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Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sovereign shepherd, who guides and protects us, hallowed be Your name. We praise You for Your love and wisdom. Lord, You are compassionate and gracious, full of loving kindness, ready to forgive, and generous beyond imagining. We find refuge in the shadow of Your wings.

Thank You for the gift of Yourself and for teaching us how to live and serve. Forgive us when we fail to live in complete dependence upon You so that Your power can work through us.

Strengthen our Senators today in every good work and every good word so that they may honor You in their labors. Give them joy in doing Your will. Help them to be attentive to Your voice and sensitive to Your movements.

Transform each of us into Your instruments, enabling us to help bring peace to our world.

We pray this in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will be in a period of morning

business for 60 minutes. The first 30 minutes will be under the control of the Democratic leader or his designee, and the final 30 minutes will be controlled by this side of the aisle. That hour of morning business will begin after leader time is used.

Prior to the Easter break, I mentioned our intention to begin consideration of the asbestos legislation. I understand there will be objection from the other side of the aisle and, therefore, I will move to proceed to the asbestos measure.

I do ask Members to come to the floor today to debate this motion. If we are unable to begin consideration of the bill, it may be necessary to file cloture on the motion to proceed. Discussions will be underway over the course of this morning across the aisle and among various interested Senators as to specific plans.

UNANIMOUS CONSENT REQUEST— S. 2290

Mr. FRIST. Mr. President, I ask unanimous consent that immediately following the morning business period today, the Senate begin consideration of Calendar No. 472, S. 2290, the asbestos bill.

Mr. DASCHLE. I object.

The PRESIDENT pro tempore. Objection is heard.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MO- TION TO PROCEED

Mr. FRIST. Mr. President, I now move to proceed to the consideration of S. 2290, and I ask unanimous consent that the motion be set aside until the conclusion of the use of leader time and the 1 hour period of morning business.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE ASSISTANT DEMOCRATIC LEADER

The PRESIDENT pro tempore. The deputy leader is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, very briefly, under our controlled one-half hour, we yield 15 minutes to Senator HARKIN, 7½ minutes to Senator CORZINE, and 7½ minutes to Senator SARBANES.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I am going to make a 10-minute statement. I would be happy to turn to the Democratic leader for any opening comments.

Mr. DASCHLE. I have a statement as well. It would require about the same length of time. I will defer to the majority leader and make my comments after he has completed his.

ASBESTOS LITIGATION REFORM

Mr. FRIST. Mr. President, for Senators who are going to be here for morning business, it will probably be another 20 minutes or so, total time between the two leaders' time, before morning business begins.

As I said in my opening comments, our intention is to go to asbestos and to bring to closure a very important piece of legislation that a lot of people across the aisle have worked on and are dedicated to addressing.

I believe now is the time to do that. I want to briefly introduce my view of the current status of the asbestos litigation debate and how I think we can bring that debate to closure.

This body—both sides of the aisle—has recognized that asbestos litigation has run amok. It is time to fix what has become an embarrassing, inadequate system that we have, the purpose of which is to compensate victims. The current system is broken. It fails to compensate victims fairly, while at

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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the same time imposes huge costs on our economy and thus on jobs and job creation.

We now have a choice, and it is a choice I very much think we should face right now, and that is to either leave the sick asbestos victims to suffer the vagaries of this system as it works today or put our very best work together to give them a better and more reliable and more secure system. There will be a lot of comments made over the course of the day and the week, but I think it is important to understand that we have made substantial progress, meaningful progress toward creating a better system. With all of this progress, it is now time to bring it to a focal point and bring it to closure.

The chairman of the Judiciary Committee, Chairman HATCH, has brought S. 1125, the FAIR Act, the Fairness in Asbestos Injury Resolution Act, from its introduction through that Judiciary Committee, and a number of parties have participated in the various negotiations to get it to the floor.

Now is the time to take very deliberate action—it is going to be difficult over the next several days to do that—and to finish the process and bring relief to victims and stop the devastating impact the current system is having on our economy. Although we have made real breakthroughs and we have moved forward through a lot of continued discussions among the various stakeholders and various Senators, a lot of which has occurred since Senator HATCH's work with the committee, there are still a lot of calls to delay and put things off until some indefinite time in the future. Since I have been involved, pretty much after it came out of committee, there have been calls for delay—we need another week or 4 days or month or 2 months or 3 months. Now we need to stop talking about it and actually do it. We need to fix the system, which we know—I think there is a general consensus—is broken; that it is unfair and it hurts the economy. It is a detriment to our economy.

I have made it a leadership priority for the Senate to help resolve this issue. We have given parties, again and again, additional time to work out some of the issues. But now we need to take decisive action. As I said, there is wide agreement. If you look at the problem itself—that the current system is a disaster for victims and for jobs and a disaster for the impact on the economy—we are pouring vast amounts of money into this defunct system. But as we pour money into it, the system is getting worse and worse. More than 700,000 individuals have filed claims and, right now, there are 300,000 claims out there pending—300,000 claims. We have spent \$70 billion trying to resolve these claims.

You must ask, with 300,000 claims out there and having spent \$70 billion, what do we have to show for it today? Well, we have a system where sick vic-

tims of asbestos exposure have to wait in line with thousands of unimpaired claimants. We have the sick and people who have not been hurt at all, and they are all waiting. Sick victims wait too long for an award. The ones we need to focus on, the ones who are sick, now have to wait a long time. It is almost like a lottery system where few claimants—there are a few who get very large awards, but many get little, often based on simply where, for example, the claim was filed. The big winners are always the trial lawyers who have taken billions of dollars out of the system, which is money that should be going to the sick victims.

As much as half of every dollar spent in the system goes to the trial lawyers and to other expenses. If we say there is \$70 billion, we say half is not going to the victims, the people being hurt, not to the potential victims. Obviously, it is clear that system needs to be fixed. It is inequitable, a wasteful system, and nothing is being done to make it better. In fact, you can see it is getting worse.

Future funds that should be preserved to compensate sick victims are simply being drained away by frivolous claims today. I keep hearing more and more of the large number of unimpaired claims that are filed based on questionable, so-called “diagnoses” that are obtained through these mass screenings. That process simply has to come to an end.

As business after business has gone bankrupt paying these claims, sources of revenue to pay the claims are drying up. Already more than 70 companies have filed for bankruptcy after being flooded by asbestos claims. The companies that actually manufacture asbestos products have long been bankrupt. Today we have the lawyers zeroing in on new companies in order to keep funding their suits. Many of these companies have little to do with asbestos. Right now, 8,400 companies have been named in asbestos suits. That includes mom-and-pop companies all the way to Fortune 500 firms. That is 8,400 companies that have been named right now in asbestos suits.

When companies collapse under this asbestos suit pressure, not only do resources for the sick victims dry up, for the people who have been affected physically by asbestos, but now there is a whole new class of victims that has been created. This new class of workers at these companies lose their jobs and lose not only current payments but also their retirement savings. Bankruptcies have affected 200,000 people who worked at bankrupt companies. Sixty thousand people lost their jobs, and these people will lose an estimated \$50,000 in wages each because of the disruption. Workers also see retirement savings plummet when a company files for bankruptcy.

In the end, the American economy suffers. That, of course, means the loss of new jobs and investment, as well as the loss of companies that are literally

pulled under by these asbestos claims. If the current situation holds, it will cost as many as 400,000 new jobs that could be created in this time of economic recovery but will not be because of the failure to invest. So we have watched this deterioration and we have talked about it for all too long. Now we must act.

So as we move forward, we need to move forward understanding there is bipartisan general agreement that the litigation challenge before us, which has run amok, must be cleaned up. Rationality and justice must be restored and we must get the compensation to those who need it. We must do it through a system that preserves jobs, preserves economic growth for current workers, and stewards funds for future claimants.

Indeed, this body has been struggling with these issues for some time, and it has met with success despite the difficulty of reaching agreement in some very specific contentious areas. Chairman HATCH did yeoman's work in July getting S. 1125 through the committee. There were a whole range of successes worked out by the committee. Chairman HATCH led a major bipartisan solution on a linchpin issue of medical criteria; and without agreement on this issue, we simply would not have been able to move forward at all. This issue, over time, has proven very difficult, very controversial. I commend him for his leadership in bringing the resolution to this particular issue. That is just one of the many examples of issues that have been overcome.

Chairman HATCH noted that as many as 50 changes were made at the urging of Democrats before—really between the bill's introduction and the time of markup—and there have been many ongoing discussions in the wake of that success.

I also thank Members on the other side of the aisle. Senator LEAHY has worked hard on this bill, and it simply would not have been possible to get as far as we have—even though we have a long way to go—without his work on the other side of the aisle, as well as the various stakeholders who have an interest in this bill.

The commitment of many parties has created the momentum for change, for cleaning up the system, and the good faith that has led to a number of key breakthroughs that have been seen today and that I am confident will continue to make success possible.

Following the committee markup, I became deeply involved in negotiations on S. 1125, working closely with Senator DASCHLE, as well as Chairman HATCH and Senators LEAHY, DODD and CARPER, and others on both sides of the aisle.

My colleague from Pennsylvania, Senator SPECTER, has been particularly instrumental working on key elements of the bill, so I wish to recognize him for that.

Under S. 1125 and current agreements which are embodied in S. 2290, we will

replace the current adversarial asbestos litigation system with a new streamlined no-fault system where sick victims will be compensated fairly and efficiently. A national trust fund will pay claimants, cutting out waste and providing certainty and rationality for claimants and for businesses. Most importantly, this system will end the bankruptcy spiral, therefore preserving future funding for victims who need it.

S. 1125, as reported out of committee, represents an unprecedented achievement in forging consensus on issues like medical criteria that stalled previous attempts at similar legislation. Nonetheless, a number of issues were left open for further discussion, and additional concerns were raised that were not addressed by the committee. I identified these issues on the floor on November 22, 2003, and they include adequacy and security of funding, claims values, administration of the system, and protection of claimants from the risk of a funding shortfall.

Since the bill was reported out of committee, various stakeholders and members from both parties have continued negotiations. There have been more than 20 meetings starting last July at which my staff and Senator SPECTER's staff have negotiated these issues with staff representing the minority. What has emerged from all these collective efforts is a proposal that retains the key elements of S. 1125, and includes some critical modifications that address concerns that were raised by stakeholders. Today's proposal embodies the best thinking on these issues and represents an aggressive yet feasible solution to the crisis.

These negotiated agreements make it possible to bring a bill to the floor, and the bill is better for these changes, difficult as they were to hammer out.

First, we had to make sure the system contained claims values that would fairly and adequately compensate victims. Second, we had to make sure funding was adequate—and that any risk of shortfalls rests on defendants and insurers, and not on claimants. The bill also provides the administrator with more flexibility to ensure that any short term bulges in claims can be accommodated. Third, we had to make sure the new system would be easy for claimants to use, and that it could be funded and up and running quickly. Fourth, the bill now contains a number of additional provisions requested by organized labor to protect the rights of claimants. I am also submitting an expanded description of these changes for the RECORD.

The top priority of this bill is to compensate claimants, and under any analysis, more money reaches claimants under the bill than under today's flawed tort system. Even so, we know that we needed to reach a number that Democrats felt comfortable with, so S. 2290 raises claims values.

We agreed to raise the claims values in order to get consensus even though the claims values in S. 1125 as reported

represented a bipartisan proposal, and included some of the highest values found in similar Federal compensation programs. We raised the values even though S. 1125 already puts more money into the pockets of claimants than the current tort system, where more than half of the resources go into the pockets of attorneys and consultants. Under the revised bill, S. 2290, approximately \$111.5 billion of the expected \$114 billion in fund expenditures will be available for victims. Compare this with Tillinghast's actuarial study of the current system, where only \$61 billion goes to plaintiffs and the rest to legal fees. Or the Milliman study, where they estimate as much as \$92 billion could go to plaintiffs and the rest to legal fees. So the bill gets more money to victims than the leading studies estimate could go to them under the current system.

What's more, S. 2290 actually gets this money to sick victims, whereas much of the money paid into the system today goes to unimpaired claimants. Under the current system, much of the compensation is drained away from the truly ill to fund these unimpaired mass lawsuits. Right now, the sickest victims, those with mesothelioma, are receiving only 17 to 20 percent of the funds in the system, with nonmalignant cases getting about 65 percent. The proposed bill would prioritize the sickest victims—over half of the funding would be directed to those with mesothelioma. Nonmalignant claimants would receive about 20 percent. The new system would also increase the share of funds that are directed to pay cancer claims from about 16 or 18 percent to 24 percent. Under S. 2290, funds are properly directed at the sickest victims. And the determination of the medical criteria that should be used is a result of the landmark bipartisan agreement made in Committee.

S. 1125 also presents a substantially better means of obtaining compensation than through bankruptcy trusts. The trusts being created in bankruptcies today discriminate between present and future claims, and give preferential treatment to certain claimants, not because of their medical condition, but because they were first in line. Let me also point out that S. 1125 provides significantly more money than claimants could receive from bankruptcy trusts, many of which are paying pennies on the dollar. Johns-Manville pays 5 cents on the dollar, UNR 9 cents, Celotex 11.3 cents, and topping out at 15.5 cents is Eagle Picher. So while some claimants may appear to win big court cases, if the defendants are in bankruptcy, which many are, claimants will likely only get pennies on the dollar. In today's bankruptcy compensation system, the risk that a trust may be inadequate falls on the victims, and that is not fair. Unlike these bankruptcy funds, the claims values in S. 1125 will be 100 percent paid or victims will be able to return to the tort system.

Despite these generous values in the bill as reported, organized labor and Democrats urged that the values were not high enough. So we have agreed to raise the values because it is so important to create consensus and move this bill forward.

It is crucial that the fund has the faith and confidence of claimants, and that it can fulfill its mandate to compensate them. Funding must be adequate, it must be secure, and provisions must be made for any shortfall. And any risk must fall on defendants and insurers, not claimants.

To ensure funding adequacy, the bill establishes a new overall funding framework, which makes available \$114 billion for direct victim compensation. The funding provided is substantially more than what is estimated to reach victims if the current tort system is allowed to continue.

Let me say a few words about how this relates to the overall funding structure that came out of committee. The mandatory funding in the bill as reported was \$108 billion, which is similar to what S. 2290 offers. That funding proposal represented a very fair amount to solve the problem. The committee, however, went well beyond this benchmark during markup. The net effect of the committee modifications to S. 1125's financial structure was dramatic. S. 1125 as reported could have required businesses and insurers to provide compensation at up to two times the most credible estimates of total future plaintiffs' recoveries under the tort system. As a result, insurers almost uniformly withdrew their support for the act, calling it "dangerously unaffordable" and "potentially worse than the existing system."

In order to get the legislation back on track, I initiated a mediation process between insurers and defendant companies. We reached agreement whereby \$114 billion would be made available for victims. To help ensure this funding is obtained, enforcement provisions of the bill were further strengthened.

To address concerns that there will be early stress on funding, the revised schedule requires money from insurer participants to be infused in the first years, where it is expected that the highest demands will be placed on the Fund.

To protect against any shortfalls, an additional \$10 billion contingent funding is also available from defendants if necessary to pay claims in the out years of the fund's operation.

Furthermore, the bill gives the administrator more time and more flexibility to deal with a short term bulge in claims, if necessary. Under the bill as reported, the fund could have unnecessarily sunsetted due to a short term liquidity problem if a large number of claims were filed at once. Alternative sunset provisions have been provided, and the borrowing authority has been

expanded to increase the funds's liquidity. Sufficient funds will now be available to pay in full all claims found eligible before the fund sunsets, and any debt incurred by the fund will be paid by monies in the fund and not the United States Treasury.

Finally, and critically, under S. 2290 the risk of underestimating the amount of funds needed will not fall on the victims, but on the defendants and their insurers. Historically, rates of asbestos victims' claims filing are uncertain and difficult to predict. Given the creation of the new compensable disease categories in S. 1125 and the streamlined no-fault administrative system, this problem is even more acute. But under the proposal, if future claims exceed estimates and the mandatory funding, including the contingency funding, is not enough the fund will end and victims will be able to seek compensation in the Federal courts. Ensuring that the risk of underestimation does not fall on the claimants was a linchpin in organized labor's proposals.

There is, however, one particular risk to the fund that must be addressed, and that is the lack of predictability of claims by individuals, particularly smokers, who have occupational exposure, but not enough exposure to have caused asbestosis.

S. 1125 is careful to provide the highest levels of compensation to claimants whose illness has the greatest causal connection to asbestos. It is not and cannot be a tobacco compensation bill. With that said, the bill sets out within the consensus medical criteria a level VII category, a new and untested category for lung cancer cases, that may end up compensating large numbers of individuals whose illnesses are not caused by asbestos, but by smoking. There are experts who believe the eligibility criteria for this category will reliably screen for asbestos-caused lung cancers. But we just don't have enough experience with these claims. With 87 percent of overall lung cancer cases caused by smoking, they could inundate and sabotage the fund.

Accordingly, I want to put all Senators on notice that I intend to offer an amendment, after consultations with all interested parties, to provide a mechanism to protect the solvency of the fund if claims from level VII's dramatically exceed expected levels.

At its heart, today's proposal represents a policy choice. On the one hand, we have the status quo, with its delays, failure to compensate victims, bankruptcies, litigation costs, wasteful transaction spending, and major negative impact on the economy.

On the other hand, we have an opportunity to rationalize this broken system. It is true that there is some uncertainty in projecting future claims filing rates, but we are putting over \$100 billion into the system. And any risk that this is not enough would fall back on defendants. There would be a reversion to the Federal tort system,

and defendants would have to essentially pay twice—after staking over \$100 billion they would still be subject to tort claims. And claimants would get their day in court. This bargain is a reasonable policy choice.

Another fundamental way S. 1125 improves the current tort system is that it is more accessible and simpler for claimants to use. Organized labor, however, had expressed a concern that the administrative structure in S. 1125 as passed out of committee was too adversarial and cumbersome. This was a key concern for labor, so in order to address this concern, industry and labor representatives agreed under the auspices of Senator SPECTER and Judge Becker of the Third Circuit Court of Appeals, to simplify the process. I commend Senator SPECTER for this leadership in that process, and thank Judge Becker for his expertise and commitment.

Under the new proposal, claims processing will be moved from the Court of Federal Claims to an executive office situated in the Department of Labor. Now a single administrator will be responsible for both the claims handling and the management of the fund. The fund will benefit from the experience the Department of Labor has garnered from administering similar compensation programs over the past 90 years. The infrastructure already created under these programs will help with prompt program initiation.

The claims application process will now be more user friendly, there are fewer levels of administrative review, and the claimant assistance program will be expanded. The new structure provides for advisory committees with expertise on a host of issues to advise the administrator, and allows for contracting with entities who have knowledge and experience with asbestos-related injuries and compensation programs to assist in the processing of claims.

The new administrative structure also will help address concerns about how quickly funds will begin flowing to claimants—especially those with the most serious diseases, such as mesothelioma, who may only have a short time to live.

The new administrative structure will help to ensure that the program is up and running quickly and managed efficiently to the benefit of claimants, including providing for interim regulations and interim authority to begin processing claims as soon as possible. The interim administrator may prioritize claims so that the victims with the most severe injuries, especially mesothelioma victims, have their claims processed first. Money will flow into the system faster, since S. 1125 now requires upfront funding from participants. Money from defendants will be available within 3 months from the date of enactment from certain defendant participants and within 6 months from the remaining defendant participants, which will be in addition

to the monies received from the bankruptcy trusts. There also is authority to require upfront money from the insurer participants so that there is no delay in obtaining money from the insurers.

As an additional protection against an influx of early claims, the bill also provides the administrator with expanded borrowing authority to ensure that there are sufficient funds available to initiate the program and to pay claims in short order. The borrowing would be 100 percent collateralized against the mandatory payments from participants in the Fund.

These changes are designed to address concerns raised by Senator FEINSTEIN in the committee's consideration of the bill. Senator FEINSTEIN raised valid concerns that a delay in creation of the claims system would harm claimants. However, her amendment would have essentially left the current system in place for an indefinite amount of time and would allow credits for monies to be paid to the fund, having the unintended effect of perpetuating the status quo with its gross misallocation of payments to unimpaired claimants and its excessive attorney fees. Furthermore, it would have threatened the Fund itself, by diverting Fund assets to cover these unwarranted claims and fees.

Given the improvements that have been made to the claims processing system, good public policy demands expedited termination of the broken system and commencement of payments to the most worthy claimants, as defined by the consensus medical criteria.

Organized labor has an important role to play in protecting the interests of working people in the congressional debate. In addition to numerous concessions associated with the new administrative structure, representatives of organized labor aggressively advocated for a number of changes, which were adopted. These changes were aimed at ensuring that the program established under S. 1125 was the most fair to victims, as the intended beneficiaries of the program.

S. 2290 now provides for medical monitoring reimbursement for costs of physical examinations as well as costs for x-rays and pulmonary function testing.

S. 2290 explicitly extends the protections of HIPAA to ensure that claimants cannot be discriminated against for provision of health insurance solely as a result of filing a claim with the Fund.

This bill also requires the use of presumptions for satisfying the exposure criteria for certain industries, occupations, and time periods.

While I have outlined some major changes here, literally dozens of additional changes have been made to S. 1125 since the introduction of the bill. These changes clarify language and strengthen provisions to ensure that sick claimants are promptly and fairly

compensated, that the burden and risk on claimants is reduced to the extent possible, and that participants can obtain certainty with respect to their asbestos liabilities as necessary to promote the creation of jobs and the economy.

And it was recognized, as the bill was being considered by committee, that even as we are dealing with the aftermath of asbestos, the substance itself is still in limited use. The committee adopted Senator MURRAY's landmark asbestos ban, and this country's workers will be safer for it. It simply did not make sense to create a compensation system and continue to allow workers to be exposed.

We also addressed the terrible situation in Libby, MT, where many workers and residents have become ill from asbestos and the manufacturer, W.R. Grace has filed for bankruptcy leaving victims with little recourse. S. 1125 contains special provisions so that Libby victims can readily gain compensation from the Fund.

In addition, we must not forget this Nation's veterans. Veterans have been long overlooked when talking about the asbestos litigation crisis. Men and women who served in the Armed Forces were often exposed to significant amounts of asbestos while serving our country, particularly during World War II and while serving on ships. S. 1125 provides a better avenue, and may be the only avenue, for veterans to receive fair and prompt compensation, while still preserving the veterans' benefits that are currently available.

We have set forth a rational system, offering a positive alternative to today's broken system. It is one of the largest, boldest compensation programs in this Nation's history. The choice here is not about the mechanics of the program, the final dollar amount, or any individual provision. We can work those things out. The choice is whether to offer victims a better system than we have today, and at the same time rationalize the system to stop the havoc it is causing to jobs and the economy.

Indeed, we have made major progress in getting this bill ready for the floor, especially considering the controversial issues involved. We've had literally dozens of stakeholder meetings. During this process, all of the issues have been visited and revisited. All parties have been heard, and all concerns have been heard. While such a sweeping bill will inevitably contain compromises that are not perfect in the eyes of each stakeholder, we have listened to all concerns and come up with the best solutions possible.

I had hoped to bring the bill up for a vote before the last session ended. At that time, a lot of stakeholders felt that was premature. On November 22 of last year, I announced that I would wait, but that the bill would be considered by the end of March. Again on February 27 I made it clear that the bill would be brought up by the end of

March. To continue the discussions among the stakeholders, I again extended this time to the week of April 19, and, thus, we are here. It is time to stop talking and bring these issues to resolution.

We have waited long enough and worked to create consensus, and now we have significant support to wrap up the outstanding issues—challenging as they are—and hold a vote. There have been suggestions almost from the start that we need more time to come up with better answers. We have very few legislative days remaining, and as we feared, we are nearly out of time. Senator HATCH and I have consistently offered realistic scheduling and frankly have allowed too much delay already. Now we have run the clock out and we must act.

Standing still is not an option, as the situation continues to deteriorate. Victims wait for unpredictable and inequitable compensation, companies continue to declare bankruptcy, and jobs and the economy suffer.

For many Members, it will require courage and leadership to change the status quo, but I am calling on this body to give the American people a better system for compensating asbestos claimants. Inaction—allowing the status quo—is in itself a choice that harms victims and American workers.

I believe it is time to move forward by offering the changes I have described here in an amendment in the nature of a substitute.

Mr. President, I ask unanimous consent that a detailed summary of the major changes in a section-by-section description be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. FRIST. Mr. President, there will no doubt be constructive proposals from Senators on both sides of the aisle to refine and improve this bill. That is what the amendment process is all about.

I encourage this process. It is my hope the process will be constructive and it will result in a bill that can pass this body. I look forward to the debate and consideration of S. 1125.

I yield the floor.

EXHIBIT 1

S. 2290—SUMMARY OF CHANGES FROM S. 1125 AS REPORTED

S. 1125, the Fairness in Asbestos Injury Resolution Act, as reported out of the Senate Judiciary Committee, represents an unprecedented advance on complex and difficult issues that have stalled previous attempts at similar legislation. Landmark agreements were reached on asbestos injury compensation issues such as medical criteria, and over 50 consensus-building changes were adopted overall. Nonetheless, a number of issues were left open for further discussion, and additional concerns were raised that were not addressed by the Committee. Since the bill was reported out of Committee, various stakeholders and members from both parties have continued negotia-

tions. The substitute bill being introduced reflects agreements on some of these difficult issues reached during these negotiations, and attempts to address a number of concerns that have been raised but have not yet been subject of agreement. In particular, the First/Hatch bill: raises claims values, creates a more streamlined administrative system that can be up and running quickly, provides increased liquidity and upfront funding so that claims can be paid in short order, and places the risk that the Fund runs out of money on the defendants and insurers and not on the claimants. These are just some highlights of the numerous changes that were made to make a fairer system for claimants. The following provides a section-by-section summary of the changes in the First/Hatch bill from S. 1125 as reported with explanations as to the need for the changes.

SEC. 3. DEFINITIONS

Changes were made to various definitions under this section to conform with other amendments in the bill to provide clarifications.

Sec. 3(3) Definition of "asbestos claim." S. 1125 seeks to replace the current broken tort system with a streamlined, administrative system. S. 1125, therefore, must preempt and supersede all asbestos claims filed in the current tort system. Concerns were raised that the definition of "asbestos claim" in S. 1125 as reported may have been interpreted as unduly limited, failing to cover some types of asbestos claims that are currently overburdening the tort system today, which were intended to be preempted and superseded by the Act. This definition was amended to help ensure that the definition is interpreted broadly to encompass all types of claims that are being filed in the system today. This definition has also been amended to make clear that claims alleging damage to tangible property are left intact.

[Sec. 3(6) Definition of "collateral source compensation." The disease categories under S. 1125 are not easily translatable from those filed in the tort system. The definition of "collateral source compensation," therefore, was clarified to more clearly encompass awards in the tort system.]

Sec. 3(9) Definition of "insurance receivership proceeding." A new definition for "insurance receivership proceedings" was added to S. 1125. This definition accompanies changes made to section 402 that would give the Fund a priority for collection of assessments from insurers in state insurance receivership proceedings. These provisions track those provided for insolvent companies in bankruptcy. This definition describes the state law proceedings to which the priority applies. This, like the bankruptcy provisions, help to ensure that the payments made to the Fund are continued despite any subsequent insolvencies of insurer participants.

[Sec. 3(11) Definition of "participant." One of the exceptions to "participant," defined in section 3(11), are companies who have completed their bankruptcy proceedings. This exception was amended to ensure that the bill is in concert with the United States Bankruptcy Code. A company is not "out of bankruptcy" until the plan of reorganization becomes effective in accordance with its terms. Under the Bankruptcy Code, changes to the plan can occur until the date on which the plan is "substantially consummated," as defined in section 1101(2) of that Code. Conforming changes were made to applicable sections in the funding provisions under title II.]

TITLE I—ASBESTOS CLAIMS RESOLUTION Subtitle A—Office of Asbestos Disease Compensation

The Frist/Hatch bill incorporates a new administrative structure for the processing and

paying of claims, which was part of an agreement between representatives of labor and industry groups negotiated under the auspices of Senator Specter and Judge Becker. This new structure responds to concerns raised by representatives of organized labor, who wanted a more streamlined and more non-adversarial system than that in S. 1125 as reported. Various aspects of the new structure promote the efficient management of the program and create a less burdensome system for claimants. Old title I, subtitle A, which created a claims processing structure within the Court of Federal Claims, was replaced with new subtitle A, which creates an executive office situated in the Department of Labor to administer the program. Subtitle B in S. 1125 as reported, which outlined the claims handling process, also was substantially amended to respond to requests by stakeholders. The new administrative structure also contains provisions to ensure that the program is processing claims as soon as possible, which were added as part of the alternative to the Feinstein startup amendment. Conforming changes were made throughout the bill.

Sec. 101. Establishment of Office of Asbestos Disease Compensation Program. New section 101 establishes within the Department of Labor, an Office of Asbestos Disease Compensation. This section clarifies that all administrative expenses of the program are to be paid from the Fund. The office is headed by an Administrator, who will be responsible for both the claims handling and the management of the Fund. The Administrator is appointed by the President with the advice and consent of the Senate, and reports directly to the Assistant Secretary of Labor for the Employment Standards Administration. The general duties of the Administrator are provided in this section, and provisions regarding the Administrator's fund management duties found in section 222 of S. 1125 as reported (p. 168-69) were incorporated into this general authority provision. Civil penalties up to \$10,000 for false statements and fraudulent acts against the Office are also provided for under this section. Two Deputy Administrators will be selected by the Administrator—one to carry out the Administrator's claims processing responsibilities, and one to carry out the Administrator's Fund management responsibilities. Finally, a general provision with respect to the application of the Freedom of Information Act ("FOIA") was added to section 101.

Placing the office within the Department of Labor was requested by labor representatives. In addition, much of the provisions in the Frist/Hatch bill are based on provisions from statutes and implementing regulations for compensation programs administered by the Department of Labor. The Administrator, therefore, can utilize the 90 years of experience the Department has in administering similar compensation programs and the infrastructure already created for these programs.

Sec. 102. Advisory Committee on Asbestos Disease Compensation. New section 102 provides for the establishment of an Advisory Committee on Asbestos Disease Compensation within 120 days after the date of enactment of the Act. The Advisory Committee will advise the Administrator on general policy and administration matters. The Advisory Committee is composed of 24 members with 3-year staggered terms. Sixteen members are to represent the interests of the claimants (at least 4 of which are recommended by recognized labor federations), defendant participants, and insurer participants. The remaining 8 members are appointed by the Administrator and cannot have earned more than 25% of their income for each of the 5 years prior to their appoint-

ment by serving in asbestos litigation as consultants or expert witnesses. The Administrator selects a Chairperson and Vice Chairperson. The Advisory Committee must meet at least 4 times a year for the first 5 years of the program and at least twice a year thereafter. The Administrator must provide information and administrative support as may be necessary and appropriate for the Advisory Committee to carry out its functions. The members are entitled to travel and meal expenses. An advisory committee was provided for under the Energy Employees Occupational Illness Compensation Program Act ("EEOICPA"), 42 U.S.C. §7384o, which served as a model to the new administrative structure. The size and scope of the Advisory Committee was outlined by labor representatives in order to provide stakeholders with the opportunity to provide the Administrator with input on the compensation program.

