U.S. Senator.
BARBARA CUBIN,
Member of Congress.

Mr. THOMAS. I still have not received an answer to my letter from the FAA. The letter was sent in early December of 1997. All the letter asked was for a date by which we could expect a decision. I didn't ask for a decision, I didn't urge a certain outcome, just the date.

I called the FAA Administrator several weeks ago and though she said she would check into it I have heard nothing from her or her staff. For an agency that claims safety as its No. 1 priority, these delays are hard to understand.

This assessment is not an effort to expand the airport. There won't be longer runways, bigger airplanes or more flights. It is about safety, safety for everyone flying in and out of this airport. Time is of the essence—there is a short construction period, as you might imagine, in Jackson Hole, WY. The FAA needs to come to a decision quickly or these safety improvements will be delayed for yet another year.

Mr. President, I guess I have to admit that I am simply expressing my frustration with this situation. The FAA's primary responsibility is safety. The Jackson Hole Airport presents an opportunity to deal with an important safety issue and we've received no response from the FAA. I, therefore, intend to be rather critical of the FAA until it decides to act and comes to a conclusion. This process has gone long enough. The FAA needs to move forward now.

I typically am not anxious to come to the floor of the Senate and grumble about a federal agency, but I think this is something that needs to be grumbled about, and therefore I am here.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

INDEPENDENT COUNSEL

Mr. TORRICELLI. Mr. President, I ask unanimous consent to have printed in the RECORD a letter I have written on this day to Attorney General Janet Reno.

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

FEBRUARY 11, 1998.

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

DEAR MADAM ATTORNEY GENERAL: As a member of the Senate Judiciary Committee, which is charged with conducting oversight of the Department of Justice and the Office of the Independent Counsel (''OIC''), I believe public confidence in our system of justice must be maintained. I therefore respectfully request that you conduct a formal inquiry of Independent Counsel Kenneth Starr to determine whether he should be removed or disciplined for repeated failures to report and avoid conflicts of interest pursuant to the powers vested in the Attorney General by the Ethics in Government Act (''The Act''), 28 U.S.C. §591, et seq.

Recent events involving the Independent Counsel's probe are further evidence of Mr. Starr's entanglements that cast a cloud over his ability to conduct an investigation objectively. Over the course of his entire investigation, Mr. Starr, in his continuing work as a partner at the law firm of Kirkland & Ellis and as Independent Counsel, has embraced (and been embraced by) persons and interests that seek to undermine the President as part of their political agenda. He has continually turned a blind eye to his own conflicts of interest at his law firm, to the conflicts engendered by the actions of his clients, and to benefactors that seek to discredit the President for partisan political gain. A person of Mr. Starr's numerous conflicts of interest cannot carry out the even-handed and fair-minded, independent investigation contemplated by the Act. Moreover, the evidence that has surfaced thus far regarding the expansion of Mr. Starr's jurisdiction into these matters raises serious concerns about the OIC's collusion with the Paula Jones legal team in an effort to unfairly and illegally trap the President.

This possible misconduct demands an immediate investigation by the Department to determine if Mr. Starr remains sufficiently ''independent'' to continue to serve in his current position.

I. THE ETHICS IN GOVERNMENT ACT REQUIRES THE ATTORNEY GENERAL TO INVESTIGATE ALLEGED MISCONDUCT OF THE INDEPENDENT COUNSEL

The Independent Counsel statute provides the Attorney General with jurisdiction to investigate alleged misconduct, conflict of interest and other improprieties that would render an Independent Counsel unfit to remain in office. Specifically, under the statute, the Attorney General may remove an Independent Counsel ''for good cause, physical disability, or other condition that substantially impairs the performance of such independent counsel's duties.'' 28 U.S.C. §596. The Supreme Court has suggested that a finding of ''misconduct'' would most assuredly constitute ''good cause'' under Section 596, and that ''good cause'' may impose no greater threshold than that required to remove officers of ''independent agencies.'' *Morrison* v. *Olson*, 487 U.S. 654, 692, n. 32 (1988).

