

Philadelphia area which is more frequently a parking lot as opposed to a high-speed line. It would further be enormously helpful on the problems of air pollution, as a tremendous stream of traffic moves from the suburbs over the Schuylkill Expressway and U.S. route 422.

The cost of this light rail system would be \$720 million, with the Federal share being \$576 million. Congressman JON FOX joined me today at the area where we took a look at the proposal, and I think it is really a very, very useful use of ISTEAF funds. It is my hope that, as we move ahead with the so-called ISTEAF legislation, we will make a very substantial investment in infrastructure and that the higher figure will be adopted by the Senate, by the House, and by the conferees as we move through this important legislation.

I have joined over the years in efforts to take the highway trust fund off budget so it will be used for the specific purpose for which it was intended. I know in my State there are an enormous number of important projects which could be funded if the highway trust fund were to be used for highways, bridges and mass transit. I have confidence that the same exists around the country.

THE ESCALATING WAR BETWEEN THE PRESIDENT AND INDEPENDENT COUNSEL

Mr. SPECTER. Madam President, I now seek to discuss, or comment, on the escalating war between the President and independent counsel and to urge the independent counsel to reply forcefully in the public forum to attacks, as opposed to the use of the grand jury as a means of investigating the people who are proposing and undertaking those attacks. My own sense is that independent counsel would be well advised to reply to his critics in a public forum, and by that I do not mean in his driveway in the morning, but, when criticized, to reply. I have had some experience as a prosecutor running grand jury investigations, and it is an inevitable consequence that, when someone is under investigation, that person, persons or entity, will not like the investigation. I think it would be enormously useful if the American people knew, for example, why Mr. Starr is in the investigation on President Clinton's personal affairs.

People ask the question, how did he move from the investigation of an Arkansas land deal, where he has been engaged for many years at very substantial cost, over to the investigation of the President on his personal matters? There is a very direct answer, but one which I think very few people know. That is that Attorney General Reno asked Mr. Starr to conduct this investigation. That request was made by the Attorney General about 6 weeks ago. We all know that Attorney General Reno is very reluctant to authorize investigations by independent counsel,

with many of us having urged her to do so on campaign finance reform to no avail. So, when Attorney General Reno authorizes an investigation, there is a good indication that it is for a very, very strong cause. But people do not know that Mr. Starr got into this matter in relation to his authorized investigation of Webster Hubbell. And information came to Mr. Starr from Linda Tripp about an effort to secure employment for Ms. Monica Lewinsky under circumstances identical for Webb Hubbell, with the allegation being, and the inference being, that it was hush money for Webster Hubbell.

Linda Tripp came to Mr. Starr and Mr. Starr knew Ms. Tripp from his previous contacts with her when she was a witness in the Foster suicide and on Filegate. Ms. Tripp told Mr. Starr that Ms. Lewinsky had stated that a given individual had sought employment for Ms. Lewinsky outside of Washington, DC, with a specific firm, and that happened to be an identical firm—an identical individual who had made similar arrangements for Mr. Hubbell.

Mr. Starr then put a consensual electronic surveillance on Ms. Tripp, that is, consensual by Ms. Tripp. And Mr. Starr has been continually criticized for having conducted an unlawful electronic surveillance as recently as yesterday's TV talk shows. The fact of the matter is, Mr. Starr ought to make this point and ought to make it emphatically, that the one-party consent to the electronic surveillance was perfectly lawful under the law of Virginia where it took place.

After the electronic surveillance confirmed for Mr. Starr what Ms. Tripp said, Mr. Starr then took the matter to the Public Integrity Section of the Department of Justice and said, here is the evidence. There are a number of alternatives. One is the Justice Department can handle the matter itself. Second, the Justice Department can seek other independent counsel. Or, third, the Justice Department could refer, Mr. Starr recounts, to Mr. Starr. The matter was then taken to Attorney General Reno, who said it was her decision to authorize Mr. Starr to conduct further investigation related to the Ms. Monica Lewinsky matter, and that was then confirmed by the three-judge court which authorizes Mr. Starr's conduct.

Now, at that time, obviously, Attorney General Reno knew about the electronic surveillance and, in asking Mr. Starr to conduct the investigation, there was, I think, fairly stated, more than implicit approval of what Mr. Starr had done, but really explicit approval of what Mr. Starr had done.

There has been very, very substantial comment on the question of executive privilege. And, in looking at the news media reports on comments about this legal issue, they appear, really, to be authored by people who are advocates for the President's position. The law on executive privilege is well established, has been since the case of United

States v. Nixon, 418 U.S. 683, and it applies, as outlined by the Supreme Court of the United States on page 706 of U.S. Reports, volume 418, executive privilege applies to "protect military, diplomatic or sensitive national security secrets." Well, there is nothing of that nature involved in the investigation of the President's personal activities. Executive privilege applies to matters which are carried out by the Executive in his official capacity, again, not in his personal capacity.