Sec. 103. Medical Advisory Committee. New section 103 is permissive rather than mandatory, granting the Administrator the authority to create a Medical Advisory Committee to provide general medical advice relating to the review of claims that cannot be adequately addressed by the larger Advisory Committee on Asbestos Disease Compensation. To help ensure objectivity on the part of the members of this Committee, individuals who earned more than 25% of their income for each of the 5 years prior to their appointment by serving in asbestos litigation as consultants or expert witnesses cannot be appointed to the Committee.

Sec. 104. Claimant Assistance. New section 104 expands the claimant assistance program under section 116 of S. 1125 as reported (p. 39). At the request of labor representatives, the program was expanded to include, among other things, the requirement to establish resource centers and to contract with labor and community based organizations. Aspects of this more expansive program are modeled on Section 7384v of the EEOICPA, for which several resource centers have already been established by the Department of Labor.

The streamlined administrative structure and the claimant assistance program, which includes assistance in finding pro bono legal representation, both reduce the burden on the claimant seeking compensation and the need for a lawyer. Although legal representation is allowed, the goal of S. 1125 is to reduce the high transaction costs of the current tort system, which can be upwards of 40% for legal fees to the plaintiff's attorney alone. As such, the Frist/Hatch bill provides for reasonable limits on attorneys fees to reflect this streamlined process, allowing for higher percentages for more complex cases. Penalties are provided for to ensure that these limits are followed.

Sec. 105. Physicians Panels. The Physicians Panels were established in order to perform the functions of the Medical Advisory Committee originally contemplated under S. 1125 as reported, section 114(j) (p. 37). The Physicians Panels will provide necessary medical advice in the adjudication of individual claims, as opposed to the newly created Medical Advisory Committee which would advise on general medical policy. While the Administrator still chooses how many panels are required, the statute now requires that each panel be composed of 3 physicians. The third physician is only to be consulted in the event the other two physicians cannot agree. The qualification that physicians serving on the panels be actively practicing was replaced by a limitation that such physicians cannot have earned more than 25% of their income for each of the 5 years prior to their appointment as an employee of a participant or a law firm representing any party in asbestos litigation or

as a consultant or expert witness in matters related to asbestos litigation. The previous qualification was deleted in order to allow doctors who are retired but have knowledge and experience with diagnosing asbestos-related illnesses may serve on the Physicians Panels. It was replaced by a requirement that sought to ensure objective doctors were placed on these panels. Labor representatives also requested less restrictive compensation provisions due to its impression that it is currently difficult to retain qualified doctors under the EEOICPA because of a limitation on compensation. A provision ensuring that Physicians Panels are exempted from the Federal Advisory Committee Act was also included at the request of labor representatives.

Sec. 106. Program Initiation. New section 106 was inserted in order to address concerns raised by labor representatives that the program could take an inordinate amount of time to start paying claims. This section requires the establishment of interim regulations, including regulations for the processing of exigent claims, within 90 days from the date of enactment in order to allow for an expeditious program startup, addressing concerns raised that victims do not have time to wait through undue delays until a whole new administrative program is established. The Secretary of Labor is required to provide the Administrator with temporary personnel and other resources as necessary to facilitate the initiation of the program. This section also defines "exigent health claims" as those made by individuals who are living mesothelioma claimants and others who have been diagnosed as terminally ill from an asbestos-related illness and having a life expectancy of less than one year. The Administrator has the discretion to identify additional exigent health claims as well as extreme financial hardship claims to be handled on an expedited basis.

Stakeholders recognized that an interim administrator may be appointed in the event that the Administrator is a presidential appointee to avoid any delays related to the Presidential appointment and Senate confirmation of an Administrator. To address this issue, the Frist/Hatch bill provides that the Assistant Secretary of Labor for the Employment Standards Administration serve as Interim Administrator, until the Administrator is appointed. The Interim Administrator may begin processing and awarding claims without regard to the time limits set forth in the title I, subtitle B. The Interim Administrator also may prioritize claims processing based on severity and causation, so that living mesothelioma victims or terminally ill claimants, who may not have much time, can be placed first in line and be paid as quickly as possible. The provisions, along with placing the Office within the Department of Labor, help to ensure that the program can be up and running in short order and effectively administered in the long run.

Sec. 107. Authority of the Administrator. New section 107 was added to provide the Administrator with general authority to issue subpoenas and conduct hearings, and is derived from the Federal Employees Compensation Act ("FECA"), 5 U.S.C. §8126. Such authority is necessary to implement the Administrator's responsibilities under the Act.

Subtitle B—Asbestos Disease Compensation Procedures

Subtitle B lays out the claims handling process. Although it incorporates many of the same provisions found in title I, subtitle B, of S. 1125 as reported, new subtitle B represents the more streamlined process requested by labor representatives and includes changes which labor felt would create a fairer process for claimants.

Sec. 111. Essential Elements of Eligible Claim. Section 111 amends old section 113 from S. 1125 as reported (p. 28) as requested by labor representatives, by collapsing the requirements that were listed separately into a general reference to the "medical criteria" section in subtitle C, which includes latency, exposure, diagnostic and medical criteria requirements.

Sec. 112. General Rule Concerning No-Fault Compensation. No change from old section 112 in S. 1125 as reported (p. 28).

Sec. 113. Filing of Claims. New section 113 revises section 111 from S. 1125 as reported (p. 23). Section 113(a)(1) incorporates the definition of "personal representative" as the term is defined in 28 C.F.R. §104.4, which contains the regulations governing the September 11th Victim Compensation Fund of 2001. This change was made to avoid some of the difficulties that may be encountered in defining who may file on behalf of a deceased claimant and sorting through potential familial disputes. Also at the request of labor representatives, new provisions defining the "date of filing" and clarifying the procedures for handling incomplete claims were added. These provisions were based on the Radiation Exposure Compensation Act, 42 U.S.C. §2210 note, section 6(d), and regulations implementing the EEOICPA, 20 C.F.R. §30.100(c), and the Black Lung Act, 20 C.F.R. §§725.404(d), 725.409.

Statute of Limitations. Labor representatives raised a concern with respect to the statute of limitations section in S. 1125 as reported, which would allow setoffs in multiple injury cases of recoveries for all prior claims made with the Fund (section 111(c)(3), p. 27). New section 113(b) clarifies that a claimant who files a second injury claim with the Fund for a subsequently diagnosed malignant disease does not receive a setoff for prior recoveries from the Fund in cases where the claimant has already filed and resolved a claim with the Fund for a nonmalignant injury. This new provision is based on the 2002 Trust Distribution Procedures for the Manville Trust, which recognizes that claimants who develop and receive awards for a nonmalignant claim should not receive setoffs in the event that claimant is subsequently diagnosed with a malignant disease.

Another change was made to the statute of limitations for pending claims. Although S. 1125 creates a specific statute of limitations for "pending claims" timely filed in the courts or with a bankruptcy trust, S. 1125 does not seek to revive stale claims. As such, a definition of "pending claims" with bankruptcy trust was added to clarify when such a claim is "pending" for purposes of the statute of limitations. The new definition provides that only claims that have not yet been resolved with the trust be allowed to take advantage of the relaxed statute of limitations, and that claims will not be considered pending simply because they are awaiting additional payment installments or may have the potential to have increased payment.

Required Information. Additional changes were made to the required information provision of S. 1125 to reflect concerns raised by labor representatives that the application requirements were too strict, and to clarify certain required information at the request of labor representatives.

Sec. 114. Eligibility Determinations and Claims Awards. New section 114 replaces the claims handling provisions of S. 1125 as reported, including the administrative appeals process, largely in response to requests by labor representatives. It establishes a more streamlined system, eliminating at least one level of review from S. 1125; thereby resulting in the deletion of subtitle E of title I (En Banc Review) in S. 1125 as reported. Sub-

section (a) authorizes the Administrator to render decisions on claims for compensation. This language is based on provisions found in FECA, 5 U.S.C. §8124. Subsection (a) also clarifies that costs associated with any additional medical evidence or testing requested by the Administrator as part of the individual's claim shall be borne by the Fund.

Proposed and Final Decisions. The Administrator is required to issue a proposed decision, containing findings of fact and conclusions of law as well as an explanation of the procedures for review, within [90] days of the filing of a complete claim. The claimant then has the opportunity to request, in writing within [90] days of issuance of the proposed decision, an informal hearing or review of the written record. If a hearing is requested, it is to be conducted before a representative of the Administrator, and claimants have the right to request a subpoena, which may be granted or denied at the sole discretion of the representative hearing the claim. If no review has been requested, the Administrator issues a final decision. If the final decision in such cases materially differs from the proposed decision, the claimant may then seek review. If review of the proposed decision is requested, the Administrator is required to issue a final decision within [180] days after the request for a hearing, and [90] days after the request for review on the written record. A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act. The provisions in new section 114 are largely based on FECA and its regulations and on regulations implementing the EEOICPA.

Sec. 115. Medical Evidence Auditing Procedures. New section 115 consolidates various program-wide and individual claims auditing provisions found in S. 1125 (sections 115(a), (b), p. 38, sections 114(c)(3)(B)(i), (c)(4), p. 31-32), with some modifications. The general auditing authority was clarified to require the development of methods for auditing and evaluating medical evidence and other types of evidence submitted to the Office (new section 115(a)(1)).

Independent Certified B-Readers. The provisions providing for review of x-rays by independent certified B-readers was amended to allow the Administrator to consider the findings of the independent certified B-readers rather than denying the claim in the event the independent B-readers disagree with the reading submitted by the claimant as was previously provided. This change was made to account for potential disagreements between the independent certified B-readers (new section 115(b)(3)). The purpose of this review, however, is still to ensure that questionable x-ray readings submitted by claimants are not considered when determining eligibility.

Smoking Assessment. Provisions on the assessment of claimant representations as to their smoking status was amended to clarify that such review applies only to other cancer claims, lung cancer claims, and exceptional medical claims. Based on past experience of claims filing, this section also now provides that the review of claims on smoking status should address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers because of the potential for fraud in such cases.

Subtitle C—Medical Criteria

In order to preserve the bipartisan agreement reached with respect to medical criteria, no changes have been made to this subtitle except where necessary to conform to the revised administrative structure under title I. One substantive change that was made as part of the agreement between labor and industry representatives on the ad-

ministrative structure was to add a requirement that the Administrator develop presumptions for satisfying the exposure criteria for certain industries, occupations, and time periods. A similar provision was included in S. 1125 as introduced, but was dropped from the medical criteria in S. 1125 as reported.

Subtitle D—Awards

Several major changes were made to Subtitle D (p. 81) of title I in S. 1125 as reported. [First, section 131(b)(1) adjusts the claims values to reflect those proposed by the Majority Leader (and to correct one apparent typographical error for nonsmoker, Level VIII claims). This bill raises claims values above S. 1125 in several categories.] Second, section 132(b) now provides medical monitoring reimbursement for costs of physical examinations by the claimant's physician as well as costs for x-rays and pulmonary function testing. A physical examination is another important element for obtaining a proper diagnosis, and should also be covered by the fund. Finally, although providing for payments over a three-year period was provided for in Committee at the request of labor and democrats, it was further clarified, also at the request of labor and democrats, that such payments should be made in the following amounts: 40% the first year, 30% the second year, and 30% the third year. The statute now provides a standard by which the Administrator must comply to extend such payments to 4 years—that is, if warranted in order to preserve the overall solvency of the Fund.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

In addition to technical amendments, Subtitle A was amended to reflect the new funding allocation to defendant participants proposed by the Majority Leader, to provide a structure that would guarantee the \$2.5 billion (net of hardship and inequity adjustments) in defendant participant annual contributions, and to incorporate a funding proposal that would infuse the Fund with monies within months of enactment.

Aggregate Payment Obligations Level. As part of the Majority Leader's funding proposal, section 202(a) now provides that the defendant participants be required to pay \$57.5 billion to the Fund, subject only to a contingent call for additional payments. Section 204(h) requires annual aggregate payments to the Fund of \$2.5 billion a year for 23 years or until such time as the requirement in section 202(a) is reached (if it is reached in less than 23 years). In the event there are insufficient monies collected from defendant participants to reach this annual requirement (net of any hardship and inequity adjustments) in any given year, the Administrator is granted the authority to obtain the balance from a guaranteed payment account established pursuant to section 204(k). If there are insufficient funds in the guaranteed payment account to raise the balance required, the Administrator is granted the authority to impose a guaranteed payment surcharge under section 204(l) on all defendant participants, on a pro-rata basis in accordance with the liabilities under sections 202 and 203, as necessary to raise this minimum aggregate payment obligation (net of hardship and inequity adjustments) in any one year.

Financial hardship and Inequity Adjustments. Unlike S. 1125 as reported, the defendant funding formula now guarantees that funding will be available for hardship and inequity adjustments up to the annual limit of \$250 million. Section 204(d) was clarified to

ensure that adjustments in effect in any one year made for both financial hardship and inequity are subject to a combined \$250 million cap. Although limits based on a fixed percentage roughly equating to \$150 million for severe financial hardship and \$100 million for demonstrated inequity were originally provided, the Administrator is now given the discretion to use the \$250 million for demonstrated inequity adjustments and for financial hardship adjustments as deemed necessary. It is anticipated that the severe financial hardship adjustments will increase in importance in the future as companies become confronted with unanticipated and unpredictable financial hardships. The Administrator's discretion would be broad enough to allow the Administrator to reallocate monies from inequity adjustments to accommodate future financial hardships. [In addition, unlike S. 1125 as reported, such adjustment determinations would be subject to review.]

A financial hardship and inequity adjustment account under section 204(j) replaces the orphan share reserve account in S. 1125 as reported (section 223(h), p. 189). Under section 204(k), any excess monies above the \$2.5 billion minimum aggregate annual payments are to be placed into the financial hardship and inequity adjustment account up to \$250 million in any given year. Any monies not used in the account in any given year are carried over for use in the next year. Any additional excess funds (after the \$250 million) go to the guaranteed payment account established under section 204(k) to be used to ensure that the defendant participants reach the minimum annual aggregate payment amount (net of hardship and inequity adjustments) in future years. The monies in the financial hardship and inequity adjustment account are now to be used only to the extent the Administrator grants a financial hardship or inequity adjustment, and not in the event a defendant participant files for bankruptcy and cannot meet its obligations as previously provided in S. 1125 as reported. The guaranteed payment account provided for under section 204(k) (plus the potential surcharge) is meant to address any potential shortfalls due to such bankruptcies.

Contingent Call. Pursuant to the new Frist funding proposal, only defendant participants are subject to a contingent call for additional payments and, therefore, the contingent call provisions in S. 1125 as reported (section 223(f), p. 179-87) were moved to subtitle A of title II and amended to reflect the new Frist funding formula. Due to the increased liquidity provided for under the Frist funding proposal, the back-end payments provisions (section 223(g), p. 187-89) were deleted. The amended contingent call provision, section 204(m), grants the Administrator the authority to require up to \$10 billion in additional payments to be allocated based on the defendant allocation scheme in sections 202 and 203. To invoke the contingent call authority, the Administrator must certify, after consultation with appropriate experts, that such monies are required to meet the Fund's obligations. Although the Administrator may invoke the contingent call authority at any time for purposes of borrowing monies, the additional payments may not be assessed against defendant participants until after the total aggregate payment amount has been reached.

Upfront funding. Subtitle A also reflects changes that would require defendant participants to provide upfront funding to infuse the Fund with monies to begin paying claims within months of enactment. Section 204(i) requires a defendant participant to make a good faith determination as to its prior asbestos expenditures and/or payments made to pay claims brought under the Fed-

eral Employees Liability Act ("FELA"), and submit payments to the Administrator within 90 days of the date of enactment for Tiers I and VII and within 180 days of the date of enactment for Tiers II through VI. It is believed that 90 days is sufficient time for debtors and Tier VII defendant participants to determine their liability under this section and make initial payments. Due to the greater complexity of determining prior asbestos expenditures for Tiers II through VI, however, 180 days is allowed for defendant participants to be able to make an initial, good-faith determination and payment, conforming to the 6 month requirement for bankruptcy trusts to assign their assets to the Fund. The Administrator would still make a final determination as to a defendant participant's tier and subtier, and request additional payment or rebate for year 1 if necessary. After the initial payment, defendant participants must then make payments and submit information as prescribed by the Administrator. The right to an administrative rehearing was also clarified, and the statute now expressly requires the exhaustion of such administrative remedies prior to seeking judicial review.

Clarifications for Debtors. The superseding provisions related to debtors under section 202(e) were clarified to ensure that a plan of reorganization or other agreement associated with asbestos claims are superseded.

Subtitle B—Asbestos Insurers Commission

Subtitle B in S. 1125 as reported has been amended to reflect the new Frist funding proposal and to address potential constitutional problems that were inherent in Subtitle B of S. 1125 as reported. [Additional changes to further clarify these provisions may be necessary.]

Establishment of Asbestos Insurers Commission. Given the authority granted to the Commission, the appointment provisions in S. 1125 as reported allowing for Presidential appointment of the members after mere consultation with certain members of Congress, present potential appointments clause problems. Section 211, therefore, now provides that the members of the Commission are appointed by the President with the advice and consent of the Senate. In addition, Section 211 now provides that the Commission may act based on the participation of a majority of the members. S. 1125 as reported had required all the members be present for the Commission to be able to act, which was not practical and could have resulted in unnecessary delays in the allocation process.

Aggregate Payment Obligation Levels. As part of the Majority Leader's funding proposal, section 212(a)(2) provides that the insurer participants be required to pay \$46.025 billion to the Fund, and section 212(a)(3) outlines the annual aggregate payments. Insurer participant payments are front loaded, but are to be paid over a period of 27 years. Additional conforming changes were made to reflect the new funding provisions and to clarify the allocation process and criteria.

Upfront Funding. Similar to the defendant participants, the insurer participants are now required to provide upfront funding to help infuse the Fund with monies to begin paying claims quickly. Sec. 212(e) grants the Administrator the authority to require insurer participants to pay interim contributions to the Fund to assure adequate funding by insurer participants during the period between the date of enactment of the Act and the date when the Commission issues its final determination of contributions. Contributions required by the Administrator will be credited to the insurer participants subsequent payment obligations established by the Commission.

Guaranteed Payment. [To be determined.]

Subtitle C—Asbestos Injury Claims Resolution Fund

As described above, various provisions were moved to other parts of the bill and deleted from subtitle C in S. 1125 as reported. In addition to provisions previously identified, the provisions relating to violations of environmental and occupational health and safety requirements (section 222(c), p. 171) were moved to Title IV—Miscellaneous Provisions. Various substantive changes, as well as other conforming changes and technical corrections, were made to this subtitle to help increase the Fund's liquidity and to help protect the integrity of the Fund.

Borrowing Authority. As part of the Majority Leader's funding proposal, the borrowing authority provision of S. 1125 as reported (section 223(c), p. 177) was amended to provide more expansive authority to increase the Fund's liquidity. Under new section 223(b), the Administrator is now authorized to borrow against up to seven years of expected payments by the participants. The new borrowing provisions clarify that any debt incurred is to be paid solely by amounts available in the Fund. To help ensure that the fund is up and running quickly, monies may be borrowed from the Federal Financing Bank during the first two years of the Fund. The increased liquidity will also help to fix short-term funding problems in the event there is a bulge in claims to ensure that the Fund is not unnecessarily subject to an early sunset.

Increased Enforcement. Additional provisions were added to subtitle C to strengthen the Administrator's authority to enforce the participants' payment obligations. New audit authority has been provided for under section 223(d). This audit authority is for the following purposes: (a) ascertaining the correctness of any payments made to the Fund; (b) determining whether a person who has not made a payment to the Fund was required to do so; (c) determining the liability of any person for a payment to the Fund; (d) collecting any such liability; or (e) inquiring into any office connected with the administration of enforcement of title II. In addition to the criminal penalties already provided for in S. 1125 as reported, civil penalties for false statements and fraudulent acts against the Administrator have been added under this section. The enforcement provisions in section 225 now provide that the Administrator may enforce the provisions of this Act in proceedings outside of the United States to ensure the ability to go after recalcitrant foreign companies subject to the liabilities under the Act. Additional enforcement provisions aimed at insurer participants were also added to section 225. New section 226 provides that interest be paid on any amount of payment obligation that is not paid on or before the last date prescribed for payment.

TITLE III—JUDICIAL REVIEW

The judicial review provisions in S. 1125 were largely replaced to reflect changes in the administrative structure and to simplify the provisions. These changes were largely as a result of negotiations between representatives of labor and industry.

Sec. 301. Judicial Review of Rules and Regulations. Section 301 now applies to judicial challenges of rules and regulations promulgated by the Administrator or the Asbestos Insurers Commission pursuant to the Act, granting the United States Court of Appeals for the District of Columbia Circuit exclusive jurisdiction over such actions. Any petition for review must be filed within 60 days of the date the notice of such promulgation appears in the Federal Register.

Sec. 302. Judicial Review of Award Decisions. Section 302 now applies to judicial review of eligibility determinations made by

the Administrator. Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation may petition for judicial review within [90] days of the issuance of a final decision of the Administrator. Such petition may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order. At the request of labor representatives, the standard of review of such eligibility determinations was changed from the usual arbitrary and capricious standard to a substantial evidence standard.

Sec. 303. Judicial Review of Participants' Assessments. Section 303 now applies to judicial challenges of participants' assessments made by the Administrator or the Asbestos Insurers Commission. The United States Court of Appeals for the District of Columbia Circuit, rather than the United States District Court for the District of Columbia as was provided in S. 1125 as reported, has exclusive jurisdiction over such actions. A petition for review must be filed within 60 days of the final determination giving rise to such action. Defendant participants must file a petition for review within 30 days of the Administrator's final determination (after rehearing), and insurer participants must file a petition for review within 30 days of receiving notice of a final determination.

Sec. 304. Other Judicial Challenges. Section 304 provides that any action challenging the constitutionality of any provision of the Act must be brought in the United States District Court for the District of Columbia. The provision also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section shall be filed within 60 days after the date of enactment or 60 days after the final action of the Administrator or the Commission giving rise to the action, whichever is later. The District Court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Sec. 305. In General. As provided in S. 1125 as reported, section 305 also states that no stays of payments into the Fund pending appeal are allowed. In addition, no judicial review other than as set forth in sections 301, 302 and 303 is allowed. Any decision of the federal court finding any part of the FAIR Act to be unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court within 30 days of such ruling.

TITLE IV—MISCELLANEOUS PROVISIONS

The following provisions in Title IV have been amended from S. 1125 as reported.

Sec. 402. Effect on Bankruptcy Laws. Various changes were made to section 402 for clarifications and to address possible constitutional arguments that may affect the ability of the Fund to receive assets from current bankruptcy trusts.

Sec. 403. Effect on Other Laws and Existing Claims.

Asbestos Claims Barred. Section 403(d)(2) is changed to address a variety of unconventional asbestos claims that plaintiffs have asserted directly against both defendant participants and insurer participants in the tort system.

Subsection (d)(6) is added to permit parties to obtain a credit in the event that a court ignores or misapplies the exclusive remedy provisions of the Act, and erroneously awards a judgment in favor of asbestos claimants outside of the federal compensation program.

Initiation of the Fund. Because the new administrative structure and the new funding provisions were amended to ensure that the program is up and running in a matter of months, section 403(d)(5) (p. 211) was deleted from the bill.

Sec. 404. Effect on Insurance and Reinsurance Contracts. Section 404 (Section 406 in the Committee Bill) deals with the effect of the Act on insurance and reinsurance contracts. Section 406 as it came out of Committee accounted for "erosion" of insurance policies that cover not only asbestos liabilities, but also potentially other liabilities. The section established how contributions to the fund by insurers and reinsurers would reduce the limits of existing insurance policies held by the defendant participants.

Erosion. Changes have been made in section 404(a), dealing with erosion of insurance coverage limits, in order to account for the possibility of an early sunset of the Fund. Based upon the assumption that insurers and reinsurers will be required to make payments into the Fund for 27 years after enactment, erosion of the policy limits is deemed to occur at enactment. If the Act sunsets early, however, the insurers may not be required to pay the full amount for which they have been given erosion credit. In order to treat this situation, section 404 has been amended to provide for the restoration of unearned erosion that exists at the time of an early sunset.

Additionally, section 404(a)(2)(B) has been amended to conform the Act to the revised funding structure. The Bill that passed out of Committee deemed certain erosion to occur upon a contingent call because the contingent funding was shared equally by the insurer participants and the defendant participants. Any required contingent funding is now to be required solely of defendants, and therefore no erosion will be deemed to occur upon contingent payments.

Finite Risk Policies Preserved. The Frist/Hatch bill includes a new section 404(d), dealing with finite risk policies. Finite risk policies are non-traditional insurance and reinsurance vehicles that have in recent years been obtained by a relatively small number of defendants in asbestos litigation and some of their insurers in an effort to responsibly manage their asbestos liabilities. These contractual arrangements were specifically designed because traditional asbestos coverage was no longer available after the mid-1980s. Generally, finite risk policies provide coverage with respect to events that occurred in the past and are already known to both parties to the contract. Commercial General Liability insurance provides coverage usually for injuries that may occur in the future.

Because of the unique nature of these kinds of contractual arrangements, it is appropriate that finite risk insurance be excluded from the legislation. This will avoid the danger that participants that have entered into these arrangements could be required to pay twice. Without the exclusion, participants that have entered into finite risk arrangements would be required to pay substantial amounts to the trust fund and also be subject to a potential forfeiture of their rights to funds comprised, in effect, mostly of their own money used to prepay their asbestos liabilities. The participants that have obtained finite risk insurance should not be penalized by the legislation. If the finite risk arrangements are not excluded from the legislation, the insurance carriers issuing the finite risk insurance policies would reap a substantial windfall at the expense of such participants.

Treatment of Other Insurance and Reinsurance Rights or Obligations. A new section 404(e) has been added to specify the effect of the Act on certain reinsurance and insurance claims. Generally, no participant may pursue coverage claims against another participant or captive insurer for required payments to the Fund. Certain insurance assignments are voided. Otherwise, the Act does not affect insurance or reinsurance rights or

obligations unless a person voluntarily pays a claim superseded by the Act or otherwise available limits are deemed eroded.

Sec. 405. Annual Report of the Administrator. The sunset provisions in S. 1125 as reported (section 404(3), p. 214) created an inflexible trigger that could cause the Fund to terminate unnecessarily because of a short-term bulge in claims to the detriment of claimants. Section 405 amends old section 404 to provide a workable alternative to the sunset provisions, giving the Administrator more time and more flexibility, such as through the increased borrowing authority, to deal with a short term aberration in claims and available funding. S. 1125 only gave the Administrator a mere 90 days to correct for short-term liquidity problems. S. 1125 as reported also would have only ensured that 95% of the award amounts owed for the prior year and 95% of eligible claimants be paid prior to sunset. The alternative now in the bill would require that sufficient funds be available to pay all resolved claims in full. Moreover, the bill now makes clear that any debt incurred by the Fund is paid by monies in the Fund and not the United States treasury. These provisions also ensure that the risk that the Fund runs out of money is borne by the participants, providing that, in the event of sunset, a federal cause of action is created and the claimants may file their claims in federal court.

Sec. 406. Rules of Construction Relating to Liability of the United States. This section was previously section 405 in S. 1125 as reported [with one change to conform to the new administrative structure].

Sec. 407. Rules of Construction. Provisions found in section 101(d) of S. 1125 as reported (p. 23) can now be found under new section 407.

Sec. 408. Violations of Environmental and Occupational Health and Safety Requirements. Provisions found in section 222(c) of S. 1125 as reported (p. 171) are now placed in new section 408.

[Sec. 409. Tax Treatment. Currently, insurers have tax-deductible status for reserves originally set aside for payment of asbestos claims. Under S. 1125, these reserves would now be used to pay assessments required by the Act. New section 409 would maintain the tax deductibility of these reserves until such time as the insurer makes payment to the Fund.]

Sec. 410. Nondiscrimination of Health Insurance. New section 410 incorporates a proposed amendment by labor representatives and Democrats that explicitly extends the protections of HIPAA to ensure that claimants cannot be discriminated against for provision of health insurance solely as a result of filing a claim for medical monitoring reimbursement with the Fund.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

RECOGNITION OF MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

DEBATING ASBESTOS LITIGATIONS REFORM

Mr. DASCHLE. Mr. President, I will address a couple of issues. I am disappointed we have come to debate the asbestos issue under these circumstances. I agree with much of what

the majority leader has said about the need for the Senate and our country to constructively address this problem. I agree there has been a negative economic impact on many of our most prestigious businesses throughout the country. I agree in many ways the current system has been deficient. So there is much of what the majority leader said in his description of the situation with which I agree.

He did not mention, but I think it ought to be noted, that as we speak the estimate is 1.3 million Americans are still exposed to asbestos in their places of work; that asbestos is still legal in this country; and that we import 29 million pounds of asbestos each year, a 300 percent increase in the last decade.

He did not mention, but I think it also is noteworthy, the peak death toll for asbestos is not likely to occur for approximately 15 years. The primary asbestos-related illnesses could cause at least 100,000 deaths: mesothelioma, asbestosis. An average 10,000 victims per year die from asbestos exposure. More Americans die of asbestos-related illness than drownings and fires combined already. Estimates range that current and future victims could be—and this is a stunning number—1.2 million to 2.6 million people.

So we are called upon to write legislation that will become law that projects our best guess on how to address those numbers, not this year but for the next 20 to 30 years. If we are going to do this, I would hope in the deepest sense of what it means to be a Senator we do it right. I must say we are far from that point as we begin this debate this morning. We are not doing this right.

I want to talk a little bit about why I do not believe we are, but it is not just the view expressed by some of us on this side—I will go into procedures and lost opportunities over the next couple of minutes—but there was an article in the paper this morning quoting a prestigious and engaged Member of the Senate, Senator SPECTER, who says the current plan is counterproductive and argues about why this legislation is not ready for the consideration the majority leader insists we give it today. I ask unanimous consent this article be printed in the RECORD at this time.

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

[From The Hill, Apr. 20, 2004]

SPECTER SAYS FRIST'S ASBESTOS PLAN IS 'COUNTERPRODUCTIVE'

(By Klaus Marre)

A centrist Republican is speaking out against a Senate leadership plan to force a vote this week on a controversial asbestos reform bill.

In his first interview on asbestos litigation legislation, Specter said that it would be "counterproductive to force a cloture vote" on a bill recently introduced by Senate Majority Leader Bill Frist (R-Tenn.) and Senate Judiciary Committee Chairman Orrin Hatch (R-Utah). The measure, which would set up a trust fund to pay victims of asbestos expo-

sure, is expected to be debated on the Senate floor this week.

Frist spokeswoman Amy Call said Republicans would seek a cloture vote if Democrats object to a unanimous consent agreement on the legislation. "Senator Frist feels that providing compensation for asbestos victims is an urgent and important piece of legislation that the Senate needs to act on, which is why he is bringing it to the floor this week," Call said.

Asbestos reform has failed to move in the Senate for a number of reasons, but the major dispute centers on the amount of the planned trust fund. The new bill would be able to pay \$114 billion in claims and has a \$10 billion contingency fund, which organized labor says kicks in too late.

The previous legislation had a total value of \$153 billion, including a larger contingency fund that the unions had approved.

Specter credited Frist for pressing for action on asbestos reform but said a vote on the new bill would be premature. He added that continuing the long-running negotiations between industry groups, unions and other affected parties is more likely to succeed than a cloture vote.

The Pennsylvania senator, who faces an April 27 primary against Rep. Patrick Toomey (R-Pa.), stressed that he was not criticizing Frist. But he said that his weekly meetings with stakeholders on asbestos reform have yielded "a tremendous amount of progress," adding that he is "afraid that cloture will hurt efforts to continue the negotiation process."

