

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

nominee and to also highlight the caliber of the nominees that we are receiving from the President of the United States.

There are a number of categories into which my objections to this nomination might fall.

One would be a disrespect for the court and its environment, perhaps most clearly typified by the willingness of this nominee to use profanity in the courtroom.

No. 2, a contempt for prosecutors and police officers that is evidenced in the way she has treated them and handled them as they have appeared in court and the way in which she has handled evidence assembled by those officers.

Those are two major problems that I have with this particular nominee.

No. 3, the concept of leniency in sentencing; the effort made by this nominee as a judge in the State of Pennsylvania to reduce the sentences which were given to those who had been convicted of crimes is notable. It has, as a matter of fact, even caught the attention of the appellate courts at which time those sentences have been reversed.

These are among the most important factors that lead me to the conclusion that Judge Massiah-Jackson should not be confirmed as a United States district court judge.

She should not be considered for a lifetime responsibility in administering justice in the United States of America; that in the event that the President refuses to withdraw this nomination, which he should do, that the Senate of the United States of America should reject this nomination.

Let me just go through some of these points in order to establish a factual basis for these conclusions supporting the categories which I have mentioned.

First is the contempt for prosecutors and police officers that Judge Massiah-Jackson has evidenced in the conduct of her responsibilities as a judge in Pennsylvania.

In the case of *Commonwealth v. Ruiz*, Judge Massiah-Jackson acquitted a man accused of possessing \$400,000 worth of cocaine because she did not believe the testimony of two undercover police officers, Detective-Sergeant Daniel Rodriguez and Detective Terrance Jones. It was the second time she had acquitted alleged drug dealers nabbed by the same officers. The first time, the two undercover officers testified that they found two bundles of heroin on a table right next to the defendant's hand. The judge not only refused to believe this testimony, she went one step further. As the officers were leaving the courtroom, the judge reportedly told spectators in the court: "Take a good look at these guys [the undercover officers] and be careful out there."

This identification by the judge was reported in the *Philadelphia Inquirer*.

Detective-Sergeant Daniel Rodriguez confirmed this outrageous courtroom incident in a signed letter to the U.S.

Senate. The detective-sergeant had the following comments regarding the incident, and I quote:

I thought, "I hope I don't ever have to make buys from anyone in this courtroom." They would know me, but I wouldn't know them. What the judge said jeopardized our ability to make buys. And it put us in physical danger.

I really believe that this officer sincerely wrote that letter and that he intended for the letter to say exactly what it said and that he felt the sense of physical danger that was occasioned by the special identification that the judge had made of him and another police officer.

Detective Terrance Jones, the other undercover officer that was identified by Judge Massiah-Jackson in open court, according to the *Philadelphia Inquirer*, also confirmed the facts in a signed statement to the committee staff. He stated that the comments "jeopardized our lives." Detective Jones also notes:

As a law enforcement officer who happens to be African American I am appalled that self-interest groups and the media are trying to make the Massiah-Jackson controversy into a racial issue. This is not about race. This is about the best candidate for the position of Federal judge.

Let me go to another case, the case of *Commonwealth v. Hicks*. In this case, in an action that led to a reversal by the appellate court, Judge Massiah-Jackson dismissed charges against the defendant on her own motion.

Although the prosecution was prepared to proceed, the defense was not ready because it was missing a witness—a police officer who was scheduled to testify for the defense apparently had not received the subpoena. The defense requested a continuance to clear up the mixup concerning the subpoena. The commonwealth stated that it had issued the subpoena. The defense did not allege any wrongdoing or failure to act on the part of the commonwealth. Nonetheless, without any evidence or prompting from defense counsel, Judge Massiah-Jackson decided she simply did not believe that the commonwealth's attorney subpoenaed the necessary witness. Judge Massiah-Jackson held the commonwealth liable for the defense's lack of preparation for its own unpreparedness, and Judge Massiah-Jackson, on the motion of the court, dismissed the case without even the suggestion from the defense that the case should be dismissed. The facts ultimately revealed that the subpoena had been issued, but the officer was on vacation and had not received it. It was not the fault of the commonwealth. Judge Massiah-Jackson's decision was reversed on appeal as an abuse of discretion. The appellate court concluded that, "Having carefully reviewed the record, we are unable to determine the basis for the trial court's decision to discharge the defendant. Indeed the trial court was unable to justify its decision by citation to rule or law."

There is a lot of discussion about whether we need to send this nomina-

tion back for additional information and for hearings before the Senate Judiciary Committee.

This particular case, for instance, was discussed at the hearing. When asked by a Senator if she had any comment or explanation of the situation, Judge Massiah-Jackson just replied, "No, Senator, I don't."

It occurs to me that it is not necessary to reconvene the committee and to move this matter back from the floor of the Senate asking that there be opportunities for explanations for cases like that when those opportunities were available then.

Commonwealth v. Hannibal is a case that is demonstrative of this particular nominee's lack of judicial temperament.

In court, in response to prosecutor's attempt to be afforded an opportunity to be heard, the following exchange took place on the record:

The COURT. Please keep quiet, Ms. McDermott.

Ms. McDERMOTT for the Commonwealth: Will I be afforded—

The COURT. Ms. McDermott, will you shut your f***ing mouth.

That is from the transcript of June 25, 1985, at page 17.

Judge Massiah-Jackson was formally admonished by the Judicial Inquiry and Review Board for using intemperate language in the courtroom. This incident, incidentally, was also discussed by the committee with the judge, and the conduct was admitted.

In the case of *Commonwealth v. Burgos* and *Commonwealth v. Rivera*, during a sentencing proceeding, the prosecutor told Judge Massiah-Jackson that she had forgotten to inform one of the defendants of the consequences of failing to file a timely appeal. Of course, such a failure would prejudice the commonwealth on appeal. Judge Massiah-Jackson responded to this legal argument with profanity, stating, "I don't give a [expletive deleted]." This incident was discussed at the committee hearing, and the conduct was also admitted.