There have been commentaries on the issue of the lawyer-client privilege as it would apply to a number of witnesses now appearing before the grand jury, and the speculation is that it is on Mr. Bruce Lindsey. Just as the claim of executive privilege might be applied to Mr. Bruce Lindsey, or perhaps to Mr. Blumenthal, we are not really sure, but there is very strong legal authority in a case decided by the Eighth Circuit Court of Appeals handed down on May 2, In re—Grand Jury Subpoena Decus Tecum, 112 F.3d 910. This is part of the controversy and contest between the White House and Mr. Starr—this case lays out, at page 920 of 112 Federal Reporter on the Third Series: Executive branch employees, including attorneys, are under a statutory duty to report criminal wrongdoing by other employees to the Attorney General.

Mr. Lindsey, who is an attorney, can hardly be in an attorney-client relationship to the President when he is a governmental employee. The court goes on to point out that the way a person retains a lawyer to have the attorney-client privilege is a very direct way, and that is the person retains his own counsel and not looking to a governmental employee to be the counsel. A governmental employee like Mr. Lindsey or other attorneys have their fiduciary obligation running to the Government of the United States. It does not run to anyone else with whom they have contact, even the President of the United States. The express statutory authority set out in 28 U.S.C. section 535(b) establishes the obligation of any governmental employee, including attorneys, to report evidence of wrongdoing to the Attorney General of the United States.

The way these matters are commented upon on the talk shows and in the press and in the media, it appears that there is some strong ground to assert executive privilege. To call it frivolous would be elevating it to a higher level than it deserves. It is absolutely, positively a stalling tack, nothing more and nothing less. It could not possibly apply. Some may argue that the Eighth Circuit opinion is not binding on the U.S. District Court for the District of Columbia, but those who have referred to it in the media make the suggestion that it applies only in St. Louis. The fact of the matter is that it's a Circuit court opinion, it is very persuasive, and there is no authority to the contrary. It is based

upon a principle of law which is hard to dispute, and that is that an attorney employed by the Government and paid by the Government owes a duty to the Government and has a statutory duty to report crime to the Attorney General, not to another governmental employee, even the President of the United States, who happens to employ him.

So we have a series of events where there is a very, very strong proposition that what is being undertaken here in this war, this escalating war between the President and independent counsel, really talks about legal propositions which are spurious and frivolous at best. It would be my hope that the independent counsel would respond to the President in the public news media. I know that prosecutors who are investigating cases do not like to disclose what is going on in a pending prosecution, and there are good reasons as a general matter for investigators or prosecutors on an investigative matter not to make disclosures but to keep those matters confidential. But when those prosecutors conducting these investigations are attacked in the public news media, there is absolute justification for a response.

I believe that Mr. Starr made a mistake when he called people before the grand jury last week such as Mr. Blumenthal, in giving Mr. Blumenthal a platform. I made mistakes myself when I was District Attorney of Philadelphia. I made some in the U.S. Senate. And just because Mr. Starr made a mistake does not mean that he is disqualified from carrying on as independent counsel. It does not mean that he ought to resign, as some Members of the other side of the aisle have suggested. The fact is that the Attorney General of the United States has the authority, under the independent counsel statute, to remove Mr. Starr for cause, and the President has the authority, through the Attorney General, to remove Mr. Starr for cause. We have already gone through that once in our Nation's history under a circumstance, the so-called Saturday Night Massacre. But if Mr. Starr is doing things which require his discontinuance in office, that can be handled by the Attorney General. And no suggestion has been made that he ought to be removed. Nor do I think there is any basis for saying that.

When Mr. Starr has found his assistants under attack, it is understandable that there would be a very strong reaction.

Two of his assistants were attacked, one a Mr. Emmick. The information was spread broadly in the news media that an assistant independent counsel, Mr. Emmick, was criticized by a judge for using "threats, deceit, and harassment to get testimony in a 1994 police corruption case." But the fact of the matter is that the court transcript showed that the "threats, deceit, and harassment" had been directed at another Federal prosecutor in Los Ange-

les, and the same judge called Mr. Emmick "a man of integrity" at a hearing a year later.

These matters do not come out. I think that what Mr. Starr has to do is make a very forceful defense of his assistants.

Similarly, an associate independent counsel, a Mr. Udolf, had been reputedly fined some \$50,000 in a Georgia civil proceeding for violating the civil rights of someone who was wrongfully held in jail for 4 days in 1985. But others have come to his defense. The retired Federal chief judge, Judge A. R. Kenyon, said that Mr. Udolf "was very sensitive and always had compassion for people even though he had to prosecute them."

