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Investigating the Special: The Symbolic Function of the Independent Counsel

JUDITH ROOF*

In June, 1999, the Independent Counsel Statute¹—the authorizing armor and arsenal of our most recent prosecutorial Starr—lapsed. Still the subject of debate over its constitutionality, import, and effectiveness, this last installment of the 1978 Ethics in Government Act sponsors a legacy of questions, double-guesses, accusations, and recriminations symptomatic of the underlying breach the statute was designed to reveal.² This breach, opened wide by President Nixon and the “Saturday Night

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1. 28 U.S.C. §§ 591-599 (1994).

2. There have been two waves of commentary on 28 U.S.C. §§ 591-599, the first in the seventies and eighties around its original passage in 1978, and the second in the late nineties when the statute was scheduled to lapse in the wake of Kenneth Starr’s investigations of President Clinton. Early questions involved the Act’s constitutionality, particularly the problem of separation of powers, which was considered by the Supreme Court in *Morrison v. Olson*, 487 U.S. 654 (1988). See, e.g., Howard H. Baker, Jr., *The Proposed Judicially Appointed Independent Office of Public Attorney: Some Constitutional Objections and an Alternative*, 29 SW. L.J. 671 (1975); Harold H. Bruff, *Independent Counsel and the Constitution*, 24 WILLAMETTE L. REV. 539 (1988); Steven L. Carter, *The Independent Counsel Mess*, 102 HARV. L. REV. 105 (1988); Carolyn M. Corry, *On the Constitutionality of the Independent Counsel Provisions of the Ethics in Government Act: Do They Comport with the Separation of Powers?*, 26 DUQ. L. REV. 715 (1988); Simon Lazarus & Jane E. Larson, *The Constitutionality of the Independent Counsel Statute*, 25 AM. CRIM. L. REV. 187 (1987); Carl Levin & Elise J. Bean, *The Independent Counsel Statute: A Matter of Public Confidence and Constitutional Balance*, 16 HOFSTRA L. REV. 11 (1987); Constance O’Keefe & Peter Safirstein, *Fallen Angels, Separation of Powers, and the Saturday Night Massacre: An Examination of the Practical, Constitutional, and Political Tensions in the Special Prosecutor Provisions of the Ethics in Government Act*, 49 BROOK. L. REV. 113 (1982); Donald J. Simon, *A Constitutional Rationale for the Independent Counsel Law*, 25 AM. CRIM. L. REV. 229 (1987); Alexander I. Tachmes, *Independent Counsels Under the Ethics in Government Act of 1978: A Violation of the Separation of Powers Doctrine or an Essential Check on Executive Power?*, 42 U. MIAMI L. REV. 735 (1988); Charles Tiefer, *The Constitutionality of Independent Officers as Checks on Abuses of Executive Power*, 63 B.U. L. REV. 59 (1983); *The Constitutional Validity of the Ethics in Government Act: Morrison v. Olson*, 16 HOFSTRA L. REV. 65 (1987); *A Symposium on Morrison v. Olson: Addressing the Constitutionality of the Independent Counsel Statute*, 38 AM. U. L. REV. 255 (1989).

Second wave commentary was more worried both about the statute’s failure to depoliticize the prosecutorial process and about its fundamental fairness. Scholars either suggested possible reforms or argued for or against the statute’s lapse. See, e.g., Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 291 (1999); John Q. Barrett, *Independent Counsel Law Improvements for the Next Five Years*, 51 ADMIN. L. REV. 631 (1999); Susan Low Bloch, *A Report Card on the Impeachment: Judging the Institutions that Judged President Clinton*, 63 LAW & CONTEMP. PROBS. 143 (2000); Marjorie Cohn, *The Politics of the Clinton Impeachment and the Death of the Independent Counsel Statute: Toward Depoliticization*, 102 W. VA. L. REV. 59 (1999); Julian A. Cook III, *The Independent Counsel Statute: A Premature Demise*, 1999 B.Y.U. L. REV. 1367; Julian A. Cook III, *Mend It or End It? What to Do with the*

Massacre," evokes a figurative failure (and the failure of a figurehead), a gaping, embarrassing place the law did not quite seem to cover.³ Designed to redress any

Independent Counsel Statute, 22 HARV. J.L. & PUB. POL'Y 279 (1998); Joseph E. diGenova, *The Independent Counsel Act: A Good Time to End a Bad Idea*, 86 GEO. L.J. 2299, 2303 (1998); Michael J. Gerhardt, *The Historical and Constitutional Significance of the Impeachment and Trial of President Clinton*, 28 HOFSTRA L. REV. 349 (1999); Robert W. Gordon, *Imprudence and Partisanship: Starr's OIC and the Clinton-Lewinsky Affair*, 68 FORDHAM L. REV. 639 (1999); Ken Gromley, *Impeachment and the Independent Counsel: A Dysfunctional Union*, 51 STAN. L. REV. 309 (1999); Symposium, *The Independent Counsel Statute: Reform or Repeal?*, 62 LAW & CONTEMP. PROBS. 1 (1999); Brett M. Kavanaugh, *The President and the Independent Counsel*, 86 GEO. L.J. 2133, 2135 (1998); William K. Kelley, *The Constitutional Dilemma of Litigation Under the Independent Counsel System*, 83 MINN. L. REV. 1197, 1207-11 (1999); Stephan O. Kline, *Heal It, Don't Bury It! Testimony on Reauthorization of the Independent Counsel Act*, 1999 DET. C.L. MICH. ST. U.L. REV. 51; John F. Mannin, *The Independent Counsel Statute: Reading "Good Cause" in Light of Article II*, 83 MINN. L. REV. 1285 (1999); Thomas W. Merrill, *Beyond the Independent Counsel: Evaluating the Options*, 43 ST. LOUIS U. L.J. 1047 (1999); Norman J. Ornstein, *Doing Congress's Dirty Work*, 86 GEO. L.J. 2179 (1998); Julie O'Sullivan, *The Independent Counsel Statute: Bad Law, Bad Policy*, 33 AM. CRIM. L. REV. 463, 475-79 (1996); Comm. on Fed. Legislation, *The Politics of Prosecution: The Independent Counsel Statute*, 53 REC. ASS'N B. CITY N.Y. 574r (1998); Thomas O. Sargentich, *Debating the Future of the Independent Counsel Statute*, 51 ADMIN. L. REV. 657 (1999); Christopher H. Schroeder, *The Independent Counsel Statute: Putting Law and Politics in the Right Places—Reforming the Independent Counsel Statute*, 62 LAW & CONTEMP. PROBS. 163 (1999); Russell M. Soloway, *Critique of Morrison: The Tale of the Omnipotent Prosecutor: How Recent Events Expose Flaws in the Supreme Court's Analysis of the Independent Counsel Clause of the Ethics in Government Act*, 17 REV. LITIG. 611, 611 (1998); David A. Strauss, *The Independent Counsel Statute: What Went Wrong?*, 51 ADMIN. L. REV. 651 (1999); Cass R. Sunstein, *Bad Incentives and Bad Institutions*, 86 GEO. L.J. 2267, 2282 (1998) [hereinafter Sunstein, *Bad Incentives*]; Cass R. Sunstein, *Lessons from a Debacle: From Impeachment to Reform*, 51 FLA. L. REV. 599 (1999); Lawrence E. Walsh, *The Need for Renewal of the Independent Counsel Act*, 86 GEO. L.J. 2379 (1998); Nick Bravin, Note, *Is Morrison v. Olson Still Good Law? The Court's New Appointments Clause Jurisprudence*, 98 COLUM. L. REV. 1103 (1998).