District Attorney Morganelli of Northampton County, PA, has suggested that the reason there are not more instances of foul language on the record is that Judge Massiah-Jackson's principal court reporter routinely "sanitized the record."

It does not appear to be a coincidence that both of these profane outbursts were directed at prosecutors. Instead, Judge Massiah-Jackson's foul language appears to be part and parcel of her hostility to law enforcement.

Let me move to the issue of the leniency in sentencing which has been characteristic, I believe, of this judge's record. In the case of *Commonwealth v. Freeman*, the defendant shot and wounded a Mr. Fuller in the chest because Mr. Fuller had laughed at him. Judge Massiah-Jackson convicted the defendant of misdemeanor instead of felony aggravated assault. She sentenced him to do 2 to 23 months and

then immediately paroled him so that he did not have to serve jail time. The felony charge would have had a mandatory 5- to 10-year prison term. Judge Massiah-Jackson explained her decision stating, "The victim had been drinking before being shot," and the defendant "had not been involved in any other crime since the incident."

Here we have an individual who shoots another individual, and this judge not only makes it a misdemeanor so that the sentence can be reduced from a minimum of 5 to 10 years to 2 to 23 months, but then paroles immediately the individual so that no jail time is served after the conviction. The judge explains this behavior saying that the person who had been shot had been drinking as if somehow, I guess, if you are drinking you are eligible to be shot; and that the defendant "had not been involved in any other crime since the incident."

This case was not discussed at the hearing. No appeal was taken from this case.

In the case of *Commonwealth v. Burgos*, during a raid on the defendant's house, police seized more than 2 pounds of cocaine along with evidence that the house was a distribution center.

The defendant, Mouin Burgos, was convicted. Judge Massiah-Jackson sentenced the defendant to only 1 year's probation.

Then District Attorney Ronald Castille criticized Judge Massiah-Jackson's sentence as "defying logic" and being "totally bizarre." He commented, "This judge just sits in her ivory tower * * * She ought to walk along the streets some night and get a dose of what is really going on out there. She should have sentenced these people to what they deserve."

This case was discussed at the hearing, and Senators and the judge had an opportunity to explain their positions. No appeal was taken from this case.

In the case of *Commonwealth v. Williams*, a first-degree robbery, unreported sentencing reversal case, I would like to provide just one more example of Judge Massiah-Jackson's leniency in sentencing, an example that I think is also relevant to whether we should have another hearing on this nominee.

In the case of *Commonwealth v. Williams*, the defendant robbed a 47-year old woman on the street at the point of a razor. The defendant used the razor to slash the woman's neck and arms and took her purse. The defendant had to undergo surgery to repair the slashed tendons in her hand and was forced to wear a splintering device that pulled her thumb back to her wrist. The defendant pled guilty to first-degree robbery. Under the Pennsylvania sentencing guidelines, that offense carries a range of 4 to 7 years, with a mitigated range of 3¼ to 5 years. Despite these sentencing ranges, Judge Massiah-Jackson sentenced the defendant to a mere 11½ to 23 months. In

order to do so, Judge Massiah-Jackson not only had to deviate substantially below the guidelines range but also had to ignore a mandatory weapons enhancement that raises the minimum sentence 1 to 2 years. The Commonwealth did appeal this meager sentence, and Judge Massiah-Jackson was reversed for her sentencing errors.

Now, this decision is important not only because it demonstrates her leniency in sentencing but also because of what it says about the equity of giving Ms. Massiah-Jackson an additional hearing. We have heard a lot about Judge Massiah-Jackson's right to be heard and have been given the impression that she has been the victim of sandbagging by her opponents. It is true that there is information that was not available at the time of the committee's hearing. This sentencing case, for example, was not addressed at the hearing. But why wasn't it addressed at the hearing? That is no one's fault but Judge Massiah-Jackson.

The committee's standard questionnaire asks every candidate to list any judicial decisions which were reversed on appeal. Judge Massiah-Jackson failed to list this case. Indeed, she testified that she had never been reversed on a sentencing appeal. So if this case wasn't debated or discussed at the hearing, it wasn't debated or discussed because at the hearing she had failed to disclose this when the committee had requested that she disclose it, and when asked additionally if there were cases like this upon which she had been reversed she informed the committee that she had not been reversed on sentencing appeal when in fact this case represented such a reversal.

Now, it seems ironic to me that when we finally find out about the existence of those things which she said did not exist, she should be accorded a second hearing now to explain that which she failed to disclose. I think that is a serious problem. This is not only a failure-to-disclose problem but this is the disclosure of something which was specifically denied in the hearing.

I make this point to make clear that this is not just a simple matter of giving someone a right to confront new allegations. She had the opportunity to respond to the allegations in this setting by providing the evidence in the first instance, or the case or the notification that she had been reversed on appeal, and in the second instance by not denying that she had ever been reversed on appeal. It strikes me that we are creating a troubling precedent by affording nominees a second hearing at least in part to explain materials that were requested prior to the first hearing.

Let me move on to the case of *Commonwealth v. Smith*. This is leniency not just in sentencing but a predisposition on the part of this judge to suppress evidence and to do so improperly.

Judge Massiah-Jackson has also demonstrated leniency in improperly suppressing evidence. The case that per-

haps most dramatically illustrates this point is *Commonwealth v. Smith*, a case discussed by the chairman of the Judiciary Committee in the Chamber yesterday. It is a case that I also mentioned.

In this tragic case, the victim, a 13-year-old boy, was raped at knifepoint in some bushes near a hospital. Eventually, the young boy managed to run away from his assailant nude and bleeding. Two nurses at the hospital saw him, and he told them what had happened, pointing out the bushes where he was attacked. The two nurses called the hospital security guards. They saw the defendant in the case emerge from the bushes with his clothing disheveled and then saw him walk quickly away. The women yelled out for the man to stop, and the police arrived on the scene and apprehended the defendant.