Sen. Tom Carper (D-Del.) agrees. Before the April congressional recess, Carper said Frist was moving too quickly on asbestos and urged him to continue negotiating and bring a compromise to a vote later in May.

Various stakeholders have come out against the Frist-Hatch bill. In an April 15 letter to Frist, several insurance companies, such as The Chubb Group and the American International Group said the legislation contains some improvements, but is "inequitable, unaffordable, and provides no finality or certainty to victims, defendants, insurers and reinsurers."

The groups add the proposed trust fund approach is "fatally flawed and can't be made to work."

Three insurance- and reinsurance-industry groups—the National Association of Mutual Insurance Companies, the Property Casualty Insurers Association of America and the Reinsurance Association of America—said in a joint statement that the bill "is absolutely essential to insurers that the Senate resist attempts to bid up the insurance share" as the legislation makes its way through the Senate.

The AFL-CIO strongly objected to the bill, saying it would shrink the trust fund and the "result is a bailout for big business that fails to provide fair and certain compensation for asbestos disease victims."

The Asbestos Alliance, a coalition of influential business groups that include the National Association of Manufacturers, has endorsed the legislation and is lobbying for its passage.

Hatch said last week that he believes his new bill, which he introduced prior to the recess, will likely not attract enough Democratic support to pass. An earlier asbestos reform bill he introduced passed the Judiciary Committee by a 10-8 vote.

In an April 8 speech to the U.S. Chamber of Commerce, Frist said the new bill has significant improvements over the one that passed out of committee. He said it has additional compensation for victims and has more protections for the proposed trust fund.

Frist stressed that Congress needs to act on this issue, pointing out that the lack of a

solution has caused victims to go uncompensated and led 70 companies to go bankrupt and to the loss of 60,000 jobs.

Specter said he is committed to reaching a compromise this year. He believes that if the amount of the asbestos trust fund is agreed upon, the other pieces will fall into place because "there would be a sense that it will really happen."

He added that passing a bill this year is crucial because it would provide "a boost to the economy to take companies out of reorganizations and bankruptcy." Specter praised the work of Hatch and Senate Judiciary Committee ranking member Patrick Leahy (D-Vt.) for their work on the bill.

Mr. DASCHLE. It is counterproductive. We are concerned that in many respects the legislation before the Senate actually is a step backward from what was passed out of committee, and that was viewed by people in our country and in the Senate on both sides of the aisle as insufficient. One thing we do know is attempts to address this problem in other cases affecting other diseases has been an absolute fiasco. Ask the black lung victims today whether we did any good when we passed the black lung victims fund. If they are still alive, they will shake their heads in disbelief. Ask those victims of uranium whether we solved the problem, and again they will shake their heads and say how deeply disturbed they are with the outcome.

I can recall how many Senators acclaimed these responses as finally having addressed the issue. Well, now people get sick, they die, and they have no recourse. While we know perhaps 2.6 million people could be affected by this over the next several decades, the bill before us actually reduces the compensation fund from \$153 billion—and I might add parenthetically that the potential range of how much this could cost reaches \$300 billion, so we are locking in a bill already that may be deficient—but we go from \$153 billion down to \$109 billion in the bill currently pending, which maybe one-third of what will be required to adequately deal with the compensation we already know will be needed.

Then there is the issue of claims. For somebody working brake linings in an auto mechanics shop, filled with asbestos, 15 years of asbestos exposure, what this bill says is if they have lung cancer after having been exposed to asbestos for 15 years we are going to give them as little as \$25,000, and that is it. Who conscientiously could look that victim in the eye and say, I am sorry, \$25,000 is the best we could do? I cannot say that.

We also have the problem of pending cases in this bill. I actually know victims who have attempted to do their best under the current system, have gone through approximately 10 years of extraordinarily complicated legal process to get to a verdict, they finally reach a verdict, there is finally some light at the end of the tunnel, they are going to get their award, and this bill says forget it, they have to start over. We are going to use a new system. All those years of waiting, all that pain

and that agony, all of that potential for loss of life, it is over. We are going to make them reapply. Sorry about that.

At least the committee bill acknowledged we do not know how much this is going to cost. This could be \$300 billion. I know we only have \$153 billion in the bill and now \$109 billion if we look at this bill. Because of the work of Senator BIDEN we said, all right, if we run out of money, at least people ought to be able to go back to the courts. This bill says, you can go back to the courts, but only if you meet the strict new limits that we've added, and only Federal court. Your recourse is limited. Oh, yes, we put a \$10 billion contingency in there, but it's not available until year 24. How cynical is that.

Democrats want a bill. I want very much to resolve this matter, as Senator FRIST has noted. I wanted to do it so badly that I asked my staff to meet with Senator FRIST last fall, right after the August recess. They did meet five times at the staff level. Then Senators DODD and LEAHY and I met with a number of Republicans in November.

My staff has participated in virtually all, if not all, of the meetings hosted by Senator SPECTER since the new year—and I must say what admiration I have for Senator SPECTER and the work he has done on this bill. He has been diligent, he has been studious, he has been thoughtful, and he has been inclusive. It is too bad it took a Senator from Pennsylvania to create that kind of environment for real work and progress, but he deserves a lot of credit, and I hope I am not getting him in more trouble for praising him this morning on the floor. But he deserves credit.

Senator DODD and Senator LEAHY and I met with the manufacturers and insurers on several occasions through September, October, November, December, January, February, and March. We have met with advocates of the victims. I went to Senator FRIST last year and I said: Could we meet? Could we resolve these issues, you and I? Let's see if we can put a draft together.

That was impossible in December. I was told we just couldn't do it in January or in February or in March. I was hoping, at least at the staff level, that might afford us an opportunity to begin work together, but even at the staff level our efforts were repelled until mid-February.

Finally, I was told I had a meeting on the 31st of March. I was very pleased, at long last, having waited 4 or 5 months to get one, we had one. I got there, to Senator FRIST's office, and was told I had 10 minutes—10 minutes—to discuss this issue that we know will last decades.

We stand ready to work out this legislation in a bipartisan way. There are many on both sides of the aisle who truly and deeply want a resolution. I am puzzled, mystified that without any warning, without any consultation this bill was laid down, put on the calendar,

and is now called before us. It makes a mockery of the system and of any real serious and sincere effort to resolve this matter in a truly bipartisan way.

I think those of us who are truly interested in a resolution ought to continue to meet with Senator SPECTER as should those who believe a solution can be negotiated. But this is not the way to do it. This is nothing more than a—well, it is nothing more than a lost opportunity. I could say more but I don't think incendiary language helps this process and I will forgo that.

But I must say I am troubled that yet again, on an issue of this importance, there are those who will put politics and political posturing ahead of finding a real solution.

Mr. SARBANES. Will the distinguished leader yield?

Mr. DASCHLE. I am happy to yield to the Senator from Maryland.

Mr. SARBANES. Do I understand after repeated efforts to hold, I take it, a thorough and comprehensive meeting with Senator FRIST, which was to discuss this matter, when the time for the meeting had arrived—which had been delayed, I gather, repeatedly—it was scheduled then for only 10 minutes?

Mr. DASCHLE. It was actually scheduled for a longer period of time, but once the meeting began, I was told the majority leader had about 10 minutes, correct.

Mr. SARBANES. Hardly enough time to say hello and goodbye, I might observe.

Mr. DASCHLE. That is just about all that happened at that particular meeting. The Senator is correct.

Mr. SARBANES. The other question I wanted to put, do I understand the proposal that has now been brought—sprung to the floor, so to speak, because I don't know that it represents the culmination of any consultative process—for people who have been working their way through the existing system toward getting some recovery for the illness and the harm they suffered, they would be required to go back and start all over again under this? Is that correct? I find that very difficult to accept. I just wanted to be clear on that particular point.

Mr. DASCHLE. The Senator is correct. Under this new proposal, those who have already been given a judgment, have done everything within their power to resolve this matter using the current system, will be told that effort is now nullified and they will have to restart under this new system for whatever compensation they might be awarded.

I would say again—I don't know if the Senator was in the Chamber when I illustrated or described one particular case, a case involving someone who had been exposed to asbestos for 15 years—under this bill, that person, who has lung cancer, who smoked, who was exposed to asbestos for 15 years, is entitled to as little as \$25,000.

Mr. SARBANES. It is pretty brutal treatment, it seems to me, to people

who have suffered real harm. But for people to have worked their way through the system with all of the stress and strain involved in doing that, and to have either come up to the point of judgment or, as I understand it, perhaps even achieved judgment, then to be required to go back and begin all over it seems to me is just a completely unacceptable procedure. I am very concerned to hear that.

I thank the leader.

Mr. DASCHLE. I thank the Senator from Maryland.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I am delighted to have this discussion now because I think what the distinguished Democratic leader and Senator SARBANES pointed out is that we have a problem. Whether the problem is one outlined—it may be in the bill. I don't know the specifics of that particular case and didn't hear the particular case. But the problem, and it goes on both sides of the aisle, is that we have an inequitable system today. It is not working. It is broken. We are falling down on process.

The accusations of 10 minutes in my office, which I resent—I called the Democratic leader this morning. I knew he was at a meeting and I didn't get a call back from him. If the Democratic leader is going to make accusations that I haven't discussed this enough, let's discuss this today. I set aside this whole week and I set it aside starting in—the bill came out in July. I said shortly after that, specifically in November, we were going to do this in March.

People, mainly from the other side of the aisle, came forward and said we needed more time. I said, OK, we will have more time. Then we went to the end of March and we said, OK, another month, or April. Here it is April.

We can go back and look. I pointed out in my statement that I knew the Democratic leader and others were either present or present in part of it. We had over 20 meetings with staff on both sides of the aisle since the bill came out, going through this bill again and again and again.

We can argue process throughout. My only objective is to make sure the patients with mesothelioma—and I have had the privilege to treat patients with mesothelioma. I have treated a lot of patients with mesothelioma, both as a surgeon in England and in this country, and it is a devastating disease, secondary in large part to asbestos. I treated thousands—if not thousands, over a thousand—of people with lung cancer, so I know lung cancer. I know it is devastating. I know what it does to the families. I know the tragedy. I know the causal factors. There are correlations. Some are causal factors. It is difficult in terms of what causes cancer, what doesn't. There are limitations to the science itself. That is something we need to debate and discuss and to build upon. That is one of

the things that makes it hard, because you are projecting out and the science is not just perfect itself.

But I will make almost a plea to the other side of the aisle: We have a week. The stakeholders, the people who are affected, the various constituents—they know because I said months ago that we were going to do this—are around this week. If it is an argument over whether I personally haven't spent enough time with either the Democratic leader or others, we will spend the time. The stakeholders are here. Senator SPECTER spent so much time and he has done a tremendous job. Senator HATCH has. And Democrats and Republicans.

Why don't we take this week, which I set aside weeks ago and said we were going to have a week—let's put everybody in a room. There are rooms here in the Capitol right now—right now. Take some Democrats, take some Republicans, take mediators, take Judge Becker, take our staff—us. There are rooms right now.

Again, I said starting yesterday we have 5 days to resolve the problem. In truth, each one of these issues—this particular bill people worked on 360 days. It was marked up in the committee before. It has been improved again with Democratic and Republican input. It can be improved more.

I have told everyone from day one the modifications Senator HATCH, I, and others have made with input of labor and others are still not perfect, but until we bring it to the floor of the Senate or until right now, today, over the next 8 hours today, 12 hours tomorrow, 12 the next day, and 12 the next day, I am convinced we can resolve the differences. All this talk about being excluded from meetings or not, we have rooms in the Capitol; the "person" power is here. People are prepared to debate. As I said in my opening statement, nobody is stuck on particular clauses or amounts.

I suggest—and that is a reason I called this morning, about 10 minutes before we started; I knew he was in the leadership meeting—over the course of today we figure out a process by which we can come to resolution of the problem we all know exists, that we have bipartisan support on fixing, have some process outlined. I would say we start today because I said 2 weeks ago it would be this week, that we would take a week, so this is no surprise. I went through my statement. I was on the floor of the Senate November 22, March, April, the day before we left. I told everybody it would be this week. People are here—if they are not here, they can get here by tomorrow—to sit down and go through the issues.

I respond to the Democratic leader's comments that we have a shot. We have a responsibility of addressing this issue. We only have 79 legislative days left. To put this off further is not going to be the way to do it. We need to start to put our heads together and put together a process to do that and fix the system we know has run amok.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I am pleased the majority leader came back to the floor to reiterate his desire to find a solution. It will take more than just reasserting over and over that we want to find that answer, that compromise, that legislative approach that will generate the kind of support in the Senate that is possible.

It takes what he just said. It will take a willingness to meet, a willingness to work through these issues. That is my frustration. I truly believe the majority leader is sincere when he says he wants to find a way to solve the problem.

What I don't feel has been done, except in the offices of the good Senator from Pennsylvania, is that concerted effort to try to address these issues in an inclusive way. That has been done, but it has been done in large measure by Senator SPECTER, not by the leadership.

We are prepared today, tomorrow, tonight. We will be happy to meet, as I have offered to do on many occasions. The sooner we do it, the sooner that opportunity for resolution can be achieved.

I yield the floor.

Mr. FRIST. If the Democratic leader will yield for a question, if we start right now and we work through today, Wednesday, Thursday, and Friday on issues we debated and talked about—a lot of people are a lot more expert than me—why can't we do that? Why can't we resolve this huge problem? If we send it off to never-never land for an unlimited period of time, this will not come back. I know that. This is the fourth date I have set as a final date that we will come in just for consideration, so we can get on the bill. Even if we were on the bill, talking about the merits of the bill, debating it, we can be having discussions with Democrats and Republicans. I ask that Senator LEAHY and Senator HATCH also be in the room as well.

Now is the time. Now is the time for action. Would that be possible?

Mr. DASCHLE. If the Senator is asking me a question, I respond by saying, absolutely. But let me give him one illustration of my skepticism about his question.

There must have been now, as he said, 20—maybe more—staff meetings over the course of the last 6 or 8 months. As he and I discussed this matter and as our staffs discussed this matter, attention has turned to the compensation trust fund. We were absolutely startled, surprised, deeply troubled by this remarkable movement away from the trust fund number the committee had included: \$153 billion. The pending bill has \$109 billion.

My staff and I have both asked staff of the majority leader on several occasions, Is there a way to find a reasonable number? We have been stonewalled every single time when that issue has been discussed. It has

not been discussed. It is not even discussable on the other side.

It does not do any good to sit and look across each other at the table if we cannot have a meaningful discussion about some of the differences we have. If all we do over the course of the next week is to say this is our number, with some expectation that maybe by saying it 100 times we will concede that then has to be the number, this will be one of the most fruitless experiences he and I will have had in our time in the Senate.

So yes, there has to be a willingness to meet; but if those meetings have meaning, there also has to be willingness to negotiate. Frankly, we have not seen much of that except in the Specter meetings. Again, I am hopeful we can finally move off these hard positions and find some common ground. If that can be achieved, then, yes, I think this week could be a productive week.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I think we need to get on to our morning business as we go forward. Hopefully, our colleagues have seen this play out. Both the Democratic leader and I are committed to this. We will have to have a process to get through it. I am absolutely convinced we can do it this week if we get the appropriate process. He and I will talk, the leadership will talk, and talk to the relative parties over the course of the day. I hope by the end of the day we will figure out what the process will be that would be fair and appropriate negotiation, to come to a resolution for the American people.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the period of the transaction of morning business for up to 60 minutes, with the first 30 minutes of time under the control of the Democratic leader or his designee, and the final 30 minutes of time under the control of the majority leader or his designee.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand I am recognized for up to 10 minutes.

The PRESIDING OFFICER. Fifteen minutes.

Mr. HARKIN. Mr. President, I say to my friend from New Jersey I will not take that long.

CONGRATULATIONS TO CHERI BLAUWET FOR WINNING WOMEN'S WHEELCHAIR DIVISION OF BOSTON MARATHON

Mr. HARKIN. Mr. President, I want to talk about the news this morning about the issuance of the proposed final rules on overtime. Before I do that, on a more happy note, I note that an Iowan, of whom we are all very proud, Cheri Blauwet, from Larchwood, IA, crossed the finish line of the Boston Marathon yesterday in 1 hour 39 minutes 53 seconds to win first place on the

women's side in the Wheelchair Division of the Boston Marathon.

Last year she finished second. This has added to her long list of accomplishments as a wheelchair competitor in races. She is a three-time Paralympic medalist. Again, she won the Boston Marathon yesterday.

As I said, Cheri Blauwet, whom I know well, is from Larchwood, IA. She is now a medical student at the Stanford University Medical School. We are all proud of Cheri and wish her the best as she continues to win more and more marathons.

PROPOSED FINAL REGULATIONS ON OVERTIME

Mr. HARKIN. Mr. President, the news reports of this morning are that the Department of Labor will shortly publish the final regulations regarding changing the overtime rules that have been in existence since 1938.

Frankly, given its past track record, the Bush administration is simply not trustworthy on this issue. This administration has gone out of its way, time and again, to undercut working families' rights to time-and-a-half pay for overtime.

Now, it is possible that the administration has had an election-year conversion on overtime, but I hope you will pardon me if I remain a little skeptical. I will remain skeptical until I see the regulations and have a chance to analyze them and read the fine print. I have asked the Department of Labor to provide me with a copy of the regulations this morning. I am eager to see them as soon as possible. As of a few minutes ago, they still have not been posted on the Department of Labor's Web site.

Let's be clear about one thing: The draft regulations that came out a year ago were a radical rewrite of the Nation's overtime rules and a frontal assault on the 40-hour workweek. Millions of American workers were slated to lose their right to time-and-a-half overtime pay as a result of those proposed regulations.

Since passage of the Fair Labor Standards Act in 1938, overtime rights and the 40-hour workweek have been sacrosanct, respected by Presidents of both parties—until now.

This administration rammed through these new regulations a year ago without a single public hearing. It has dismissed public opinion polls showing Americans' overwhelming opposition to changes in overtime law. The White House brushed aside the will of the Senate and the House, both of which voted in support of my amendment last year to block implementation of these new rules.

There is no question the proposed new rules will hurt job creation. If employers can more easily deny overtime pay, they will simply push their current employees to work longer hours without compensation. With 9 million Americans currently out of work, why

give employers yet another disincentive to hire more workers?

Again, while a limited number of low-income workers technically were given the right to overtime pay—and that base was increased—at the same time, the Department of Labor also gave employers advice on how to avoid paying overtime compensation to the lowest paid workers. So the administration gave on the one hand and took it away with the other.

The Department of Labor is poised to issue its final regulations. But I can assure you, this will not be the final act. We will be back. I look forward to reading them. We will look over the fine print, as I said.

For example, last year when the proposed regulations came out, it took some months before everything came out about how bad these proposed regulations really were. So we are going to go over these proposed regulations and take a look at them.

But I know the administration yesterday and in a press report today said this is a good deal; they are going to expand the eligibility for overtime pay; this is going to include more people. Well, we heard the same kind of "happy talk" a year ago when they first put out the proposed regs. However, public exposure showed the real facts of the proposed regulations. Up to 8 million Americans were going to lose their right to overtime pay. Again, it is just one in a series of assaults on working Americans by this administration.

Again, if you look at this chart, the red line is what the White House forecast for job creation for 2002. The blue line is what they forecast in 2003. The purple line is what they forecast for 2004. Here is where we really are down here with the green line. So this is "happy talk." The administration says, oh, they are going to forecast more jobs. It is all going to get better. But the facts are not so. Job creation has stayed stagnant. So when you hear all this "happy talk" about how these final new regulations on overtime are going to be so wonderful for everyone working in America, take a look at this chart. It is just more "happy talk."

We will look them over. But unless this administration has done almost a complete revision of what they proposed, we are going to still be back on the Senate floor asking that these rules not go into effect, and we will have a vote on that.

Finally, I think an article by Bob Herbert in the New York Times of April 5 says it all: "We're More Productive. Who Gets the Money?" What Mr. Herbert points out in his article is that an awful lot of American workers have been had, fleeced and taken to the cleaners, as he said. He said:

... there has been no net increase in formal payroll employment since the end of the recession. We have lost jobs.

He said: What happened to all the money from the strong economic growth? Well, he said:

The bulk of the gains did not go to workers, "but instead were used to boost profits ... or increase C.E.O. compensation."

Well, it is the first time on record where the bulk of the increase has gone to corporate profits and not to labor.

Mr. President, I ask unanimous consent this article of April 5 be printed in the RECORD.

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

[From the New York Times, Apr. 5, 2004]

WE'RE MORE PRODUCTIVE. WHO GETS THE MONEY?

(By Bob Herbert)

It's like running on a treadmill that keeps increasing its speed. You have to go faster and faster just to stay in place. Or, as a factory worker said many years ago, "You can work 'til you drop dead, but you won't get ahead."

American workers have been remarkably productive in recent years, but they are getting fewer and fewer of the benefits of this increased productivity. While the economy, as measured by the gross domestic product, has been strong for some time now, ordinary workers have gotten little more than the back of the hand from employers who have pocketed an unprecedented share of the cash from this burst of economic growth.

What is happening is nothing short of historic. The American workers' share of the increase in national income since November 2001, the end of the last recession, is the lowest on record. Employers took the money and ran. This is extraordinary, but very few people are talking about it, which tells you something about the hold that corporate interests have on the national conversation.

The situation is summed up in the long, unwieldy but very revealing title of a new study from the Center for Labor Market Studies at Northeastern University: "The Unprecedented Rising Tide of Corporate Profits and the Simultaneous Ebbing of Labor Compensation—Gainers and Losers from the National Economic Recovery in 2002 and 2003."

Andrew Sum, the center's director and lead authority of the study, said: "This is the first time we've ever had a case where two years into a recovery, corporate profits got a larger share of the growth of national income than labor did. Normally labor gets about 65 percent and corporate profits about 15 to 18 percent. This time profits got 41 percent and labor [meaning all forms of employee compensation, including wages, benefits, salaries and the percentage of payroll taxes paid by employers] got 38 percent."

The study said: "In no other recovery from a post-World War II recession did corporate profits ever account for as much as 20 percent of the growth in national income. And at no time did corporate profits ever increase by a greater amount than labor compensation."

In other words, an awful lot of American workers have been had. Fleeced. Taken to the cleaners.

The recent productivity gains have been widely acknowledged. But workers are not being compensated for this. During the past two years, increases in wages and benefits have been very weak, or nonexistent. And despite the growth of jobs in March that had the Bush crowd dancing in the White House halls last Friday, there has been no net increase in formal payroll employment since the end of the recession. We have lost jobs. There are fewer payroll jobs now than there were when the recession ended in November 2001.

So if employers were not hiring workers, and if they were miserly when it came to increases in wages and benefits for existing employees, what happened to all the money from the strong economic growth?

The study is very clear on this point. The bulk of the gains did not go to workers, "but instead were used to boost profits, lower prices, or increase C.E.O. compensation."

This is a radical transformation of the way the bounty of this country has been distributed since World War II. Workers are being treated more and more like patrons in a rigged casino. They can't win.

Corporate profits go up. The stock market goes up. Executive compensation skyrockets. But workers, for the most part, remain on the treadmill.

When you look at corporate profits versus employee compensation in this recovery, and then compare that, as Mr. Sum and his colleagues did, with the eight previous recoveries since World War II, it's like turning a chart upside down.

The study found that the amount of income growth devoured by corporate profits in this recovery is "historically unprecedented," as is the "low share . . . accruing to the nation's workers in the form of labor compensation."

I have to laugh when I hear conservatives complaining about class warfare. They know this terrain better than anyone. They launched the war. They're waging it. And they're winning it.

Mr. HARKIN. Mr. President, again, we will look over these proposed regulations. But nothing the administration has done in the last couple, 3 years with regard to job creation, with regard to treating labor fairly in terms of getting its fair share of any economic gains, or the proposed regulations last year that would have literally cut off at the knees American workers' right to overtime pay changes my mind; I remain skeptical that this administration really wants to help work workers get overtime pay.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

THE TAX BURDEN IN AMERICA

Mr. CORZINE. Mr. President, first of all, let me congratulate the distinguished Senator from Iowa for pointing out and being so persistent in dealing with this issue of overtime pay and how working Americans are being treated by the economic policies of the current administration.

I have been on the Senate floor a number of times over the last several months talking about the status of the American economy—the job losses that we have had: 2 million, roughly, generally, and 2.6 million private sector jobs. We have talked about the pressure on the middle class. Good gracious, we are now talking about cutting overtime pay for 8 million working Americans in the middle class.

Goodness knows, the budget situation in this country, under this administration, has been a fiasco. We have gone from projections of \$5.5 trillion worth of budget surpluses to \$5 trillion of budget deficits over the next 10

years—\$18,000 of debt per American to \$24,000 now, and projections it will get up to \$35,000 over the next 10 years—an incredible failure of economic policy.

But today I want to talk about another indicator that is showing the weaknesses and the failures of this policy. Last week, millions of Americans paid their income tax. A lot of us struggled to figure out how to do that and send it in by the April 15 deadline. But the fact is, when all is said and done, about 30 percent of Americans' income was paid in Federal, State, and local taxes—about 30 percent. But while the average American is paying 30 percent of their income in taxes, the majority of corporations are paying far less. In fact, about 60 percent of all corporations reporting income did not pay income tax at all. That is according to the General Accounting Office. Sixty percent of corporations did not pay any Federal tax at all.

Moreover, about 95 percent of corporations pay less than 5 percent of their income in taxes. As a share of corporate profits, corporate taxes are now at their lowest level since World War II. There has been a dramatic shift in the tax burden from corporations and high-income folks to those middle-class folks who are now going to have their overtime cut. It is an incredible change in the direction of this country and in fairness.

While corporate taxes have declined, as the good Senator from Iowa pointed out, corporate profits have increased dramatically over the last several years, much greater than wages. Median income during the Bush administration has fallen about 3 percent for the average worker in America. Corporate profits, by contrast, have increased by 26 percent. There has been a huge growth in corporate profits at the same time median income for working Americans is down. In other words, workers have received relatively little benefit from the increase in corporate profits. With all this "hootin' and hollerin'" about GDP growth, it is not showing up in the paychecks of working Americans.

In the early 1990s, when you had an increase in the economy as we are seeing now, 60 percent of those increases in income went to wages, and about 40 percent went to corporate profits. In today's recovery, the one that has occurred over the last several years, only 13 percent has gone to working men and women, and almost 87 percent has gone to corporate profits or corporate wages, to the CEOs. It is incredible, 60 percent versus 13 percent. There is something afoot here.

It fits into an overall flow of facts that middle-class income workers are getting hurt in this economy. The fact is, we have seen median income decline 3 percent for the average worker in America. And by the way, at the same time income has fallen for real families in America, the costs are going up. For example, a couple of items that go on in everybody's budget: Health insur-

ance is up 14 percent at the same time these median incomes are going down. Corporate profits are going up. Gasoline prices are up 19 percent. College tuition, something that gives access to the American promise, is up 28 percent at the same time. I hate to get into property taxes, but in many parts of our country, all we have done is shift the tax burden from the Federal Government to the local level. The Bush record includes income falling for middle-income families and rising costs on things that matter in their lives.

It is incredible, particularly when put in the context that we haven't been creating jobs. The fact is, we have 8.4 million Americans without jobs. That is the latest survey. We have been hearing a lot of hootin' and hollerin' about growth and jobs. There are 8.4 million Americans without jobs. That is 2.4 million more jobs lost during this administration's tenure and stewardship of the economy. Something is wrong here. Income is going down. Jobs are going down. Costs are going up.

What is happening is we are putting incredible pressure on the average American. By the way, even when people get jobs after they have lost a job, there is an incredible loss of real income for those individuals. That is how that median income came down.

According to survey, for workers who lost jobs in 2001, the average salary was \$44,570. Today, for those who have found jobs, the average salary an individual ultimately was able to get was \$35,410. That is another 21-percent drop for those people who lost jobs and then ultimately reentered the workforce.

We have median income going down. We see job losses going up. We see corporate profits going up, and no sharing of that going on in the economy.

There is a real problem. The administration's proposals and policies have done an incredible job of actually undermining the well-being and quality of life for middle-income Americans.

Many people have different views about fairness, but since the tax date was last week and we talked about the fact corporations are not paying their fair share, I want to mention the fact for the middle 20 percent of Americans, a range of people who have an adjusted gross income from filings and income tax, the average tax break for that middle 20-percent, middle-class America, was \$647. That is not something to throw out the window, but it is not a great amount of money given what tuition costs are doing, and given gasoline prices and health care costs. But it is a break. But if you were in the top 1 percent of Americans, on that same scale of adjusted gross income, you got an average tax break of about \$35,000.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SARBANES. Mr. President, I yield the Senator 1½ minutes of the time allocated to me.

Mr. CORZINE. I thank the Senator from Maryland.

Finally, if you look at those individuals in America who have been blessed

with good earnings and opportunity, with \$1 million of earnings or more, a tax cut of \$123,500. I don't understand why anyone would think this is going to be stimulative to the economy, efficient to the economy. Let alone does it relate to the fairness most Americans expect. Here we have \$1.5 trillion in tax cuts and a whole bunch of it is going to the people making \$1 million or more, and the middle class is getting a very small portion. We have a major problem with economic policy. We clearly are not creating jobs. We clearly are undermining the quality of life of middle-income Americans.

There is a classic fairness issue that is going on here which I wanted to relate with regard to corporate income taxes and certainly with regard to how tax breaks work.

It is time for a rethink. The IMF and the OECD this week released reports that said the current administration's policies are going to end up undermining growth for the rest of the world because we are running such big deficits. There is something wrong. It is time for us to address it. I will come out here and talk about these kinds of pressures on the middle class, on our budget, on what is fair. We need to make sure the American people know they are not getting a fair shake.

We need to pass the legislation for which the Senator from Iowa has so assiduously fought to make sure 8 million people are protected on overtime. We need to make sure we change this tax policy so all Americans benefit from the great bounty we have. The choice is clear.

We were able in the 1990s, with a different set of policies, to create 22.5 million jobs, the greatest increase in wealth for all Americans, not just middle class but all Americans. We decreased poverty. All good indicators of what happened.

Now we have lost 2.6 million private sector jobs; 8.4 million people are unemployed; and we have a distribution of income that makes no sense for the middle class.

Mr. SARBANES. Mr. President, I commend the very able Senator from New Jersey for his very powerful statement and for putting everything in context.

First of all, I appreciate his taking the April 15 filing deadline, which most of us have just confronted in terms of filing our tax returns, and pointing out that corporations are paying hardly anything in income taxes. As I understand it, 60 percent of corporations filing show no tax liability. As I understand it, 95 percent were paying 5 percent or less.

Secondly, the Senator has pointed out this huge discrepancy in the tax benefit from the Bush tax cuts. His chart shows middle-income people were getting about \$600, as I recall the figure. And for the top 1 percent, what was the figure?

Mr. CORZINE. That was \$124,000.

Mr. SARBANES. That is the millionaires.

Mr. CORZINE. Excuse me, \$35,000.

Mr. SARBANES. And the millionaires were getting \$124,000. This is classic trickle-down economics. It doesn't work. Proof that it does not work is where we are on the jobs front. We have an administration that claims it has a successful economic policy, and it is not producing jobs. In fact, we have now over 2 million fewer jobs than we had when this administration took over in January of 2001.

