: No. 7, p. 1651 (1991)
- "The 1984 Bail Reform Act: Pretrial Detention Permitted," Black Law Journal, Vol.9: No.3 (1986)
- "Presenting the Case to the United States Attorney" Videotape for the Federal Law Enforcement Training Center - Glenco, Georgia (1987)

ADMITTED TO PRACTICE

Supreme Court of Pennsylvania - 1979
U.S. Court of Appeals for the Third Circuit - 1980
U.S. District Court for the Western District of Pennsylvania - 1979

REFERENCES AVAILABLE UPON REQUEST

TESTIMONY BEFORE THE JUDICIARY COMMITTEE
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES

May 5, 1994

Sandra D. Jordan
Associate Dean and Professor of Law
University of Pittsburgh School of Law

INTRODUCTION

It is a privilege to be in front of this legislative body and this Judiciary Committee today to testify about the proposed Independent counsel legislation. I believe one of the reasons I was asked to appear today is because in 1991 I wrote an article entitled "Classified Information and Conflicts: Balancing the Scales of Justice After Iran/Contra." This article was published in the Columbia Law Review. It stems from my experiences during 1988-1991 when I served as an Associate Independent Counsel with Lawrence Walsh on the Iran/Contra prosecution team.

From 1979-1988 I served as an Assistant United States Attorney for the Western District of Pennsylvania and specialized in white collar investigations and prosecutions. These experiences gave me working knowledge of the prosecutive priorities of white collar cases. Currently, I serve as the Associate Dean for Academic Affairs and Professor of Law at the University of Pittsburgh where I have taught since 1989. My teaching areas include Criminal Law, Evidence, Criminal Pre-Trial Advocacy and White Collar Crimes.

BACKGROUND.

During the course of a criminal investigation and prosecution, information may become available to the investigators that implicates members of the executive branch of government. Congress was aware of the conflicts of interest that arise in situations where the executive is called upon to investigate its own high-ranking officials. Our country's experiences with Watergate have convinced most Americans of the need to have independent investigative and prosecutive oversight in matters where a conflict of interest arises with the executive branch of government.

The executive branch of government is charged with the enforcement of the criminal laws. If a member of the executive branch of government commits violations of the law, there exists a conflict regarding who should investigate this allegation and who should prosecute any resulting criminal case. This appearance of a conflict exists because the chief executive appoints the chief law enforcement official. Where the relationship is a close one, human nature dictates that one cannot be objective and impartial where the allegation is against an employer or close professional colleague. Even in simple matters, such as violations of the law that have no relationship to the official duties of an executive branch member, an independent counsel investigation may be warranted because of appearance of a conflict of interest. Often, this type of criminal wrongdoing falls under the category commonly called "white collar crime," but it need not be so limited. The question is simple: In situations where members of the executive branch are subjects of a criminal investigation, should that same branch continue to

conduct the investigation?

The executive branch is charged with the power to decide whether to prosecute a case, to decline a prosecution, and/or to dismiss a case that has begun. The executive branch retains broad discretion in deciding who to prosecute and what charges to bring. Declination decisions are not made public since the defendant is never brought into the criminal justice system by being charged with an offense. Cases that are dismissed after the charges are filed, likewise, will usually not be subject to review because the defendant achieves the desired result of non-prosecution.

Prosecutive decisions are not made in a vacuum. They are the result of discretion, professional judgement and several other competing interests. For example, when a prosecutor decides to decline a case, this matter is not subject to judicial or legislative review. Perhaps more significantly, where there has been an allegation of criminal wrongdoing resulting in criminal charges, the prosecutor can decide, for a variety of reasons, to dismiss a case. The reasons can range from insufficient evidence, credibility problems with witnesses, immunity and plea negotiations. Prosecutorial discretion is an extraordinary power, to be exercised with the greatest degree of professionalism and ethical behavior.

For this reason, one cannot be both a close associate or colleague of the person being investigated and an independent thinking prosecutor upholding the oath of office.