The Attorney General's removal authority and the concomitant authority to investigate the independent counsel to determine if there are grounds for removal are essential to the continuing constitutional vitality of the Act. Indeed, the Supreme Court's holding that the Act did not violate separation of powers principles rested largely on the power reserved to the Attorney General to remove the independent counsel for ''good cause.'' Specifically, the court found that the Attorney General's removal power rendered the independent counsel an ''inferior officer,'' as required by the Constitution, 487 U.S. at 671, and that such authority ensured that undue powers had not been transferred to the judicial branch under the Act. 487 U.S. at 656. Thus, Morrison teaches that not only is the Attorney General authorized to determine whether there are reasons to remove the independent counsel, but that the Attorney General is constitutionally obliged to do so.

In addition, the Act expressly obligates the Independent Counsel to follow, to the fullest extent possible, the standards of conduct prescribed by the Department of Justice. See 28 U.S.C. §594(f) (An Independent Counsel ''shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written and other established policies of the Department of Justice respecting enforcement of the criminal laws''). Accordingly, independent of your removal authority, the Department's Office of Professional Responsibility (''OPR'') has jurisdiction to investigate allegations of misconduct by the Independent Counsel and his staff or potential conflicts of interest that would disqualify him from serving as independent counsel. See Department of Justice Manual (''DOJ Manual''), Section 1–2112 (Supp. 1990) (Office of Professional Responsibility ''oversees investigation of allegations of misconduct by Department employees''). Against the backdrop of this clear constitutional and statutory mandate, I request that you initiate a formal inquiry into the following matters.

II. CONFLICTS OF INTEREST: MR. STARR HAS CONSISTENTLY IGNORED THE CONFLICTS RELATED TO HIS WORK, HIS CLIENTS, AND HIS BENEFACTORS

Mr. Starr's decision not to devote his full attention to his obligations as Independent Counsel in a matter involving the President of the United States has made inevitable the ensuing appearances of impropriety and actual conflicts of interest. His own ethics consultant, Samuel Dash, formerly Chief Counsel to the Senate Watergate Committee, noted that Starr's decision to continue representing private clients while investigating the President has ''an odor to it.'' ''How Independent is the Counsel,'' The New Yorker, April 22, 1996. The seriousness of these conflicts (and the odor) is evident by the direct involvement that his clients and others to whom he is financially dependent have assumed in Mr. Starr's investigation.

The Act makes clear that during an Independent Counsel's Tenure, neither the counsel, nor any person in a law firm that the counsel is associated with ''may represent in any matter any person involved in any investigation or prosecution under this chapter.'' 28 U.S.C. §594(j)(l)(i) and (ii). Mr. Starr, however, has violated both the spirit and letter of the statute through his own work and work of his law firm, as well as the actions of his clients and future benefactors.

A. The Expansion of the Investigation Into Matters In The Paula Jones Case Places Mr. Staff In Violation Of the Act's Conflict of Interest Provisions

Mr. Starr, as a partner at the law firm of Kirkland & Ellis and just prior to his appointment as Independent Counsel, actually provided legal advice in connection with the Paula Jones litigation. ''Mr. Starr's Conflicts,'' New York Times, March 31, 1996. While the fact that he has been involved with that litigation prior to becoming Independent Counsel certainly gave his appointment the appearance of impropriety in violation of the spirit of the Act, now that his investigation has fully inserted itself into the Paula Jones matter, concerns about his former representation certainly are magnified and call into question his role as an ''independent'' counsel in Paula Jones-related matters.

Of far greater gravity are the press reports and other information suggesting past and present representation by Kirkland & Ellis of other individuals connected to the Paula Jones civil litigation. See ''More Subpoenas and Angry Talk in Starr's Probe,'' Chicago Tribune, January 31, 1998; ''Starr Furor Lands at Firm's Door,'' Legal Times, February 9, 1998. Mr. Starr's potential breach of his duty to inform you of any association between his firm and persons involved in the Paula Jones matter, as well as the possible breach of the Act's statutory conflict of interest standards, should be the subject of investigation. Evidence that is discovered as the result of the current subpoena directed to Kirkland & Ellis for Paula Jones-related documents will undoubtedly shed light on whether Mr. Starr is in violation of the conflict of interest standards under the Act.

Chicago Tribune, January 31, 1998. Kirkland & Ellis's reported opposition to the subpoena is a significant indication of a violation of the Act. ''Chicago lawyer's role in Jones suite examined,'' Chicago Tribune, February 11, 1998. The firm's internal investigation apparently uncovered work done by one of its partners on Jones-related matters. This discovery subsequently was confirmed by one of Ms. Jones' former lawyers. Id. If, in fact, Mr. Starr failed to report the association of his law firm and such a conflict exists, that would undoubtably be grounds for his removal.