This extensive listing is to illustrate not only the volume of commentary on this two-decade statute, but the oppositional character of the commentary.

3. Of the rationales offered for the passage of the Ethics in Government Act in the first place, the conflict of interest problems around Nixon's prosecution figure as the primary historical catalyst. As Orrin Hatch comments, "the primary impetus for our nation's first independent counsel statute was the firing of then-Watergate Special Prosecutor Archibald Cox in 1973 by President Nixon." Orrin G. Hatch, *The Independent Counsel Statute and Questions About Its Future*, 62 LAW & CONTEMP. PROBS. 145, 145 (1999). More pragmatic considerations, however, are offered for why the procedures take the shape they do. For Congress's explanation see H.R. CONF. REP. NO. 95-1756, at 78-79 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4381, 4394-95. Katy Harriger suggests that:

Congress faced a serious dilemma: If it wanted to solve the problems of conflict of interest and appearance of independence, it had to remove or at least limit executive control; the amount of debate and resistance to the notion on constitutional grounds, however, made it very difficult to remove that control completely. There were also secondary concerns about fairness to the targets of

further high-level peccadilloes, the 1978 Act appointed a "special prosecutor" who would properly choreograph future official dressings down. In 1983, the terminology in the Act for this avenging agent changed from "special prosecutor" to "independent counsel"; this change anticipated a shift from the shady, sideshow investigation of judges and minor officials in the eighties and early nineties to a Klieg-lit presidential center stage, signaling the centrality of the symbolic anxiety (and anxiety about the Symbolic) the statute itself embodies.⁴ While one might easily demonstrate that the Ethics in Government Act is about both patching and revealing a failure of Law, it is also about the powerful erotics of Symbolic transformation—the process of veiling and unveiling necessary to install a new Symbolic in the place of the one that has been gradually eroding.

The key word here is "erotics." The role of the Independent Prosecutor is to arrange the various investigations, inquiries, press releases, indictments, and hearings—the "veils" that reveal and obscure the questions, facts, and innuendoes of alleged misconduct. This unusually empowered independent force manipulates inquiry and information in such a way as to provoke desire and allay public anxiety by substituting desire for anxiety, curiosity for knowledge, innuendo for event, and science for truth. The various terms suggestively cover one another, simultaneously signaling the presence of something behind, while enacting its absence, drawing attention to one site by withholding its view, distracting thus from another in plain sight in a drama of perpetual provocation, deflection, and displacement. In the case of Independent Counsel Starr's choreography of various Clinton debacles from Whitewater to Lewinsky, the veils produce an oscillating drama of conjecture/evidence, errant Father/sinful son, metaphor/metonymy in a shell game of sliding significations that is ultimately less about ethics or crime than it is about securing a new order, the order of the son who moors a very different Symbolic system. The prosecutorial veil dance enacts the terms of a transition from a Symbolic based on substitution to one operating on enchainment, while seeming to revitalize conservative patriarchal values. This transition is subtle, made acceptable by its covert eroticization of the terms (it is no accident that Starr's investigation centered on illicit sexual behavior) and naturalized by changes in technology and the effects of globalism. It is important, however, for among other things, the ways it resituates Law, which goes from a system centered on the idealized Word to a series of situational prohibitions and requirements that represent no single unified Truth, but rather evince a variety of finely-tuned opportunistic managements.

investigations and about an "out of control" prosecutor, that worked against creating a truly independent investigator.

Katy J. Harriger, *Can the Independent Counsel Statute Be Saved?*, 62 LAW & CONTEMP. PROBS. 131, 133 (1999).

4. The change in the nomenclature of the prosecutor was made in the 1983 amendments to the Act. See Ethics in Government Act Amendments of 1982, Pub. L. No. 97-409, § 2, 96 Stat. 2039, 2039 (1983). As Priester, Rozelle, and Horowitz point out, "Congress believed that the label 'independent counsel' had less negative connotation: 'This change would remove the Watergate connotation of a special prosecutor investigation and would help spare the subject of such investigation adverse public reaction.'" Benjamin Priester et al., *The Independent Counsel Statute: A Legal History*, 62 LAW & CONTEMP. PROBS. 5, 10 n.12 (1999).

Though what I described in the previous paragraph may have more to do with Kenneth Starr's own performance of his role as independent counsel, the combination of the rationale for the Ethics in Government Act, its symptomatic changes in nomenclature, its failure to depoliticize investigative processes, the unhampered powers it afforded the independent counsel, and the very public nature of its wide-ranging aegis set the stage for precisely the kind of symbolic process I am suggesting Starr enacted. I am also suggesting that this process was neither random nor merely an effect of increased media access. Rather, the combination of the statute and Starr produced an instance of a much larger trend in which the very character of law and systemic logic are in the process of changing. Starr's performance is thus less idiosyncratic than symptomatic and the Ethics in Government Act very much an indicator of anxiety about law, government, politics, and the legal system in general.