The defendant denied raping the boy, but the police searched him and found a knife matching the description of that used in the rape. At that point the police arrested the defendant. Shockingly, Judge Massiah-Jackson ruled that the police lacked probable cause to arrest the defendant and suppressed all evidence, including the identification of the defendant by the two nurses.

Now, not surprisingly, the appellate court, when confronted with this dubious judgment, reversed Judge Massiah-Jackson.

So the situation is this, that Massiah-Jackson, lenient in suppressing evidence, was reversed by the appellate court. It has been pointed out, and I would thank Senator SPECTER for having so pointed out, that after a remand to the trial court the defendant was acquitted in a new trial before a different judge. But what seems to have received less attention is that all this occurred after Judge Massiah-Jackson was reversed by the appellate court. Unlike the second judge who conducted a full trial, Judge Massiah-Jackson threw out the evidence on the ground that the police lacked even probable cause to arrest the defendant despite his proximity to the crime scene and the victim, and the other facts that are attendant thereto, including the identification by the individuals who were there at the time of his arrest. It is, of course, one thing to acquit someone after a trial but the notion that the police officers did not even have probable cause to arrest the defendant is just shocking, and the appellate court agreed.

And the litany, incidentally, of illustrations regarding leniency in sentencing could go on. Last year there were 50 separate cases that were singled out just as exemplary of this leniency, but that was just last year. And organizations, law enforcement organizations, organizations that serve the culture by providing the safety and security for persons and their property which defines a civilized culture, have come out saying this individual should not be

confirmed as a U.S. district court judge.

The Philadelphia Lodge of the Fraternal Order of Police announced its opposition to the confirmation of Massiah-Jackson on January 13 of this year. And just yesterday I had the privilege of attending a press conference in which Philadelphia Fraternal Order of Police President Richard Costello made his opposition to this nominee unmistakably clear. The National Fraternal Order of Police announced its opposition on January 20. In coming out against this nominee, here is what the National President of the Fraternal Order of Police, Gilbert Gallegos, stated: "Judge Massiah-Jackson has no business sitting on any bench, let alone a Federal bench."

After describing the incident in which Judge Massiah-Jackson pointed out undercover police officers in open court, Mr. Gallegos stated, "I cannot adequately express my outrage." The National Fraternal Order of Police President concluded, "To confirm Judge Massiah-Jackson would be an affront to every law enforcement officer and prosecutor in the Nation, all of whom have a herculean task of fighting crime. We shouldn't have to have [both] the judges and the criminals against us."

I note the presence of the majority leader in the Chamber, Mr. President, and I would gladly yield to the majority leader with the understanding that at the conclusion of his remarks my right to speak in the Chamber be retained.

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

Mr. LOTT. Mr. President, I have had the opportunity now to discuss this nomination with Senators on both sides of the aisle and those who did support her and certainly those who are opposed to this nomination. I think that we should not go forward to a vote at this time since there are very serious allegations out there. I am convinced they are true; I am convinced this nomination should not go forward; and I would urge at this point the President withdraw this nomination because clearly this nominee has very serious problems, conduct on the bench that is certainly inappropriate and a number of concerns about the nominee's attitude toward prosecutors and toward law enforcement. Clearly this is the type of nomination that should not be confirmed. But so that some of these articles, some of the cases, some of the suggestions that are now in the public arena can be properly looked into, I thought the best thing to do at this time would be to not go forward with a vote and allow time for the committee to have a hearing on the problems that have been identified. I don't think it can be disposed of in the near future.

Having said that, I understand the chairman of the Judiciary Committee will be conducting an additional hearing on the nominee sometime when we

return from the recess we are about to go into at the close of business on Thursday or Friday. So we can see what that hearing turns up. But I think that no further action can be taken at this time. I thank all Senators for their consideration and will yield the floor to the Senator from Missouri. I appreciate him yielding me this time. And I know that the Senators from Pennsylvania will both seek recognition so that they can comment on the present status of this nominee.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. I believe the Senator from Missouri still has the floor.

Mr. SPECTER. Mr. President, I ask unanimous consent that I be permitted to speak in response to the majority leader for up to 1 minute.

Mr. ASHCROFT. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. Is there objection?

Mr. ASHCROFT. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. The Senator from Missouri does have the floor.

Does the Senator from Missouri object to the unanimous consent request?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

Mr. ASHCROFT. Objection.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the call of the roll.

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

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

Mr. ASHCROFT. Mr. President, I had hoped to offer to the Senator from Pennsylvania an opportunity to make brief remarks, and that is the reason I placed the quorum call, for an opportunity to make that offer.

The nomination of Frederica Massiah-Jackson is a nomination which I think should call us each to a very serious consideration of our responsibilities here in the U.S. Senate. Judges who are appointed for life, who really do not answer to the voters, do not answer to the administration or the executive branch, have a very high degree of power in the culture and we should be very careful about the individuals that we endow with the authority of becoming Federal judges. The National Association of Police Organizations understands that and the National Association of Police Organizations announced its opposition on January 22, to this nominee.

Further, there is opposition from the local law enforcement community in Philadelphia, opposition from individ-

uals that one would not expect to ordinarily oppose a nominee except in extraordinary situations: Lynne Abraham, who is the district attorney in the Philadelphia area—a Democrat, someone you would expect to be aligned with the President and his nominations—at great political cost, with substantial display of putting the benefit of the community in Philadelphia above party loyalty, came out against the nomination of Frederica Massiah-Jackson in a letter to Senator SPECTER, at least that is my information, on January 8. She wrote:

My position on this nominee goes well beyond mere differences of opinion, or judicial philosophy. Instead, this nominee's record presents multiple instances of deeply ingrained and pervasive bias against prosecutors and law enforcement officers—and, by extension, an insensitivity to victims of crime. Moreover, the nominee's judicial demeanor and courtroom conduct, in my judgment, undermines respect for the rule of law and, instead, tends to bring the law into disrepute.