Mr. Starr, unfortunately, has failed in the past to report such direct conflicts of interest. While he was investigating the Resolution Trust Corporation and its supervision of Madison Guaranty, Kirkland & Ellis was being sued by the RTC for misconduct. ''Who Judges Prosecutor's Ethics? He does,'' Newsday, January 30, 1998. Despite his membership on the firm's management committee, Mr. Starr professed ignorance of the suit in which the RTC sued Kirkland & Ellis for one million dollars. The New Yorker, P. 63. Mr. Starr's lip-service to his ethical obligations without any apparent willingness to address the conflict of interest issues that have arisen demands that the Attorney General conduct an investigation to determine whether he should be removed.

B. Mr. Starr's Client, The Bradley Foundation, Has Been Active In Efforts To Discredit The President In Matters Directly Affecting The Investigation

The ties of Mr. Starr and his firm to persons and interest groups adverse to the President are not limited to the Paula Jones case. Indeed, in addition to his own personal involvement with the Paula Jones case, Mr. Starr represented the Lynde and Harry Bradley Foundation in an effort to uphold Wisconsin's experimental school-choice program after he was appointed Independent Counsel. The New Yorker, April 22, 1996, p. 59. Mr. Starr's position in that case was in direct opposition to the Administration. In addition to retaining Mr. Starr, the Bradley Foundation gives money to the President's ''most virulent critics,'' including the American Spectator, a publication obsessed with impugning the character of the President and First Lady, as well as the Landmark Legal Foundation and National Empowerment Television. Id.

The Bradley Foundation acknowledged freely that Mr. Starr's role was based in significant part on his long-standing ideological beliefs. Id. At 60. One noted ethics expert concluded that it was ''unwise for Starr to take Bradley money, given Bradley's funding of beneficiaries who are ideological enemies of the president he is investigating.'' ''Gov. Hires Ken Starr To Defend Plan,'' The National Law Journal, December 18, 1995, p. A5. In these instances where his private client is engaged in a highly politicized, personalized and acrimonious public policy debate with the President, Mr. Starr cannot possibly operate as an impartial investigator. This is particularly true when his private client is funding efforts devoted to publicizing Mr. Starr's investigation and related matters in an attempt to discredit the President and his political agenda.

C. Mr. Scaife, Mr. Starr's Benefactor At Pepperdine, Has Funded The ''Arkansas Project''—A Clandestine Effort To Attack The President

The question whether Mr. Starr labors under a conflict of interest in light of his ongoing relationship with Pepperdine University and Richard Scaife, a well-documented political opponent of the President's, was prompted by reports that Mr. Scaife has underwritten the faculty position that waits for Mr. Starr at Pepperdine University upon the expiration of his tenure as Independent Counsel. Washington Post, ''Starr Warriors,'' February 3, 1989. According to recent media reports, Mr. Scaife and his tax-exempt foundations are at the center of a secretive operation, coordinated with the American Spectator, called the ''Arkansas Project.'' See New York Observer, ''Richard Scaife Paid for Dirt on Clinton in Arkansas Project,'' February 4, 1998.

The ''Arkansas Project'' reportedly involved Mr. Scaife funneling more than $2.4 million from his tax-exempt 501(c)(3) foundations to the American Spectator over the last four years ''to pay former F.B.I. agents and private detectives to unearth negative material on the Clintons and their associates.'' Id. Indeed, the project apparently paid former state trooper L.D. Brown—the source of a number of allegations against the President investigated by the Office of Independent Counsel—as a ''researcher.'' Id. Mr. Starr's apparent failure to inquire into the financial motivations that may have prompted these allegations makes his investigation a ''patsy'' for the Arkansas Project, if not actually complicit in its goal to undermine the President.

Even more troubling, David Hale, Mr. Starr's alleged chief witness against the President, is linked to Mr. Scaife. The Arkansas Project was apparently run by Stephen Boynton, a Virginia lawyer and close friend of David Hale, the convicted felon that Mr. Starr considers his prize witness against the President. Recently, after his office argued to reduce Mr. Hale's 28 month sentence to time served, abated his $10,000 fine and asked the court to vacate the order that Mr. Hale provide restitution of $2 million for defrauding the Small Business Administration. Mr. Starr praised Mr. Hale saying ''This [investigation] would be over if everyone had been as cooperative as David Hale, had told the truth.'' Federal News Service, February 6, 1998. Mr. Hale's previous record, however, involved lying to a federal judge at his sentencing. ''The Real Blood Sport: the Whitewater Scandal Machine,'' Washington Monthly, May 1, 1996. Fortunately for Mr. Hale, his personal attorney is Theodore Olson, a board member of the American Spectator Education Foundation, Inc., and former law partner of Mr. Starr. Id.