I. THE LAW'S "SPECIAL" SYMPTOM

If we understand federal legislation as a textual body whose slips and inconsistencies reflect in some Freudian way the preoccupations and anxieties of an American cultural unconscious, then the Ethics in Government Act provides a special example of an attempt to use legislation to compensate for a perceived legal lack. It is generally agreed that the statute was enacted in response to Nixon's attempts to circumvent Department of Justice investigations into his activities.⁵ According to Katy Harriger, the Act's purpose was to reassure the public that government scandals could be investigated impartially,⁶ or as Herbert Miller and John Elwood suggest, "Congress created a statute designed to ensure investigations would be conducted by someone outside the executive branch."⁷ Julie O'Sullivan argues that its purpose was "[t]o promote the appearance and reality of evenhanded justice."⁸ On a conscious level Congress rearranges the relations among criminal law and prosecution; in so doing, it also rearranges slightly the balance of powers taking some prerogative from the executive and transferring it to the judiciary, all to stymie leaderly disdain for moral imperatives.⁹

5. Like Hatch, *see supra* note 3, Priester, Rozelle, and Horowitz attribute Nixon's misdeeds as the prime motivation for the passage of the Ethics in Government Act:

The tragedy of Watergate inspired the creation of a permanent statutory scheme for appointing an officer, independent from the supervision and control of the President, to investigate and prosecute crimes by high-level federal officials. President Nixon's misconduct, of course, prompted calls for greater scrutiny of high-level government officials generally. In addition, a particular episode during the Watergate period—the "Saturday Night Massacre"—reinforced the principle that criminal investigations of the President or persons close to him must be handled by an officer with political independence.

Priester et al., *supra* note 4, at 9.

6. *See* Harriger, *supra* note 3, at 136.

7. Herbert J. Miller, Jr. & John P. Elwood, *The Independent Counsel Statute: An Idea Whose Time Has Passed*, 62 LAW & CONTEMP. PROBS. 111, 112 (1999).

8. *See* O'Sullivan, *supra* note 2, at 463.

9. This problem of the separation of powers was one of the prime considerations of those

The statute, however, also works as an unconscious symptom, signaled by the 1978 statute's use of the term "special" to denominate the prosecutorial position of extra-executive, impartial, and evenhanded investigation. A symptom is a metaphor for an untranslated unconscious message; it is a compact manifestation of an unconscious problem that appears as an odd and repeating figuration in representations.¹⁰ While the concept of the symptom emerges from psychoanalysis—the Freudian slip that reveals unconscious thoughts, for example, or the insistent and unmotivated appearance of an object or idea that suggests unconscious preoccupation—it can also be used figuratively as a way to discern the less-than-overt preoccupations of a culture, especially as symptoms appear in synchronic formations through a number of apparently disparate representations.¹¹ The form and content of the symptom relate to and often reveal the nature of the problem a symptom makes visible. Hence, the famous sexual preoccupation subtending the popularized Freudian slip is directly linked to the sexual content of the slips themselves.¹² At the same time, the relation between sexual preoccupation and the slip reveals the structural relation between modern Western culture and a sexuality that is repressed thus emerges as if by accident.

The structure of the symptom, then, reveals both some of the contents of an unconscious (sex) and the character of the system within which such a symptom might be significant (prohibition). Symptoms are the threads that unravel, like sofa buttons (*points de capiton*), to quote psychoanalyst Jacques Lacan; they have a direct line to the logic of the system itself—to its Law, its Symbolic, the very conditions of its operation, its central premise.¹³ When I evoke the Symbolic (with a capital "S"),

who worried about the statute's unconstitutionality. See, e.g., Corry, *supra* note 2; O'Keefe & Safirstein, *supra* note 2; Tachmes, *supra* note 2.

10. The concept of the symptom as employed by psychoanalysts derives from the conceptual tools of psychotherapy. As analyst Colette Soler explains, "the unconscious is a split or schism in the subject's symbolic world: there are things the subject can synthesize about himself and his own history, and others that he cannot." Colette Soler, *The Symbolic Order (II)*, in *READING SEMINARS I AND II: LACAN'S RETURN TO FREUD* 47, 51 (Richard Feldstein et al. eds., 1996). The symptom would be the part, represented by a signifier (a slip, a word, a tic) that represents the unsynthesized part. Jacques Lacan defines the symptom as a formation of the unconscious which is itself "a play of the signifier." JACQUES LACAN, *FOUR FUNDAMENTAL CONCEPTS OF PSYCHOANALYSIS* 130 (Alan Sheridan trans., Jacques-Alain Miller ed. 1978) (1973).

11. Cultural critics deploy what is really an analogy to the psychoanalytic symptom, treating culture as if it were a single psyche and treating inconsistencies, obsessive repetitions, and other apparently odd formations as symptoms of a cultural unconscious. See *generally* the works of Slavoj Žižek.

12. For Freud's extended reading of such phenomena, see *THE PSYCHOPATHOLOGY OF EVERYDAY LIFE* (James Strachey ed. & trans., Hogarth Press 1960) (1901).

13. Ragland-Sullivan writes:

By deliberately creating irruptions and breaks in an analysand's unified story; by listening for specific clusters around sounds, words, or concepts; by following displacements, similarities, and substitutions . . . Lacanian analysts are able to "guess" at associative elements of unconscious meaning. Lacan has referred to such unconscious signifying effects in language as crossroad words

I am referring to the register identified by Lacan as the network of rules, principles, laws, and relations that govern human interactions.¹⁴ These include both official laws and such other structural regulators as language, kinship, morality, and so on. All manifestations of the Symbolic, like language, operate on a metaphorical principle in which they substitute the Word for physical prohibition, social coercion, or connection and develop systems of rules in relation to a larger principle. It is because of the connection between symptoms and the Symbolic that symptoms emerge in the first place, for they reveal not small exceptions, but rather a larger problem, not idiosyncratic difficulties, but a rift in the system itself.

The central metaphor of the Symbolic is the Law-of-the-Name-of-the-Father whereby Western culture attempts to produce a definitive connection by appending a name where there otherwise might not be one. This produces a Symbolic that appears to have meaning at a center—the Word or Name—which itself underwrites all meaning. Hence, Western culture is dominated by such formations as monotheism, constitutional government, common law—any site where the Word is imagined as originary, generative, and precedential. The Symbolic, however, is changeable and has been changing, perhaps most spectacularly in the metonymic logics of technology, various notions of relativism and relativity, and evocations of multiculturalism. The battle is not between conservatives and liberals as different takes on the same everlasting Truth, but rather between metaphor and metonymy as coexisting logics within a larger transition from the dominance of one to the other.¹⁵

The term “special” is itself a symptom. In relation to a body of law presumed to work more or less uniformly and universally, the word “special” denotes in itself the exception, the extralegal gathered in and treated as its own “special” case. As a legal term, “special” denotes among other things an event or circumstance beyond the

or “knots” of meaning.