The point is that there are going to be criticisms, and in the course of a legal career, prosecuting attorneys may be censured, and the nature of a criminal proceeding very frequently is very highly charged, very emotional, a lot of things are said by both sides with frequently considerable provocation. But whatever is said, it is my view that Mr. Starr ought to respond in a public contest and ought to do it very, very promptly, again, without resorting to the matter of the grand jury to bring people in there.

The stepped-up attacks on Mr. Starr may carry the suggestion that he is getting closer. Dick Morris observed last week that the testimony of former Arkansas Governor Jim Guy Tucker might prove to be very, very significant, perhaps decisive in the Arkansas land deal. I do not know whether that is true or not, but I do know that if you take a look at the chronology of events which lasted for years before Mr. Starr could bring former Governor Tucker to trial, it was a long, tough road which took a very protracted period of time, including overturning a judgment where an Arkansas Federal judge dismissed the indictment, the indictment later being reinstated by the court of appeals, and the court of appeals even granting the independent counsel motion to have that judge removed from the case.

So where you have a protracted period of time and very considerable money spent, it is relevant to note what has happened in the matter, these facts really not being known at all by the public and not being known by me unless I take a look to see exactly what is going on behind the veil.

When Attorney General Reno appointed Mr. Starr to expand the jurisdiction to cover the President's personal activities, I made a comment that was widely misinterpreted and widely misconstrued. I said 2 weeks ago that Attorney General Reno had erred in appointing Mr. Starr because people would not understand what he was doing in that case in light of the fact that he started off a long time before in the Arkansas land deal and that it was unfortunate because Mr. Starr has become a lightning rod.

No longer is there a focus of attention on what President Clinton has

done, and he is, allegedly, supposedly the object of the investigation, but the attention has been focused only on Mr. Starr. I do not believe that Attorney General Reno had in mind when she appointed Mr. Starr that the appointment would prove to be such a formidable public relations defense for the President, directing attention away from the President as the focus of the investigation to Mr. Starr. But that is certainly what has happened. It is in no way a criticism of Mr. Starr that the Attorney General asked him to take over the investigation and that he has become a lightning rod.

That is where we find this matter. I believe the lightning rod has to exchange and reply in kind, and if it calls for lightening, so be it.

I went to high school in a small town in Russell, KS—Russell High School, which had a football team known as the Broncos. There is another football team not too far from Russell called the Broncos, the Denver Broncos, who were the Super Bowl champions. When I look at this battle, this war being waged with the President, on one hand, and the independent counsel on another, I analogize it to a football game between the Broncos who are the Super Bowl champs and the Broncos from my old high school football team.

If the playing field is to be leveled to any significant extent at all, I believe that Mr. Starr has to respond. The appropriate way to respond is exactly when these criticisms are made.

It is my hope and my understanding that Mr. Starr is not going to pursue the business of calling his critics before the grand jury. I think Mr. Starr, a former Federal judge, a former solicitor general, knows better than to argue that the first amendment is only for articulating the truth. Who knows what the truth is when you have a controversy, or who knows what the eye of the beholder is as to what the truth is? The first amendment is to protect freedom of speech. You cannot get involved in limiting it to who is telling the truth or it would be a never, ever ending controversy.

I hope that we will put this war between the President and the independent counsel on the back burner. I hope that we will presume the President to be innocent and that we will presume Mr. Starr to be innocent and to let the investigation go forward until it is concluded so that the President and the rest of us can focus our attention on the important items facing the country, like this important legislation, ISTEA, on the infrastructure spending of America for the next 6 years; on the enormous problems we are facing in Iraq; on the problems we are facing in balancing the budget and how to handle the \$1.7 trillion funding which we now have to apply to America's problems.

But if the debate is to rage and if it is to continue, it is my hope that the grand jury will not be the place where Mr. Starr's critics come, but that he

will engage in forceful, lusty debate and express himself and answer his critics and let the chips fall where they may.

I thank the Chair, yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. THOMAS. Madam President, are we on ISTEA?

The PRESIDING OFFICER. The Senator is correct.

Mr. THOMAS. I would like to speak for 10 minutes on that.

The PRESIDING OFFICER. The Senator is recognized.

Mr. THOMAS. Thank you very much. Madam President, I want to say—which has already been said a number of times—how pleased I am that we are moving forward on this important legislation. I am a member of the Environment and Public Works Committee, and we worked very hard last year to bring this to the Senate. Of course, as you know, we found some problems, particularly with the House version, and ended up with a temporary bill. That temporary bill expires the first of May, and all of us, I think, are aware of how important it is for us to get on into the permanent reauthorization of this bill so that our various State highway commissions can go forward with their plans.

The current ISTEA law has certainly, over the years, made some important changes in our whole transportation program, our transportation policies. It has changed things a great deal. We have come up with a national system of Federal highways. We have found a way to protect this system and to cause it to be effective. But as we move into the 21st century, we need, of course, to update this law as it was passed to make it more flexible, to make it such that the States can deal with the unique issues that they have.