This nominee's judicial service is replete with instances of demonstrated leniency towards criminals, an adversarial attitude towards police and disrespect toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

That is a very serious charge from the prosecutor, someone of the same party as the President who nominates this judge. I quote again:

This nominee's judicial service is replete with [full of] instances of demonstrated leniency toward criminals, an adversarial attitude toward police and disrespect toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

The words "full of" were my amplification. Her text did not include that.

Other local law enforcement officials who feel that this is a nomination which should not go forward—the Northampton County District Attorney, John Morganelli, another Democrat, announced his all-out opposition to this nomination on January 6, 1998. Mr. Morganelli provided members of the committee with a letter detailing the numerous incidents of unprofessional conduct that have marked Judge Massiah-Jackson's tenure on the State trial bench. The concluding paragraphs of that letter are worth quoting at length:

[The] record is one of an unusually adversarial attitude toward the prosecution and police. Much personal animosity towards prosecutors and police in general. Other portions of her record indicate a tendency to be lenient with respect to criminal defendants.

I continue with his letter:

This judge sat as a fact finder in the vast majority of her cases because criminal defendants almost always felt it advantageous to waive their right to a jury trial in order to present their case directly to the judge. * * * In addition, she has shown a lack of judicial temperament with respect to vulgar language from the bench on the record and much of it off the record. Also, as indicated above, Judge Massiah-Jackson has attempted to meddle with the appellate process in Pennsylvania by contacting appellate courts and improperly attempting to influence appellate decisions. Her comments,

conduct, record and lack of judicial temperament by itself should call into question her stature to serve as a Federal Judge.

Numerous District Attorneys and police organizations in the Commonwealth of Pennsylvania oppose this nomination as a slap in the face to the law enforcement community.

That is the conclusion of District Attorney Morganelli's letter, opposing the confirmation of this judge.

In addition, the Executive Committee of the State of Pennsylvania's District Attorneys Association has unanimously voted to officially oppose the nomination. On January 8 the Executive Committee of the Pennsylvania District Attorneys Association, in a unanimous vote, officially opposed the nomination. The President of the association wrote a letter on January 26, expressing the association's opposition.

I would just comment it is not usual for prosecuting attorneys, or for district attorneys, or for police organizations to attack judges, especially judges who are sitting as judges in their jurisdictions, the same judges they have to go before on a regular basis in seeking to effect justice in the society, to make sure we have the right law enforcement, the right prosecution, the right conviction and the right detention of those who have been deemed guilty of a crime. It is not comfortable, it is not easy, it is not expected. It is, I think, fair to describe it as rare, that someone would, as a prosecutor, or that the association of prosecutors, or that the police, or the associations of police, would come forward and make statements that say not only is this the worst judge I have ever seen but this is the worst judge of which I have any awareness. These are individuals who have a substantial awareness of the judicial system as a result of their broad experience in the system.

If my recollection serves me correctly, the district attorney in Philadelphia, Lynne Abraham, is a former judge herself. She has an ability to know what the circumstances of the judge's responsibilities are. And when she comes forward to say that this judge is a judge that is so out of touch with the balance necessary to accord fairness in the system by being so predisposed to the defendant's position and antithetical to the prosecutor's position, and antagonistic to the position of the Commonwealth as opposed to that of the individual who is seeking to be declared innocent of the charges, she just indicates that we can do better. And I think that is really the case that we have here.

The pool of legal talent in Pennsylvania is not shallow. We have talked about Philadelphia lawyers all across the country for a long time, because Philadelphia is known as a center for individuals who know how to work with the law and to do it effectively, who know what their responsibilities are and to make sure that those responsibilities can be carried out in the best interests of their clients. And I believe that there are those in that community who could well serve this Presi-

dent as nominees and could well serve this country as nominees. And I believe it is the responsibility of the U.S. Senate, when you have a nominee who is not of the caliber and quality that is appropriate for membership on the Federal bench, for the Senate to stand up and say so. And I believe that is our responsibility here.

I don't believe that the Founding Fathers of this great country put the U.S. Senate in the stream that leads to the Federal judiciary so that it could act in a way which is a rubberstamp, so that it could say, well, in spite of the fact that this individual is an affront to the judicial system, disrespects it with profanity, disrespects its participants by profaning them and their conduct, is so lenient with criminals that it causes major questions, has to be reversed on criminal appeals and, when asked about it, denies ever being reversed until the appeals are found—I don't think we have to have that kind of person. I don't think we are here to pass that kind of person through to a lifetime tenure, to a system which will, really, give her great latitude in imposing upon the people of this country the authority of the United States in demanding or commanding adherence to the law. I really think that we can do better. And I think we ought to do better.

It is not hard for us to do that. Surely we have cooperated 90, 95 percent—I don't know—of the time, that these cases go through. Most of them never even get debated. This case was—they insisted that we debate. When I was last at a committee meeting I thought we should not move this case to the floor for debate. There was an outcry, a substantial, significant outcry, insisting that we move this case to the floor for debate. Now that we have moved it to the floor for debate there is a substantial outcry to move it back to the committee.

I think the real fact of the matter is we know, we know enough about this case to say this is not an individual that we want to welcome into the lifetime tenure of the Federal judge. It does not mean the individual cannot have merit, cannot do different things, is banished from any other responsibilities. It is simply someone who is not suited to be endowed with the authority of a Federal judge, a serious responsibility in this society and culture.

I suppose we can let this individual go back for additional committee hearings or additional deliberations. But in my view that is a mistake. And, in my view there are times when the Senate should simply act as the Constitution calls upon it to act, that is to either provide the advice and consent which is appropriate and constitute the nominee as a member of the judiciary or deny the advice and consent and move on because America can and should do better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I just want to thank the majority leader, again, for his willingness to cooperate with both Senator SPECTER and me in our request that Judge Massiah-Jackson's nomination not be voted on here in the next few days but that the process be able to be worked out and worked through, a hearing to be held. I know Senator SPECTER, who cannot be here right now, fully supports this process that we now have begun to get her a hearing in the Judiciary Committee. And then I hope very promptly to bring her back to the floor of the U.S. Senate for a vote.