ELLIE RAGLAND-SULLIVAN, *JACQUES LACAN AND THE PHILOSOPHY OF PSYCHOANALYSIS* 109 (1986). Ragland-Sullivan also notes suggestively that “[a]fter Lacan, reality, rationality, and objectivity appear as comforting illusions—*points de capiton*—amid the truths of plurality, ambiguity, and uncertainty.” *Id.* at xvii.

14. One of the three orders knotted together, according to Lacan, the Symbolic (in relation to the Imaginary and the Real) is a “predetermined linguistic network, which forms identity and mind.” *Id.* at 162. As Colette Soler points out, in his later career, Lacan reduced the Symbolic to “the logic of signifiers, the logic of discourse.” Soler, *supra* note 10, at 52. What is particularly important in this context is the concept of the Law-of-the-Name-of-the-Father as a defining instance of a particular Symbolic order governed by a logic of metaphorical (or substitutive) relations that characterize both language and law. See JUDITH ROOF, *REPRODUCTIONS OF REPRODUCTION: IMAGING SYMBOLIC CHANGE* 19 (1996).

15. The connection between the Symbolic, Law, and language is premised on the logic of discourse. This logic, at least in Roman Jakobson’s analysis, is defined according to two principles: metaphor (Freud’s condensation) where a word stands in more or less arbitrarily for something else and metonymy (Freud’s displacement) where sense derives from the chaining of elements or their contiguity. These two logics coexist, dominated at least until the nineteenth century by metaphor as manifested in the ways cosmologies defined science. Arguably after the spread of geared machines and the discovery of the molecular, the Symbolic has been shifting gradually to metonymy. See ROMAN JAKOBSON & MORRIS HALLE, *FUNDAMENTALS OF LANGUAGE* 76-82 (1956).

normal, something “supplemental” to the regular, or “assigned or provided to meet a need not covered under established procedures.”¹⁶ “Special” is a term that appears sporadically in federal legislation, always as a Band-Aid or the provision of oversight where otherwise something seems to slip through. The federal statute covering civil service employees has a provision for a “special counsel” whose job it is to investigate prohibited personnel practices.¹⁷ There is a United States Court of Federal Claims Office of Special Masters that oversees claims made under such statutes as the National Vaccine Injury Compensation Program.¹⁸ Other federal statutory provisions provide for a Special Trustee for American Indians under the American Indian Trust Fund Management Reform.¹⁹ There is a special counsel to oversee unfair immigration-related employment practices,²⁰ Presidential Special Representatives for Arms Control,²¹ and a “special selection board” to consider the promotion of officers not considered because of administrative error.²²

In referring to something beyond the normal, the word “special” points to the gap it fills, something otherwise uncovered, beyond normal treatment, or even above the law. While the sporadic use of special counsel and masters in federal statutes all seem to address unusual or supplementary situations in the course of normal governmental operation, the term “special prosecutor” in the Ethics in Government Act focuses on the status of the personnel it targets, betraying a worry that someone might be above the law. If someone is above the law, then the Law itself must not be comprehensive. If the law cannot cover every case, then is it Law? If the Law is not indiscriminate, then the very concept of Law as a holistic, evenhanded arbiter of truth and conduct suffers. If Law is threatened with not being Law at all—with not being the Word that in a meaningful and consistent fashion links the otherwise arbitrary relations between words and deeds—then it may become merely a list, a fabricated collection of individual rules without system or Truth, their concocted, negotiated, infinitely idiosyncratic nature exposed. If Law is not articulated within an imaginary universal system (for example, the Constitution, common law), then its masquerade is stripped, the Word breaks down into words, and its underlying makeshift character—its chaotic balancing of chaos—is revealed. This worry is doubled in relation to a figurehead who is already supposed to work symbolically.

Passed after President Nixon’s betrayal of public trust, the 1978 federal statute created the “special prosecutor,”²³ whose job it would be to address, if necessary, a wide range of misdeeds which by the 1994 installment included a fairly long list of officials, beginning with the President and Vice President as well as:

- (2) any individual serving in a position listed in section 5312 of title 5; (3) any individual working in the Executive Office of the President who is compensated

16. MERRIAM-WEBSTER’S DICTIONARY OF LAW 461 (1996).

17. 5 U.S.C. §§ 1214-1222 (2000).

18. 42 U.S.C. § 300aa-12(c) (1994).

19. 25 U.S.C. §§ 4041-4046 (1994 & Supp. 2001).

20. 8 U.S.C. § 1324b(c) (2000).

21. 22 U.S.C. § 2567 (1994 & Supp. 2001).

22. 10 U.S.C. § 14502 (2000).

23. 28 U.S.C. §§ 591-599 (1994).

at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5; (4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5; (5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue; (6) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and (7) any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position.²⁴

The statute also provides for an independent counsel for persons whose prosecution might cause a conflict of interest if pursued by officials of the Justice Department and for members of Congress.²⁵ In other words, the statute applies to anyone who might be a significant political appointee and who, by virtue of his or her office lacks the checks of typical hierarchical or congressional oversight. Once the Attorney General deems there are sufficient grounds for the appointment of such a functionary by the division of the court, the independent counsel is empowered

to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.²⁶

Independent counsel investigate special crimes by special people under special circumstances with very special jurisdiction over potentially self-perpetuating infractions produced by the investigation itself. The big gap around the big people is covered over with big power wielded by one very big person without the checks and review power normally a part of other kinds of prosecution. Neither the Attorney General's decision that an independent counsel be appointed nor most of the actions of the independent counsel are reviewable, except that the independent counsel is subject to oversight by Congress²⁷ and must comply with the explicit provisions about expenses in the statute itself.²⁸

The nature of the gap in law signaled by the term "special" becomes more apparent

24. *Id.* § 591(b).

25. *Id.* § 591(c).

26. *Id.* § 593(b)(3).

27. *Id.* § 595(a).