The last time we had an administration that failed to produce a net increase in jobs over the course of the administration was the Herbert Hoover administration. Now, stop and think about that. I say to the Senator, is it not his understanding that every administration since Herbert Hoover has been able to show a net increase of jobs over the course of their administration—until this administration which now is over 2 million jobs in the hole below where we were when they came into office?

Mr. CORZINE. The Senator from Maryland is absolutely correct. If you look at private sector jobs where a real economy is broadly creating wealth for individuals, 2.6 million jobs have been lost, and it is a horrific record relative to the performance of what should be enormous productivity and job growth in this country.

Mr. SARBANES. Furthermore, it is my understanding, I say to the Senator, that this recession we have experienced began 36 months ago. As we have said, we have fewer jobs now than we did when the recession first started. This is the first recession since the Great Depression in which 36 months after the recession began we have failed to come back and recover or recreate the jobs that were lost in the recession.

Stop and think about that. It is 36 months after the recession began. In every other economic downturn since the Great Depression, 36 months after the recession began we had recovered all the jobs lost and gone well beyond that in most instances in job creation. We have not done that in this business cycle. In fact, if we had grown at the job growth equal to the worst on record following a recession—I am just taking now the worst performance of previous economic downturns—if we had just the job growth now that we had in the worst recovery period, we would have 3.4 million more jobs than we have today. It is incredible what is happening on the jobs front. We are not closing this jobs gap. This administration doesn't seem to understand it or face up to it.

In fact, in the 2002 Economic Report of the President, the administration forecasted that in 2004—the year we are in—the economy would have 138.3 million jobs. Last year, the President lowered that estimate for the number of jobs we would have in 2004. In 2003, he predicted only 135.2 million jobs. In the most recent economic report, the administration lowered it again to 132.7

million jobs. In 2 years, they lowered the number of job predictions by 6 million jobs.

Mr. CORZINE. Will the Senator yield for a question?

Mr. SARBANES. Yes.

Mr. CORZINE. The Senator from Maryland understands supply and demand. But if there are 6 million more Americans looking for jobs than is demand, what usually happens when there is excess supply of labor or any other element of our economic system versus demand?

Mr. SARBANES. You can see the effect on the earnings of workers that is taking place in the economy, for one thing.

Mr. CORZINE. It is a most important element. This jobs issue is not only impacting people who don't have jobs, it is impacting people who do have jobs.

Mr. SARBANES. Exactly.

Mr. CORZINE. It is undermining the ability of working Americans to actually get good wages. That is why median income is down. That is why you go from \$45,000 for a job lost to picking up a job worth \$35,000.

Mr. SARBANES. The Senator is right to focus on the inadequacy of demand. If he would put up the chart that shows how much of the benefit goes to workers' wages as opposed to corporate profit in this so-called recovery, we can see that if you go back to the early 1990s, during that recovery, a majority—85 percent—of the benefits were going to workers. In this recovery, the workers are getting only 15 percent.

Mr. CORZINE. It is 13 percent.

Mr. SARBANES. So 87 percent of it is going to corporate profit. That is one of the big differences. That is one of the reasons we are not creating jobs. When it goes to workers' wages, it makes its way back into the economy, stimulates economic activity. As a consequence, it helps produce jobs. Now it is so heavily weighted away from workers and toward the corporations that are showing these record profits that we are not getting the same economic stimulus.

Then they say, well, if the corporations make big profits, they will invest in plant and equipment. But the corporations won't invest in plant and equipment if they don't think there is going to be a demand for what that plant and equipment will produce. The major source of the demand comes from workers' wages, which is being grossly shortchanged in this so-called economic recovery. It is no wonder we are facing such a severe economic situation.

Twenty-four percent of the people who are unemployed have been unemployed for more than 26 weeks. They are the so-called long-term unemployed. We are now at a record in that this percentage has been above 20 for 18 consecutive months. The last time we had long-term unemployed at that level for such a long period of time was in the 1982 recession, when the unemployment rate went up to close to 10

percent. So what is happening is a lot of the impact is being concealed or disguised. People have dropped out of the workforce. The workforce participation rate now is at a 16 year low, despite having previously risen almost every year in this postwar period. That is the situation we confront.

The Senator is absolutely right to put his finger on these gross inequities in the workings of the economy because more and more of its benefits are being pushed to the very top of the income and wealth scale. As a consequence, they do not get recirculated back through the economy to create jobs and meet the tremendous challenge that working people in this country are facing, which the Senator has very thoroughly outlined in the course of his statement. I commend my colleague from New Jersey for his very strong and powerful statement in underscoring this shift in economic benefits.

There is one strata up at the top that is reaping the benefits, and all the rest of us are feeling the economic burdens, stress and strain of this economy.

Mr. CORZINE. Will the Senator yield?

Mr. SARBANES. Yes.

Mr. CORZINE. I think the Senator from Maryland probably realizes—and correct me if I am wrong—I think there are 1.4 million or 1.6 million Americans that have even dropped out of looking for work.

Mr. SARBANES. That is right.

Mr. CORZINE. The Senator most appropriately talked about the pain that is being inflicted on the unemployed because they are unemployed for a much longer period of time. But what is just as serious is that there are a lot of people who have said the heck with it; there is no chance of actually getting a job.

Mr. SARBANES. I thank the Senator for his very strong presentation.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). There will now be 30 minutes for the majority.

The Senator from Wyoming is recognized.

THE ECONOMY

Mr. THOMAS. Mr. President, before I talk on the subject I came to talk about, I want to react a little to what has been said in terms of the economy. It is surprising, because the economy has grown substantially, that we find some complaining about it over there. It is not a surprise that the person who pays the most taxes gets a tax cut. That should not be a surprise. The idea is that encouraging business is how you create jobs. But I guess we have a different view of what it is.

I think we have a political aspect to what is going on here. This place has become almost like a political rally, when what we ought to be doing is talking about issues. I hope we can do that.

COURT JURISDICTION

Mr. THOMAS. Mr. President, this has little to do with the idea of establishing a venue search for various court actions.

I would like to address an issue that is very important to all of us, particularly the Western States that have a good amount of public lands. First, there are many suits being filed. People are trying through suits, or the threat of suits, but even worse, if there is a suit, to be able to pick a venue they think is more sympathetic to their point of view than going to the venue in which the issue occurs. That is what I am talking about.

That has particularly been the case with environmentalists who have sought to manage public lands and public facilities largely through suits rather than the issues.

In recent years, we have been steamrolled quite a bit by Federal issues that go to judges completely out of the area rather than dealing with them in the circuit in which the issue occurs. Specifically, we have had some experience with suits involving issues with Yellowstone Park or Teton Park.

We have a circuit court system. We are in the Tenth Circuit. I need to review what I am talking about. The Federal judiciary is set up on a system of circuit courts. It is set up with a number of circuits throughout the country and based on geography. The reason for that, of course, is so everyone has access to the legal system and it is fairly available to them.

If you go to a circuit court and you appeal that decision, it goes to the appeals court and then to the Supreme Court. The fact is, the circuit court in Cheyenne, WY, is a Federal court, just as the circuit court in Washington, DC. It certainly is more appropriate to go to them. That is why those circuit courts are there.

Our Constitution includes many checks and balances, and the authority for Congress to limit judicial jurisdiction is clearly needed.

I have introduced a bill that would provide original jurisdiction to the appropriate court venue in the impacted area for matters involving Federal lands. I cannot continue to watch issues that happen in particular parts of the country—in this case in Wyoming and Montana—to be taken to a Federal court in Washington, DC, when, in fact, there are Federal courts in our area. That is why they are there.

My intent is nondiscriminatory. It simply underscores my strong belief that Federal judges in the area should have the first crack at cases that have a direct impact on that particular area. Certainly that is something on which we need to continue to work. It is a matter, of course, that affects a lot of Federal lands.

Half of the State of Wyoming belongs to the Federal Government. It is similar in Arizona and other States in the West. The circuits we are in are the ones that should, in fact, deal with

those Federal land issues when the issue is in that particular State. Of course, the appeals go on the same as anywhere else.

When I introduced the bill, some folks were shocked and said it was a waste of time. I think it is more shocking to skirt the jurisdiction of judicial courts and venue shop and go somewhere they think will give a better result to the lawsuit that has been filed.

The justices need to be fair. Everyone deserves their day in court. Certainly we have an issue now where the local court has been involved at one time, and they went around the local court and went to Washington, DC. We have two courts on the same level with two different points of view on the same issue. It has caused us a great deal of problems.

I ask unanimous consent that an article written by Judge Robert Ranck, a retired judge, be printed in the RECORD.

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

[From the Jackson Hole News & Guide, Mar. 24, 2004]

FEDERAL JUSTICE AND YOUR DAY IN COURT

(By Robert Ranck)

No one should be shocked. And particularly no one should be confused by the editorial that ran in this paper last week.

Apparently, what is needed is a review of our civics.

The federal judiciary is set upon a system of circuits based on geography. Each action that leads to a case in a particular geography area must generally be filed in that circuit. If there is an appeal of a case within that circuit from federal district court, it is directed to the federal appeals court of that circuit. If appealed from that federal circuit's appeals court, it then goes to the U.S. Supreme Court in Washington.

Why are the federal circuits based on geographic lines? Our judicial system is founded on the premise that everyone deserves their day in court. To have your day in court, you need to be able to get to the court and not be required to travel thousands of miles to do so. That's why the jurisdiction of our federal circuit courts are such—it's called access to justice. And no one—least of all our litigious community—should be shocked or upset by access to justice.

Loopholes in the rules of federal venue are being currently exploited by those who want to pick the federal judge who best suits their politics. They do that by twisting the allegations describing the nature of the case. If there is an issue involving snow machining in Yellowstone, for example, some groups think the action arises not in Wyoming or Montana, but in D.C. Why? Because the Park Service is headquartered in D.C. But that's not how the federal system was designed. That is not the intent of the system. That takes justice further from the people most impacted by the matter in question. And that is wrong.

In many ways, a federal judge is a federal judge. Brimmer or Sullivan, they are of the same federal rank, with the same federal powers. Here's the difference: one was born, raised, and spent his entire professional career in the jurisdiction where the snowmobiling controversy arose. The other was born, raised and practiced his entire career in Washington, D.C.—a heck of a long way from the Tetons. I am disappointed that this paper, and other usually thoughtful people, are advocating venue concepts that result in justice being less accessible to people

most impacted by controversies. I wonder if these people think a Wyoming federal judge should have the power to decide a federal challenge to marriage licenses issued to gay couples in San Francisco? I doubt it.

Senator Thomas is seeking to close the venue loopholes that currently allow district judges in Washington, D.C. to decide issues that should be heard and decided where they arose. In doing so, he is a populist—bringing the opportunity for access and justice closer to people. That some are uncomfortable with this idea is disturbing. But for some litigants, the ends always justify the means. In this case, the anti-snowmachining lobby will continue to try to have their case heard as far from Wyoming as possible in front of the most sympathetic judge they can find, even if their tactics are unfair to the people who live and work in the West.

Two thousand miles is a long way for voices to carry—particularly for people who are too busy earning a living and raising a family to file or defend litigation in Washington, D.C. Federal venue loopholes should be closed in the interest of fairness. Don't be confused by those who are more interested in their desired political outcome than the fairness and integrity of the judicial process.

Mr. THOMAS. Mr. President, I hope we can take a look at the idea of directing these various court activities to the circuit court in which it arises. It seems a reasonable approach. I have introduced a bill to do that, and I look forward to pursuing it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

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

FINGERPRINT COMPATIBILITY

Mr. GREGG. Mr. President, I rise today to address an issue which I have been working on for many years, regrettably, about how we control our borders. The issue is how we deal with terrorists or people with criminal intent or who have a history of criminal activity who threaten our Nation by coming into our country. Either way, these are individuals who really should not be coming into our country.

Back in the nineties, as chairman and ranking member of the Commerce-Justice-State Appropriations Subcommittee, we began funding a major effort by the Federal Bureau of Investigation to organize its fingerprint database, called IAFIS. At the same time, the Immigration and Naturalization Service, now part of the Department of Homeland Security, was beginning to set up a fingerprint database for people coming into the country, called IDENT.

The problem has arisen that these two fingerprint databases do not communicate with each other. This, of course, was a function of history. In the nineties when the FBI was setting up IAFIS, which has now grown to 44 million identifying fingerprint records, their purpose was to create a national repository of criminal fingerprint records to identify a person who com-

mitted a crime by their fingerprint match with the system and to assist local law enforcement efforts to do the same. It was a law enforcement tool.

The INS, when it began its system in the nineties, was basically trying to find people who were illegally coming into the country or who had been deported and had criminal backgrounds. The purpose was also for law enforcement but a different type of law enforcement. They were not looking for people who actually committed a crime. They were looking for people coming into the country who should not be coming into the country because of their background.

These two protocols were set up independent of each other. We noticed this in our committee in the late nineties and directed the two organizations to integrate their fingerprint identification systems. This was done by the Commerce-Justice-State Subcommittee, which I and Senator HOLLINGS chaired off and on during that period. We exchanged chairmanships, depending on the control of the Senate, but our policies were exactly the same.

We directed in the late nineties that these two agencies begin to integrate their fingerprint databases. It was pretty obvious to me and Senator HOLLINGS at that time that this was important not from a law enforcement standpoint, but from an antiterrorism standpoint, and that is what drew us in this direction.

Regrettably, that was not accomplished. Today we are in a situation which is extraordinarily inappropriate and, to some degree, ironic if it were not so sad and unfortunate. And that is that the FBI is sitting over here with 44 million fingerprints of people we know have a background that required them to be fingerprinted and, therefore, maybe we have some issues with them. We know within that 44-million-person database there are at least 12,000 individuals who are identified as terrorists. We know the FBI has this IAFIS database which we have spent \$1.1 billion—billion dollars—to put in place. Our committee has funded this over the years.

It had some fits and starts. It took the FBI a while to get it going right but now they have it set up. Then we know Homeland Security, which has now taken over INS, has the IDENT Program, which is the baseline for something called the US VISIT Program, which is a fingerprint program, the purpose of which is to fingerprint people coming into the United States for identification and have a database of those people.

What we also know is these two major fingerprint databases do not talk to each other. So if someone is coming into our country who is a terrorist with fingerprint records in the FBI's IAFIS database, and they are fingerprinted as they would be required to be to get a visa to come into this country, that fingerprint they had for the visa would not show up in the FBI

database as a terrorist because the systems cannot communicate. The databases of IDENT and US VISIT, which is being set up, are not structured to communicate with the FBI database.

In the late 1990s, as I mentioned, our committee directed these two databases start to be integrated and figure out some way to communicate. There was minor progress made in this effort, and a lot of money put into it, over \$41 million. Yet the reorganization of the Homeland Security Department, which took INS out of the Justice Department, created an atmosphere which was not maybe so convivial to the two groups communicating with each other. Also, the INS has a different goal, which is to move people quickly through the fingerprinting process. Therefore, they only use as their fingerprinting system the fingerprints of two flat digital fingerprints of the index fingers. By using the 2-fingerprint system, they can move people through their identification process very quickly, and that is important at a border entry from the standpoint of making the border entries tolerable to individuals to go through. The INS therefore was not willing to go to a roll process of all 10 fingerprints, which would require a great deal more time. The FBI, however, because it is interested in a more intensive capacity to review the fingerprints, has something called rolled fingerprints of all 10 fingerprints.

So today we still have 44 million fingerprints which have no relevance, for all intents and purposes, to who is coming in and who is leaving our country because DHS is only fingerprinting individuals in a manner which is not compatible with the 10-fingerprint procedure of the 44-million-person database.

Now some folks in the administration appear to be aware of this problem and are talking about it. There are a number of things that have been done, and I want to acknowledge them for having done some things. Every 2 weeks they are extracting certain fingerprint records from IAFIS to IDENT, including certain wanted individuals and potential terrorists. Those 12,000 terrorists I mentioned in IAFIS is now supposedly in the IDENT system and accessible to the US VISIT Program. There is an attempt to get NIST, which is the organization which has the capacity to technologically address this issue, to take a look at this issue to see if there is not some way to cross-reference these records. Even under the most optimistic game plan, however, it is now the position of the administration it will not be until 2008 that they are able to integrate IDENT and IAFIS, assuming they are able to integrate them at all. To make them compatible, most likely it will mean DHS will have to go from a 2-fingerprint system to an 8-fingerprint system, digital flat fingerprints.

We need to focus on this as a government. This is one of those situations

where one learns about it and understands it and says, why is this happening?

We understand the history of it. As I mentioned, the history is INS and FBI had different purposes for their fingerprint systems when they set up these two major databases. Those two purposes have been totally overshadowed and left in the wake as a result of September 11. The FBI no longer has as its primary function catching people after they commit a crime. The FBI's primary function now, although maybe they do not totally appreciate this, is they are supposed to catch people before they commit a terrorist act. They are supposed to be an intelligence agency. That is their primary purpose, to find out who is going to harm us and get to them before they get to us. They have this huge resource of 44 million fingerprints of people who are potential problems, and it should be a resource, but is instead just sitting there. If someone commits a bank robbery or a Federal crime, it is still a very functional database, but for the primary purpose of the FBI, which is intelligence in anticipation of terrorist threat, it is not very functional at all.

Then there is the INS which set up the IDENT system under the theory that people were repeatedly entering the country illegally and in some cases after they had been deported and they wanted to get them out of the country or they wanted to know who they were. They did not see them as terrorists back in the 1990s. They set up a system to address that. Now they have such a system and they are adding to it the U.S. VISIT system. That system is set up in a manner which, yes, expedites people through our borders, which I appreciate is important, but, no, it does not tell anybody at DHS whether that person who just got through the border, having been fingerprinted with the two index fingers, is in the FBI database as a terrorist or a criminal, unless that name happens to have been moved over to IDENT as a result of basically a manual decision.

We cannot afford that historic anomaly to continue. We cannot continue to have these two systems which do not communicate. It is my hope the administration, again working with the various technical experts who are out there—and I suspect they have to be independent of these two agencies because these two agencies have vested interests which cause them to dig in their heels on occasion—that somebody will sit down and say merge these databases and do it before 2008. I hope they will come up with some system which allows us to do that.

As an appropriator, I know this is going to cost a lot of money. I suspect Senator HOLLINGS would agree with me on this, and I know Senator BYRD would because it is a big issue for him and Senator STEVENS too, who are the chairman and ranking member of the committee, I am willing to put in whatever money is necessary in order

to accomplish this integration on a faster timeframe than 2008 because we need it done. I hope the administration will pursue this effort.

Fingerprint compatibility is an issue that affects all Americans. It relates to counterterrorism and protecting our borders; ensuring that taxpayer resources are not squandered; and ensuring that Federal agencies actually work as a unified Government rather than a set of fiefdoms. The issue is fingerprints how they are taken, processed, and accessed.

The Department of Homeland Security, DHS, has started a new initiative, US VISIT, to better control who is coming into the country and tracking them once they have arrived. The plan calls for the collection of personal data, photos, and fingerprints by the Department of State at U.S. consular offices abroad and by the Department of Homeland Security at our ports of entry. The fingerprints taken will be 2 "flat" fingerprints, a simple, one-touch of the index finger of each hand.

Those 2 flat fingerprints, however, cannot be searched against the 44 million contained in the FBI's national repository of fingerprints of terrorists, wanted individuals, and of convicted criminals. That is because the repository, known as IAFIS, contains 10 "rolled" fingerprints, a more complete capture of each finger.

If the purpose of US VISIT is to better determine who should enter the country, what is more important than knowing if they are terrorists or criminals?

This is not a new problem. For nearly 15 years, the Immigration and Naturalization Service, INS—now the Department of Homeland Security—and the Federal Bureau of Investigation, FBI, have been developing and operating separate and incompatible fingerprint-based identification systems. INS has IDENT, which takes 2 flat prints and was created to identify repeat immigration offenders and deported aliens who should be detained and prosecuted. FBI has IAFIS, which takes 10 rolled prints and was created to automate the FBI's paper-based fingerprint identification system of criminal records. Without integration if you check IDENT, you do not have access to the prints of all criminals. If you check IAFIS, you do not have access to immigration law violators.

We raised this issue as early as 1999. In the fiscal year 2000 CJS appropriations conference report, we directed the Department of Justice, DOJ, to develop a plan to integrate the INS and FBI systems. Five years later, the effort "remains years away" according to a March 2004 report by the DOJ Inspector General.

Each year, millions of aliens are apprehended trying to illegally enter the United States. Many are voluntarily returned to their country of origin without further action. Some, however, are detained for prosecution if suspected of: multiple illegal entries, a

prior deportation, a current arrest warrant, an aggravated criminal record, or alien smuggling.

Before IDENT, INS had difficulty verifying identities of the apprehended aliens. False names and spelling errors were common making it difficult to check for immigration or criminal histories. An automated fingerprint identification system was the obvious solution. It provided a faster, unique biological measurement for individuals. Funding was first provided to develop IDENT in fiscal year 1989.

At about the same time, in 1990, the FBI began to overhaul its paper-based fingerprint card system. The FBI had maintained a central repository of tenprints of criminal offenders' fingerprints since the 1920's. The FBI wanted a system that would allow for electronic searches for fingerprint matches against criminal histories, wanted individuals, as well as stolen articles, vehicles, guns, and license plates. Over \$1.1 billion has been spent on building and maintaining IAFIS to date. IAFIS now contains over 44 million criminal records, including 12,000 terrorist records.

From 1990-1994, INS and FBI discussed integrating their systems, but they had conflicting priorities and interests. INS focused on the need to process apprehended aliens quickly and therefore only wanted to take 2 fingerprints. FBI wanted INS to take 10 fingerprints so they could match apprehended aliens against the ten fingerprint records in the law enforcement databases or latent fingerprints obtained at crime scenes.

There were also capacity concerns. FBI did not know if their system would have the capacity to meet INS's high volume of fingerprints in a quick response time. FBI did not believe their system would be able to search and match 2 fingerprints against 10 fingerprints in a timely manner.

By 1994, INS began proceeding with its separate system, IDENT. IDENT was developed to match 2 fingerprints of detained individuals against fingerprints in two IDENT databases: 1, apprehension database: includes each recorded apprehension of illegal border crossers; and 2, lookout database: contains information on deported and criminal aliens and therefore ten-print cards.

Problems with IDENT quickly emerged. A March 1998 Inspector General report found INS was enrolling less than two-thirds of the aliens apprehended into the IDENT system; INS was only entering 41 percent of all aliens deported into the IDENT lookout database; the data entered into the system was of poor quality because employees did not have sufficient training.

In 1999, the case of Rafael Resendez-Ramirez reemphasized the need for the integration of IDENT and IAFIS. Resendez-Ramirez was apprehended by INS for an immigration violation in June 1999 and was voluntarily returned

to Mexico because INS was unaware that he was wanted for murder. Shortly after his voluntary return, he returned to Oregon and committed four more murders. Had IDENT been linked to IAFIS, immigration officials would have known Resendez-Ramirez was wanted for murder, had an extensive criminal history and prior deportation, and could have detained him for prosecution.

That year, in the fiscal year 2000 conference report, the CJS Appropriations Subcommittee responded by directing DOJ to prepare a plan for the integration of IDENT and IAFIS databases and fingerprint systems.

DOJ submitted a plan for integration in March 2000. The plan focused on conducting several studies to determine the impact, scope, and technology needed to integrate the two systems.

Good news is the project has slowly moved forward.

Records are now extracted from IAFIS and added to IDENT every 2 weeks, including those of wanted persons likely to be picked up by immigration officials, birthplace outside of U.S. Over 140,000 wanted individuals have been downloaded into IDENT. There are, on average, 400 hits per month, meaning 400 apprehended aliens have active wants or warrants for their arrest. There are also over 12,000 fingerprint records of known or suspected terrorists extracted from IAFIS and put into IDENT.

A workstation has been developed and deployed to DHS field sites, border patrol stations and ports of entry, that has a ten print scanner that can capture ten rolled prints; and a computer that can simultaneously search IDENT and IAFIS and provide an integrated response from both systems.

The CJS appropriations subcommittee provided \$1 million in fiscal year 2003 for National Institute for Standards and Technology, NIST, the Federal agency charged with establishing fingerprint standards, to research fingerprint search compatibility. Preliminary results show 8 flat prints can be searched against 10 rolled prints with the same accuracy as 10 rolled prints, but the search takes 2-3 times longer. Compare that to 2 flat prints, in which case the search has an "unacceptable reduction in identification accuracy" and takes 35 times longer.

The bad news: 5 years have passed and \$41 million has been provided and the systems are still not integrated. Extracting a sampling of IAFIS information every 2 weeks is not enough.

Wanted individuals who are apprehended by DHS could be mistakenly returned to their country of origin if their warrants are submitted to IAFIS during the 2 week lag time. DOJ and DHS claim they will begin to extract information daily, but it is unclear when, how and whether that can happen. Even daily extracts cannot substitute real-time information or full interoperability.

The extracts do not include criminal histories. The need for criminal histories was made apparent in the 2002 case of Victor Manuel Batres. In that case, Batres was deported following a conviction for an aggravated felony. Batres reentered, but information about his deportation was not known because the systems are not integrated, and he was voluntarily returned to Mexico. He illegally entered the country again, at which time he raped two nuns, resulting in the death of one of them. Had IDENT and IAFIS been integrated, the immigration officials would have had immediate access to Batres' deportation and criminal history, and could have detained him for prosecution, thereby saving lives. Reentry after deportation alone can carry up to 20 years imprisonment.

Workstations are only a one way solution. Workstations give DHS access to IAFIS, but they do not give law enforcement access to immigration records. FBI and State and local law enforcement believe there are situations that require access to immigration records, such as: Fingerprints captured at a crime scene cannot be checked against immigration violators; and an individual can apply to a sensitive position, security at a nuclear power plant, and there is no way to verify his or her country of birth or immigration history.

Workstations are only partially deployed. Two hundred and ninety-three workstations have been deployed to only 115 DHS field sites, which means less than one-third of DHS' field sites have workstations. It is unclear whether there is a plan to deploy workstations at the remaining field sites.

The administration has no timeline to move to capturing 8 flat prints. Eight flat prints would significantly improve the chances of interoperability.

The bad news also is that any plans for integration have been delayed at least 2 years, with final deployment now not expected until August 2008 due to fear that the Government could not absorb the impact of integration, the increases in detention, prosecution and imprisonment of aliens. There is no agreement between DOJ and DHS on how to collectively proceed with IDENT/IAFIS integration. Personnel and resources were diverted from IDENT/IAFIS integration to build US VISIT.

Now, DHS is creating its new system, US VISIT, with the same traps as IDENT and then some. Problems are already apparent. US VISIT has not been fully defined. No policy has been identified for Mexico and Canada or the "exit" aspect of the program, for example, will U.S. citizens be checked every time they leave the country. US VISIT was built on IDENT because that was the only way DHS could meet its December 2003 deadline to deploy the program. That means US VISIT continues to capture only 2 flat prints and is not

interoperable with IAFIS. There has been no mention of whether and how IAFIS would access the US VISIT fingerprint records. It is unclear whether IDENT alone is robust enough to handle the additional workload that comes with US VISIT.

The State Department, whose job it is to take the photos and fingerprints of visa applicants, appears to be on track to meet the October 26, 2004 deadline to enroll 2 flat prints of all visa applicants between the ages of 14 and 79 at all 211 posts. However, there has been some question regarding the quality of the fingerprint images the State Department is enrolling, which we are looking into.

In summary, knowing the background of individuals entering the United States is our first line of defense against terrorism. We have spent hundreds of millions of dollars to build a criminal database, IAFIS, and should take full advantage of the information it contains. The administration should make the integration of IDENT and US VISIT with IAFIS a number one priority. These agencies must work together to determine what is needed to integrate these systems. The administration should submit a statement of policy and a plan, agreed to by FBI, DHS, and State, which provides the technology and funding requirements as well as a time line for integration.

The PRESIDING OFFICER. The Senator from North Carolina.

THE ADMINISTRATION IS SUCCEEDING IN IRAQ

Mrs. DOLE. Mr. President, I want to address the repeated attacks towards the Bush administration's role in Iraq. Yesterday, one critic claimed that our unilateral policy in Iraq has steadily drifted from tragedy to tragedy and made America less safe. The very mention of Iraq and the current situation there incites what I have begun to call the "liberal naysayers" to launch into steady streams of empty rhetoric against our plans in Iraq. Just this week these critics said that our troops are paying the price for flawed policy. These brazenly political claims have no basis, in fact, and serve no purpose other than to undermine the administration in a time of war.

In liberating Iraq, we have rid the nation and the rest of the world from the danger of Saddam Hussein. 46 of the 55 of his most wanted regime members have been captured or killed. In removing this tyrant from power and undermining his regime, we have brought about increased security in a nation that at one time barely comprehended the term. Today, over 150,000 Iraqis, including 75,000 new police personnel, are protecting the Iraqi people. Recently the Iraqi Governing Council signed the Transitional Administrative Law. This unprecedented framework promises long overdue civil rights for all Iraqis. It ensures freedom of religion and worship, the right to free expression, the

right to peacefully assemble, the right to be treated equally under the law, the right to stand for election and cast a ballot secretly, the right to privacy, and the right to a fair, public and speedy trial. We have removed many barriers in the Iraqi society and allowed women to finally play a role in every day life—including the new Iraqi government.

To abandon our mission in Iraq today would undermine all we have accomplished up until now. We would leave behind a devastating breeding ground for terrorists. More importantly, it would give the insurgents in Iraq reason to believe they have won—that they finally succeeded in driving us out and halting the process of peace. The recent surge of violence in Iraq is not indicative of failed policy—rather it is proof that terrorists see freedom arriving there—and it terrifies them. Just recently I read of that fear firsthand in a memo written by captured al Qaeda operative Zarqawi. Concerned that the Mujahidin may lose its footing in Iraq he wrote:

There is no doubt that our field of movement is shrinking and the grip around the throat of the Mujahidin has begun to tighten. With the spread of the Army and the police, our future is becoming frightening.

The very idea of freedom incites fear in the hearts of terrorists across the world. Insurgents from Syria, Libya, Iran and other countries continue to cling to the fruitless hope that their violence will force the coalition forces out and allow the eradicated reign of terror back in. They don't just hate freedom—they fear it. These terrorist cells infiltrating Iraq know that the introduction of democracy and peace in the Middle East is only the beginning of the annihilation of terrorism worldwide.

The accomplishments are many, and the truth is the liberation of Iraq is just one battle in the war on terror. The process of creating a democracy and turning the government over to an entire new governing council will take time. But we are a nation of our word. President George Bush has told the world that we would return power to the Iraqi people on June 30, and we intend to stick to that deadline. Our desire is to restore sovereignty to the people of Iraq—and ensure peace and stability in the transfer. To abandon Iraq prior to either of those goals being accomplished would be a failed mission—and that simply is not an option.

While it is important to note the administration's successes in Iraq, Americans should also be aware that our actions in Iraq have made us safer here in the U.S. President Bush recognized that in order to contain the growing threat of terrorism from Iraq we had to eliminate it at its source. Our President chooses to allow the war on terror to be fought in Kabul and Baghdad, rather than Washington, DC, or New York. As he so boldly explained just recently, his desire was not to stand idly by. He said:

I made a pledge to this country; I will not stand by and hope for the best while dangers gather. I will not take risks with the lives and security of the American people. I will protect and defend this country by taking the fight to the enemy.