The appearance of a conflict of interest overrides all other considerations. In such situations, an independent counsel should be appointed because there is an appearance of a conflict of interest if not an actual conflict of interest. An independent counsel is warranted even in situations where there is the appearance of a conflict of interest. Often, the public perception that the system is fair is as important as the fairness of the system itself.

For example, if a high ranking government official, a member of the executive branch, becomes a suspect during the course of an investigation, logic dictates that the critical prosecutorial decisions should not be made by a prosecutor who owes his or her allegiance to the same executive who the high ranking official owes his or her loyalty to.

THE FEDERAL EXPERIENCE.

In 1978 Congress established a procedure for the appointment of a temporary special prosecutor to investigate wrongdoing by high-level government officials where there was a conflict of interest. A conflict of interest, or the appearance thereof, in investigating close personal or political associates of the President or the attorney general led Congress to enact provisions for the temporary appointment of a special prosecutor who would handle the investigation and prosecution independently of the Justice Department. It is simply too much to ask any individual to investigate his superiors because one who holds office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will. Under this post-

Watergate legislation, the attorney general can petition a three-judge panel to appoint an independent counsel to investigate allegations of criminal wrongdoing at the highest levels of government. This law was upheld as constitutional in Morrison v. Olsen 487 U.S. 654 (1988)

The independent counsel stands in the shoes of the prosecutor and becomes the representative of the government for all prosecutions within his or her jurisdiction. An independent counsel must be truly independent and able to operate with clear authority to conduct an investigation without interference, supervision or control by the executive. An independent counsel must be able to exercise all investigatory and prosecutive functions and powers of the Department of Justice. Both in appearance and reality, the independent counsel must be free from control or supervision of the Justice Department.

The basic purpose of an independent counsel law is to promote public confidence in the impartial investigation of the alleged wrongdoings of government officials. Conflicts of interest are inherent in our system of government and the public confidence is served only when investigations having the appearance of a conflict of interest are conducted by a person totally outside the control of the executive branch.

DISCUSSION.

The United States Supreme Court has upheld the federal independent counsel law

against an separation of powers challenge. In Morrison v. Olsen, the Court reinforced the importance of the system of checks and balances established in the Constitution.

Under the law, the attorney general must apply for the appointment of an independent counsel after receiving a request to do so. Members of the legislative bodies may request in writing that the attorney general apply for the appointment of an independent counsel. The attorney general has the power to apply for the appointment and a special division of the court has the authority to make the appointment.

Thus, the federal law contemplates that the executive must make the decision in the first instance that an independent counsel is warranted. This decision can result from a referral from members of the legislative branch or from members of the judiciary or public. Regardless of the source of the request, the attorney general is asked to consider the appointment of an independent counsel and must make a decision within ninety days from receiving a request to do so. Within ninety days the attorney general conducts an investigation to determine whether there is sufficient evidence to warrant investigation of a person covered by the act. If that determination is supported by evidence, the attorney general shall apply for the appointment of an independent counsel. If, on the other hand, there is insufficient support for such an appointment, the attorney general must notify the special division of the court that no further investigation is warranted.

Once prosecutorial power is removed to an independent counsel, any decision-

making by the executive branch in connection with the case is inherently fraught with conflict. Human experience suggest that the first reaction to intense scrutiny is self defense, and the executive branch therefore may attempt to thwart the investigation or prosecution. For this reason, an independent counsel must be truly independent and not subject to the control or whims of an attorney general. When criminal wrongdoing is alleged within the highest levels of government, the lack of an independent prosecutive decision creates the potential for serious abuse and does not promote the appearance of fairness within the criminal justice system.

CONCLUSION.

My experiences as both a prosecutor and a law professor have caused me to believe that, regrettably, there are instances in our society that warrant the need for an independent counsel. I defer to the collective wisdom of this body to determine the specific parameters and procedures for determining if and when an independent counsel law should be passed and the implementing legislation. Thank you for the invitation to appear before you today.