28. *See* United States v. Tucker, 78 F.3d 1313, 1316 (8th Cir. 1996) (holding that the Attorney General's decision to appoint an independent counsel under the Ethics in Government Act is nonreviewable).

in the 1983 change from “special prosecutor” to “independent counsel.” If, as I have argued, “special” signals a patch in the law, what does “independent” mean and why change from one term to the other? In legal discourse “independent” means “not contingent or unaffiliated.”²⁹ In the context of the Ethics in Government Act it connotes an agent who acts freely and without restraint or influence from others. It is someone who does not hold an office of profit or trust under the United States with “appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner,”³⁰ but who has “full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice.”³¹ Such a supergun is specifically independent from the Department of Justice³² but is subject to congressional oversight.³³

What “independent counsel” really seems to mean in the 1994 version is someone free of conflict of interest with the current administration. The function is aimed in only one direction: toward high-ranking government officials who otherwise have no regulation other than their own conscience. As Senator Hatch commented, the Act is:

a statutory “auxiliary precaution” designed to curb abuses of power by a President. The statute attempts to accommodate two related interests: (1) avoiding the inherent conflict of interest that arises when a prosecutor investigating the President is controlled by the President, and (2) deterring the use of presidential power to commit crimes.³⁴

Dubbing such an agent “independent” assures us that this agent will do a conflict-free job on office-holders who seem to be full of moral and legal conflict. But does it? The Congress doth protest too much. As above, such nomenclature, especially the need to change it, also suggests some underlying preoccupation with interest, with the fact that no such agent will ever be independent at all, and hence the prosecution of the law will always be as it always has been: ideological, biased, and in the other-than-justicial interest of someone. The term “independent” is overcompensatory for the very lack of independence that independent counsel betray in almost every other way. For one thing, by statute independent counsel report to a political and politicized body—the Congress or the Attorney General in some circumstances. For another, the task is initiated and they are appointed by what turns out also to be politicized bodies—the Attorney General and a panel of judges all of whom are political appointees. What the term “independent” covers over, then, is such agents’ very lack of independence, their function as political and party games-masters as well as the bias residing throughout the system, sanitized by this statutory protest of disinterest.

29. MERRIAM-WEBSTER’S DICTIONARY OF LAW 241 (1996).

30. 28 U.S.C. § 593(b)(2).

31. *Id.* § 594(a).

32. *Id.* § 594(i).

33. *Id.* § 595(a).

34. Hatch, *supra* note 3, at 145.

The symptomatic term “independent” in fact produces its breach all too visibly.³⁵

But why be concerned about this lack of disinterest at this point in time? Because the bias of the law has become all too visible, its fictive (imaginary) attachment to justice all too tenuous and in need of constant care. Evidence: the vast body of television law docudramas, cases of justice carried and miscarried, including the Starr Report itself.³⁶ Law has become a public spectacle, a soap, a series, which, while coping with personality as one analysis, looks to forensic science as another. If the law is not working on the macrolevel, we look to the micro to see that the cardinal red trilobal nylon fibers of the type found in 1978 Dodge Chargers and bordellos can indeed, through the miracle of electronmicroscopy and the sagacity of nameless faceless technicians still be connected to the corpse, if not the *corpus delicti*. Law no longer reigns on the level of the Ideal—morality, principle, Right and Wrong—but only in gapless chains of evidence that link culprits physically, literally to the deed. And while such evidence seems only necessary to corral wrongdoers so that Right/Wrong can give them their just deserts, Right/Wrong come to exist only in relation to this forensic truth, circumstantial and eyewitness testimony becoming less and less convincing, the sentencing more mandatory, and decisions made earlier (without the benefit of DNA) coming under scrutiny. Although one could argue that the larger system is still in place—and I would agree—its modes of determination have become obsessively more material and microscopic just as Starr attempted to prove Clinton’s moral unfitness by identifying seminal DNA. Both evidence chains and defenses (based on DNA as well) have retreated to the molecular. The chain takes over the Ideal; the breach or gap between Word and Deed that subtended a metaphorized idealized legal system becomes deadly to one requiring complete evidentiary metonymies to get from deed to Word in the first place.

The exposed and compensated breach in Law as a system represented by the independent counsel is, however, not finally a hole in the Law, or at least not on the surface. Even if the independent counsel statute is an attempt to correct what is

35. Many commentators demonstrate the very lack of partisanship and political intrigue that has characterized Independent Counsel Starr’s performance. From James Carville, whose *AND THE HORSE HE RODE IN ON: THE PEOPLE V. KENNETH STARR* (1998) exposes Starr’s many potential interests, to such legal scholars as Kavanaugh, *see supra* note 2, The City of New York Bar Association, and Schroeder, who suggests that “[t]he fundamental flaw in the independent counsel law—not the only flaw, but the root of many of its problems—consists of its attempt to convert a political decision, the decision whether to refer a case of public corruption to an investigator outside normal prosecutorial offices, into a legal one.” Schroeder, *supra* note 2, at 163.

36. While television shows treating law enforcement have always been a broadcast staple, the number and kind of these programs has proliferated. The advent of expanded cable channels has contributed to this, but the recent focus on forensic evidence in such shows as *Medical Detectives* and *CSI: Crime Scene Investigation* have taken *Quincy* to new heights of obsessive molecular detail. *The Starr Report* was an immensely popular commodity. Its release over the Internet prompted a rush to download it. Over twenty million Americans used the Internet to access a copy of the report. *See* Kris Gautier, *Electronic Commerce: Confronting the Legal Challenge of Building E-Identities in Cyberspace*, 20 *MISS. C. L. REV.* 117, 122 (1999).

perceived as an opportunity for high-level skulduggery, the object of investigation is perhaps what is most suspicious about it. In other words, why do we need this statute at all? Although myriad legal commentators have argued about the statute's utility, inutility, constitutionality or lack thereof, I would like to take a different tack and suggest that the statute exists as an orthopedic corrective for the potential failures of the Law's central symbolic figure: the Father and the ways the President stands in for such a symbolic figuration.³⁷ It accomplishes this corrective not in what facts an Independent Prosecutor may ferret out that might restore patriarchal rectitude, but rather in achieving a shift in our understanding of what the Symbolic may be and what mechanisms might govern it. It accomplishes this in two connected ways: 1) it embodies a clash between and shift of logical systems around its Symbolic paternal center; and 2) its very procedures enact such a shift before the public eye. It accomplishes both of these through a process of perpetual unveiling wherein the independent counsel functions as an unwitting agent of the progressive denouement of precisely the terms and mechanisms of a contemporary shift in the Symbolic order.