The only conclusion is that Mr. Starr is inextricably intertwined with persons whose primary objective appears to be to discredit the President. While these allegations have previously been brought to the Department's attention, Mr. Starr's relationship with Mr. Scaife and others in the Arkansas Project combined with the information about the extent of Mr. Scaife's extraordinary expenditure of resources (in apparent violation of federal tax law) to discredit the President in parallel with Mr. Starr's investigation seriously undermine any contention that Mr. Starr is without a conflict of interest.

III. EVIDENCE OF OIC COLLUSION WITH PAULA JONES LEGAL TEAM WARRANTS FURTHER INQUIRY

The sequence of events leading up to the President's deposition and certain media accounts raises serious concerns that the OIC coordinated its investigation with the Paula Jones legal team and, in fact, may have played a role in the preparation of questions for the President's deposition. Such collusion, even if indirect, would constitute misconduct of the highest order and provides grounds for Mr. Starr's removal.

As you may be aware, press reports indicated that on January 12, 1998, Ms. Tripp contacted the OIC and provided them with tapes of conversations that she had unlawfully captured between herself and Ms. Lewinsky, Time, February 9, 1998. Then, the next day, January 13, the OIC equipped Ms. Tripp with a wire and taped a conversation between herself and Ms. Lewinsky. On January 16, Ms. Tripp again lured Ms. Lewinsky into a meeting with her. At that time, she was approached by FBI agents and OIC prosecutors. Id. According to press reports, she was held for several hours, threatened with prosecution and offered immunity if she agreed to a debriefing at that time. Id. According to her current attorney, the immunity offer was contingent upon her agreement not to contact her attorney in the Paula Jones matter, Frank Carter. Time, February 16, 1998. That same day, the Special Division (the court empowered to appoint an independent counsel) expanded Mr. Starr's jurisdictional mandate to cover the allegations related to Ms. Lewinsky.

Simply, the timing of events leading up to the President's deposition provides substantial reason to be concerned about possible coordination between the OIC and the Paula Jones team. But there is more. According to media reports, Ms. Tripp briefed the Jones legal team not only on the conversations that she recorded, but also on the OIC-directed monitoring of her conversation with Ms. Lewinsky. Wall Street Journal, February 9, 1998. This draws the OIC one step closer to the Jones civil litigation efforts. Moreover, the OIC's delay in seeking approval to expand its jurisdiction further heightens concerns over the OIC's coordination with the plaintiffs in the Paula Jones matter. Specifically, in seeking immediate approval of his expanded jurisdiction, Mr. Starr apparently expressed concern that impending press reports would scuttle his efforts to obtain evidence against Mr. Vernon Jordan and perhaps the President. See Washington Post, January 31, 1998. But it appears that Mr. Starr knew about the impending press coverage well before he brought the new allegations to your attention. His delay may be suggestive of an effort to maintain the secrecy of the new allegations until after the deposition of the President.

The alleged entanglement of the OIC with persons or organizations singularly devoted to the demise of the President implicate bedrock constitutional principles of due process and fair play. Indeed, ''[f]undamental fairness is a core component of the Due Process Clause of the Fifth Amendment.'' *United States* v. *Barger*, 931 F.2nd 359 (6th Cir. 1991); *United States* v. *Brown*, 635 F.2d 1207, 1212 (6th Cir. 1980). Any collusion between the OIC and the Paula Jones legal team, for example, casts serious doubt on the propriety of any investigation into the President's alleged statements regarding Ms. Lewinsky during his civil deposition. Specifically, the government may not, consistent with due process, deliberately use a judicial proceeding for ''the primary purpose of obtaining testimony from [a witness] in order to prosecute him late for perjury.'' *United States* v. *Chen*, 933 F.Supp 1264, 1268 (D.N.J. 1986).