I applaud our administration for carrying out their mission in Iraq so effectively. Our role in Iraq has brought about freedom to 50 million Iraqis and Afghans and underscored America's character in keeping our word. Former secretary of State George Shultz said it best this week when he wrote:

Above all, and in the long run, the most important aspect of the Iraq war will be what it means for the integrity of the international system and for the effort to deal effectively with terrorism. The stakes are huge and the terrorists know that as well as we do. That is the reason for their tactic of violence in Iraq. And that is why, for us and for our allies, failure is not an option. The message is that the U.S. and others in the world who recognize the need to sustain our international system will no longer quietly acquiesce in the take-over of states by lawless dictators who then carry on their depredations—including the development of awesome weapons for threats, use or sale . . . September 11 forced us to comprehend the extent and danger of the challenge. We began to act before our enemy was able to extend the consolidate his network.

The war on terror will not easily be won, but America is up to the task. May God bless our brave men and women in uniform fighting for democracy and freedom—and God bless this land of the free, America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time remains in morning business?

The PRESIDING OFFICER. There remain 3½ minutes.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak up to 10 minutes.

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

ASBESTOS LEGISLATION

Mr. SPECTER. Mr. President, I have sought recognition to comment on the issue of asbestos, the legislation which is about to be called to the Senate floor, offered by the distinguished chairman of the Judiciary Committee, the senior Senator from Utah. The Judiciary Committee reported out a prior bill in July of last year, and it was supported largely along party-line votes. One Democrat joined in the vote to send it out of committee, and I supported the vote to send the bill to the floor, having stated a number of concerns I had on specific provisions.

In August, during the August recess, I enlisted the aid of the former Chief Judge of the Court of Appeals for the Third Circuit, Judge Edward R. Becker, who had taken senior status preceding May 5. For 2 days, in Judge Becker's chambers, he and I met with representatives of the manufacturers, the insurers, the reinsurers, the AFL/CIO, and

the trial lawyers, starting to go through a wide range of issues. Since that time, we have met on 18 occasions in my office here in the Hart Building, virtually every week, with those representatives, and they had meetings in between.

During the course of our extensive discussions, we have come to significant agreements on streamlining the administrative process, early startup, defining the exigent health claims, moving through the language on judicial review, and dealing with the issue of medical monitoring. A good number of those provisions were inserted in a new bill introduced by Senator HATCH and Senator FRIST on April 7. The majority leader has listed the asbestos bill on a number of occasions, and each time has deferred it pending the negotiations which have been in process and I think are making good progress.

I have attended all of these meetings. They have lasted, most of them, for several hours supplementing the 2 days in Judge Becker's chambers, which were both all-day events. All the parties have been very, very cooperative. The manufacturers have talked to the AFL/CIO. In between, meetings have been had with the AFL/CIO. The trial lawyers have been cooperative. There is no doubt that some among the trial lawyers may feel they have some contrary interests. I think there has been an overall view—clearly by the trial lawyers and the AFL-CIO—that there are many injured people who have suffered from mesothelioma, which is a deadly ailment, who are not being compensated because their companies were bankrupt. In excess of 70 companies have gone bankrupt. There are hundreds of thousands of claims and there are numerous parties who have been named as defendants. The specific statistics are that the number of claims is now over 600,000. There are 8,500 companies which have been named as defendants. As I say, more than 70 companies have been bankrupt.

The courts have held that someone is entitled to compensation for exposure to asbestos even though the injuries are not yet demonstrable; that even though the injuries are speculative, a jury may return a verdict based on what injuries may be sustained. That decision was made by the Supreme Court of the United States. That stands at the same time the people who have mesothelioma, which is a deadly disease, are not compensated.

So it is a very serious matter on all ends: On the end of the claimants who are not being compensated because the companies are bankrupt; on the end of companies which have gone bankrupt spending a lot of money on litigation.

When a request is made, when legislation is structured to give up the right to jury trial, that is a very serious matter with our common law tradition for right to trial by jury, a right which is specified in the seventh amendment to the U.S. Constitution, the right to jury trial in a civil case. We are dealing with very weighty matters. We

have established a scale of compensation, a schedule which is patterned along the lines of workers' compensation, but there are very weighty matters to be considered.

It is my thinking that a cloture vote this week would be counterproductive. I understand the thinking to the contrary, that a cloture vote may put some pressure on the parties to move forward. There are many on both sides of the aisle who want a bill. I see the distinguished junior Senator from Delaware having risen. He probably wants to make some comments but is waiting patiently, or impatiently, but at least waiting. Senator DASCHLE has been a participant. His people have been in these discussions. Senator LEAHY, of course, the ranking Democrat, has been an active participant, and Senator DODD has been. Senator CARPER keeps calling over the weekend, concerned about these matters. Senator HATCH has been a leader, having constructed the idea of the trust fund and having gotten \$104 billion in it initially. That figure may be up to \$114 billion. Senator HATCH commented about the legislation reported out, if I am incorrect—Senator HATCH is in the Chamber and can correct me—at \$139 billion. So there are a lot of people who want a bill.

Some of the thinking is if there is a cloture vote it will put people on record, people whose constituencies would like to see a bill, who may not want to vote against cloture, so there may be that pressure.

My own view is progress has been made. I can represent emphatically that these are very complex issues. Judge Becker was the judge who wrote the opinion on the class action case brought on asbestos several years ago. His opinion was upheld by the Supreme Court. He is very knowledgeable in the field. He happens to be the winner of the outstanding jurist award among Federal judges, about 1,000 judges. He really knows the field.

I have had substantial experience in litigation and legislation and have examined these complex issues and say emphatically that there has been no dawdling. Progress has been made on the complex issues, as much as could be made, at the meetings presided over by Judge Becker and myself and meetings in between time.

So my view is a cloture vote is premature. Earlier today the majority leader in the Senate talked to Senator DASCHLE and raised the possibility about a delay but not committed to a delay. His inclination, fairly stated, is to go ahead with a cloture vote unless there can be some good reason there will be a way to expedite negotiations.

Judge Becker has some commitments this week which he cannot break, but he is available part of the week and is available all of next week. I have a commitment next Tuesday that I have to work toward. It is called a primary election. I am only in town today, breaking my campaign schedule, which

is very important. I have a tough fight on my hands—it is well within my pay grade—a tough fight. But I met earlier today with the parties to the asbestos matter, attended a leadership meeting, and spoke with Senator HATCH earlier today.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous agreement, morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The pending business is the motion to proceed to the consideration of S. 2290.

The Senator from Utah.

Mr. HATCH. Did the distinguished Senator from Delaware have a desire to speak?

Mr. CARPER. Just for 5 minutes.

Mr. HATCH. I ask I be given the privilege of speaking thereafter.

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

Mr. REID. What was the unanimous consent request?

The PRESIDING OFFICER. The unanimous consent is that Senator CARPER be given 5 minutes, after which Senator HATCH will be given 5 minutes.

The Senator from Delaware.

Mr. CARPER. Before Senator SPECTER leaves the Chamber, I express my thanks to him and certainly to Judge Becker for the willingness to enter into what many people describe as one of the most complex issues we will face this year or any year in the U.S. Congress to try to see if there is a way to ensure that people who are sick and dying from asbestos exposure get the help they need; folks who are not sick, who become sick, get the help they need, and that the companies which have a fair amount of exposure, whether they be manufacturers or insurance companies, get some certainty with respect to their financial obligations.

I am more encouraged at this moment than I have been for some time that we may have the beginning of a negotiating process. I realize these negotiations are going under the sponsorship of Senator SPECTER and the leadership of Judge Becker. If we are fortunate enough to get the buy-in from both leaders, Senator FRIST and Senator DASCHLE, these negotiations, led by Judge Becker, should be the vehicle.

We do not have to go out and invent a new negotiation process. This is one that works. Judge Becker is smart as a whip. He got the involvement of the leadership staff on both sides. Senator HATCH's staff, Senator LEAHY's staff, Senator DODD, myself, and others have been actively involved in these negotiations through Judge Becker.

This is a good process. We ought to build on this process. I have encour-

aged our leader to take ownership of the process—not to take away from Judge Becker but to ask him to continue to work. Judge Becker, for reasons that are beyond my pay grade, enjoys the confidence of labor. He enjoys the confidence of the insurers. He enjoys the confidence of the manufacturers, the defendants in these cases, and I think the respect of the trial bar. What we need to do is take him up on the offer, on his willingness to stay here and work with us.

My hope is we will end up with a negotiation that will lead not to further negotiation but a bill, another bill in the Senate, building on what has come to the Senate already.

I had a chance to talk with Senator HATCH a few minutes ago off the floor. He expressed a willingness to wait for as much as a month before we actually take up the bill. That gives this negotiating process another 4 weeks to bear fruit, further fruit—it has already borne a lot—and for us to take up at a date certain—I suggest maybe the week before the Memorial Day recess—to take up the bill, to negotiate, to debate, to amend it, and to pass it.

I am, again, more encouraged than I have been in some time. I express my thanks, again, to the Senator from Pennsylvania for his leadership.

I thank Senator HATCH. I know this is near and dear to his heart, and Senator LEAHY and both of our leaders. We can get this done, and we have to.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague. However, I am not as sure we are going to get this done as he is. I have to say, we have been working on this for 15 months. We have met innumerable times with our friends on the other side. We have met with every party involved here. I have tried to do everything I possibly can to bring everybody together. This is mired in politics. There is no question about it.

We are talking about a motion to proceed. How often in the Senate have we had a filibuster against a motion to proceed to a bill, when you can filibuster the bill, too? So you would have two filibusters on this bill, assuming we were to invoke cloture on a motion to proceed. It shows the lengths to which some will go in an election year to play partisan politics.

Look, we have done everything in our power to accommodate Democrats. We have made so many changes to accommodate the Democrats on this that I have gotten excoriated by the Wall Street Journal and others who I do not think have looked at these negotiations or understand what is going on.

Keep in mind, there are 8,400 companies that would like to resolve this problem, many of which are going to go into bankruptcy. Seventy have already gone into bankruptcy. Those jobs are lost. Those pensions are lost. The money we could have here to help settle this is lost. Those were the main

companies that handled asbestos. The remaining companies are those that have some peripheral experience with asbestos but really did not do the wrongs. But under this system, which is out of whack according to the Supreme Court of the United States of America, and any reasonable person who looks at it, we have unjust litigation going on all over this country for people who are not even sick. A high percentage of the cases brought are for people who have never had a sick day in their lives—certainly not from asbestos. It is another scam, in many respects. Not all of them; some of these cases are valid. That is why we want to come up with \$114 billion, that we have had to force the companies to come up with, to try to solve these problems.

This has not been easy, and it has not been fun for me or anybody else in this process. The fact of the matter is, there is a high percentage of these lawsuits that are unjustified that are costing us an arm and a leg. Let's be honest about it, 60 percent of all the money we are talking about here—assuming we cannot get this bill passed—will go for attorneys' fees and transaction costs, not to the people who need help. Mesothelioma victims are getting 5 cents on the dollar, if that, about \$17,000 for an absolute cancer that has destroyed their lives and has caused them death.

I do have some comments to make about the comments my good friend, the distinguished minority leader, made this morning. I would like to make some comments with regard to Senator DASCHLE's statements this morning. He stated a lung cancer victim with 15 years of exposure would receive only \$25,000 in compensation. That is painting a very incomplete picture, which I would like to finish. If we are going to paint the picture, let's paint the whole picture.

First, that picture is the bottom range of compensation. Under the claims values in the FAIR Act we have come up with, claimants who were exposed to asbestos and still smoking will receive between \$25,000 to \$75,000 in compensation. And for the record, Senators LEAHY and KENNEDY have stated they want \$50,000 for claimants falling into this category. But it is between \$25,000 and \$75,000.

Mr. President, I have come here to discuss the FAIR Act. We have a chance to help those who have suffered from asbestos-related injuries for far too long. Many people have spent months getting us to this point. I want to assure we have a complete picture of the bill for the record. We owe at least that much to the victims.

By the way, these are people who do not have any markers, do not have any evidence through X-rays or any other reason to show asbestos has caused their cancer. Yet we are willing to give \$25,000 to \$75,000 to them. If they get mesothelioma, they have a right to go and get the million dollars under the schedule we have agreed to in the Judiciary Committee. It does not stop them

from getting fair compensation. But it certainly is a misrepresentation to say they are only getting \$25,000. These are heavy-duty smokers. Almost everybody knows their cancers come from smoking, but we bent over backwards to give consideration that possibly there may be some connection to asbestos, even though there is no evidence.

Senator SARBANES, the distinguished Senator from Maryland, stated we, and I quote, "sprung" the bill on the Democratic Senators and their staff. Come on. Senator DASCHLE called attention to the total fund value. I want to state for the record Senator DASCHLE's staff was informed of the new numbers last October. That was 6 months ago. Since October, there have been repeated and continuing discussions of these numbers over the ensuing months, and we had many months of discussion prior to that. We have been on this for 15 solid months on a daily basis, and we have worked with Democrats on the other side. We have worked with everybody involved, including the personal injury lawyers who do not want to lose this bird in the cage.

Now we repeatedly asked the Democrats for a response to the numbers. Repeatedly we have asked. We have received none. We repeatedly asked the Democrats for a legislative proposal they would like to make, a concept of a structure, something, anything. We have received nothing. As Senator DASCHLE knows, this so-called new bill we allegedly "sprung" on him includes the very numbers we released months ago, the changes demanded by the Democrats and the changes demanded by the unions. We have all kinds of changes we have made for these parties in this matter. This is not some little sprung deal. The Democrats have had every right to participate in these processes, and some have. Some have been kept from these processes by their own party members.

I would like to respond to a few of the statements made by my colleague from South Dakota, Senator DASCHLE, earlier this morning regarding S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004. If I recall it correctly—and I was watching as Senator DASCHLE stated there was no reversion to the tort system should the moneys not be there—and the moneys are there. Virtually everybody who has effectively studied this says this amount of money we have in this bill will take care of the problem. In fact, though, there is a reversion to the tort system should it not. Should the fund become insolvent, then claimants with asbestos injuries who have not received compensation under the fund may pursue their claims in the courts at that time. So that statement there is no reversion is simply wrong. Again, we have worked closely with our colleagues on the other side. That was their idea, and we accepted it.

Naturally one of the problems in this matter is some of these personal injury lawyers, who really know better, have

been forum shopping to special jurisdictions that are out of whack that literally do not care what the law says and literally do not care about justice or doing what is right. Some say—I hope this is not true—but some say they are bought and paid for by the personal injury lawyers in their respective jurisdictions.

There are at least four or five jurisdictions in this country where you can go in and get whopping verdicts for no injuries, like one verdict in one of these counties in one of these preferred jurisdictions by, I think, dishonest personal injury lawyers, or at least those who are exploiting the system, where there was \$150 million granted for five plaintiffs, not one of whom had been sick a day from asbestos. That money is not going to those who really are sick, which this bill does. Even the Supreme Court has said this system is broken.

I am not against further negotiations. We are happy to do it. That is one reason why this bill is on the floor right now, because we are going to have a vote on this. It might be a cloture vote on a motion to proceed, of all things, but at least we are going to have a vote so people know where some of these folks stand. Some people have used this bill to raise money for their campaigns, saying they are going to be for it, and yet when push comes to shove, they are never for it, it is never good enough, there is never enough money. Yet, as I have said, we have not had a proposal, we have not had a dollar figure, except outrageous figures nobody can meet, off the top of the head.

We can talk about 15 months of very heavy-duty slogging here. Now they want more time?

I would like to take a couple minutes to talk briefly about some of the improvements in the Fairness in Asbestos Injury Resolution Act. We worked our guts out to get a bill out of committee. It was a very tough thing. I remember staying into the, I think it was the wee hours of the morning or at least pretty close to midnight that night debating this bill. There were some amendments added that I have to admit I didn't like and that would have made it impossible for this bill to pass on the floor. But we have worked very hard. Since then, we have had countless meetings with unions, with personal injury lawyers, with victims, with companies, with insurance companies, trying to bring everybody together.

This bill was reported by the Senate Judiciary Committee after a lengthy committee markup spanning four separate meetings. S. 1125, the bill reported out of committee, included, among other unprecedented achievements, a major bipartisan solution with respect to medical criteria where all of the committee members—and this committee is ideologically divided, very tough—agreed on eligibility requirements for determining asbestos-related injuries compensable under the act and

over 50 other consensus-building provisions. It and other bipartisan agreements remain in S. 2290, the bill we are discussing today.

S. 2290, as many have noted, makes additional significant improvements over the committee bill from a lot of hard work. I praise Senator LEAHY, Senator SPECTER, the majority leader, and others who have worked so hard. Of course, their staffs have worked so hard on a day-in-day-out basis to try to solve these problems. These improvements reflect agreements reached in continuing negotiation among representatives of organized labor and industry that were mediated by our colleague from Pennsylvania, Senator SPECTER. I praise our mutual friend, chief judge emeritus of the Federal Third Circuit Court of Appeals, Judge Edward Becker, who has played a pivotal significant role here.

First, let me briefly highlight some of the key provisions of this important legislation. S. 2290 ends the broken asbestos litigation system and replaces it with a privately funded asbestos victims compensation program for the payment of asbestos claims.

The key elements of the asbestos victims compensation program include an office of asbestos disease compensation headed by an administrator for processing and paying claims; a no-fault system based on sound and fair eligibility requirements. That no-fault system will not require attorneys in most instances and will save the attorney's fees. Sixty percent of the moneys here go to the people who are really sick. That no-fault system is a very important step. It includes a nonadversarial, streamlined, and less burdensome claims process with only two levels of review. In most cases, the claimant probably will not need an attorney or if the claimant has an attorney, we provide for attorney's fees under the bill, but on a scaled down basis.

There is still \$2.5 billion in this bill for attorneys, even under this system. It provides for over \$100 billion in funding assured over a period of 27 years, actually \$114 billion with a \$10 billion contingent fund added on. So you could look at it as \$124 billion that we are forcing these companies, including the insurance companies, which have limited liability by the way, we are forcing them to pay into this fund upwards of \$124 billion, if it is needed. But \$114 billion will be made available, and it does have that \$10 billion in contingent funding for defendants.

S. 2290 bans future asbestos use to eliminate the dangers caused by asbestos exposure. It provides grants for mesothelioma research and treatment centers, hopefully to find a way to resolve some of the problems.

This represents a good-faith effort to improve this fine legislation. That is just some of the changes. No piece of legislation is perfect, but I am certain that with these changes a very good piece of legislation got better.

Let's go to the improvements over S. 1125. We had to get a bill out of com-

mittee. It was a hard-fought battle. It took us four markups and a major all-day session. Let me list some of the improvements.

This is less adversarial. It provides for a less adversarial, more streamlined administrative process, including less levels of review than the original bill. This bill has a more user-friendly application process and expanded claimant assistance program, where you might not even need lawyers to eat up the funds, although you could have a lawyer if you want one.

This provides interim authority, interim regulations, upfront funding, and increases borrowing to facilitate the prompt startup of paying these folks who have suffered—the real claimants, not these people who haven't suffered who are getting moneys from these false jurisdictions.

This bill increases claims values. Mesothelioma victims are now getting, in many cases, 5 cents on the dollar. This bill resolves that problem, just to mention one thing.

This has more secure funding because it guarantees mandatory funding from funding participants. It gives audit authority and civil penalties for false statements and fraud. It has stronger enforcement authority, and it has additional safeguards to ensure priority of payments to the fund.

It also increases liquidity and provides more flexibility to address short-term funding problems. It has a more orderly wind-up of the fund and transition back to the tort system in the event of a sunset, with payment in full for all resolved claims. It also provides grants for mesothelioma research and treatment centers that are also required to participate in a mesothelioma disease registry. All of these would be wonderful.

This new bill increases compensation going to victims over what they are getting today. The attorneys do real well, but the victims aren't doing quite as well. It revises the funding provisions to help guarantee funding and to protect the solvency of the fund, while ensuring that any risk or shortfall rests on defendants and insurers, not on claimants. It establishes a more streamlined, less adversarial and less burdensome administrative system than provided in our original bill, S. 1125, that will be up and running more quickly. It provides grants for mesothelioma research and treatment to help find a cure for this deadly disease.

I emphasize that S. 2290 puts even more money in the hands of victims than provided in S. 1125 as reported by the committee, which was already estimated to put over one and one and a half times more money into the pockets of victims than they would have received under the current tort system where more than half of the resources now go into the pockets of the plaintiffs' and defendants' lawyers.

I am pleased to say, with the leadership of our majority leader, Senator FRIST, S. 2290 raises award values in

certain categories, focusing those diseases that are most clearly caused by exposure to asbestos.

I might add that as a thoracic surgeon Senator FRIST brings a unique perspective on this legislation. I think it is fair to say that he is the only Member of this body who has performed surgery on mesothelioma patients. The values from the negotiations conducted by Senator FRIST led to an increase of \$100,000 for severe and disabling asbestosis, among other increases.

Values for smokers and ex-smokers with lung cancer under levels 8 and 9 were also notably increased, although most likely their cancers came from their heavy-duty smoking. That involves a lot of union members who probably would get nothing if it weren't for this bill. For the life of me, I don't understand why the union leaders have not been totally for this. I have heard them privately say this is a good bill. I commend Senator FRIST for his insight and efforts in this process.

Although some Democrats and some affected parties assert that values in S. 2290 are not enough, they generally only focus on the values for exposure-only lung cancers. Most experts believe these claimants have no clearly established link that the lung cancer was caused by asbestos exposure, such as underlying asbestosis, and may have been heavy smokers all their lives. There is no evidence in these cases that their cancer or lung problems have come from asbestos exposure, but we give them the benefit of the doubt in this bill. Some conservatives think that goes way too far. Even though these people have been heavy smokers all their lives and we know that leads to cancer, we have been willing to go this far in the bill. Some of these experts provided testimony to the Judiciary Committee that an exposure-only lung cancer disease category runs an extremely high risk that lung cancer falling within this category are, in fact, not conclusively attributable to asbestos exposure. That is putting it mildly. Providing increased compensation for these smoking-related claimants could frustrate the purpose of the fund and put the fund at risk. In fact, lung cancer claimants with no markers or impairment from asbestos currently receive nothing from today's bankruptcy trusts—zero. This bill gives them the benefit of the doubt. These claims with no markers and no impairment—meaning no indications at all that asbestos was involved—almost always result in defense verdicts in today's tort system.

Here we provide the benefit of the doubt to them in the bill. Some have criticized that, but that is how far we have gone to try to get the other side to do something and debate this bill. If they don't like provisions of it, file amendments and bring them up. We are willing to debate them. They may win on some of these amendments. I can live with that. But to just continue to

filibuster everything that can help this country immeasurably at this time seems to me to be hitting below the belt.

Upon close consultation with organized labor, S. 2290 contains additional changes to ensure that more money is put into the hands of victims more quickly. Specifically, this entailed locating the program at the Department of Labor. The Wall Street Journal doesn't like that idea and neither do some of my fellow Republicans. But that is how far we have gone to accommodate them and try to bring this to closure. This is a major change from the bill as reported by the committee—which assigned the claims processing function to the Court of Claims. I have to admit, I don't particularly like that provision. I thought the Court of Claims would do a better job. I think any court would probably do a better job. On the other hand, these people are expert in some of these things. The Government is not making these payments. Payments have to come from the companies. So it is not something like black lung that goes off the charts year after year. It is no secret that the administration has serious reservations about this change. In fact, I have questions about these provisions myself, but in the spirit of good faith and compromise, we decided to include this new administrative mechanism in order to attempt to put more funds into the hands of the families suffering from asbestos-related illness. We did this in an attempt to accommodate our friends on the other side—attempt after attempt after attempt—and here we are with a filibuster on the motion to proceed. We have acted in good faith. I think a filibuster is in bad faith.

Reimbursement of costs for physical examinations are now provided as part of the medical monitoring program, and structured payments are now required to be made in a 40/30/30 split over a 3-year period, unless a stretch out to 4 years is required to protect the solvency of the fund.

The Hatch-Frist-Miller FAIR Act also improves the committee bill by providing more secure funding and additional protections in the fund's solvency, while maintaining that the risk of insolvency falls onto the various industries involved. Most of them should not be here. Most of them are companies that hardly ever did anything with asbestos, but because they have either acquired a smaller company, or had some contact with asbestos, although not significant, they are hauled into all these cases, and they are going to have to come up with moneys they should never have had to come up with. The mandatory funding for defendants is guaranteed, and moneys from insurers are infused into the fund in the early years where the most claims are anticipated. The increased enforcement authority of the Attorney General to compel payment and other additional safeguards, such as requiring a priority

for payment obligations to the fund in State insurance receivership proceedings, further bolsters the fund's solvency. Also, increased borrowing authority provides more liquidity and will help with the short-term funding problems.

Let me talk about some of the safeguards: We have over \$100 billion in guaranteed mandatory funding; \$114 billion plus \$10 billion contingency; a strong enforcement measure for underpayment and nonpayment; borrowing authority of 7 years future revenue ensures liquidity; regular program reviews, including claims and funding analysis with recommendations for improvements; annual reports to Congress on the status of the fund, with recommendations for improvements—Congress can make changes if it has to; and \$10 billion in contingent funding; a risk of insolvency placed on companies with a sunset provision.

Those are all safeguards we put into the bill, much to the credit of our friends on the other side, who now appear to be filibustering this bill—even the motion to proceed. Of course, they are now asking for even more time for discussion.

Look, I have been told by people who know—or at least think they know—some who have speculated that we are never going to get a bill this year because it is an election year, and there is a lot of money involved from the personal injury lawyers. By the way, like the bankruptcy bill, a lot of money is involved by the companies who tend to pour it into people objecting to the bill, hoping they will somehow or other do what is right and support the bill. I hope that is not the case, but the more this drags out and the more we have filibusters on motions to proceed; and on this bill, after all the concessions we have made and the negotiations we have had, the more I come to the conclusion maybe these rumors are true. In fact, I know a lot of people who believe they are true.

Because of these new financial safeguards I have discussed, the Hatch-Frist-Miller bill was able to modify the amendment proposed by Senator BIDEN and adopted in committee, which allowed for a reversion to the tort system in the event the fund becomes insolvent. Many members of the committee—and I thought Senator BIDEN himself—recognized that the provisions in his amendment, voted on late with little discussion with the committee, needed further review. We are pleased our new language satisfies the problem the Biden amendment addressed in the first place, but do so in a more flexible and deliberative fashion.

Simply stated, the Hatch-Frist-Miller bill replaces these provisions with an alternative program review that will give the administrator more time and more flexibility to address any unanticipated short-term funding problems. Under the new bill, full payment of all resolved claims is required. To create a smoother transition and to

avoid recreating the current manifest shortcomings in a handful of State courts, the fund will revert to the Federal court system. We must not lose sight of the fact that it is the aberrational result in the courts of a few States—especially Mississippi, Illinois, and West Virginia—that has triggered this national crisis.

Let me emphasize that under the new language, any risk that the funding is insufficient would still fall on defendants with claimants able to get their day in court.

Members and other interested parties need not worry that any risk of insolvency will fall on the claimants.

I can give you cases that are 20 years long without any resolution to the people who have been injured. This solves those problems almost instantly.

Another significant change I would like to discuss further is the new administrative structure and claims handling procedures provided in the Hatch-Frist-Miller bill. While the committee bill created a more accessible and simpler claims processing system for claimants than found in the tort system, organized labor continued to express concerns that the administrative structure under S. 1125 was too adversarial and cumbersome.

The agreement mediated by Senator SPECTER and Judge Becker to move claims processing from the Court of Federal Claims to an executive office situated in the Department of Labor included numerous refinements made in consultation with labor union representatives. They were brought in in every way, and they are the ones who demanded this. Senator SPECTER and Judge Becker have negotiated it.

In addition to placing the office within the Department of Labor—against the preference of the Department of Labor, I might add—or an independent executive agency, as requested by industry who lost on this issue, the new language also includes simplifying the claims application process, expanding the claimant assistance program, and requiring the creation of exposure presumptions to reduce the burden of proof for claimants in high-risk employments.

We made further refinements addressing concerns raised by Senator FEINSTEIN and others that there may be an undue delay in starting up a new claims system, forcing mesothelioma victims and victims whose claims have been sitting in court for years to wait even longer to receive compensation. Senator FEINSTEIN's amendment could have unintentionally threatened the fund itself by diverting resources away from the fund and to unimpaired claimants.

Instead, the Hatch-Frist-Miller bill provides interim regulations for the processing of claims, including exigent claims, interim authority, upfront funding, and increased borrowing authority, which all go toward ensuring the system is up and running as soon as possible after the date of enactment.

Good public policy demands expedited termination of the broken tort system and preservation of funds so that payments can go to the most worthy claimants, as defined by the consensus medical criteria.

As a final note, proposals for research moneys for mesothelioma were circulated in committee. Mesothelioma victims generally live only a year or so after diagnosis of this horrible disease. More research is needed on mesothelioma to find better treatments and even a cure, and I am pleased this bill addresses this problem.

Our bill now provides up to \$50 million—and I am willing to consider increasing that amount—in grants to mesothelioma research and treatment centers. In addition, these centers must be associated with the Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma. These, along with the asbestos ban, are important and vital pieces of legislation that must not be overlooked.

Again, I tried to highlight here some of the major changes from S. 1125 as reported, many of which were made to address the concerns raised by various members in committee, especially on the Democratic side. These revisions are aimed at ensuring that the program established under the FAIR Act is fair to victims.

In short, the Hatch-Frist-Miller bill represents a reasonable and fair solution to the asbestos litigation crisis and may be the only solution to it. Members from both sides of the aisle recognize that an equitable compensation program is necessary.

I believe S. 2290, the Hatch-Frist-Miller bill, meets the test. I urge all of my colleagues to support this bill and at least support debate on this bill and bring up amendments so we can see what further changes the Senate, in working its will, will require. We should certainly see that this bill is fully considered by the Senate.

Having said all of that, I am very concerned that this bill is being treated only politically; that there are those who are afraid to vote on this matter; that there are those who do not want to be involved in this matter right now; that there are those who want to stop this matter because of political pressure by special interest groups.

We now have 8,400 companies that are being sued, and it may go as high as 15,000. I might add that we have about 16 major insurance companies that are being sued, some of which should not have the liabilities we are imposing upon them. Nevertheless, the more companies that go into bankruptcy, the more jobs are lost, the more pensions are lost, the more this economy will suffer, and the more all of us will be worse off.

I might also add that the courts have not proven to be effective here and that the tort system has failed. Even the Supreme Court of the United States

says this requires a legislative solution. This is the only legislative solution that is available, and if we want to get something done, we are going to have to work on this bill.

Personally, rather than have a filibuster on the motion to proceed, I think we should go to the bill. I personally would be willing to grant more time if we would have a definite date. I cannot speak for the majority leader, naturally, but I would personally be willing to grant more time, as Senator SPECTER was, to have further negotiations outside the context of debate on the bill where usually those negotiations help bring about a bill. But I would be willing to go another 2 weeks to a month in intensive 9 to 6 negotiations every day, which we have been doing now for 8 months, if we had a definite time to bring up amendments and a definite time for final passage of the bill or a final vote on the bill. Maybe we will vote it down in the end. I doubt it. In fact, I am sure we will not.

The fact is, in other words, if we do not have to face another filibuster and if everybody in good faith works to try to bring this about and we have a debate on the floor and people have amendments they want to bring up, they can do it. I cannot speak for the majority leader, but I certainly would be willing to recommend that, again bending over backwards to try to accommodate our colleagues on the other side.