II. A STARR PERFORMANCE

The first of the mechanisms imbricated in Starr's performance is precisely this shift from a system figured by the Name-of-the-Father to one based upon metonymy, or constant shifting and displacement through a linked chain of signifiers governed by contiguity (much as in a chain of evidence) figured best by DNA. The second mechanism is a politic of power and desire surrounding the mystified and demystified Phallus, a signifier which only functions as a powerful Symbol of desire when veiled.³⁸ The Phallus is the signifier of desire, not as a desired object in itself, but as the thing no one can have. Unveiling the Phallus produces the penis in all of its inadequacies, undoing Desire, and substituting in its place tawdry wants such as commodities or the silly perpetual series of petty infidelities circulated through talk shows.

Starr's performance brought to us by the independent counsel statute brought these two mechanisms together in a symptomatic way, which worked something like this: The Phallus is an overdetermined signifier of desire, but also a metonym of the Father and patriarchy. The Phallus works best when veiled. The Father is an overdetermined Symbol of patriarchy. Patriarchy is a metaphor of Law in relation to the Name-of-the-Father. The President is a symbol of Law and patriarchy. The President, thus, should

37. A Symbolic order which veers toward the ordering principle of metaphor is emblemized by what Lacan calls the "Law-of-the-Name-of-the-Father." This law is essentially the principle of all Law as a discourse which produces relations and fills gaps with words. At the same time it is the symbol of prohibition. Property, for example, is a connection between a person and a piece of land made through language—a deed. This is based on the idea that before it was possible to determine with exactitude the identity of any father, the patronym was a way of securing a connection. With the advent of DNA testing, paternity has become discernable, which arguably indicates a slow shift from a Symbolic based on metaphor to one that works through metonymy—the metonymies of DNA and digital computers. See ROOF, *supra* note 14.

38. For Lacan, the Phallus was a signifier of desire—the thing one wants but can never have—rather than any literal human organ. See RAGLAND-SULLIVAN, *supra* note 13, at 286-87.

figure as both Father and Phallus. Unveiling the Presidential Phallus, as Starr tried to do in very literal terms, would seem to reveal the lack in power and the lack in Law—at least the Democratic Party version of these things. But where Starr and his backers were mistaken was in the idea that this was ever about an individual and his evil system-defiling crimes. Unveiling reveals instead that the Symbolic we thought was there isn't; rather, it is somewhere on the other side of the stage—in the laughing son, the “slick” one who evades unveiling not because he's tricky and corrupt (that was Nixon), but because his very figuration works through another logic to begin with—a *glissement* or slide through a series of positions he can occupy with equal ease. This metonymical son is frustratingly devious, not as a character flaw, but as an essential attribute of a metonymic Symbolic. Like the sun-spot in the eye, we can never actually see him; such is the nature of his mystery. In other words, if we could not look on the Father through prohibition, we cannot see the son because he'll never be where we look, which is not about the individual but about representation and systemic transformation. Starr tried to look at the father's nakedness to prove his unworthiness. What he found was that Clinton wasn't the father at all (he deposited his sperm in unfatherly places), but the scion of another system altogether. The drama of Starr's investigation played this discovery (or unveiling) out in full public view.

The manager of this Phallic Unveiling is the Ethics in Government Act itself and the independent counsel it puts in charge. Not only does its very presence signal a symptom of some breach in the Symbolic—in Law—as it attempts to patch it up, it also provides a familiar prosecutorial dynamic as the means by which the shift from metaphor to metonymy in the Symbolic—this veil dance—is performed. The independent counsel statute provides a controlled mechanism for revealing that someone's Phallus is the penis; and thus that someone is unworthy of his figurehead status. But as we have seen, it actually redistributes the Phallus both to those who appear to wield the veil (that is, to Ken Starr, Republicans, Morality, and so on) and to the laughing son who always appears to evade them, even when cornered into denials. The so-called evasiveness of Clinton's denial figures the evasiveness of the filial Symbolic not as a system of prevarication and inauthenticity, but as a system of virtuous (and virtual) sliding, figured already by the multiple displacements discovered in the so-called presidential primal scene—the shift from penis to cigar, from vagina to mouth, all parts equal and interchangeable. The statute operates in such a way that it enables the constant displacement of what it reveals as it reveals it, preserving power and performing the metonymic logic whose way it paves. And here is how:

1. The process begins when Congress displaces part of its impeachment aegis to the Ethics in Government statute which itself displaces legal oversight from one site to another—from the Official to the hired gun—so that the site from which the Law has been displaced can be policed. This already involves a catalyzing displacement from the figurehead to the Attorney General, who determines if an investigation is warranted. The statute is aimed at the executive branch, but through a chain of associations, also at any person who occupies a position of discretion and power in the government, including members of Congress and judges.

The statute addresses criminal acts. The notion of criminal, as we saw throughout Starr's investigation, is already a displacement from moral rectitude. If an act is immoral, then it must be criminal, which is of course, ultimately the gap Starr failed

to fill.³⁹

This displacement of oversight is veiled by the supposed congressional motivations for passing the Act. It is generally agreed that the statute was enacted in response to Nixon's attempts to circumvent the Department of Justice's investigations into his activities. The Act supposedly replaces partisanship with an evenhanded procedure. Evenhandedness veils all especially in its impossibility.

2. Evenhandedness is, however, a myth that veils a covert interest in ideals of moral rectitude while perpetuating a myth of legal fullness. In collapsing morality and law, the statute also works as an unconscious symptom of a desire to fill an apparent lack of morality with the ubiquity of law. The statute fills such lack as if the absence of moral character were already an exception, and as if such a special functionary simply reduplicates powers already present (for example, in the Department of Justice, in Congress) through the provision of "special" means. "Special" signifies an anxiety about the law's power (or powerlessness) in relation to morality, but it also might appear to be a potent, pervasive, prohibitive, and effectual force.

3. If we recover from the shock of recognizing our cultural symptom as both a lack of morality and law's failure to compensate—or if the import of such recognition is missed (which always happens with a public captivated by figural trees instead of the diversified forest)—the veil of the "special" is pulled aside in favor of the truth of "independence." If, as I have argued, "special" is a symptom that points to a patch in the law, "independence" signifies a power that makes up for any lack in the law. Under the Act, the independent counsel enjoys wide-ranging versatile powers; it is someone "who does not hold an office of profit or trust under the United States" with "appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner," but who has "full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice."⁴⁰ "Independent" is, thus, very alluring, veiling either a Law so pure it insists on fairness or so corrupt that it must launder its image.