I am from Wyoming where we have probably more miles and fewer people, more miles per person than, I suspect, most any other State in the Union. So our needs are quite different than they are in California, than they are in New York or Rhode Island. And this ISTEA bill tends to recognize that with more flexibility and more efficiency by reducing some of the regulations that go with it, by putting programs together and helping us to meet the challenges that are before us. It is not perfect, of course.

I believe ISTEA II achieves this goal of efficiency and flexibility, and cre-

ates “new rules of the road” that serve the national interest and will help us to build the highways—I hate to be repetitive—and bridges of the 21st century. I heard that somewhere before.

At any rate, my State, as is the case with all other States, has road needs. And our roads are in a condition such that they need a good deal of repair, a good deal of maintenance.

Again, Wyoming is unique. Wyoming taxpayers contribute more to the highway trust fund per person than any other State in the country because we drive more—nearly \$200 per person in Federal gas taxes. And yet we have a deteriorating bridge and road system. According to the best figures I get from our highway department, 44 percent of our roads and bridges are in a deteriorating condition, in a fair to poor condition. So we have a great deal to do.

These shortfalls, of course, in the roads of Wyoming, as in other States’ roads, are a detriment to all taxpayers. If we are to have a national system, then, of course, you have to cross all the States to get there.

A set of efficient and well-maintained roads is important to the cities that export goods around the country, as they are to us in Wyoming. This bill, of course, and all of the activities and dollars that go with it are a very direct contribution to the Nation’s economy. These dollars move out quickly. These dollars move to fill the needs of people throughout the country, provide jobs, and are very efficiently used in a very quick fashion. So ISTEA II will help the flow of goods and services in our country.

We worked very hard. I want to salute the chairman of the committee, Senator CHAFEE, who worked so hard to find, along with others, a fair solution. This is a difficult issue. Through the years, as everyone knows now, we have taken in more money from Federal highway taxes than we have spent. We kept it in the trust fund, at least partially, to help balance the budget.

We have a unified budget, so if you spend the money, even if it is in the trust fund, you spend the money in the highway fund, then you have to reduce the spending somewhere else in order to stay within the spending caps. That is not easy. So the first discussion we have had—it has been a very difficult one—is how much of that money do you spend without impeding on the other spending?

The second difficult one, of course, is that of the formula in which there is distribution. There is always great controversy about the formula. There are States that pay in more than they, frankly, get back. There are States that get more than they pay in. There are those who believe all the dollars should go to highways.

There are others who believe part of the money—this is, after all, a surface transportation bill—some of the dollars ought to go for public transportation, some ought to go for Amtrak, some ought to go for bicycle trails, and those

kinds of things. So I suspect, of all the bills that we deal with, No. 1, everyone wants to pass it, everyone knows that it needs to go forward. But there are so many different kinds of interests that are represented here—and legitimate, all legitimate.

So finding a fair funding formula, based on the national interests, is most difficult. I admire very much what the leadership of this committee has done. And it is there to emphasize a National Highway System. I think that is key—a National Highway System.

Let me talk just a minute about an issue that I guess I would have to admit is particularly important to me, but I think to others as well. I happen to be chairman of the Subcommittee on National Parks. We find ourselves with national parks that are being loved to death. More and more people like to go to parks, but at the same time we find ourselves \$5 billion to \$8 billion in arrears in infrastructure. Nearly \$2 billion of that backlog is in highways.

And, of course, parks only have one source of revenue, really, for the maintenance of their highways, and that is Federal taxes. Counties do not come in to Federal parks and build roads as they do in some other public lands. The State does not contribute to the highways inside of parks. So we have found that a high percentage of existing park roads and bridges are in poor condition. And therefore, we need to do something about it.

In my State of Wyoming, Yellowstone National Park alone is \$250 million behind for the care of highways. It is very difficult. First of all, they are built in difficult places. Their season is rather short to reconstruct. So it is hard to keep highways moving.

We are very pleased that in this particular bill we make a step forward—we make a step forward—and have moved up from about \$70 million a year, which has been traditional, to about \$180 million. So it makes a great deal of difference. And then the Park Service will decide where those allocations are made.

The same is true of other Federal lands. Wyoming is 50 percent Federal lands. Some States are much higher. Nevada, for example—86 percent of that State is owned by the Federal Government. So you have BLM lands. You have forest lands. You have refuge lands. All of these are lands that we look forward to helping through this program. And they will receive a small, relatively small increase, relatively small in terms of the problem, but a sizable increase.

Senators CHAFEE and WARNER and BAUCUS have been working with us on this issue. I feel confident that these park needs will very much be accommodated. I thank the Senators for their willingness to do that.

ISTEA II will streamline the program structure and give States and localities more flexibility. I believe that is very important. There is a consolidation of five programs into three, which