I would not like to see this nomination hang out for a long period of time after the hearing. I don't think that would be fair, again, to her or to the process, or to the President who I know, in having conversations with the White House, they would like to see this matter be dealt with in an expeditious fashion after the hearing takes place. A hearing will not be able to take place until the week after next because we are not in session next week. So I am hopeful we can bring this judge up for a final vote here in the U.S. Senate within a 3-week period of time, maybe a 4-week period of time. I think that would be appropriate for her and I think appropriate for the Senate at some point to pass judgment on this nominee. I think it is important when the President puts a nominee up who has had, certainly, the amount of attention that this nominee has had, that the Senate, all Members, get an opportunity to express their opinion as to whether this nominee has the credentials and qualifications and qualities necessary to serve on the Federal judiciary.

With that, I again thank the majority leader and thank my colleagues for allowing this procedure. There are things that could have been done. I talked to several of my colleagues about those things that could be done. The Senator from Missouri and others would have liked to vote today. In fact they could force a vote today. It is within the right of any Senator on this nomination to offer a tabling motion, which would bring the debate to a stop and cause a vote. They have agreed to not do that and I appreciate that very much.

They could have derailed this effort. But their indulgence in allowing what two home State Senators believe is a fair process, their indulgence in allowing what we believe to be a fair process, in acquiescing to those desires, is noble indeed and very much appreciated. So I thank the Senators from Alabama, Missouri, and others who have expressed a willingness to expedite consideration of this nominee, for their willingness to withhold and allow the process to work out just a few more weeks. And then take the nominee back to the floor.

There will be no vote in committee. She will not be recommitted to committee. There will be no action necessary by the committee. Her nomination will remain on the floor of the U.S. Senate and will be eligible to be recalled by the leader at his discretion, which is our understanding, subsequent to the hearing in the Judiciary Committee.

So that is the state of play, if you will, of this nomination, and it is one I find wholly acceptable at this point. I know my colleague, Senator SPECTER, does also.

Mr. THURMOND. Mr. President, I rise today to express my opposition to the nomination of Frederica Massiah-Jackson for the United States District Court for the Eastern District of Pennsylvania. I opposed this nominee in Committee, and nothing has changed in the interim to make me any more likely to support her.

I believe that the President is entitled to some deference in his choice of judges for the Federal Bench, and I try to give his nominees the benefit of the doubt. However, because of Judge Massiah-Jackson's judicial temperament and record of leniency toward criminal defendants, I cannot support her nomination.

Judicial temperament is an essential quality for judges. They must be professional, civil, and fair. To earn esteem and honor, they must exhibit dignity and be respectful of those who appear before them.

Unfortunately, Judge Massiah-Jackson has shown a lack of judicial temperament while serving on the Pennsylvania trial court. She has used profane language from the Bench, which I will not repeat here. There is simply no excuse for a judge to use profanity in court.

Also, we have received numerous letters from bipartisan professionals to the effect that she is hostile and unfair toward prosecutors and police officers. The Pennsylvania District Attorneys Association, which unanimously voted to oppose her nomination, wrote that she has "an anti-police, anti-prosecution bias" and that her actions as a trial judge "at times . . . have bordered on the outrageous." The Attorney General of Pennsylvania, Michael Fisher, has weighed in against her. The National Fraternal Order of Police wrote that she "has made a career of dismissing out of hand testimony by police officers, treating them as second-class citizens." The Philadelphia FOP echoed this criticism, saying that her actions "make it appear she is on a crusade against public safety." The Philadelphia District Attorney, Lynne Abraham, whose office prosecutes criminal cases within Philadelphia where Judge Massiah-Jackson has served as a judge, was resolute. She wrote that the "nominee's record represents multiple instances of a deeply ingrained and pervasive bias against prosecutors and law enforcement officers, and by extension, an insensitivity

to victims of crime. The nominee's judicial demeanor and courtroom conduct . . . undermine respect for the rule of law and . . . tend to bring the law into disrepute." She then compared this judge to others stating, "This nominee's judicial service is replete with instances of demonstrated leniency toward criminals, an adversarial attitude towards police, and disrespect and a hostile attitude towards prosecutors unmatched by any other present or former jurist with whom I am familiar."

An example of the judge's hostility toward police that has created much attention is an incident where she pointed out two undercover narcotics agents and told those in her courtroom to take a good look at the officers and, quote, "watch yourselves." This story was published in a Pennsylvania newspaper, and I asked her about it in writing during the hearing process, which gave her plenty of time to reflect on the matter. She responded, "I have read the 1988 article and it is inaccurate. I would not and did not make any such statement to the spectators." However, the two undercover agents that the article referred to later signed statements saying she had singled them out and referred to them in this manner.

She has also made public comments about crime that warrant concern. Although she informed me in response to a written question that she is not opposed to imposing the death penalty, she was very critical of the death penalty in a 1994 speech. Quoting Justice Harry Blackman, she said, "the death penalty experiment has failed." She added, "It is not a deterrent to criminal behavior." Later in the speech she said, "Locking folks up is a belated and expensive response to a social crisis."

It is very unusual for us to receive opposition to a nominee for the Federal Court from prosecutors and professionals as we have here. I commend the prosecutors and police who have taken this bold stand. They have brought a great deal of attention to a nominee who is simply not fit to serve on the Federal court.

The public opposition to this nominee from prosecutors and police, in addition to the information we had at the time she was considered in Committee, should be more than enough for Senators to oppose her. It should not even be necessary to consider cases and statistics that have been brought to our attention in the past few weeks.