If that is not acceptable, then I have to conclude that the statements made by some of the folks outside of the Senate who are knowledgeable about this that politics is more important than solving this problem, that money is more important than solving this problem, that the personal injury lawyers are more important than solving this problem happens to be true. I hope that is not true. I hope we can get our colleagues to work together. I would like to work with them, as we have. We have not rejected or failed to consider any idea that has come up, and we will continue to do so. But if not, then let's go to cloture on this bill and let's let everybody know who wants to stop even a reasonable debate, even a reasonable time to file amendments, even the reasonable position the Senate ought to always take, and that is the Senate should work its will and we should vote on the amendments one way or the other, vote on this bill one way or the other, and let the chips fall where they may.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, will the Senator withhold?

Mr. HATCH. I will be happy to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, is the parliamentary situation that we are going to recess for the party caucuses at 12:30 p.m.?

The PRESIDING OFFICER. The Senator is correct, until the hour of 2:15 p.m.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be recognized at 2:15 p.m. to speak on the asbestos legislation.

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

Mr. LEAHY. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Vermont.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED—Continued

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is on a motion to proceed to S. 2290.

Mr. LEAHY. Before we recessed, was there a unanimous consent request made for the Senator from Vermont to be recognized?

The PRESIDING OFFICER. The order is the Senator from Vermont be recognized.

Mr. LEAHY. That was without any time limitations, as I recall?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I thank the distinguished Presiding Officer, my good friend from Ohio.

DIVERSION OF FUNDS FOR MILITARY OPERATIONS IN IRAQ

Mr. LEAHY. Mr. President, I want to take a moment to respond to the very serious allegations contained in Bob Woodward's book about the use of counterterrorism funds to support preparations for the U.S. military invasion of Iraq.

As a Senator and a taxpayer, I am very troubled by this information. The Constitution gives Congress the sole power of the purse. The Founding Fathers did this for good reason. It is a responsibility that I take very seriously.

As a member of the Appropriations Committee for more than two decades, I know there is a long, bipartisan tradition of administrations—of both political parties—informing Congress when money is going to be used for purposes different than what it was intended for, especially if it is part of a major change of policy.

We do not yet know all of the facts, and we need to get the whole story as soon as possible. But I will say that in the wake of September 11, the Congress moved very quickly in a bipartisan way to appropriate billions of dollars to respond to the threat of international terrorism.

In doing so, we gave the administration a great deal of flexibility, but we also made clear that we expected the administration to keep the Congress informed on the use of these funds. And administration officials gave us their word that they would keep us informed.

We now learn, as a result of Bob Woodward's book, that millions of dollars that we thought we were appropriating for Afghanistan, or to respond to other terrorist threats, may have been used by the Defense Department to begin preparations for the invasion of Iraq.

The problem is that there is not a shred of evidence linking Saddam Hussein to the September 11 attacks. Even the President has acknowledged this.

In effect, it appears that the administration has treated the Congress with much the same disdain as it treated our European allies. Remember? They were the "old Europe," who were out of touch, whose support we did not need. Like the United Nations, they were "irrelevant."

So too the Congress: What do they know? They just appropriate money. They do not need to know what it is being used for.

We also have learned, in even more detail, how this administration rushed into war without making adequate post-war plans or building a real international coalition. As a result, the reconstruction efforts are a mess, our credibility is in tatters, and America's soldiers are shouldering a grossly disproportionate share of the burden and the casualties.

The proper use of taxpayers' money is not a Democratic or a Republican issue. As representatives of the American people, it is something that we should all be concerned about, and it may force us to change the way we do business around here.

Mr. President, we also have before us an asbestos bill, the Asbestos Injury Resolution Act of 2004. This partisan asbestos bill is not ready for floor consideration. It is not ready for prime time, not by a long shot. I do believe the Senate should pass legislation to establish a national trust fund to fairly compensate asbestos victims. After all, I held the first hearing ever held by the full Senate Judiciary Committee in an effort to get a resolution to the problem facing victims of asbestos poisoning. But, despite the title of this bill, it is far from fair. It is very partisan. This partisan bill creates a trust fund that provides unfair compensation for asbestos victims. This partisan bill creates a trust fund with inadequate funding, no startup protections, and major solvency problems. This partisan bill contains a warped sunset provision that could trap victims in a failed trust fund for 7 years or more without having access to compensation.

Look at this chart. This fund says victims could be trapped in a failed trust fund for 7 years or more and would have no compensation. If the

fund becomes insolvent, then the Hatch-Frist substitute provides for a reversion to the tort system, but only after 7 years from when the fund begins processing claims, and then only in Federal court, and then only for some limited disease categories. So victims could be trapped for 7 years or more with no compensation. That is not fair.

Some have claimed this bill provides for contingency funding to try to address the many uncertainties of future projections for asbestos victims, but the \$10 billion for continued funding only kicks in after year 2023 and only if the funds still exist at this time. Let me show you on this chart. It is only after year 2023. We are in the year 2004. There will be very few in the Senate who will still be around to try to correct the mischief of this bill. You have contingency funding available after 2023. That means a lot will not be available to pay the pending 300,000 claims on day one. That is not a fair trust fund.

So I would say it is a mistake for the Republican leadership of the Senate to insist on proceeding to a bill and have so many major problems still unresolved. The bill is not ready for prime time. Let's work at making it ready, not work at scoring partisan points. Let's do something for the victims of asbestos.

Creating a fair national trust fund to compensate asbestos victims is one of the most complex legislative situations I have seen in 29 years in the Senate. The interrelated aspects necessary for a fair national trust fund is like a child's Rubik's Cube. So it is all the more necessary that a bill be a consensus piece of legislation for it to become law. I am not looking for a Democratic or Republican piece of legislation; I am looking for a bipartisan one that would work. That is why I worked so hard in months of bipartisan negotiation, why I worked so hard to encourage the interested stakeholders to reach agreement on all the critical details. I have had so many meetings in my office and in other Senators' offices with the major stakeholders across-the-board, and this is where we are. We have Senator HATCH and the majority leader introducing a partisan asbestos bill.

I hoped the bipartisan dialog over the past year would yield a fair and efficient compensation system that we could in good conscience offer to those suffering today from asbestos-related diseases and to the victims yet to come. Our leader, the senior Senator from South Dakota, Senator DASCHLE, was entrusted by all of us to speak for our caucus and to try to negotiate an agreement. Time and again he made that attempt. Time and again he was put off.

I stood there with him when he spoke to the leadership on the Republican side saying, Can't we get together on a piece of legislation? But unfortunately the Senate majority leadership decided to walk away from those negotiations

and resort to unilateralism by introducing a partisan bill without Democratic support. That is a shame. They ought to pull this bill and sit down with Senator DASCHLE, knowing Senator DASCHLE will go to the table and negotiate a real bill, because the introduction of this bill raises many questions, most notably what the sponsors are trying to achieve, because it certainly is not a fair compensation model for asbestos victims. By breaking off bipartisan negotiations and pushing this bill to the floor, they have turned their backs on those of us who have worked so long for a fair solution.

I was encouraged to learn this week from a news wire report that a colleague, the senior Senator from Pennsylvania, Senator SPECTER, who played an important role in the negotiations, favored resumption of negotiations. Senator SPECTER told the Associated Press:

I declined to join with Senator FRIST and Senator HATCH in their substitute bill because I think it is the better practice to try to work through these problems. Senator SPECTER, of course, has put in untold hours with retired distinguished Judge Becker in trying to work through the points of such a bill.

We have all learned a great deal about the harms caused by asbestos exposure since that first hearing that convened in September of 2002. Asbestos is the most lethal substance ever widely used in the workplace. Between 1940, the year I was born, and 1980, more than 27.5 million workers in this country were exposed to asbestos on the job and nearly 19 million of them had high levels of exposure over long periods of time. Unbelievably, asbestos is still used today.

What we face is an asbestos-induced disease crisis. Hundreds of thousands of workers and their families have suffered debilitating disease and death due to asbestos exposure. The disease and the death are among the most horrible ways of being sickened or to die. These are the real victims of the nightmare and they must be the first and foremost focus of our concern and effort. These are people who, simply by showing up for work and doing their job as they are supposed to, endured lives of extreme pain and suffering.

Not only do they continue to suffer, and their number will grow, but the businesses involved in the litigation, along with their employees and their retirees, are suffering from the economic uncertainty created by the situation.

More than 60 companies have filed for bankruptcy because of their asbestos-related liabilities. These 60 bankruptcies have a devastating human economic effect. Asbestos victims deserving fair compensation do not receive it and bankrupt companies do not create new jobs or invest in our economy.

In working with Senators DASCHLE, DODD, FRIST, HATCH, and SPECTER, we encouraged representatives from organized labor, the trial bar, and industry

help reach consensus on a national trust fund to compensate asbestos victims. We wanted to give financial certainty also for the defendants and their insurers.

Now a successful trust fund—by that, I mean one that would provide fair and adequate compensation to all victims—would bring reasonable financial certainty to defendant companies and their insurers. To be successful, it has to have four essential components. It has to have appropriate medical criteria, it has to have fair award values, adequate funding, and an efficient, expedited system for processing claims.

During the markup session of the Judiciary Committee on the first FAIR Act, we unanimously adopted the Leahy-Hatch amendment on medical criteria. This created 10 categories of disease. The medical criteria represent bipartisan agreement the national trust fund should provide monetary compensation to claimants who suffered impairment and it should provide medical monitoring to those individuals with less serious asbestos-related conditions. The bipartisan medical criteria are in this new bill. I agree with them.

During the mediation process established by Senator SPECTER and Judge Becker—I referred to him earlier as Judge Edward Becker, retired chief judge for the United States Third Circuit Court of Appeals—the interested stakeholders tried to craft a streamlined administrative process. Senator SPECTER and Judge Becker worked very hard on this process. They deserve the thanks of all Members. I believe their very inclusive process was crucial to the establishment of a national trust fund at the Department of Labor.

Even that agreement, the agreement between the interested stakeholders, left many details unresolved. In fact, as this chart shows, Judge Becker listed 22 outstanding issues. Many involved administrative process. That list of 22 outstanding issues did not include the 2 other major components of a fair trust fund: fair award values and adequate funding to pay for it. These are the remaining issues.

We cannot zip to the Senate floor and because we could not find anything else to do, we bring it up. There are many issues, including startup language, sunset time, timeframe, reversion to tort system, in what forum, pending cases, settlements in pending cases, treatment of existing trusts, worker's compensation, medical screening of high-risk workers, transparencies, setoff rules, statute of limitation language, exclusive default judgments, bankruptcies, FELA, exclusivity for asbestos-related claims, and on and on.

I mention this because this is a highly complex area. Simply putting something on the Senate calendar to say we put something on the Senate calendar is a lot different than actually being legislators and trying to pass something. What we want is a decent piece of legislation, not a headline. The peo-

ple who are suffering from asbestos-induced injuries and illness are not helped by a headline. They are helped by real legislation which requires real Senators doing—guess what—real work.

The changes made to a few award values by Majority Leader FRIST moved in the right direction. His partisan bill does not move far enough toward providing fair compensation to all impaired victims of asbestos exposure. In fact, seriously ill victims of exposure would receive significantly less compensation on average under the current version of this act than they would in the tort system. The so-called FAIR Act is not yet fair.

The gravest injustice to the bill is to lung cancer victims. A victim with at least 15 years of asbestos exposure could receive only \$25,000 in compensation for his or her asbestos-related disease under the new bill. Goodness gracious. I ask any Member of this committee, if somebody's negligence caused them to have lung cancer, would they feel satisfied with a \$25,000 award? I don't have to poll the other 99 Senators. I know it would be a resounding no. Don't do it to the victims of asbestos just because they do not serve in the Senate.

My chart underscores the fairness of the award value for asbestos-related lung cancer victims compared to compensation available in the tort system and under the proposal offered by Senator KENNEDY and myself during the committee markup.

The legislation we are considering today provides as little as \$25,000 in compensation for victims suffering asbestos-related lung cancer. What a cruel joke on these lung cancer victims, especially those who are going to die within the next 2 years. What a cruel joke on their families who see this as the punishment because the breadwinner in their family went to work every day in one of these industries.

When there is smoking and asbestos combined, the likelihood of the resulting disease is greater than the sum of the parts.

Dr. Laura Welch is a well-respected medical expert who helped us craft medical criteria which was accepted by an overwhelming bipartisan majority in the committee. She said:

Smoking and asbestos act in concert together to cause lung cancer, each multiplying the risk conferred by the other.

There is a synergistic relationship between asbestos exposure and smoking. Smokers who meet the bill's exposure requirements face a risk of lung cancer that is up to five times greater than smokers not exposed to asbestos. But they receive only \$25,000 under this bill.

In other words, if you go to work at W.R. Grace or Halliburton or some of the other companies that are getting a real, real big deal under this bill, and they say, "OK, guys and gals, you can take a 10-minute cigarette break," if

they are foolish enough to do it, that combination of asbestos and smoking—at whatever company it might be; I picked W.R. Grace and Halliburton only because they benefit so greatly under the bill; others do, too—then their risk is much greater, and then they may have their awards reduced or even eliminated to repay any insurance carrier.

Now, that is a lot different than what happens now. Usually, under these programs, you do not have to repay your insurance carrier, you do not have to repay workman's compensation. Under the Radiation Exposure Compensation Act, you do not have to do that. Under the Energy Employees Occupational Illness Compensation Program Act, you do not have to do that. Under the Ricky Ray Hemophiliac Relief Fund Act, you do not have to do that.

But what bothers me is that when we made the medical criteria, we got a bipartisan consensus on the medical criteria. We did it in a way to guarantee that we were eliminating what were the most troublesome claims. We were setting a roadmap on which business and everybody else agreed. We all say we need to compensate the truly sick, but fair compensation is not free.

The Judiciary Committee's bipartisan agreement on medical criteria will be meaningless if the majority, in effect, rewrites the categories by failing to fairly compensate many who fall within them. You cannot come to the floor and say, look, you have Republicans and Democrats who came together and worked out the medical criteria that they are all very happy about—and we met with labor, and we met with businesses, and we met with insurers, we met with the victims themselves, and we worked out a fair medical criteria—and then come to the floor and say, see, we worked it all out. However, we made one little change. And what is the little change? The little change is to take away all the money or much of the money that was going to pay these victims.

If the award values are unfair, the bill will be unfair. And if the bill is unfair, it is unworthy of our support. In this case, with this partisan bill, it is unfair. It is unworthy of the support of Senators.

Since the first hearing, the hearing I held, we have had one bedrock principle: It has to be a balanced solution. Whatever solution we have, it has to be balanced. I cannot support a bill that gives inadequate compensation to victims. I will not adjust fair award values into some discounted amount just to make the final tally come within a predetermined and artificial limit. That is not fair, and I will not vote for a bill that is not fair. Remember, we are taking away people's most cherished right, the right of a jury trial. If we are going to do that, we cannot do it in a bill that is not fair.

Now, my friends on the other side of the aisle have insisted for months they will only support a bill that contains

funding with a goal of raising \$109 billion over 24 years. But it is very clear from projections of future claims that this funding is inadequate to pay fair award values. You cannot have good legislation, successful legislation, fair legislation if it is based on a false promise. The promise we have to make is, if we are going to take away the rights of a jury trial to these victims, then we have to promise them fair compensation. This bill does not do that.

On the Judiciary Committee, we reported a bill that contained total funding of \$153 billion. But this new partisan bill, introduced less than 2 weeks ago, contains mandatory funding of only \$109 billion. All of a sudden, we have lost—we have lost—over \$40 billion from the total funding approved by the Judiciary Committee under contingency funding amendments by Senators FEINSTEIN and KOHL.

Senator FEINSTEIN—she can speak for herself; she is in the Chamber—but she worked night and day on this issue to get a fair agreement. I do not know the number of times she buttonholed me at the committee or elsewhere, and every other Senator on both sides of the aisle, to reach an agreement; and she got it. That has been taken out.

Look at this chart. Is this fair? We reported a bill, which many questioned whether it had enough money, S. 1125, at \$153 billion. Now it comes back and it is \$109 billion. The first bill, many complained, did not have enough money; the current bill drops \$44 billion out.

We also know there has to be adequate funding at the beginning of a national trust fund. Why? There are more than 300,000 asbestos claims in our current legal system, so you are going to have to have enough money in there to handle the claims that are going to be there on day 1 of this fund. However, this new bill actually provides less up-front funding than the bill reported by the Judiciary Committee.

It strikes what we passed in the committee, by bipartisan majorities, a commonsense requirement that directs insurers—who, after all, have billions of dollars sitting today in current asbestos reserves—to contribute their funding within the first 3 years of the fund because that is when most of the claims would come.

Another fundamental unfairness in this bill is it provides a corporate bailout for certain companies with serious asbestos liability.

Take a look at another chart. I ask if this is fair. The present value of Halliburton's asbestos liability is \$4.8 billion. Under this bill, they would only pay \$75 million a year to a national trust fund. The reason I mention this is Halliburton told their shareholders sometime ago they could handle this \$4.8 billion, they could handle the amount of money set aside for their liability. They knew they were liable. They knew they would have to pay for it. They could set this money

aside. In fact, when they thought they had a settlement of that amount, their stock actually went up.

But, lo and behold, by the time the Republican majority got the amount Halliburton would owe—the \$4.8 billion—by the time our friends on the Republican side of the aisle got it, they only have to pay \$1.2 billion. They saved \$3.6 billion overnight. Not only that, they only had to pay it over 24 years. They are going to make that on the interest on their money. I am not even going to point out how much money they are making in profits in Iraq at the moment. I will leave that for another day. But they suddenly go from the \$4.8 billion that basically they knew they were going to have to pay, and as soon as this Republican bill came up, it is down to \$1.2 billion. No wonder Halliburton likes some of my friends on the other side of the aisle.

Let's take W.R. Grace, another good friend of some of my friends on the other side of the aisle. W.R. Grace was a company that was responsible for poisoning an entire community. Some of these companies only poison a few hundred or 200 or so of their employees when they come to work. They only poison a few hundred by hiding what they are doing. W.R. Grace goes big time, to quote one of the people they support.

W.R. Grace was responsible for poisoning an entire community, the whole community, whether you worked for them or not. They poisoned the whole community from its asbestos mining facilities in Libby, MT. W.R. Grace must love their Republican friends because while they had total asbestos liabilities of about \$3.1 billion, under this bill they suddenly have to only make payments of \$27 million over 24 years, which is pocket change for them. Instead of paying the \$3.1 billion they are liable for today, they will pay only \$424 million. No wonder they love Republicans. I mean, this is a walkaway.

And the irony is, with a straight face there are those who call this the FAIR Act. I am sure they probably call it the FAIR Act at the board of directors of W.R. Grace. I am sure they call it the FAIR Act at the board of Halliburton. But I can tell you, in the families where they see the breadwinner with the oxygen tank suffering, coughing up blood, suffering a horrible death, they don't call it the FAIR Act. They might call it the Halliburton Relief Act. They might call it the W.R. Grace Relief Act. They don't call it the FAIR Act.

As presently written, the FAIR Act would completely negate all legally binding settlement agreements between asbestos defendants and victims. It would take away their right to the courthouse. Even settlements that have already been partially paid, even those settlements—whether it is W.R. Grace or Halliburton, anybody else—where they have agreed they are liable, where they have started to make payments, all of a sudden comes the FAIR

Act, and it is like Christmas in April because they can void those agreements even though they have been making payments.

In other words, if a victim agreed to take a settlement over a period of time from a defendant in return for dismissing the case, and even though that settlement agreement is an enforceable contract, the defendant, whether it is Halliburton or W.R. Grace or anybody else, gets the right to walk away.

Victims are actually punished under this legislation for agreeing to settlement terms proposed by asbestos defendants. Is that fair? Absolutely not.

In addition, the FAIR Act would retroactively extinguish all pending asbestos cases regardless of the stage in the litigation. The asbestos cases currently in trial or on the verge of trial would immediately be brought to a halt. Cases with jury verdicts or judgments would end, and all appeals would be suspended. Is that fair? No. It is not fair to the victims. It might be fair to W.R. Grace or Halliburton; it is not fair to the victims at home coughing out their lungs.

The partisan emphasis in this bill on behalf of the interests of the industrial and insurance companies involved, to the detriment of the victims, has predictably produced an imbalanced bill. This bill is a reflection of the priorities that went into it. Remember, many of us wanted to bring certitude to the companies, to bring fair compensation to the victims. Instead, this is totally skewed.

For us to succeed in reaching the consensus solution we sought for so long, a workable bill should fairly reflect and not discount the significant benefits that a fair solution would confer on the companies involved. A trust fund solution would offer these firms reasonable financial security. Even a casual glance at the way the stock values of these firms have closely tracked the Senate's work on this issue are enough to make it crystal clear.

I think forcing this new asbestos bill through the Senate would prove counterproductive, even fatal, to the legislative effort. The near party-line vote within the committee on the earlier bill was more of a setback than a step forward. Proceeding further without consensus would make it worse.

Many of us have worked very hard. Senator DASCHLE has worked extremely hard. Many of us have worked very hard for more than a year toward the goal of a consensus asbestos bill. This new partisan bill is especially saddening to me, and it is confounding. The obvious question that all of us, including those who brought this new bill to the floor, should be asking is, Does the partisan turn that the sponsors of this bill have taken help or hurt our efforts to produce and enact a consensus bill? I think the answer is clear.

Instead of writing a bill that will make Halliburton and W.R. Grace very happy with some in this partisan exercise, let's restart our work to achieve

the common ground needed to enact a good and fair law. That is the best way to move it forward. Remember, we are not legislating as an arm of Halliburton or W.R. Grace or a few others. We are legislating for the good of this country. The 100 of us represent 280 million Americans. We want to be fair. Let's represent them.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member for his comments, most of which—I think all of which I agree with.

Mr. HATCH. Will the Senator yield for a unanimous consent request?

Mrs. FEINSTEIN. Yes, of course.

Mr. HATCH. I ask unanimous consent that I be recognized immediately following the distinguished Senator from California.

Mr. REID. Reserving the right to object, does the distinguished chairman of the Judiciary Committee know approximately how long he might speak when he does get the floor?

Mr. HATCH. I think it would be less than a half hour.

Mr. REID. We want to let other people come and speak. So it does not matter how long he speaks, just so we have some general idea. I withdraw the reservation of objection.

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

Mrs. FEINSTEIN. Mr. President, as a member of the Judiciary Committee who voted for the bill in committee and worked out two amendments that are substantial, I regretfully rise to urge my colleagues to vote no on cloture on the motion to proceed to this bill. In the course of my remarks, what I hope to do is indicate my reasons for opposing cloture and make some positive suggestions as to how to close the gap on the unresolved issues.

There are only two ways to get a bill on asbestos. I say this to everybody out there who has a legitimate concern and need for a bill. That is, one, unless the two leaders agree or, two, a bill that goes back to the Judiciary Committee and is worked out as a product of that committee's work.

Last July, nearly 9 months ago, the Judiciary Committee passed out a comprehensive asbestos bill. We deliberated and had hearings over several years.

The bill wasn't perfect, but it reflected a substantial step forward in crafting a legislative compromise. A few issues were unresolved. They were to be worked out by members in the intervening time. Since July, labor representatives, defendant companies, insurers, and others have engaged in multilateral negotiations, not only to settle these few unresolved issues, but to renegotiate the entire bill.

The legislation proposed by Senator HATCH, the distinguished chairman of our committee, and Senator FRIST, the distinguished majority leader, actually sets the debate backward by taking positions directly contradictory to the

will of the majority of the Judiciary Committee. It is a substantially different bill that is on the Senate floor today than was the bill that I voted for in committee.

I don't believe the bill is ready for the floor and I hope to technically explain why. In fact, I have written the chairman of the Judiciary Committee requesting that the bill be returned to committee for future deliberations. We, the Senators serving on that committee, did do our job, and we should be allowed to finish that job and work through the issues necessary to forge a bill that can pass in this body.

Let me explain my concerns. Specifically, the bill Senator FRIST proposes to bring to the Senate floor eliminates a crucial startup amendment that guaranteed asbestos victims would continue to have their legal rights until the Trust Fund is fully operational. This was a major deletion. It will cost the Trust Fund an additional \$5 billion.

Let me read to you from the CBO letter on that point, which is dated today and sent to Senator NICKLES. "You"—meaning Senator NICKLES—"also requested that CBO explain the major differences between our cost estimates for S. 1125"—that is the bill that came out of committee—"and S. 2290"—that is the Hatch-Frist bill on the floor. "On March 24, 2004, in a letter to Senator HATCH, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation, and it assumed a later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling \$123 billion over the lifetime of the asbestos fund (about 50 years)."

The bill that came out of committee was originally projected to cost \$108 billion. An amendment I made put in a contingency reserve of \$45 billion in case more money was needed. What this CBO letter shows is that money would, in fact, be needed. CBO's projections indicate that a \$10 billion contingency fund would not be enough to cover the cost. That is major in scope.

The bill we are considering today would cost, according to CBO, \$17 billion more than the Committee passed bill. Eleven billion of this increase comes from higher awards values.

Five billion of that \$17 billion increase is due to the elimination of my startup amendment. Here is why it costs \$5 billion. The startup amendment guarantees that asbestos victims would continue to have their legal rights until the Trust Fund is operational. In other words, they could go to court until the Trust Fund was fully operational. CBO estimates that the Fund would save \$5 billion by allowing the private settlement of these claims during this start-up period. That is the implication of eliminating the Feinstein startup amendment made in the Judiciary Committee.

Secondly, the Hatch-Frist bill, as I have said, reduces the asbestos victims'

trust fund's contingent reserve from \$45 billion to \$10 billion. The reason for the original \$45 billion contingent reserve was to ensure the solvency of the Trust Fund if the estimates are wrong. If the reserve is not necessary, it is not used. But if it is necessary, it is there. I have already shown you by this CBO letter that it would likely be necessary. CBO predicts that the \$108 billion bill we passed last July would actually cost \$123 billion because of revised projections. Thus, at the get-go, CBO predicts the Trust would need an additional \$15 billion, which is already greater than the \$10 billion reserve in the new bill. So why pass a bill that, at its beginning, is not going to have adequate funds?

Thirdly, this bill wipes out final asbestos settlements and trial court judgments granting victims awards. This was one of the points that was left hanging when we passed it out of committee, and the members were supposed to get together and solve this. Well, the members—at least this member—didn't get together. But I gather a judge and one member did get together and, up to this point, there is no solution. The bill before us simply says to everybody that has a trial court judgment that that judgment is wiped out. That is wrong.

This bill also prevents individuals from returning to the tort system for 7 years after the administrator starts processing the claims, even if the trust fund goes bust in its first years of operation.

In contrast, the bill we passed out of committee said that if there is not adequate money, individuals could revert to the tort system at any time.

Now, I am not going to vote for cloture, but I recognize that 18.8 million U.S. workers were exposed to asbestos between 1940 and 1979. The best way to look at asbestos is tiny spears, smaller than grains of sand, that lodge in your lungs, guts, stomach, and, over a period of time, in your organs. It is bad stuff and it ought to be prohibited. This bill ought to prohibit it, for starters.

Our courts are overloaded with claims arising from these exposures. Individuals have brought more than a half million asbestos suits over the last 20 years against 8,400 companies. Approximately 71 companies have filed for bankruptcy due to asbestos lawsuits.

Moreover, the current system doesn't ensure compensation for the sickest victims. Currently, nonmalignant cases get 65 percent of the compensation awards, compared to 17 percent for mesothelioma, and 18 percent for other causes. That is wrong on its face.

As this tidal wave of asbestos cases goes forward, serious questions remain whether existing victims will ever receive the compensation they deserve. For example, because of the extraordinary influx of claims, the Manville trust is only paying 5 cents on the dollar.

So I am one who believes we need a comprehensive solution to the asbestos crisis so that victims who are truly sick get compensated in a timely and fair manner.

I recognize negotiations over the asbestos bill have proceeded at a pace that is satisfying no one, and to advance the debate, I would like to ask the Senate to consider the following core proposals, and let me mention what they are.

The fund must be fiscally prudent. Clearly, it has to have a contingent fund of more than \$15 billion. Whether that fund is \$20 billion or \$25 billion or \$30 billion, I think we need to go back in the Judiciary Committee and work the values versus the other provisions in the bill. I showed how eliminating my startup amendment cost the fund \$5 billion. That is not my analysis. That is the CBO analysis.

Second, the risk of a delay in the start of a national asbestos trust fund should not be borne by asbestos victims. What do I mean by that? I pointed out the bill eliminates the startup I authored in committee that permitted asbestos claimants to pursue asbestos claims in court until the administrator of the trust fund certifies the fund is fully operational.

The reason this amendment is so necessary is to protect the legal rights of plaintiffs, and it should be restored. Without it, asbestos victims could be left without any recourse if there is a delay in starting up the fund. Under this bill, they cannot go to court. So if the money is not there right upfront or the money is short upfront, they are out in the cold.

The amendment I offered serves as a hammer to get defendant companies and insurers to cooperate with the new trust administrator. And for the third time, I point out, it saves \$5 billion, according to the CBO.

I recognize the concern of some in the industry that asbestos claimants who are not yet ill will use the interim period to press a host of lawsuits against defendant companies. To address this, I would like to propose modifying the Feinstein amendment to allow a 6-month stay on asbestos claims upon enactment, except for those claimants facing life-threatening, asbestos-related illness. Thus, the stay would only apply to those who are not ill. I think that is a way out of the problem. For those who are ill, there would be no stay.

Thirdly, I would like to suggest if claims exceed projections and the trust runs out of money, plaintiffs should have immediate access to the tort system in both State and Federal court. The current proposal on the floor would prevent victims from filing claims for 7 years after the trust starts processing them, even if the trust expires in the first or second year of operation. We cannot leave victims in this kind of legal purgatory.

So to address legitimate concerns by defendant companies about forum

shopping, I would also like to propose plaintiffs who return to court, if the trust fund collapses, would only be able to file as a member of a class or as an individual in State court jurisdictions where they were exposed or where they currently reside. This would handle the great bulk of forum shopping, if you think about it.

Fourth, I would like to suggest award values should have a sliding scale in order to reflect the individual circumstances of victims. The current asbestos bill applies a one-size-fits-all solution to asbestos awards. An 83-year-old asbestos victim without dependents and a 37-year-old single mother with three small children would both receive \$1 million for mesothelioma under the bill, but if we look at the awards given by asbestos trusts, such as the Western MacArthur trust, individual circumstances are definitely taken into account.

For example, mesothelioma victims, under that trust, can receive between \$52,000 and \$4 million, with an average value of \$524,000 in this particular Western MacArthur trust. This sliding scale brings fairness to individual victims' awards. It works in this trust.

I have talked with the managers of the trust. They believe this half-a-million-dollar average takes care of the younger victims and balances that in a fair way against older victims.

Fifth, award values for the trust should be set in a way that prioritizes compensation for the sickest victims whose illnesses can clearly be traced to asbestos. This is the hobgoblin of this whole thing. All of the companies I have spoken to are concerned the trust will be abused, and it will be abused in this way: that smokers would have access without the defined connection to asbestos. Specifically, I think we should not allow the asbestos trust fund to be overwhelmed by smoking claims. This is a deep and valid concern.

In the committee-passed bill—and I want to speak to it—awards in category 7 of the medical values raise the largest specter of uncertainty in terms of smoking claims. This category grants awards to smokers with lung cancer with 15 years of weighted exposure to asbestos but no obvious evidence of asbestos disease, such as pleural plaques or asbestosis.