There is little doubt that a primary purpose of the deposition questions regarding Ms. Lewinsky was to trick the President. In fact, press reports make clear that ''the goal of the Jones' team was to catch Mr. Clinton in a lie . . . Their detailed questions went well beyond simply whether there was a sexual relationship with Ms. Lewinsky and into other matters that could be independently verified.'' Wall Street Journal, February 9, 1998. Given that, as noted above, Linda Tripp was feeding information to the Paula Jones' lawyers about her conversations with Ms. Lewinsky, including the conversation recorded by the FBI, see Wall Street Journal, February 9, 1998, there is reason to suspect that the OIC may have assisted or played a role in the formation of questions asked by

Ms. Jones lawyers regarding Ms. Lewinsky. In addition, the evidence suggests that Mr. Starr deliberately delayed seeking your approval to expand his jurisdiction for improper purposes. Specifically, the delay appears to have been a calculated effort to conceal his expanded authority from the President prior to the deposition. Such conduct raises the specter that an unlawful ''trap'' may have been laid against the President.

In a similar vein, if the OIC was in fact assisting the Paula Jones legal team in any capacity, such conduct may also be inconsistent with the due process protections that preclude the government from using civil discovery to obtain information for a contemplated criminal action. See e.g. *United States* v. *Nebel*, 856 F. Supp. 392 (M.D. Tenn. 1993). In light of fundamental constitutional concerns implicated by the Independent Counsel's conduct, justice demands that you initiate an inquiry to ensure that the Independent Counsel's investigation has comported with basic rules of fairness and decency. The President, as do others in this investigation, deserves the same protections that shield all other Americans from arbitrary and unlawful government conduct. Indeed, particularly where, as here, a prosecutor has been given virtually unfettered authority to investigate almost every dimension of a person's life, we must be particularly vigilant in guarding against abuses of that authority. You thus have both a statutory and constitutional obligation to determine whether the Independent Counsel has acted properly in investigating the President.

Sincerely,

ROBERT G. TORRICELLI,
U.S. Senator.

Mr. TORRICELLI. Mr. President, I want to make myself clear at the outset. I rise today with no portfolio for President Clinton. I do not pretend to know the details of either the Whitewater case or matters pertaining to Paula Jones, with a series of other legal issues now, involving the Office of Independent Counsel, the Justice Department and President Clinton's private attorneys. Those issues are not my purpose today.

Like most Americans, I have watched events of recent weeks with some curiosity and with a deep sense of regret. I rise today for a different purpose. I want to talk about justice—not the justice of the individual in these cases but the administration of justice by the Government itself. I do so from the perspective of a member of the Judiciary Committee, recognizing that under the Ethics in Government Act it is the responsibility of the Attorney General to investigate alleged misconduct, conflicts of interest and other improprieties of the Office of Independent Counsel. This institution, through the Judiciary Committee, has a responsibility of oversight, both of the Office of Independent Counsel and the Attorney General herself as she implements the act.

My purpose, then, in this capacity, is to review a series of legal and ethical issues that pose a challenge to the integrity of the Office of Independent Counsel and whether or not it is being administered and the responsibility of the Attorney General to oversee its activities.

Within recent days, we have learned details of a series of deliberate leaks of grand jury material—not on a few occasions, not on one or two items, but virtually volumes of material impugning the character of individuals—that may undermine aspects of the investigation. Some of these leaks have been characterized as unfortunate. Some, perhaps, inevitable, as part of the process. They may be these things. But they are also something else. They represent a Federal felony. It is against the law. In this case, a potential violation of the law by members of the Justice Department or in their employment themselves.

David Kendall, President Clinton's lawyer, has detailed some of these leaks in a 15-page correspondence, virtually identifying volumes of material where some of the most reputable publications in America—including the New York Times, the Washington Post—indicate that this material comes from ''sources in Starr's office;'' ''Starr's investigators expect;'' ''sources familiar with the probe''—hardly masking the Government prosecutor's contravention of Federal statutes, punishable both by fines and jail terms, for leaking grand jury material.

I believe that the standard for such abuse was set by former Attorney General Thornburgh who, in the matter of Congressman Gray and the leaking of grand jury material, required that his associates, those familiar with grand jury material, were not simply investigated but polygraphed, with a clear or implied threat that any failure to comply or to pass the polygraph would mean their immediate dismissal.

Indeed, as much of America has heard about the grand jury leaks, it has tended to mask several other perhaps more serious ethical problems that must also be addressed by the Attorney General and are outlined in my correspondence being sent to the Attorney General on this date.