Let me close by referring again to the letter from the Fraternal Order of Police. I quote, "To confirm Judge Massiah-Jackson would be an affront to every law enforcement officer and prosecutor in the Nation. . . . We shouldn't have to have the judges and the criminals against us."

Mr. President, I agree. I will stand with prosecutors and police on this nomination.

At this time, I ask unanimous consent to have printed in the RECORD a

copy of the letters that I quoted in my statement.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

PENNSYLVANIA DISTRICT
ATTORNEYS ASSOCIATION,
Harrisburg, PA, January 26, 1998.

Sen. ORIN HATCH,
Chairman, U.S. Senate Judiciary Committee,
Dirksen Office Building, Washington, DC.

DEAR MEMBERS OF THE U.S. SENATE JUDICIARY COMMITTEE: As President of the Pennsylvania District Attorneys Association, I am writing to express the Association's opposition to the nomination of Judge Frederica Massiah-Jackson for a position as a Federal Judge in the Eastern District of Pennsylvania.

As you may know, recently the Executive Board of the Pennsylvania District Attorneys Association which speaks on behalf of all 67 elected District Attorneys in Pennsylvania voted unanimously to oppose the aforesaid nomination. We recently met with Senator Arlen Specter and Senator Rick Santorum of Pennsylvania in person to convey the sentiment of District Attorneys in Pennsylvania.

A review of Judge Massiah-Jackson's record during her tenure as a Criminal Court Judge clearly shows that she has exhibited an anti-police, anti-prosecution bias as a Criminal Court Judge. At times, her actions as a Common Pleas Judge in Philadelphia have bordered on the outrageous. She has used profanity in her courtroom, embarrassed and exposed police officers in her courtroom and has even interfered in the appellate process by attempting to "recommend" to an appellate court that a Commonwealth appeal of one of her decisions be quashed. Given the prevalence of federal habeas corpus appellate practice, especially as it related to capital convictions obtained from state courts, the prospect of seating a member to the Federal Judiciary with a record like Ms. Massiah-Jackson's should give those involved in the confirmation process pause and concern.

Therefore, I strongly urge all members of the Senate Judiciary Committee and all members of the United States Senate to oppose this particular nomination.

Very truly yours,

MICHAEL D. MARINO,
President.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, Pa, January 29, 1998.

Hon. ARLEN SPECTER,
U.S. Senator, Washington, DC.

RE: Judge Frederica Massiah-Jackson.
DEAR SENATOR SPECTER: I wish to express my opposition to President Clinton's nomination of Judge Frederica Massiah-Jackson to serve on the United States District Court for the Eastern District of Pennsylvania.

I am writing on Judge Massiah-Jackson's nomination after spending considerable time reviewing her record on the Court of Common Pleas of Philadelphia County. Due to the importance of this nomination and because of the seriousness of the allegations raised with respect to Judge Massiah-Jackson's record, I have delayed taking a public position until I had the opportunity to review all available data. This review has also included discussions with members of my staff and other prosecutors who have personally appeared before Judge Massiah-Jackson. To a person, these prosecutors have expressed concern about the Judge's demeanor, her temperament and the manner in which she disposes of cases. I have also reviewed sentencing statistics and discussed Judge

Massiah-Jackson's sentencing practices with these prosecutors. This review and these discussions have revealed a record of leniency in sentencing criminal defendants, a bias against police and prosecutors and an insensitivity to the plight of victims.

The major criticisms about Judge Massiah-Jackson come from the period of time she was assigned to the Court's Criminal Division. In recent years, she has been assigned to the Civil Division. U.S. District Court judges have a civil and criminal court caseload. The Office of Attorney General and I represent the Commonwealth in the U.S. District Court in civil and criminal cases.

As Attorney General, I supervise a large office which includes 180 lawyers and 266 criminal agents. My prosecutors and agents are often cross-designated in federal court and also work jointly with police officers, agents and prosecutors from other federal, state and local agencies. My Office's cases are sometimes prosecuted in federal court, notably when they are developed in conjunction with a federal task force. A federal judiciary that properly safeguards individual rights and liberties while respecting the dedication and commitment of the law enforcement community is essential to our efforts on behalf of the people of the Commonwealth.

Based on my review of Judge Massiah-Jackson's criminal court record and the antipathy she has displayed toward police, prosecutors and victims, I must respectfully ask you to oppose her nomination when it is voted on by the United States Senate and to ask your colleagues to do likewise.

My hope would be that the President will quickly nominate someone who will bring the needed diversity to the United States District Court for the Eastern District of Pennsylvania, but a person with a record that shows a more balanced perspective than this nominee.

Thank you for your consideration of my position.

Very truly yours,

D. MICHAEL FISHER,
Attorney General.

FRATERNAL ORDER OF POLICE,
NATIONAL LEGISLATIVE PROGRAM,
Washington, DC, 27 January 1998.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: I am writing on behalf of the more than 270,000 members of the Fraternal Order of Police to urge that you withdraw your support for the nomination of Judge Frederica Massiah-Jackson to the Federal judiciary.

Senator Specter, Judge Massiah-Jackson has no business sitting on any bench, let alone a Federal bench. Frankly, I have difficulty reconciling why you would offer her nomination any of your support. She routinely demonstrates that she lacks any sense of judicial propriety and temperament. Her manners and language in the court room are ugly. Her record of sympathy and leniency toward criminals, even violent criminals, is extreme. Most objectionably, Judge Massiah-Jackson consistently parades her anti-police bias by using her power and authority as a judge to belittle, harass, and threaten the law enforcement officers who appear in her court. Her contempt for prosecutors appearing before her is so rancorous, that a broad grassroots effort has been led by members of her own political party to oppose her elevation to the Federal judiciary.

In 1994, a man appeared before Judge Massiah-Jackson charged with numerous offenses. He had struck a pedestrian with his car, left her lying in the gutter, and then pummeled into unconsciousness a relative of the victim who attempted to prevent his

fleeing the scene. She described the behavior of this man, who had a prior record of 19 arrests and eight convictions, as "Not really criminal. He had merely been involved in a car accident." The man was sentenced to two years probation.