To prevent these claims from overwhelming the trust resources, I propose title VII, smoking cases, revert to the tort system, both State and Federal court, if the administrator determines at the year-end review that the incidence rates of those smoking claims will exceed projections by greater than 50 percent.

Why do I say that? The tort system historically has been able to handle those cases. So it seems to me if there is a smoking case and it shows neither the evidence of asbestos disease, such as pleural plaques or asbestosis, let a court make that decision. This would deter smokers from misusing the trust

fund for illnesses caused by smoking rather than asbestos.

This is the most difficult part of the bill. In all of the medical values and all of the hearings and the medical testimony we heard back and forth, it is clear there is a difficult line of definition here, and that is why the trust fund, which is supposed to be a kind of no-fault fund where a medical valuation can be made quickly and scientifically, may not always be able to make that valuation.

So if the fund is going to be overburdened by smoking cases and the administrator at the end of the year says, Look, we are not going to be able to make next year, he can then file in that year-end review with the Congress the request that those cases go to court.

We would give him that authority. I believe this is a solution to that problem. I am not wed to it, but to my knowledge it is the only one that anyone has come up with so far.

Six, a fair asbestos bill must exempt from the trust fund final settlements as well as trial court verdicts that compensate victims. The Hatch-Frist bill fails to do this. Specifically, the bill would overturn any final settlement that "requires future performance by any party." Thus, if an individual received a $\frac{1}{2}$ million award 5 years ago to be paid in 10 annual installments, this bill would wipe out the last 5 installments.

Of equal concern, the Hatch-Frist bill would wipe out lawsuits unless they were "no longer subject to any appeal or judicial review before the day of enactment of the act." In other words, this bill would erase any trial verdict favorable to plaintiffs still on appeal.

We should not undermine a litigant's reasonable expectation that he or she can pursue a favorable trial court verdict to its conclusion.

I am also concerned the bill would overturn the final bankruptcy settlements that have formed the \$2.1 billion Western Mac Arthur trust. Award recipients of Western Mac Arthur, 90 percent of whom are Californians, include 8,000 claimants who will be paid hundreds of millions of dollars in a very few weeks. The Mac Arthur trust has also set aside funds for 30,000 future claimants. All of this money is taken by this bill and put in the national fund. So this final bankruptcy trust is totally wiped out and 8,000 individuals who are going to be paid in a matter of weeks lose their settlements. It is just not right.

Unlike some other settlements, the Mac Arthur trust places priorities on the sickest patients. A minimum of 80 percent of the awards paid out under the trust goes to asbestos cancer victims. These awards will be based on historical rates of asbestosis awards in California, which are higher than the rest of the nation.

According to attorneys involved with the Mac Arthur trust, almost every present claimant expecting payment

under the Mac Arthur trust will do worse under the Hatch bill than under the trust because of the Hatch bill's requirement that collateral sources of compensation be subtracted from any award.

Remember, this trust is not the only defendant for many of these plaintiffs. Many of the claimants have cases against other defendants and those are all wiped out as well.

Now, I have policy concerns about wiping out the settlements and the fairness, but it is an open question as to whether such a transfer of assets is constitutional. Let me speak about that for a moment. Legal scholars such as Harvard law professor Elizabeth Warren have argued that the bill's expropriation of money from settlement trusts would violate the takings clause of the U.S. Constitution, which prohibits the taking of "private property . . . for public use, without just compensation."

Specifically, there are a number of individuals with a confirmed court order allocating money to them who will have these awards taken away without receiving comparable compensation from the national trust fund. If I have ever heard of a takings case, that is it.

Additionally, the Mac Arthur trust, which is an independent legal entity in its own right, may have a takings claim if its assets are transferred to a national fund without receiving comparable assets in return.

Renowned legal scholar Laurence Tribe takes an opposing view and argues that the conversion of trust assets would be constitutionally permissible. The ultimate outcome of this debate is unknown. But it is clear that the trustees managing the Fuller-Austin and other asbestos trusts have indicated they will file constitutional challenges against the proposed legislation as soon as it is enacted unless changes are made.

I will read from a letter dated July 2, 2003, to me from the Fuller-Austin asbestos settlement trust:

Passage of this legislation undoubtedly will set-off a firestorm of litigation challenging its constitutionality. The Trustees' present view is that their mandates under the Fuller-Austin Trust agreement and the Fuller-Austin plan of reorganization would require them to file litigation to challenge the taking of the Trust's assets and the violation of the rights of its claimants. Other existing trusts doubtless will reach the same conclusion. The resulting litigation will likely take years to resolve. In addition, it will take years to establish the claims handling facility mandated by the bill and for that entity to become operational.

We have \$4 billion in this fund from bankruptcy trusts, and \$2.1 billion additional dollars from the Western Mac Arthur trust. So that tells us something about how this bill is going to start up and whether the money is actually going to be there to pay the people.

In this bill, the people lose their right to go to court. It is a little bit di-

abolical if one thinks about it for a few minutes. That is why the startup amendment I offered in committee was so important, because it said nothing begins until the fund has its money and is operational. Therefore, those people had recourse. Once the start-up amendment was taken out, they had no recourse, and the CBO report says that is a \$5 billion cost item right off the top.

Now, I offer the principles as a basis for compromise on this legislation. I offer this as one who sat through the hearings and the medical testimony and committee debates and participated in bipartisan amendments offered on the bill.

Thanks to Goldman Sachs, we ran numbers after numbers and Goldman Sachs has been good enough to run another set of numbers for me. We have changed some of the values to try to meet some of the concerns. I have those numbers with me.

I ask unanimous consent that the Fuller-Austin asbestos settlement letter to me dated July 2 be printed in the RECORD.

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

FULLER-AUSTIN ASBESTOS
SETTLEMENT TRUST,
Greenville, TX, July 2, 2003.

Hon. Senator DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.
Re: S. 1125, The Fairness In Asbestos Injury
Resolution Act Of 2003

DEAR SENATOR FEINSTEIN: The Fuller-Austin Asbestos Settlement Trust (the "Fuller-Austin Trust") was established in December 1998 by order of the United States District Court for the District of Delaware (the "Court") in connection with the confirmation of the Chapter 11 plan of reorganization of Fuller-Austin Insulation Company ("Fuller-Austin"). The purpose of the Fuller-Austin Trust is to review and pay allowed asbestos claims of individuals who were exposed to asbestos-containing materials sold, distributed, installed or removed by Fuller-Austin Insulation Company. Pursuant to the plan of reorganization, the Fuller-Austin Trust was funded with limited cash and other assets and received the right to the proceeds of insurance policies that covered Fuller-Austin's asbestos liabilities. The purpose of this letter is to express the concerns of the Trustees regarding the application of Senate bill 1125 to the Trust.

The Trustees, pursuant to Section 524(g) of the Bankruptcy Code, are mandated to provide fair and equitable treatment to all beneficiaries of the Fuller-Austin Trust over the expected claims period, which is anticipated to be the next 35 to 40 years. These are beneficiaries who must provide proof of their asbestos-related illness and exposure at one of approximately 360 sites where Fuller-Austin worked from 1947 through 1986. There is a finite amount of funding available to the Fuller-Austin Trust to fund its current and anticipated future liability to claimants. The claims procedures for the Trust, as approved by the Court, require the Trustees to make provision for equivalent treatment for present known claimants and the currently unknown claimants who will make claims in the future as their asbestos-related diseases are diagnosed. This requires a careful analysis and balancing by the Trustees to assure the long-term solvency of the Fuller-Austin Trust to meet the anticipated claims. In addition to the trustees, there is a Trust Advi-

sor, whose mandate is to provide advice and consent to the Trustees with respect to issues regarding present, known claimants, and a legal Representative, whose mandate is to provide advice and consent to the Trustees with respect to issues regarding currently unknown claimants, including safeguarding their rights to equivalent treatment.

Since 1998, the Trustees have managed the Trust's small base of liquid assets to pay a small percentage of the allowed liquidated value of allowed claims and to cover the cost of insurance coverage litigation to pursue the major asset of the trust—the insurance available to Fuller-Austin to fund its asbestos liabilities. The litigation has been active since 1994. A second phase followed in September 2001, and a jury trial (the final phase) was just completed in May 2003. The litigation resulted in (i) settlements with nine insurers for approximately \$200 million, some to be paid over the next few years, and (ii) a \$188 million jury verdict against the remaining insurers in favor of Fuller-Austin on May 6, 2003. As a result of the settlements, the Trustees have increased the percentage of payments for each established disease value paid to holders of valid asbestos claims. The claims facility that receives, reviews, determines and pays these claims has been fully operational since August 2001.

Senate Bill 1125 presents the Trustees with several conflicts. First, the proposed law would take away the cash, property and insurance assets that were dedicated or transferred to the Fuller-Austin Trust pursuant to the Fuller-Austin plan of reorganization confirmed by the Court, undermining the orders of the Court. It would take away the assets in the form of settlements and verdicts the Trustees carefully have fought to muster for the beneficiaries of the Fuller-Austin Trust. The foreign insurers that are now the subject of a jury verdict, will argue that they now escape all liability under the proposed law, avoiding their contractual obligations as affirmed by the verdict of a dedicated jury, who spent more than eleven weeks hearing and deciding the Fuller-Austin case. Fuller-Austin's insurers used and abused the court system for nine years to delay paying their obligations under the policies they issued. The proposed law would reward that behavior. In return, the proposed law cannot provide any assurances when the national fund will be in a position to begin paying claims or what those payments will be, and it cannot provide any assurances that the national fund will be solvent and able to provide equivalent benefits to future claimants when their claims are asserted.

Second, passage of this legislation undoubtedly will set-off a firestorm of litigation challenging its constitutionality. The Trustees' present view is that their mandates under the Fuller-Austin Trust agreement and the Fuller-Austin plan of reorganization would require them to file litigation to challenge the taking of the Trust's assets and the violation of the rights of its claimants. Other existing trusts doubtless will reach the same conclusion. The resulting litigation will likely take years to resolve. In addition, it will take years to establish the claims handling facility mandated by the bill and for that entity to become operational. Finally, the limited annual funding provided by the bill will result in the need for years of build-up in the fund before current claim obligations can be paid. In the meantime, the beneficiaries of the Fuller-Austin Trust, many of whom gave up valuable rights in the tort system in exchange for the promised certainty of being paid by the Trust, would not be paid. Many would die before payments began from the federal fund and many more would not have funding for

much-needed medical care over the next few years. Please remember that most of our beneficiaries are senior citizens, and a delay of a few years could be critical.

The Trustees realize that many oppose the bill on a number of grounds, including constitutional challenges and concerns as basic as that the proposed funding levels will be insufficient to pay expected claims over the life of the trust. However, if the Committee decides to approve the bill, the Fuller-Austin Trust urges that existing asbestos trusts be exempted from the legislation or at least given the option not to participate. As a solution to (i) the issue that the proposal would take away the rights of beneficiaries of trusts established by court order under confirmed plans of reorganization and (ii) the funding crisis that would result for many present and future asbestos claimants, we suggest that existing trusts be allowed the option of continuing to function as intended and funded, leaving in place the obligations of the insurers to fund existing policies, settlements and judgments.

While we personally have concerns about the constitutional issues, the proposed funding levels for the trust, the medical criteria to be utilized, the award values and the potential windfall to certain insurers, our primary concern is to be able to continue to meet our mandate using funds and assets provided by Fuller-Austin's court-approved plan of reorganization through its fully operational trust and claims processing facility. The Fuller-Austin Trust is currently receiv-

ing, reviewing, determining and paying valid asbestos claims that meet the requirements of the procedures established by its plan. Senate Bill 1125 would completely derail this efficient and effective process to the extreme detriment of the beneficiaries of the Fuller-Austin Trust. In an effort to find a global solution to the asbestos litigation problem, pleas do not ignore the workable solutions already confirmed, in place and funded in the form of the existing trusts.

Sincerely yours,

ANNE M. FERRAZZI,
Trustee.

W.D. HILTON, Jr.,
Managing Trustee.

MARK A. PETERSON,
Trustee.

Mrs. FEINSTEIN. I also ask unanimous consent that the CBO report dated as of today to Senator DON NICKLES also be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 20, 2004.

Hon. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, CBO has prepared a cost estimate for S. 2290, the Fairness in Asbestos Injury Resolution

Act of 2004, as introduced on April 7, 2004. The bill would establish the Asbestos Injury Claims Resolution Fund (Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. The fund would be financed by levying assessments on certain firms. Based on a review of the major provisions of the bill, CBO estimates that enacting S. 2290 would result in direct spending of \$71 billion for claims payments over the 2005-2014 period and additional revenues of \$57 billion over the same period. Including outlays for administrative costs and investment transactions of the Asbestos Fund, CBO estimates that operations of the fund would increase budget deficits by \$13 billion over the 10-year period. The estimated net budgetary impact of the legislation is shown in Table 1.

S. 2290 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold (\$60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private-sector mandates in S. 2290 would well exceed the annual threshold established in UMRA (\$120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 2290

| | By fiscal year, in billions of dollars— | | | | | | | | | |
|--|---|------|------|------|------|------|------|------|------|------|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | |
| Claims and administrative expenditures of the Asbestos Fund: | | | | | | | | | | |
| Estimated budget authority | * | 18.5 | 12.8 | 12.9 | 5.3 | 5.3 | 5.3 | 5.2 | 5.0 | 4.9 |
| Estimated outlays | * | 7.5 | 10.7 | 14.6 | 9.8 | 7.6 | 5.3 | 5.3 | 5.2 | 5.0 |
| Investment transactions of the Asbestos Fund: | | | | | | | | | | |
| Estimated budget authority | 5.4 | 2.0 | -4.8 | -3.3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated outlays | 5.4 | 2.0 | -4.8 | -3.3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total direct spending: | | | | | | | | | | |
| Estimated budget authority | 5.4 | 20.6 | 8.0 | 9.6 | 5.3 | 5.3 | 5.3 | 5.2 | 5.0 | 4.9 |
| Estimated outlays | 5.4 | 9.5 | 5.9 | 11.3 | 9.8 | 7.6 | 5.3 | 5.3 | 5.2 | 5.0 |
| CHANGES IN REVENUES | | | | | | | | | | |
| Collected from bankruptcy trusts ¹ | 1.0 | 0 | 0 | 4.6 | 0 | 0 | 0 | 0 | 0 | 0 |
| Collected from defendant firms | 3.3 | 2.8 | 2.8 | 2.8 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.6 |
| Collected from insurers | 2.7 | 7.5 | 2.2 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| Total revenues | 7.0 | 10.3 | 5.0 | 9.0 | 4.4 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| Estimated net increase or decrease (—) in the deficit from changes in revenues and direct spending | -1.5 | -0.8 | 1.0 | 2.3 | 5.5 | 3.2 | 1.0 | 1.0 | 0.9 | 0.8 |

¹ Cash and financial assets of the bankruptcy trusts have an estimated value of about \$5 billion. The federal budget would record the cash value of the noncash assets as revenues when they are liquidated by the fund's administrator to pay claims.

Notes.—Numbers in the table may not add up to totals because of rounding. * = less than \$50 million. CBO estimates that by 2014 the Asbestos Fund under S. 2290 would have a cumulative debt of around \$15 billion. Borrowed funds would be used during this period to pay claims and would later be repaid from future revenue collections of the fund. We estimate that interest costs over that period would exceed \$2.5 billion, and CBO's projections of the fund's balances reflect those costs. However, they are not shown in this table as part of the budgetary impact of S. 2290 because debt service costs incurred by the government are not included in cost estimates for individual pieces of legislation.

Major provisions

Under S. 2290, a fund administrator would manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of the legislation. Claims by private individuals would be processed and evaluated by the fund and awarded compensation as specified in the bill. The administrator would be authorized to invest surplus funds and to borrow from the Treasury or the public—under certain conditions—to meet cash demands for compensation payments. Finally, the bill contains provisions for ending the fund's operations if revenues are determined to be insufficient to meet its obligations.

S. 2290 is similar in many ways to S. 1125. A more detailed discussion of the fund's operations and the basis for CBO's estimates of the cost of compensation under these bills is provided in our cost estimate for S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003, which was transmitted to the Senate Judiciary Committee on October 2, 2003.

Budgetary impact after 2014

CBO estimates that S. 2290 would require defendant firms, insurance companies, and asbestos bankruptcy trusts to pay a maximum of about \$118 billion to the Asbestos Fund over the 2005-2031 period. Such collections would be recorded on the budget as revenues.

We estimate that, under S. 2290, the fund would face eligible claims totaling about \$140 billion over the next 50 years. That projection is based on CBO's estimate of the number of pending and future asbestos claims by type of disease that would be filed with the Asbestos Fund, as presented in our cost estimate for S. 1125. While the projected number of claims remains the same, differences between the two bills result in higher projected claims payments under S. 2290. The composition of those claims and a summary of the resulting costs is displayed in Table 2.

Although CBO estimates that the Asbestos Fund would pay more for claims over the 2005-2014 period than it would collect in revenues, we expect that the administrator of the fund could use the borrowing authority

authorized by S. 2290 to continue operations for several years after 2014. Within certain limits, the fund's administrator would be authorized to borrow funds to continue to make payments to asbestos claimants, provided that forecasted revenues are sufficient to retire any debt incurred and pay resolved claims. Based on our estimate of the bill's likely long-term cost and the revenues likely to be collected from defendant firms, insurance companies, and certain asbestos bankruptcy trust funds, we anticipate that the sunset provisions in section 405(f) would have to be implemented by the Asbestos Fund's administrator before all future claimants are paid. Those provisions would allow the administrator to continue to collect revenues but to stop accepting claims for resolution. In that event, and under certain other conditions, such claimants could pursue asbestos claims in U.S. district courts.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARDS UNDER S. 2290

| | Initial 10-year period | | Life of fund | |
|--|------------------------|------|------------------|----------------|
| | Number of claims | Cost | Number of claims | Cost of claims |
| Claims for malignant conditions | 59,000 | \$36 | 127,000 | \$82 |
| Claims for nonmalignant conditions | 627,000 | 17 | 1,230,000 | 36 |
| Pending claims | 300,000 | 22 | 300,000 | 22 |
| Total | 986,000 | 75 | 1,657,000 | 140 |

Major differences in the estimated costs of claims under S. 1125 and S. 2290

You also requested that CBO explain the major differences between our cost estimates for S. 1125 and S. 2290. On March 24, 2004, in a letter to Senator Hatch, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation and an assumed later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling \$123 billion over the lifetime of the Asbestos Fund (about 50 years).

Three factors account for the difference between the estimated cost of claims under S. 1125 and that under S. 2290 (see Table 3):

The award values specified in S. 2290 are higher for certain types of diseases. That difference would add about \$11 billion to the cost of claims, CBO estimates.

Under S. 2290, most asbestos claims could not be settled privately once the bill is enacted. In contrast, under S. 1125, asbestos claims could continue to be settled by private parties between the date of enactment and the date when the Asbestos Fund is fully implemented; defendant firms could credit any payments made during that period against required future payments to the fund. Consequently, CBO estimates that the fund created by S. 2290 would face about \$5 billion in claims that, under S. 1125, we anticipate would be settled privately.

S. 2290 specifies that administrative expenses of the program would be paid from the fund. Under S. 1125, in contrast, administrative costs would be appropriated from the general funds of the Treasury. That difference would increase costs to the fund by about \$1 billion over its lifetime.

In the limited time available to prepare this estimate, CBO has not evaluated the differences between the two bills in administrative procedures. Under S. 2290, the Asbestos Fund would be operated by the Department of Labor rather than the U.S. Court of Federal Claims. This and other differences between the two bills could affect the cost of administration, the timing and volume of claims reviewed, and the rate of approval for claims payments.

TABLE 3.—DIFFERENCES IN ESTIMATED CLAIMS AGAINST THE ASBESTOS FUND UNDER S. 1125 AND S. 2290

| | In billions of dollars |
|---|------------------------|
| Estimated cost of asbestos claims under S. 1125: | 123 |
| Added costs due to higher award values under S. 2290 | 11 |
| Additional claims not privately settled after enactment under S. 2290 | 5 |
| Administrative costs under S. 2290 ¹ | 1 |
| Total estimated claims against the fund under S. 2290 ... | 140 |

¹ Under S. 1125 administrative costs would be appropriated from the general fund of the Treasury.

Major differences in estimated revenue collections under S. 1125 and S. 2290

CBO estimates that the Asbestos Fund under S. 2290 would be limited to revenue collections of about \$118 billion over its life-

time, including contingent collections. CBO has not estimated the maximum amount of collections that could be obtained under S. 1125, but they could be greater than \$118 billion under certain conditions. In our cost estimate for S. 1125, we concluded that revenue collections and interest earnings were likely to be sufficient to pay the estimated cost of claims under that bill. That is not the case for S. 2290.

Over the first 10 years of operations, we estimate that revenue collections under S. 1125 would exceed those under S. 2290 by \$7 billion. Thus, under S. 2290 we estimate that there would be little interest earnings on surplus funds and that the Asbestos Fund would need to borrow against future revenues to continue to pay claims during the first 10 years of operations.

Estimates of the cost of resolving asbestos claims are uncertain

Any budgetary projection over a 50-year period must be used cautiously, and as we discussed in our analysis of S. 1125, estimates of the long-term costs of asbestos claims likely to be presented to a new federal fund for resolution are highly uncertain. Available data on illnesses caused by asbestos are of limited value. There is no existing compensation system or fund for asbestos victims that is identical to the system that would be established under S. 1125 or S. 2290 in terms of application procedures and requirements, medical criteria for award determination, and the amount of award values. The costs would depend heavily on how the criteria would be interpreted and implemented. In addition, the scope of the proposed fund under this legislation would be larger than existing (or previous) private or federal compensation systems. In short, it is difficult to predict how the legislation might operate over 50 years until the administrative structure is established and its operations can be studied.

One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for non-malignant injuries. CBO estimates that about 15 percent of individuals with non-malignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by \$10 billion. Small changes in other assumptions—including such routine variables as the future inflation rate—could also have a significant impact on long-term costs.

Intergovernmental and private-sector mandates

S. 2290 would impose an intergovernmental mandate that would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. In addition, the bill contains private-sector mandates that would:

Prohibit individuals from bringing or maintaining a civil action alleging injury due to asbestos exposure;

Require defendant companies and certain insurance companies to pay annual assessments to the Asbestos Fund;

Require asbestos settlement trusts to transfer their assets to the Asbestos Fund;

Prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; and

Prohibit certain health insurers from denying or terminating coverage or altering any terms of coverage of a claimant or beneficiary on account of participating in the

bill's medical monitoring program or as a result of information discovered through such medical monitoring.

S. 2290 contains one provision that would be both an intergovernmental and private-sector mandate as defined in UMRA. That provision would provide the fund's administrator with the power to subpoena testimony and evidence, which is an enforceable duty.

CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold (\$60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private sector mandates in S. 2290 would well exceed the annual threshold established in UMRA (\$120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs, who can be reached at 226-2860, Melissa Merrell (for the impact on state, local, and tribal governments), who can be reached at 225-3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226-2960.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Mrs. FEINSTEIN. Where we have made some changes—and I would suggest them—is in the second class, raising the Hatch-Frist values from \$20,000 to \$25,000; in class III, raising the values for asbestosis/pleural disease B from \$85,000 to \$100,000; in class VI, other cancers, going from \$150,000 to \$200,000; in class VII, giving nonsmokers with 15 years weighted exposure a range of \$225,000 to \$650,000—that is \$50,000 more than in the Hatch-Frist proposal; in class VIII, lung cancer with pleural disease, giving nonsmokers a range of \$600,000 to \$1.1 million—a \$100,000 increase; in class IX, giving nonsmokers a range of \$800,000 to \$1.1 million a \$100,000 increase; and for mesothelioma, the last category, a \$1.1 million average award on a sliding scale.

These numbers have been run by Goldman Sachs. They total \$123.6 billion, as opposed to the \$114.4 estimated for the Hatch-Frist proposal.

Because I have not been party directly to any of the discussion, regretfully, the only way I can get my views through, it appears, is through the floor of the Senate. I believe this is much more fair to nonsmokers and I believe the methodology of giving the trust administrator the ability that, if nonsmoker cases rise above a certain percent in the next year, at the end of the previous year the administrator be given the power to put all of those cases into the tort system which will not only act as a deterrent, but will also provide the ability to fund this.

One other point I want to make before I yield the floor has to do with the CBO letter. The CBO letter, in addition to the additional \$5 billion that removing my startup amendment would cost the fund, also points out the bill on the floor is different from the bill we passed out of committee because in the

bill we passed out of committee, administrative costs would be appropriated from the general funds of the Treasury. That difference increases costs to the fund \$1 billion over its lifetime.

So those are the reasons why CBO determined that the Hatch-Frist bill will cost \$17 billion more than the Committee-passed bill.

By way of conclusion, I would very much hope this bill will go back to the Judiciary Committee. I very much hope all members of the Judiciary Committee would have input into this bill. Or a bill should be negotiated between the two leaders, so it is bipartisan. There is no way I see a bill being written in private passing this body. Too many of us have put in too much time to try to get a fair solution to let that happen.

I yield the floor.

The PRESIDING OFFICER (Mr. AL-LARD). The Senator from Utah.

Mr. DODD. Will the Senator from Utah yield for 1 minute?

Mr. HATCH. I am delighted to yield.

Mr. DODD. I commend the Senator from California for her statement and comments. She has been deeply involved in this effort, as have many of us over the last number of months, if not years. She has made a very comprehensive set of suggestions, to which I think our colleagues want to pay serious attention. I know my colleague from Utah will. He is a fairminded individual who cares deeply about this legislation as well. But I commend her for her comments.

Mrs. FEINSTEIN. Thank you very much.

Mr. DODD. At an appropriate time, I say to the distinguished chairman of the committee, I will ask unanimous consent that following the remarks of the Senator I may have some time, too. I don't know what the order is, but is such a request appropriate, Mr. President?

The PRESIDING OFFICER. The Senator can seek consent.

Mr. DODD. I ask unanimous consent at the conclusion of the remarks by the chairman of the Judiciary Committee, the Senator from Utah, that the Senator from Connecticut be recognized for 30 minutes.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I listened to the distinguished Democratic leader on the Judiciary Committee, Senator LEAHY. He made a number of statements I feel need to be corrected. I know he sincerely made them. I am not trying to disparage him in any way, but he has made the same mistake I think the minority leader made this morning, that only \$25,000 is given to these people who are heavy smokers, who have no sign of asbestosis, no markers, no signs on their X-rays, where we have \$25,000 to \$75,000 for these people, even though in all likelihood their maladies have come from their smoking.

If smoking and asbestos work in concert, together, why don't any of the bankruptcy trusts pay any money for lung cancer claims that do not present any markers or impairment at all? They do not.

Here we are giving \$25,000 to \$75,000 for complaints that get absolutely zero in court. Why are these same claims almost always met with a defense verdict in the tort system? Even the tort system, as out of whack as it is, will not give these people money. Yet we do. You would think it was a crime that it is not more. That is typical of the arguments on the other side. You will never have enough money here to satisfy some on the other side no matter what you do. What we are trying to do is resolve this problem so the country can go forward, so these businesses don't all go belly up, so the jobs are not lost, pensions are not lost, and so people can get money without paying 60 percent of the recoveries to attorneys and for transaction fees.

By the time you add the defense attorneys' costs, the plaintiffs' attorneys' contingent fees, and the transaction costs, it is 60 percent of every dime that is raised in these horrendous court decisions that are paying people who are not sick to the exclusion of people who are. This bill solves that problem.

Isn't it true this bill pays up to \$1 million to lung cancer claims where there is more certainty it was caused by asbestos exposure? The fact is, it is true. That is \$1 million some of these—a lot of these people will never get under the current tort system. But a lot of people who have never suffered 1 day of impairment in these jurisdictions I have been talking about will wind up with millions of undeserved dollars because this system is out of whack.

I am getting a little sick and tired of hearing my colleagues blast Halliburton. There is only one reason they do that. That is because, even though he has nothing to do with it, even though he has long been gone from it, even though everything he has had to do with it has been finalized and closed, the Vice President used to work for Halliburton. It gets old. I mean it is cheap shots, there is no question about it. Frankly, let me say I have to respond to the dubious argument that Halliburton is gaining a windfall by this fund. Anybody who believes that should call them and ask how they feel about this fund. The truth is they may actually be better off by not having this legislation.

Even some personal injury lawyers involved in the settlement with Halliburton believe that is the case, that they are better off not being part of raising the \$124 billion.

The truth has not stopped some of my colleagues from making exaggerated statements about this bill. I suppose it is no surprise that when they get the chance to take a shot, truthful or not, at their favorite whipping boy,

they are not going to pass it up. That is what they do—as if all big businesses are bad and all big businesses screw their employees and all big businesses are out to hurt the economy.

Let me state for the record how this bill compares to the Halliburton settlement. The conditional settlement reached with the plaintiffs' lawyers is just over \$4 billion. There is a conditional settlement that Halliburton entered into that is a little over \$4 billion. Only \$2.7 billion of that amount is cash. Of this \$2.7 billion, about \$2.3 billion may be recovered by Halliburton from insurers. The remaining amount of the settlement, about \$1.3 billion, involves issuing shares of stock. If the legislation is adopted, it seems likely the stock value will increase so that any dilution of stock values in the short run will be offset by medium- and long-term capital gains. So the actual cost to Halliburton is not the \$4 billion they throw in, which some of my colleagues claim.

We understand the firm believes recoveries from insurers in issuing new stock—two elements that those who argue this is a bailout always neglect to mention—will act together to create an actual out-of-pocket liability to the firm of less than \$1 billion.

How does their fund liability compare? As a tier 1 company in this bill, under the fund they would pay \$86.5 million per year. The total nominal value of their liability under the fund would be just short of \$2 billion. This is a bailout? It is a lot more than they would have to pay under their settlement. I hesitate to even say this in the Senate because if I were with Halliburton, I would take care of the settlement, the heck with this. But it would take some real effective money away from this trust fund. Halliburton is not the only one.

Again, it appears some of my colleagues are not interested in hearing details such as these. They would rather confuse the facts and do anything they can to make sure the personal injury lawyers who support them do not lose out on their more than \$60 billion of projected fees—just from asbestos litigation—if this bill is not passed.

No wonder they can afford to run these stupid ads all over America, acting as if they are fighting for little individual people. Give me a break. The fact is, everybody in this body knows there is a tremendous rip-off of a lot of people who have suffered from mesothelioma and other related asbestos diseases who are not going to get anything, or will get relatively nothing, if this bill does not pass.

Now, we are faced today with a historic opportunity to right a serious wrong being committed against victims of asbestos exposure, as well as the thousands of companies and individuals who stand to lose out in terms of potential bankruptcies, loss of jobs, loss of pensions, under today's downright irrational system of compensation under our current tort system.

For more than 20 years, our compensation of legitimate asbestos victims has been unacceptably diminished and delayed. It has become quite evident to the Judiciary Committee that tens of thousands of true asbestos victims, including their families, are faced with agonizing pain and suffering, with uncertain prospects of any meaningful recovery in the existing tort system.

These inequitable results are particularly troubling when viewed against the reality that large dose exposures to asbestos, associated with asbestos-related diseases, ended in the 1970s. That is when they ended. Asbestosis is considered by many as a "disappearing disease." These victims are left with little to nothing because, among other things, precious resources are being diverted toward the defense and payment of a massive influx of asbestos claims brought largely by a group of overzealous personal injury lawyers on behalf of these many unimpaired plaintiffs, people who have never suffered from anything to do with asbestos.