Just prior to his appointment as independent counsel, Mr. Starr was retained by the Independent Women's Forum to write an amicus brief in the matter of the civil complaint being brought by Paula Jones. The Independent Women's Forum is funded by a Richard Scaife of Pennsylvania. In the furtherance of these responsibilities it is not clear how much or whether, indeed, Mr. Starr was compensated, but it is clear that his firm and he were engaged in this activity, including researching a brief, contacting those attorneys, then representing Paula Jones. They were actively engaged.

Reports as recent as 3 months ago indicate that individuals at Mr. Starr's firm with whom Mr. Starr is still associated have continued to assist Paula Jones in her legal defense team. This morning in the Chicago Tribune it is further alleged by that publication that Mr. Starr's firm—where this financial relationship continues between Mr. Starr and his partners—has continued to provide assistance to Paula Jones' defense team, even while the investigation of President Clinton under the authority of the Attorney General was expanded to include matters relating to the civil complaint by Paula Jones.

Mr. President, the Office of Professional Responsibility, under the direction of Attorney General Reno, needs to review these serious lapses of ethical conduct and these transparent conflicts of interest. It is left with little or no choice. If there is to be any confidence in the administration of the Office of Independent Counsel, and if the American people are to believe the result of this investigation and whatever recommendations result, the Office of Professional Responsibility will need to definitively establish whether, indeed, there are conflicts of interest, as are being alleged.

Indeed, I know of no authority in the canons of ethics of the profession, the operating procedures and rules of ethics of the Justice Department, that would permit an attorney in any capacity, no less an Office of Independent Counsel, investigating any American, no less the President of the United States, to operate with ethical standards that allow he or his associates within a single case dealing with the same litigants to do work for such clearly conflicting interests.

Third, while serving as independent counsel for the Government, Mr. Starr's law firm has received and continues to receive retainers and legal payments from corporations, including Philip Morris and Brown & Williamson, potentially of millions of dollars, that not only have an interest but an extraordinary financial interest in the defeat of President Clinton's initiatives and whose interests are directly impacted by his political viability.

Mr. Starr's continuing to draw income, a year ago in excess of $1 million in personal compensation, while in the employment of the U.S. Government to investigate matters relating to President Clinton, is not only unsound judgment but as clear a conflict of interest between those of the private attorneys, the private parties that he has sworn to defend and the interests of the U.S. Government that he has similarly sworn to pursue. Both cannot be his master.

Attorney General Reno is left with the question of what other interests have continued to pay compensation to Mr. Starr, what other clients and what kind of judgment has been exercised.

Making this all the more urgent, indeed feeding suspicion, is a fourth point that in some ways may be the most troubling. Richard Scaife, who earlier in this affair was funding research into the Paula Jones case, appears again as a part of Mr. Starr's performance of his responsibilities. Mr. Scaife has provided $600,000 per year, approximately $2.5 million, to fund something that is known as the Arkansas project. The Arkansas project is a tax free 501(c)3 organization under the Tax Code of the United States. It indeed has funded this money through the American Spectator magazine.

The purpose, apparently as outlined in an article in the New York Observer, written by Joe Conason last week, has resulted in the establishment of a relationship with David Hale, the principal witness used by Mr. Starr against President Clinton, in the Whitewater case and a State trooper, former State Arkansas Trooper L.D. Brown. It appears that the American Spectator established a relationship of unknown financial or other reward to secure the cooperation of each individual in the writing of the articles.

The changing of the testimony of these witnesses, critical to Mr. Starr's work, and when those changes occurred and their relationship with the Arkansas project, becomes an important matter for the Justice Department. It would appear on its face that is at least reason to explore whether the improper use of tax-free foundation funding through this publication with the intention of influencing potential Federal witnesses did not constitute Federal witness tampering. It is, however, an issue that must immediately be established.

As a part of this aspect of the case requiring investigation, as Mr. Hale's legal representation by one Theodore Olson, who seemed to have guided Mr. Hale in his testimony in the Whitewater affair, who is also the counsel to the American Spectator funded by Mr. Scaife, who was also a former law partner of Mr. Starr.

Mr. President, sometimes facts that are coincidental can paint a picture of conspiracy where it does not exist. There are coincidences, sometimes, of extraordinary scale. But the Attorney General would need to admit that there are events in this case that are peculiar indeed—Mr. Scaife's funding of the American Spectator and its impact on Federal witnesses; Mr. Scaife's potential funding of Mr. Starr as a private attorney in the Paula Jones case; Mr. Scaife's funding of employment for Mr. Starr at Pepperdine University, where he was offered and initially accepted a teaching position in the law department.