To add insult to injury, a few years earlier this same man, who then was out on bail for another offense, appeared before Judge Massiah-Jackson. His counsel asserted that a particular police officer was harassing him with "unnecessary" traffic stops. Despite the lack on any evidence, Judge Massiah-Jackson offered to have the court file a complaint against the officer on the defendant's behalf! She concluded, without any discernable reason other than her contempt for law enforcement officers, that this officer was masterminding a plot to threaten and harass the man and his family! Senator Specter, she threatened in open court to appear as a fact witness against this officer in the event the defendant, his family, or friends came to any harm. What kind of a judge is this?

On one occasion, Senator, Judge Massiah-Jackson acquitted a criminal of drug possession by simply refusing to believe the testimony of undercover narcotics investigators. After dismissing the charges, she urged spectators in her court to "take a good look at the undercover officers and watch yourselves." I cannot adequately express my outrage, sir. She deliberately jeopardized the lives of these officers. Is this the type of judge we want sitting on the Federal bench?

This is surely the most offensive and egregious example of her conduct, but hardly an uncommon one for Judge Massiah-Jackson, who has made a career of dismissing out of hand testimony by police officers, treating them as second-class citizens barely worthy of even her contempt. Frankly, I am amazed she has served on any bench at all.

I urge you to ensure that all judicial nominees are properly screened, so that the likes of Judge Massiah-Jackson do not find their way to the Senate floor again. And I strongly urge you to withdraw your support of her nomination and cast your vote against her confirmation on 28 January. To confirm Judge Massiah-Jackson would be an affront to every law enforcement officer and prosecutor in the nation, all of whom have the herculean task of fighting crime. We shouldn't have to have the judges and the criminals against us.

Sincerely,

GILBERT G. GALLEGOS,
National President.

FRATERNAL ORDER OF POLICE,
PHILADELPHIA LODGE NO. 5,
Philadelphia, PA, January 13, 1998.

Hon. RICHARD (RICK) SANTORUM,
U.S. Senator, Philadelphia, PA.

DEAR SENATOR SANTORUM: The Fraternal Order of Police, in an effort to protect and properly serve its members, has a keen interest in all Jurists whose appointment could affect the safety and welfare of its Police.

To this end, the Fraternal Order of Police is opposed to the nomination of Judge Frederica Massiah Jackson to the United States District Court for the Eastern District of Pennsylvania.

The reasons for this determination by the F.O.P. is that Judge Jackson has an established record of being extremely lenient on criminals; insensitive to the victims of crime; and has posed a direct threat against Police.

Judge Jackson's bizarre rulings, coupled with her challenging and adversarial attitude toward Police and prosecutors, make it appear she is on a crusade against public safety.

The Police have a hard enough time dealing with the felons on the street. They don't

need to be worrying about the people in positions of authority placing them in more danger. Yet, that is exactly what Judge Jackson did to several Narcotic Officers in open Court.

It is an insult to the entire Judicial System and the community it services when a Jurist of this caliber would even be considered for an appointment to a position that could negatively affect public safety.

Must one be reminded that—Crime is out of control. Innocent people are being attacked and slaughtered on our streets. Drugs are in every neighborhood. Our citizens are fleeing the City in great numbers. Our residents are living in fear everyday. Our City is in decay.

We must stop the violence; we must stop the insanity!

The appointment of Judge Massiah Jackson to the U.S. Court would be directly counter-productive to this effort. We need a Federal Judge who has proven to be tough on crime. One who is a highly regarded professional in the field of law. We must have a Judge who can help bring new hope to those in despair.

In closing, Philadelphia has many Judges who can fill the requirements needed for this position. Unfortunately, Judge Massiah Jackson is not one of them.

Respectfully submitted,

RICHARD B. COSTELLO,
President.

MICHAEL G. LUTZ,
Past President.

DISTRICT ATTORNEY'S OFFICE,
Philadelphia, PA, January 8, 1998.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: On December 9, 1997, you phoned my office seeking my position on the nomination of Judge Frederica Massiah-Jackson as a Judge for the United States District Court for the Eastern District of Pennsylvania. When we spoke, I told you that, in my thirty years of public service, including almost sixteen years as a Judge and over six years as Philadelphia's District Attorney, never before had my United States Senator solicited my position on any of the many prior Federal District or Circuit Court nominees who had sought confirmation. I further related that it had been my general policy to refrain from speaking out on Federal judicial nominations.

Immediately after our brief phone conversation, you wrote and faxed me a letter seeking my written concurrence in a quoted paragraph regarding my general policy. I have deliberately deferred responding because, instead of offering a perfunctory response, I thought it prudent, under the present circumstances, to re-evaluate my general policy, to see if there were compelling reasons to deviate from it. I have concluded that this nomination presents such reasons.

Between the time of our conversation and today, I have carefully reviewed sentencing statistics, verdicts, courtroom testimony, newspaper and other print media reports, together with a number of other pieces of anecdotal evidence, including office memoranda. After having done so, I have concluded that I must stand opposed to this nomination.

This decision is a difficult one because I campaigned with and served on the bench at the same time as Judge Massiah-Jackson. I firmly believe in the rule of law and the independence of the judiciary, and I would never oppose a nomination merely because of a personal disagreement with some decisions or remarks that a judge might make in the heat of courtroom arguments.

My position on this nomination goes well beyond mere differences of opinion, or judicial philosophy. Instead, this nominee's

record presents multiple instances of a deeply ingrained and pervasive bias against prosecutors and law enforcement officers—and, by extension, an insensitivity to victims of crime. Moreover, the nominee's judicial demeanor and courtroom conduct, in my judgment, undermines respect for the rule of law and, instead, tends to bring the law into disrepute.