It also enables an intrinsic unfairness and imbalance in a system of justice thought to be evenhanded. Critics of the statute have observed that it gives the independent counsel too much unreviewable discretion in its investigative aegis that can result in abuse, harassment, and the pursuit of information that is finally not relevant to any criminal misbehavior. In addition, the independent counsel's relative freedom from oversight makes leaks to the press difficult to monitor or stop.⁴¹

39. Nixon's endeavors were fully criminal, but Starr's investigations of the Clintons, while ostensibly about criminal activity, really focused on immoral sexual behavior. The pretense of perjury only thinly veiled an investigation designed to reveal questionable moral character.

40. 28 U.S.C. §§ 593(b)(2), 594(a) (1994).

41. Robert W. Gordon comments that:

[t]he statute gave the counsel's office no other job than to investigate and prosecute a designated target. The counsel was unconstrained by budget, other tasks compelling a sense of priorities or proportion, competing political concerns, or any time-table to complete his work. He had access to the full terrifying machinery of the criminal process: to subpoena individuals to testify before grand

4. We imagine Independence reflects the Law's power, but it also works either prophylactically or cosmetically. Each veil when removed, as we have seen, reveals not the Law but yet another veil that seems to protect it. At the same time, each veil is an imitation of the law, not unlike Parrhasios's painting of the veil, which fooled its viewers into believing it was a veil covering another painting.⁴² As a veil—as something that covers over what might be nothing—the law also suggests that the Law itself is a veil, a conceptual system that covers over the very lack at its core, a lack whose exposure is threatened in this case by executive arrogance. The veil obscures the Law so that, like the Phallus, it retains its mystique and power. However, if the Law is revealed as not indiscriminate and consistent, then the very concept of Law as a holistic, evenhanded arbiter of truth and conduct suffers. If Law is exposed as uncentered and unprincipled, then it scatters—becoming merely a list, a fabricated collection of individual rules without system or Truth—their concocted, negotiated, infinitely idiosyncratic nature exposed.

5. Again the presto chango: the Law as veiled produces the Veil as Law and we are back to "Independent" as the veil that obscures the Phallus, but might really hide the penis. The Ethics in Government Act is not about an idealized evenhandedness, but about a specific kind of political interest. What "independent counsel," thus, really seems to mean is someone free of conflict of interest with the current administration. Such nomenclature, especially the need to change it, suggests some veiled preoccupation with interest itself, with the fact that no such agent will ever be independent at all. Hence the prosecution of the law will always be as it always has been: ideological, biased, and in the other-than-justicial interest of someone. The term "independent" is overcompensatory for the very lack of independence such figures betray in almost every other way. In addition to statutory dependencies, independent counsel have all sorts of conflicts in the private, ideological, and political realms as

juries; to threaten indictments or grant or withhold immunity; to prosecute witnesses for perjury or false statements if not told what he wanted to hear; and to call upon FBI agents and private investigators without limit and turn them into great armored tanks to run the state's investigative authority through the lives of targets, witnesses and their families and friends, shattering their privacy and their reputations and bankrupting them with lawyers' fees. The appointing judges of Special Division might select as counsel a political enemy of the Administration he was supposed to investigate. If he ran amok the Attorney General would risk a "firestorm" of public criticism if she tried to remove him for cause. Yet so concerned was the statute to make him independent that he could operate without any real supervision or check on his abuse of office.

Gordon, *supra* note 2, at 639-40; see also DiGenova, *supra* note 2, at 2302; O'Sullivan, *supra* note 2, at 475-79; Sunstein, *Bad Incentives*, *supra* note 2, at 2282. There are several scholars who also comment on the independent counsel's relations to the press. See, e.g., Ronald D. Rotunda, *Independent Counsel and the Charges of Leaking: A Brief Case Study*, 68 *FORDHAM L. REV.* 869, 869-75 (1999).

42. In a competition between Zeuxis and Parrhasios over who could produce the most lifelike painting, Zeuxis produced grapes that fooled birds, but Parrhasios painted a veil that fooled Zeuxis, who asked him to draw it aside so he could see Parrhasios's painting. See JACQUES LACAN, *THE FOUR FUNDAMENTAL CONCEPTS OF PSYCHO-ANALYSIS* 103 (Jacques-Alain Miller ed. & Alan Sheridan trans. 1978).

Starr's case amply demonstrated.⁴³ What the term "independent" veils, then, is such agents' very lack of independence, their function as political and party games-masters as well as the bias residing throughout the system, sanitized by this statutory protest of disinterest.

6. Which is why the next veil is crucial. If we whip away "independent" we find science, evidence impeccably chained. If the Law is a veil and "Independent" a veil and they cover one another, what is behind the veil is ultimately Truth figured as a metonymic chain of physically linked, material, molecular evidence: fibers, DNA, DNA on fibers. The great fetish quality of the evidentiary chain is apparent in the way law has become a public spectacle, which while coping with personality and motive as its object looks to forensic science as the site of its Truth. Law is the veil and alibi for this Truth, and molecular Truth is the veil for the Law—circumstantial and eyewitness testimony has become less and less convincing, tape recordings specious at best (also thanks to Nixon and Linda Tripp). The chain takes over the Ideal; the breach or gap between "word" and "deed" that subtended a metaphorized idealized legal system becomes deadly in a Symbolic system, which requires complete evidentiary metonymies to get from "deed" to "word" in the first place. The chain of evidence embodies the shift in the system, but it too is a veil that obscures the transition that occurs—in fact, it veils by presenting in fairly concrete terms the logic that now governs.

7. The veil dance so far has been an aesthetic play of Symptoms, Law, and Truth, which we might suspect cover over a very real absence somewhere. Finally the independent counsel's veil dance neither hides nor reveals a hole in the Law, or at least not on the surface, but instead reveals a shift in a system that will always cover a gap because it is a system premised on gaps in the first place. The veil dance exists as an orthopedic corrective for the potential failures of the Law's central, rapidly obsolescing symbolic figure: the Father. When the paternal figure becomes too literal—as DNA evidence now makes it—what happens to the system that depends upon that figuration? It doesn't fall apart; rather, it scrambles to fill in, to substitute, to replace that demoted Symbolic with another stronger one—science on the one hand, or more laws on the other. Other possibilities include a megalomaniac independent counsel who is on a "mission from God" or a gradual and subtle reliance on chained matter, on DNA and digital systems.