Coincidence? Perhaps. But as our former colleague, Senator Cohen once observed on this floor, ''The appearance of justice is as important as justice itself.''

There are, in the coming weeks, important judgments to be made about the administration of justice with relation to the President of the United States. Those decisions will profoundly impact policy and the guidance of the U.S. Government. I have no knowledge and, therefore, no recommendation on the matters of how the case should be pursued. I am not here to distinguish falsehood from truth. I am here in the interest of justice.

It would appear on the facts that there is something terribly troubling about the administration of the Office of the Independent Counsel. So in my correspondence of this day, I have asked Attorney General Reno to have the Office of Professional Responsibility inquire as to whether indeed there are conflicts of interest in the Paula Jones case and, indeed, whether it is factual that Mr. Starr was once engaged as a private litigant in that matter. If so, the result is clear—he must recuse himself and professional prosecutors must pursue the matter. Similarly, to establish whether funds, through the American Spectator, were improperly used with a result of tampering of witnesses. Finally, to conclude whether or not the operation of a private law practice, including the solicitation of clients and their funding, has compromised the operations of Mr. Starr in his pursuit of the various cases before his office.

Mr. President, Members of this institution and of the respective parties have at various times praised or criticized the Attorney General in the performance of her responsibilities. Perhaps the fact that she has been criticized from all quarters for so many decisions is the best testament of her native integrity. Janet Reno is as capable an Attorney General as the United States has ever been fortunate enough to have in that office. I leave these judgments with her, knowing of her high integrity, her understanding of the importance of these cases, the profound impact on the administration of the U.S. Government and of justice itself, knowing that she will do with them what is right and proper.

Mr. President, I yield the floor.

Mr. ASHCROFT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The Senate continued with the consideration of the nomination.

Mr. SANTORUM. Mr. President, I rise to continue the discussion on the judge of the Eastern District of Pennsylvania, Judge Massiah-Jackson. Within the past 24 hours, I and Senator SPECTER have been talking to the majority leader, to the chairman of the Judiciary Committee, to those who are in opposition to her nomination in an attempt to resolve a lot of issues. And what Senator SPECTER and I have referred to, to complete this process of consideration in what we believe is the only fair way to do so, is to have an additional hearing for her to be able to respond to the information that has been presented so publicly now to the Congress and the Senate with respect to her nomination.

The majority leader is intending to come down in the next 15, 20 minutes to make a statement, which I fully support, and I know Senator SPECTER supports, which will, in a sense, move this nomination aside for now and have this nominee be given the opportunity to appear before the Judiciary Committee and answer this new information, or respond to the questions of members of the Judiciary Committee.

That is all I have been asking for since the leader scheduled this nomination. I am hopeful that after we go out on recess next week, there will be scheduled a Judiciary Committee meeting for people who have provided the information to present that information formally to the committee, be questioned by committee members, and then for Judge Massiah-Jackson to have the opportunity to answer the charges that have been leveled against her.

That will complete, in my mind, the process of fair consideration.

Her nomination will remain here on the floor. It will remain on the Executive Calendar, and subsequent to the hearing, the majority leader will call the nomination up for a vote at that time.

That is, again, all I have been requesting from the leader—is to give this process time to play out, fairness dictating the order of the day, and then give the Senate the opportunity to pass judgment as to whether we believe that she should be a judge in the Eastern District of Pennsylvania.

So I see this as a very favorable resolution of what I have been asking for in the past 24 hours.

I thank the majority leader for his patience. This has been somewhat of a difficult ordeal having to juggle all the different sides on this issue.

I thank the chairman of the Judiciary Committee for his willingness to hold another hearing. He knows that he has not been formally requested to do so by the Senate but has volunteered to make the committee available to further give Judge Massiah-Jackson the opportunity to respond to this new information that has been provided.

Mr. President, I know the Senator from Missouri has more to say on this nomination. He is ready to go. So I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, I rise to continue to explain the basis for my opposition to the nomination of Frederica Massiah-Jackson to be a U.S. district judge for the Eastern District of Pennsylvania.

Although I have already spent time on the floor detailing this nominee's record, I think it is important and valuable to spend the time necessary to demonstrate the serious flaws of this