This nominee's judicial service is replete with instances of demonstrated leniency towards criminals, an adversarial attitude towards police, and disrespect and a hostile attitude towards prosecutors unmatched by any other present or former jurist with whom I am familiar.

I must, however, make this point perfectly clear: I believe firmly that the next member of the Eastern District judiciary should be an African-American woman. The underrepresentation of minorities on our federal bench has been permitted to exist for far too long. Fortunately, the Philadelphia area is blessed with many eminently well-qualified African-American women lawyers, in academia, public service, private practice, and on the bench. Had any one of these been selected, she would already be presiding on our Federal District Court bench.

I trust that this letter satisfies your inquiry.

Sincerely,

LYNNE ABRAHAM,
District Attorney.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Parliamentary inquiry. Is there time set aside for morning business now?

The PRESIDING OFFICER. There is not. However, the Senator may, by unanimous consent, request permission to proceed.

Mr. DOMENICI. Madam President, I ask unanimous consent for 15 minutes to speak as in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

NUCLEAR ISSUES

Mr. DOMENICI. Madam President, over the last few months, I have been speaking out regularly on a wide range of nuclear issues that confront our country and the world, issues that have not been carefully addressed to optimize the positive impacts of these technologies and to minimize their associated risks.

As I began this statement, I noted that nuclear issues are not exactly the ones that most of us focus on to hear cheers of public support. Nuclear issues typically have been relegated to back burners or only to attacks that wildly inflate their risks.

Based on strong encouragement that I have received from people like Senator Nunn, John Deutch, Allan Bromley, Edward Teller and others, I

intend to continue to speak and to seek national dialog on a wide range of nuclear issues. In fact, I will invite each of my Senate colleagues to participate in a nuclear issues caucus focused on issues ranging from nuclear power and waste to nuclear stockpiles.

My goal is that out of this dialog and out of a rebirth of critical thinking on the roles of nuclear technology, we can craft policies that better meet the needs of the Nation and better utilize the power of nuclear technologies. Let me give you the flavor of some of these issues that I assert need careful reexamination.

First, in 1997, the United States decided to halt research into reprocessing mixed oxides, or commonly called MOX fuel, in the hope that it would curtail other countries' pursuit of these technologies. Other countries proceeded to follow their own best interests and technical judgments.

Today, many other countries are reprocessing and using MOX fuel, mixed oxide fuel. Now the United States is unable to use these technologies to meet nonproliferation needs and has largely been left out of the international nuclear fuels cycle.

I contend we made a mistake then. The reason we made the decision is false. We said it is so that no others will do this and create some risks. Others have assessed that there are no risks, or few, and they have proceeded.

Let me move on to another example.

Today, we regulate radiation to extremely low levels based on what we have chosen to call in this country the "linear-no-threshold" model of radiation effects. That model, basically, asserts that the least bit of radiation exposure increases the risk of cancer, but scientific evidence does not support that assumption. As a result, the United States spends billions of dollars each year cleaning up sites to levels within 5 percent of natural background radiation, even though natural background radiation varies by large amounts; in fact, by over three times just in the United States and much larger amounts if we look outside the Nation.

On another issue, today, nuclear energy provides 20 percent of the electricity of our Nation. In 1996, nuclear energy reduced U.S. greenhouse gas emissions from electric utilities by 25 percent. Does that sound interesting to anyone? Nuclear electrically generated power reduced U.S. greenhouse gas emissions 25 percent. That means that we produce that electricity clean in terms of global warming emissions, and we did this without imposing taxes or other costly limitations on the use of carbon-based energy forms, some of the suggestions that are being made now about taxing those energy sources that do create greenhouse gases to minimize their impact by using less.

On another issue, today, we focus on the creation of bilateral accords with Russia to size our nuclear stockpile, and we expend much energy debating

the pros and cons of START II versus START III. Instead, I believe that the United States should move away from sizing its nuclear stockpile in accordance with bilateral accords with Russia. Instead, within the limitations of existing treaties, the United States should move to a "threat-based stockpile," driven by the minimal stockpile size that meets credible threat evaluations.

That is just another issue in the nuclear field that we ought to be addressing and debating and thinking about and listening to some experts on.

Today, many of the weapons in our stockpile and in the stockpile of Russia are on hair-trigger alert. I believe that both nations should consider de-alerting their nuclear stockpiles and even consider eliminating the ground-based leg of the nuclear triad. And I know this may not be doable, and the discussion may reveal that it is not prudent. But it should be talked about.

Today, both the United States and Russia are dismantling weapons, but both nations are storing the classified components, the so-called pits from the weapons, that would enable either nation to quickly rebuild its arsenals. We are in serious need of a fast-paced program to convert classified weapon components into unclassified shapes that are quickly placed under international verification. Then that material should be transformed into MOX—which I discussed earlier—MOX fuel for use in civilian reactors, again with due haste.

There are some who have prejudged this and will instantly say, no, I am suggesting the time is now to have a thorough discussion of these kinds of issues, because we made some mistakes 15, 20 and 25 years ago when we made some of the decisions that now guide our course in this very, very difficult area that I just spoke of with reference to nuclear arsenal components.

Today, high-level nuclear waste is stored in 41 States. Much of that is spent civilian reactor fuel that is saturating the storage capacity at many sites. The United States should move to interim storage of spent nuclear fuel while continuing to actively pursue permanent repository. In the years before that repository is sealed, there will be time to study alternatives to permanently burying the spent fuel with its large remaining energy potential. One of those alternatives for study should be a serious review of accelerator transmutation of waste technology.

Today, another issue, irradiation of food products is rarely used. Nevertheless, there is convincing evidence of its benefits in curtailing foodborne illnesses. I commend the recent acceptance of irradiation for beef products by the Food and Drug Administration. It was a long time in coming, but it is finally here.

Today, few low-level nuclear waste disposal facilities are operating in this country, jeopardizing many operations that rely on routine use of low-level radioactive materials. For example, the