Nixon failed. The all-too-fallible father is replaced by a statute that appoints a better, "watch-doggier" father in its place. We still have presidents, but they are now sons, gilded with residual symbolic resonance. Ford, Carter, Reagan, Bush, Clinton, and Bush are no longer fatherly presidents (well perhaps Reagan, but more grandfatherly, more in his dotage as an honorary old pensioner and openly corporate boy, afflicted by Alzheimer's, influenced by astrologers and the machinations of his wife—a paternity which also needs to have its viability very quickly confirmed by history as we rush to name airports and monuments after him so we can continue to

43. The statute's ostensible depoliticization of the investigative process veils the alignment of parties with sides in the investigation. Instead of inspiring confidence in disinterest, the thinness of this veil provides yet another reason for the public to distrust the motives of politicians.

believe that a "B" actor could play the part that had been unfilled for so long). Reagan in fact reveals the whole failure of the President as Father: it is an act, both president and father. The sustaining metaphor of metaphor—of the power of the name to exert connections where none exist—has lapsed into particularity in a field that has become particulate. Semen on a Gap dress is its apt icon.

Thus, even more than the "special prosecutor," the independent counsel is the conservator of Daddiness, of the Law's wisdom and wizardry displaced into an evocation of "independence." Independence is the Viagric supplement that revitalizes Law, that inflates metaphor a little longer to sustain the arbitrary link between "word" and "act." This supplement is no longer special but unique, alone, the first cause prop that reminds us of what the Law is so we can continue in its eery and weary afterglow, veiling as we unveil, playing the old game with new rules. But for this to happen, the independent counsel, too, must, as Fedwa Malti-Douglas declares, be unveiled to displace again into some principle of discrimination and balance the manic excess of his voyeuristic paternal zeal.⁴⁴ It was Starr, not Clinton, who finally exposed the lack at one center that relocates the center somewhere else or perhaps nowhere else and yet everywhere else.

By hyperbolizing the father's misdeeds, Starr tried to render again unto the father the Father's power, reconstructing Clinton as the prime mover of the Evil Symbolic of these global godless times. The drama of Clinton and the Starr Report is a perverse drama of frustrated Symbolic repatriation, wherein if we can't have the good and pure father (a la Eisenhower), then the bad father will suffice. (And this, one might speculate is why Gore didn't win the election. He campaigned as a father, reliteralizing and thus deflating what had just been displaced with great and clever labor. Bush was smart enough to campaign as the son, the only symbolic position that survives in what are arguably these post-Oedipal times.)

In its ever-shifting panorama of veils, the Ethics in Government Act performs the shift to foundational metonymy the "Name-of-the-Father" does not allow before it disappears itself. In appearing to bolster the Father, the Ethics in Government Act provides the best veil of all: the Father as veiling his own demise, of Truth, Right, and Justice giving way to DNA, carpet fibers, and tire tracks. The Law is not the Name, but the chain, the logical interconnectedness of matter in a quantum universe, the emergence of many sons who can tap one another, a la WWF, to produce continuity in the name of contiguity, eternity in the name of digitality, and relevance in the name of relativity.

The Ethics in Government Act lapsed in 1999, all chance of renewal quashed by the obscene overzealousness of that prosecutorial son of Noah, who delighted in ogling the father's nakedness, and who wished to transform a surreal primal scene into a cultural trauma of epic proportion. In other words, by hyperbolizing the father's misdeeds, this Jeremiah rendered again unto the father the Father's power. So whether the statute was unconstitutional, unfair, or unwieldy, it had unwittingly accomplished its symbolic task just in time to pass prerogative onto the savior son who governs in the name of the father.

This analysis is, of course, very much a cultural psychoanalytical reading of the

44. See FEDWA MALTI-DOUGLAS, *THE STARR REPORT DISROBED* 179-80 (2000).

signifiers that played through the field occupied by the Ethics in Government Act. I have focused on the ways the paternal function and its current (and probably century-long crisis) has been part of the symptomatic baggage of the various contradictions, illogics, and other detritus of the cultural excesses played out so dramatically by the independent counsel in his lengthy investigation of the president. But this would not be the first time I have come to this conclusion.⁴⁵ Why do I keep coming back to the sight of the father as the nexus of failure in the symbolic system itself? My pat answer is that the symptoms keep leading there—remember the symptom always has a metaphorical relation to the malaise it represents. But a more thoughtful answer is that there are only so many protracted figurations used to characterize human relations. Though I could easily have embarked on a castrating unveiling of the unveiled Phallus as another symbol playing through this mix, a more central figuration has been the language of the nuclear family, which though it may function as an analogy of hierarchy, gender relations, the structural laws of kinship, and the devolution of wealth, also emerges as a symptom of the very terms at issue: law and order.

It would be fair to say that “family values” is a code word for this very malaise. The Starr Report and the general directions of Independent Counsel Starr’s investigations were in the realm of the familial. Conflict of interest is figurative incest or vice versa. Infidelity and adultery on an individual scale translate, in Starr’s universe, into a danger to the family politic. In other words, the structures through which Starr’s investigation makes any sense are already familial structural terms and that is symptomatic in itself. And of course, finally, this isn’t about any real father at all, rather it is about the lack at the center of things which must be bridged some way for anything to work at all. If the father no longer functions to cover this gap symbolically, then something else takes its place. This is what the Independent Counsel Statute repeats symptomatically—the covering of a gap that can never be covered. Reading legislation as part of a network of signifiers in a cultural text becomes scientific insofar as it is sometimes quite able to predict the general direction of representational dynamics as those define rather than simply reflect deeper structures. And I predict that we have entered the era of the son, a millennial passage to a logic of constant displacement as systems take over themselves and we become the digital peons in a decentered network operating under a logic of perpetual displacement and eccentricity. In this logic the good old symbolic fathers—the Reagans, Cosbys, Starrs, and even Schwarzeneggers—appear as precisely the stop-gap patriarchal Band-Aids they have become and the law becomes an ever-increasing set of regulations less linked to, and consonant with, an ideal or principle and more connected to a scattered pragmatism reflecting various disparate interests.

45. See generally ROOF, *supra* note 14.