Cardozo law school professor, Lester Brickman, found that more than 80 percent of claims made in recent years and 90 percent at present do not involve a medically recognizable injury. You wonder what is going on. That would not happen but for courts that literally are not abiding by the law, where judges are bought by trial lawyers, and where they are totally plaintiffs oriented and the jurors come from areas where it is not their money, so they will put up any amount of money for people who are not even injured.

In other words, a great majority of asbestos lawsuits today are brought by those who are not even sick. These claimants show lung conditions similar to the general population, including that of individuals with absolutely no asbestos exposure at all.

To put the asbestos litigation problem in perspective, I will share the story of Mary Lou Keener, the daughter of an asbestos victim, who has spoken out in support of this legislation. Mary Lou knows all too well how the current asbestos crises has failed some of our Nation's true patriots, our veterans.

Mary Lou Keener's father served in the engine rooms of the USS *Mayrant*, *Lindsey*, and *Columbus* in World War II in the Pacific. Both the *Mayrant* and *Lindsey* suffered serious damage from enemy attacks. Mary Lou's father had the dangerous assignment of helping to bring these crippled ships back to port, spending months fighting to keep them afloat, and beginning massive repair work while they were still at sea. He then spent months at the shipyard helping to finish the repairs.

What Mary Lou's father did not know was that the countless hours spent in the engine rooms and boilers would cost him his life. The same is true of thousands of veterans like him. These ships, like almost every vessel in our fleet at the time, contained massive

amounts of asbestos. Every moment he spent working to return these ships to battle, breathing the contaminated dust and debris, worsened his condition and guaranteed that he would never ever be able to recover.

Not surprisingly, he developed mesothelioma, ultimately succumbing to this horrible, painful, and deadly disease on—guess what—Veterans Day, 2001.

Mary Lou's father was more fortunate in one way than many veterans: He had a daughter, a truly exceptional woman who is a nurse, a lawyer, and a Navy Vietnam veteran. She is also a member of the Veterans Rights Commission.

When she learned of her dad's condition, she rushed to help him and her mother navigate the complicated maze of regulatory and legal systems that he faced. Unwilling to take no for an answer, Mary Lou pushed to have him examined at the National Cancer Institute, part of the National Institutes of Health. It was there that Mary Lou's father received the definitive diagnosis that he suffered from mesothelioma. Mary Lou made sure he received the best treatment available from experts throughout the country.

After his death, Mary Lou helped her mother fight through the regulatory requirement to obtain dependent indemnity compensation from the Federal Department of Veterans Affairs for a service-connected death. She helped her mother find an asbestos plaintiffs law firm to file a tort and wrongful death claim. Now, despite Mary Lou's efforts, her father's lawsuit, even with a resourceful and tenacious advocate like his daughter, has been languishing in the courts for over 18 months.

As most veterans learn, there are few viable defendants left who are responsible for supplying asbestos to the Navy. Mary Lou's mother received three checks from defendant companies, but they are all bankrupt and the amounts are very tiny. She can only cling to the hope that there may be other viable defendants, but the reality is that far too many veterans will go uncompensated under the current tort system.

Perhaps this is why Mary Lou Keener spoke out in support of S. 2290, stating:

The courts are clogged with asbestos cases, and even if [my mother] finally has her day in court, the law firm will collect almost half of any jury award. That's why passage of [the FAIR Act] is so important. The Trust Fund solution to this problem envisioned by [the FAIR Act] will bring much needed compensation to veterans suffering from asbestos related diseases and end the vagaries and lengthy delays of the current/tort wrongful death systems.

Last year, Mary's mother received a call from her attorney. Unfortunately, it was not about her husband's case. Instead, she was told she should consider contacting her Senators immediately and ask them to vote against the asbestos legislation. Needless to say, she declined that request. She understands that for veterans like her husband,

while the status quo might benefit a handful of personal injury lawyers, it completely fails the one group that should be given the ultimate priority; that is, the asbestos victims.

Now, let me refer to this chart: What is wrong with asbestos litigation? This is for the Navy veteran I have been talking about with mesothelioma. Under the tort system, he gets nothing. Under the FAIR Act, each of them gets \$1 million. I have to say, no amount of money will compensate people for what they have gone through, but that is so much more than any of them are ever going to get without this bill.

Now, as I say, unfortunately, the asbestos litigation problem reaches beyond our veterans and into the lives of everyday, hard-working Americans who are victimized by asbestos and the very system designed to vindicate their rights. One matter I find particularly troubling is the case of *Huber v. Taylor*. That is a class action lawsuit currently pending in the Western District of Pennsylvania. The suit was filed by 2,644 plaintiffs in asbestos personal injury suits against the personal injury lawyers who represented them. The suit charges that the lawyers treated their clients as mere inventory, distributing only a few thousand dollars to each plaintiff for their injuries, while retaining tens of millions of dollars in attorneys' fees.

Now, I bring this case to the Chamber's attention because it underscores the severity of the asbestos litigation crisis and why it is imperative we, as a legislative body, must now act to address this problem.

Ronald Huber spent 35 years as a steelworker, inhaling asbestos fibers while working on the job. In 1995, he joined a class action against nearly 200 companies that made or distributed asbestos or asbestos-containing products. Although that class action settled for approximately \$140 million, Mr. Huber has not seen a single penny from this award. How much did Mr. Huber's lawyers walk away with? They received \$56 million.

Look at this chart: What is wrong with asbestos litigation? *Huber v. Taylor*. The trial lawyers got \$56 million; asbestos victims basically nothing. Think about it. That is right, the lawyers received \$56 million and the asbestos victims received nothing.

In response to this severe injustice, Mr. Huber and over 2,000 of his fellow class members filed a lawsuit on February 7, 2002, in the U.S. District Court for the Western District of Pennsylvania against the personal injury lawyers who represented them in the first action. As of today, the court is still hearing arguments on various motions.

The complaint charges the defendants with breach of fiduciary duty; failure to disclose the identity and nature of the actions they had joined; false representation to deprive the plaintiffs of funds belonging to the plaintiffs;

failure to exercise the degree of competence and diligence exercised by lawyers in similar circumstances; and misrepresentation of material facts. The plaintiffs are seeking compensatory and punitive damages.

All of the plaintiffs to this action are described as "hard-working union members in blue-collar trades." All of them were exposed to asbestos during their working years. All, to a large extent, have little knowledge or experience in the legal system. All state they were "recruited" by plaintiffs' law firms for inclusion in "mass actions," and all say their lawyers told them nothing about the lawsuits in which they were involved.

Their complaint arises from what they call the "corruption of the personal injury bar." The lawsuit states that, as early as the early 1980s, the prosecution of asbestos personal injury claims had evolved into an industry and the lawyers who were prominent in that industry had accumulated a vast amount of wealth. To quote the complaint:

The promise of such wealth drew additional plaintiffs' lawyers into the field, and this resulted in more and more aggressive efforts to recruit asbestos personal injury plaintiffs.

I think it is a sad state of affairs when asbestos victims have to sue their own lawyers to receive compensation for their injuries. We cannot allow the current, broken system to continue in this manner. It deprives victims of a meaningful remedy and diminishes public confidence in our civil justice system.

I think we have to do something now to ensure there are no more Robert Hubers who are left with no recourse other than to sue their own lawyers.

We must also act now to ensure that the tireless efforts of everyday Americans such as Mary Lou Kenner are not taken in vain. These are two of just thousands and thousands of people.

It is because of these problems that I urge my colleagues to support S. 2290. Under this bill, victims will receive prompt and certain compensation through a privately funded trust administered by the Department of Labor. Moving existing claims to the fund will significantly cut out the exorbitant transaction costs inherent in our tort system—especially given the no-fault nature of the new system being proposed.

In today's tort system, victims bear the heavy burden of proving that a specific product caused their illness. They must show culpability through causation and connect the dots that lead to the ultimate defendant. Unfortunately, few victims today are capable of producing sufficient evidence to show their illnesses were caused by a particular company's products. In fact, because of the long latency period associated with these asbestos-related diseases, the quality of evidence will inevitably degrade over time where memories fade and documents get lost.

Thus, for the scores of victims who do not have an ironclad case against any one defendant, a no-fault system is an extremely important component when crafting a solution to the asbestos problem.

Now, to illustrate my point, I would like to share the story of siblings Paul and Suzanne Verret. After being diagnosed with plural mesothelioma, both brought suit against four defendants, each a potentially responsible party under tort law. But after hearing evidence presented by the defense, a Texas jury ruled, just last month, that the Verrets' conditions were not caused by any of the four defendants who were likely to have been the result of exposure to asbestos from a Johns Manville factory in the neighborhood.

Asbestos tailings from the plant have been used for driveways and parking lots in the neighborhood where the Verrets grew up. Johns Manville, however, is now bankrupt and its asbestos trust is paying pennies on the dollar on all claims. As a result of the jury's verdict, the Verrets are unlikely to recover any compensation for their injuries, but under S. 2290 they stand to recover \$1 million each in compensation.

Now, look at these Texas mesothelioma victims, Paul and Suzanne Verret. Under the current tort system, as shown on the chart on the left, victims hire lawyers and sue defendants. After years of trial processes and delays, victims are unable to prove causation. They use trial lawyers and collect zero. But under this bill, S. 2290, with the trust fund—if enacted—each of these people will collect \$1 million in compensation.

By the way, unless they are lucky enough to get a lawyer who is going to forum shop for them into a jurisdiction where the judges are basically in the pockets of the plaintiffs' lawyers, the personal injury lawyers, they might get something that way, but there are going to be very few who get that, and most of those people are not going to be ill. They are not going to have suffered and not going to be able to prove their case in other courts of law in the country. It is pathetic.

Naturally, there are some great lawyers who do what is right here. I do not mean to find fault with them. I find fault with these phonies who use forum shopping jurisdictions and really what I consider to be corrupt judges and, in many cases, corrupt juries, to obtain humongous verdicts for people who are not even sick, taking the moneys away from those who are sick, which this bill would solve.

In the coming days, we will be engaged in a historic debate regarding the asbestos litigation crisis facing this country. The outcome of this debate will have very real consequences on the victims of asbestos and their families. These victims are counting on us, their elected Senators, to do the right thing and address the problems in our tort system that is badly broken by asbestos litigation.

I have to say, when you folks out there see these phony ads about how this bill is bad and the tort system is good, those ads are paid for by these attorneys who have already taken \$20 billion in fees away from victims, and will take another \$40 billion more, for a total of \$60 billion, out of their pockets. It is easy to see why they do not want this bill. It is a gravy train they do not want to stop.

They certainly don't want it to be stopped by this bill, which is where the gravy train would end for lawyers and recoveries that are worthy will begin for victims.

Let me say, although the stakes in this debate are high, the risk of not acting or allowing a broken system to remain broken is even more consequential. We at the very least owe it to people such as Mary Lou Kenner and Ronald Huber to make this bill the pending business of the Senate. We really need to do that.

Let me tell you one more story about the impact of the current asbestos system on American business. The reach of the personal injury lawyers—I am talking about the dishonest ones—and their web of abusive litigation practices appears to have no limit. At last count these personal injury lawyers have cast their asbestos net to include some 8,400 defendant companies representing virtually every industrial sector of the U.S. economy.

Approximately 70 companies, 35 since the year 2000 alone, have now been driven into bankruptcy as a result of asbestos litigation. Disturbingly, most of these companies that now find themselves named as defendants in asbestos cases had little or nothing to do with the manufacture, sale, or distribution of asbestos or asbestos-containing products. Under the "deep pocket" theory of law now commonly subscribed to by many personal injury lawyers, liability is not based on culpability; instead, it is based on the nearest available pot of money.

What is more, an estimated 90 percent of the claims now being filed are on behalf of persons with no discernable illness, many of whom were recruited by for-profit, mass-screening operations being sponsored by enterprising trial lawyers.

I would like to talk about a company that has facilities in my home State of Utah. Philadelphia-based Crown Cork & Seal is representative of all too many of the businesses that have found themselves targeted by the personal injury lawyers over asbestos.

In 1963, Crown Cork & Seal, a consumer products packager in the can and bottle cap business, purchased, for \$7 million, the stock of Mundet Cork Company, a New Jersey-based firm that made cork-lined bottle caps and insulation that contained asbestos. Because Crown was only interested in the bottle-cap business, Mundet sold its insulation division approximately 90 days after the purchase of its stock by Crown. Thereafter, Mundet, consisting

only of its bottle cap business, was merged into Crown.

Crown never operated Mundet's insulation business, nor had it ever intended to operate its insulation business. Crown was only interested in acquiring Mundet's bottle-cap assets; no Mundet insulation managers ever worked for Crown, and no Mundet stockholders ever had any ownership interest in Crown.

The trial lawyers have made Crown Cork & Seal pay dearly for the 90 days it owned the insulation division of Mundet. To date, Crown has had to pay out over \$400 million in asbestos claims. To give this some context, that is over 57 times what Crown paid for Mundet in 1963. In fiscal year 2003 alone, Crown paid over \$200 million in asbestos-related costs, of which only \$25 million—or 12.5 percent—went to real victims of asbestos-related diseases, and that is what is going on.

It is a rip-off. That is what is going on. That is what our colleagues are arguing for. It is a rip-off. Why? Some say it is because these personal injury lawyers are going to put up \$50 million or \$100 million for their nominee for President. I hope that is not true, but it is all too evident that that probably is.

Here are these victims who should not have been able to sue Crown Cork & Seal to begin with. Crown Cork paid over \$200 million in asbestos-related costs last year alone, and the victims got \$25 million out of \$200-plus million or 12.5 percent. All the rest went to lawyers, claimants who were not ill, and other costs.

Look at this Crown Cork & Seal chart. What is wrong with asbestos litigation? Crown Cork & Seal: \$25 million out of \$200 million total. Of the more than \$200 million paid by Crown Cork & Seal in 2003, actually only \$25 million went to individuals impaired with asbestos-related illnesses. Where did the \$175 million go? It is a rip-off. That is what is happening.

This bill will stop that. It is an expensive bill for the companies involved. They are going to have to pay for 27 years and pay through the nose. Many of them are in the same position as Crown Cork. They should never have had to pay a dime to begin with. The story of Crown Cork & Seal is just one of thousands of examples why we cannot put off fixing this problem any longer. Our current system is one that does not serve businesses and their employees whose livelihoods depend on them. Our current system surely has not served the victims of asbestos.

I urge my colleagues to join me in supporting the FAIR Act, to vote for cloture so that we can stop this obstructionist filibuster being led by some of my Democratic colleagues. Think about it. They are filibustering a motion to proceed to this bill so we can debate the bill itself, filibustering it so we cannot add amendments to the bill. If they have good amendments, bring them up. We will listen to them

and hopefully pass them, if they are good. If they are not, they might get them passed anyway. The point is, let's at least allow the Senate to work its will. Let's not stop even a motion to proceed this bill.

I would like to respond to claims that were made earlier today that the Hatch-Frist-Miller bill is not fair to pending plaintiffs. This bill preempts and supersedes those claims pending in the tort system today, including verdicts that are still subject to appeal or judicial review. Preemption of such claims assures an end to a broken tort system that everyone agrees is slow, unwieldy, and fundamentally unfair to asbestos victims.

The opponents' solution to their concern that the FAIR Act is unfair for pending plaintiffs is to keep the tort system open for pending claims. These critics are asking Congress to perpetuate the very problem this bill is seeking to rectify; that is, a broken system that is failing victims by misallocating resources away from the truly sick, where such victims receive too little because so much is going to the unimpaired and to attorneys who take most of the money.

We all know the statistics. The vast majority of the claims being filed today, as high as 90 percent, are by individuals with little or no current functional impairment. Let me tell you how this translates into real money. Using the values cited by the minority views in the report of the Judiciary Committee on S. 1125 for unimpaired claimants, it is \$40,000 to \$125,000. Allowing pending claims to continue could direct anywhere from \$10.8 billion to \$33.8 billion or more to unimpaired claimants.

How many of these claims are based on mass screenings? It has been estimated that the abuse of mass screenings has resulted in \$28.5 billion having been paid for meritless claims. That is almost \$30 billion that has gone to people who don't really have claims. This completely undermines the consensus public policy decision to redirect these funds to those who are truly sick from asbestos exposure and the whole purpose of this asbestos legislation.

The bipartisan medical criteria argument forged in the Judiciary Committee recognizes unimpaired claimants should be monitored but should not be paid for illnesses they have not and may never develop. But we will pay for monitoring.

Opponents of the bill who seek to perpetuate the tort system would also preserve the exorbitant attorney's fees associated with such claims. As much as 40 to 50 percent of awards go to the personal injury plaintiffs' lawyers fees and costs. Indeed, while we debate the bill, personal injury attorneys likely will file a large number of claims in the tort system, most of which undoubtedly will be for unimpaired claimants which would be allowed to continue if these opponents have their

way. The rest, probably another 10 percent, goes to the defendant attorneys who have to defend these companies, many of which should not have any liability at all.

There is no justification for allowing personal injury lawyers to continue to siphon significant resources out of the system when these resources could be dedicated to compensating those who are truly sick from asbestos exposure. The intent of the FAIR Act is to fix a system that everyone agrees is badly broken and in desperate need of repair.

John Hyatt, the counsel for the AFL-CIO who testified before the Judiciary Committee in 2002, described the tort system as having "high transaction costs, inequitable allocation of compensation among victims, delays in payment to victims, and a general climate of uncertainty that is damaging business far more than it is compensating victims." That is the counsel for the AFL-CIO. I have often heard Democratic colleagues make similar statements perpetuating the tort system, claims that undermine the bill, saying that would be better or more "fair" treatment than they would get under the FAIR Act. "Fair" has to be in quotes in that manner.

In fact, the Hatch-Frist-Miller bill provides relief to current pending claims. Any claimant who has filed a lawsuit in any State would be eligible for prompt compensation from the fund provided they meet the eligibility criteria set forth in the bill. These criteria are quite wrong. We should not treat plaintiffs in court as second class citizens. Cases filed in the tort system take years to process, and there is no guarantee that even with the trial date, a case will proceed. Cases in New York City given trial dates in 2002 have yet to go to trial. Even then, in most jurisdictions, cases that actually have been tried are often appealed, and years pass before the case is formally resolved. In the interim, plaintiffs are without relief, and money is being spent on lawyers, with no relief. There is no reason to leave this type of system in place. Moreover, the mere fact that a case is filed is no guarantee it will proceed. Claimants' cases proceed sometimes based on how many slots the trial has for your lawyer, where the cases were filed, what defendants are left, and other vagaries completely out of a claimant's control. That day will stop with the passage of this bill, which now provides expedited payments to anyone who can demonstrate a hardship, who has been diagnosed—anybody who can demonstrate a hardship or who has been diagnosed with mesothelioma or with another asbestos-related disease who has less than a year to live or can otherwise establish a circumstance requiring accelerated payment. The money is there now, when it is needed, and it can be paid out quickly to help these families. This bill also fixes the judicial system, unclogs the courts, allowing these judges to deal with other matters, not

asbestos cases in the wings waiting for court time that is precious and, at this point, unavailable.

There is no need or benefit to leave these cases which have been clogging the courts pending in the courts. These cases are the very reason we are seeking to fix a broken system. There is no evidence the courts can or will handle them properly and not prejudice the litigants waiting their turn. Creating a two-track process is likewise unfair to victims and defendants. Despite all the rhetoric from opponents to the bill, when compared to what the current tort system will provide, legitimately ill claimants will fare much better under this FAIR Act.

We will have victims who get immediate relief through the fund, while those with litigation pending must wait and hope for a court date and then hope the company responsible is still solvent and can afford the cost. What will we say to them when we have left a system that we agree is broken, and they are sitting in court for years? Great care has been made to ensure that the compensation program would be processing and paying claims soon after the date of enactment. There are no assurances that plaintiffs would have claims resolved in the tort system within this same amount of time. Indeed, experienced staffs say they are likely to continue to sit in court even longer.

Furthermore, awards in the tort system are disparate and depend largely on where the claim was filed, what judge is presiding, rather than the severity of the illness. In other words, it is a phony system.

Professor Laurence Tribe described the system as resembling a lottery, noting: Some victims receive astronomical awards, while others receive little or nothing. Quite a few severely injured victims die before their cases could be heard. Plaintiffs point to the larger awards in some cases and cannot be denied, so some have been able to win in this lottery system, or win the lottery. These awards, however, are the exception and reserved for the few claimants who can survive through a long and hard trial, as well as appeals, often taking many years to see any moneys at all. Then they will find that about 60 percent of the moneys are gone anyway.

The plaintiffs bar doesn't point to the majority of claims receiving significantly less money for more severe claims or even up to 40 percent taken out for attorneys' fees. As a stark example, a 2001 asbestos verdict awarded Mississippi plaintiffs \$25 million each, where none of the plaintiffs claim prior medical expenses or absences from work due to any related illness with the case of a cancer victim who underwent a lung removal operation. This cancer victim grudgingly agreed to join a class action suit against an asbestos company. He never lived to see the outcome of the case, and after 7 months his estate was awarded a mere

\$3,000. The others didn't even have injuries.

Substantial judicial proceeds dating back to the early 20th century supports the constitutionality of Congress' authority to preempt tort claims when it believes it is in the public interest. It is clearly in the public interest, and especially in the interest of asbestos victims, that Congress used the full extent of its powers to preempt the current asbestos litigation system.

Finally, Mr. President, allowing personal injury lawyers and the unimpaired to continue to drain resources out of the system and away from those who deserve the resources would not only be unfair to the truly ill, it is likewise unfair to defendants who ask them to pay into a no-fault system, give up some of their insurance company, and still expose them to the litigation lottery. We cannot expect the defendants to bear the costs and risks if it fails the judicial process. This system will continue to take 60 percent of every dollar and waste it on lawyers' experts and administrative costs.

The Hatch-Frist-Miller bill will stop the litigation lottery in its tracks and instead replace it with a fair administrative process that treats all participants fairly and consistently.

I want to respond to a few statements made by my friend and colleague from South Dakota earlier this morning regarding S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004.

Senator DASCHLE stated there was no reversion to the tort system. In fact, there is reversion to the tort system. It is one of the concessions we made. Should the fund become insolvent, then claimants with asbestos injuries who have not received compensation under the fund may pursue their claims in the courts. The statement that there is no reversion is simply wrong. I want to correct the record.

Senator SARBANES stated that we "sprung" the bill on the Democratic Senators and their staffs. Senator DASCHLE called attention to the total fund value. For the record, Senator DASCHLE's staff was informed of the new numbers last October. That was 6 months ago. Since October, there have been repeated and continuing discussions of these numbers over the ensuing months. We repeatedly asked the Democrats for a response to the numbers. We have received absolutely none. We repeatedly asked the Democrats for a legislative proposal—some language, an outline, a concept of a structure, something, anything. We received nothing.

As Senator DASCHLE knows, this so-called new bill that we allegedly "sprung" on him includes the very numbers we released months ago, the changes demanded by the Democrats, and the changes demanded by the unions. We have had 8 months of serious negotiations. I don't think it is justified for anybody to say they have been kept out of the process, we have

not tried to accommodate them about these matters.

Mr. President, I have one more comment that I would like to make to senator DASCHLE's statements this morning. He stated that a lung cancer victim with 15 years of exposure would receive only \$25,000 in compensation. He painted an incomplete picture which I would like to finish. First, that figure is the bottom of the range of compensation. Under the claims values in FAIR Act, claimants who were exposed to asbestos and still smoking will receive between \$25,000 to \$75,000 in compensation. And for the record, Senators LEAHY and KENNEDY have stated that they want \$50,000 for claimants falling into this category. Mr. President, I have come here to discuss the FAIR Act. We have a chance to help those who have suffered from asbestos-related injuries for far too long. Many people have spent many months getting us to this point and I want to ensure that we have a complete picture of the bill for the record. We owe at least that much to those victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFFEE). The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, let me begin by, first of all, commending my colleagues on the Judiciary Committee. I am not a member of this distinguished committee. I had the good fortune of serving on the Judiciary Committee in the other body years ago, in the House of Representatives. I have great respect for my colleagues who serve on the Senate Judiciary Committee in either body because they deal with some of the most contentious issues before the American public.

It is not easy to be the chairman of that committee, regardless of which party is in the majority in the Senate. I have the utmost respect for my friend from Utah. He and I have spent many years serving in this body together. There have been countless pieces of legislation that we have worked on together that are the law of the land today. I have great admiration for him.

He is a legislator. I say that because there seems to be a shrinking number of legislators around here regardless of party affiliation. He is a legislator. That means someone who is willing to sit down and work out issues. I wish to begin by thanking and commending him for his efforts on this difficult subject matter, asbestos. This is an area in which I have had a longstanding interest, as many of my colleagues know, going back a number of years. This issue is of critical importance to my State of Connecticut, because it is the home of numerous small and large manufacturers, as well as several major insurance companies. They have a strong interest in the outcome of a resolution of this very perplexing problem of asbestos litigation and related issues.

I have a strong interest in trying to come up with a solution for, first and

foremost, victims of asbestos exposure. It is estimated that more than 27 million people who have been exposed to asbestos over the years.

Regrettably, we know there are many who will die prematurely because of their exposure to this product. In fact, last year alone, 10,000 people in this country died as a result of their exposure to asbestos. The numbers are truly staggering. We know there are over 600,000 past and pending cases involving over 6,000 businesses, that have been cited as defendants in these cases. And we know there are going to be literally millions of people who are going to suffer.

So we must attempt to provide a better answer than the present system which has clogged up our courts, which has denied too many victims—seriously impaired victims—of the kind of compensation they deserve. I have had a longstanding interest in trying to come up with a solution. We have gotten very close to such a solution.

Let me begin by reporting on the progress that has been made. There is a tendency to only discuss the areas where there is still disagreement, and I think that only tells part of the story. People such as Senator HATCH and Senator LEAHY, have worked tirelessly on this issue. The majority leader, Senator FRIST, and the minority leader, Senator DASCHLE and their staffs have also spent a great deal of time on this legislation. Senator DASCHLE has always kept his door open, and repeatedly tried to see if we could proceed with a meaningful negotiation process. Such a process must occur in order to bring the various parties together around a resolution of this issue.

There are many others who have been critically involved in this issue. We heard from Senator FEINSTEIN earlier and other members of the Judiciary Committee. Senator NELSON from Nebraska has also worked hard on this issue. Senator CARPER has also worked on this issue. There are many others who care about this issue and have spent a great deal of time on it. Senator SPECTER has been performing an invaluable service in trying to work out the administrative structure of the proposed compensation fund. I am sure I am leaving some of my colleagues out, and I apologize for that, knowing, as I do, that almost every State, without exception, is affected by this lingering question. When there are over 600,000 total cases, every State and Senator is affected.

Seventy companies have already declared bankruptcy on this issue alone because of the judgments that have come in against them.

As a result of those 70 bankruptcies, over 70,000 jobs have been lost from these companies. This is a major economic problem, as well as a major health issue that needs and demands resolution.

The good news is this: There are about five or six major issues involved in the question of whether we can es-

tablish a bona fide trust that would allow for fair and equitable compensation to those who have been determined to suffer from diseases related to exposure of asbestos. The five or six major issues are the following:

One, can we establish medical criteria which would make it possible to determine who has been exposed and to what extent have they been adversely affected as a result of that exposure. I thought that issue would never get resolved. This has not been an easy task. Can you imagine trying to bring doctors together with organized labor, manufacturers, and insurance companies, all sitting down and agreeing on what the medical criteria for this legislation should be? I am pleased to announce that months ago we were actually able to reach an agreement on the medical criteria. Amazingly, the issue of medical criteria has been resolved.

The second issue is whether we could create an administrative system to process and review claims. This is also not an easy undertaking. Thanks to Senator ARLEN SPECTER of Pennsylvania and thanks to his constituent, Judge Becker, and, by the way, the involvement of a number of our Senate colleagues under the auspices of Senator SPECTER's leadership—we have reached an agreement in this area we think is going to work.

Creating an administrative system is a major accomplishment. Many people thought we would never be able to resolve this issue. On two of the major five or six issues, we have already achieved results. But it took weeks to work out the details behind these agreements.

An asbestos compensation trust fund idea is complex. It is very complex. When we envision a trust fund that might have to last for 30 years or more, that must deal with thousands and thousands of cases of people who have been exposed to asbestos, it is a serious undertaking. Every comma, every period, every semicolon can and does mean something. So we have to be very careful in how we draft this legislation.

We have hundreds of manufacturers who have been, and continue to be affected by what we are doing. There are major insurance companies that clearly must be involved and will contribute to a trust fund, as the manufacturers will be. Organized labor, representing the hundreds of thousands of victims, must ensure that a trust fund is going to have adequate funding, and that monetary awards are fair and efficiently provided.

We have seen the consequences of the current system. In fact, in the Johns-Manville trust resolution, the trust that was established under the name of that particular company, is a example of the problems with the current system. They believed that the amount of money initially placed put into that trust was going to more than adequately provide for the victims who have been exposed under the Manville situation. As it turns out today, the

Manville trust is only paying about 5 percent of the compensation victims should be receiving.

It went very wrong, not because the people who put it together planned it that way, but nevertheless that is what happened. No one I know of wants that to happen here, but it makes my point that this is a complex issue. And that getting this right is very important. We must be sure that this solution is going to work well. So it takes a little time—and in my opinion, it is time well spent.

I do not know why at this very hour we have this legislation before us. It is not ripe yet. It has not matured enough yet. There are still huge issues outstanding.

Obviously, one of the major open issues is the overall dollar amounts. I know it sounds like a lot of money—and there is a lot of money at stake here. But when we start talking about 25 or 30 years of a trust fund's existence, the difference is somewhere around \$115 billion and \$155 billion, give or take a billion here and there. As Senator Everett Dirksen said: A billion here and a billion there and pretty soon you are talking about real money. This is real money. We are not talking about hundreds of billions of dollars difference. We are talking \$20 to \$30 billion or so over 30 years, spread among a large number of defendant companies and insurers who face greater losses and greater uncertainty under the current system.

It seems to me if we get actuaries together, and agree at the universe of potential claimants, and provide them fair compensation, we should be able to come up with a neutral number to satisfy the needs of expected claimants.

We have changed approaches from where we started at the outset of this debate. We initially tried to create a bill that was "evergreen," that is, that it would be the complete solution to this problem for as far as the eye could see in the future. However, we began to realize the difficulties of creating a fund that lasts forever. Several factors caused us significant uncertainty. For example, we still import asbestos in this country. There is still asbestos being used, or at least people are being exposed to it even though we now know the problems that result from exposure. So the idea that we are going to have a final number in perpetuity, I think, was abandoned by all sides.

We have contended that this number is somewhere between \$115 billion and \$155 billion. If that does not end up being right at the end of the day, then we ought to resort back to the present tort system to solve the problem.

I just heard my colleague from Utah say his bill includes that provision. With all due respect, I must disagree with my friend from Utah because the provision in the bill being offered by the Senator from Utah and the Senator from Tennessee, the majority leader, has a 7-year gap between when the trust fund may run out of money and

when the tort system could be used by a victim.

Now, that is hardly reassuring to the victims and their families that the system that presently is in place which provides them some financial relief will be taken off of the table in the event that the trust fund becomes insolvent.

Let me quickly point out as well, that these numbers of 115 or 155—if one takes the high end or the low end, are hardly unreasonable. The Rand Corporation, which is hardly an organization that identifies ideologically with the left or right or Democrats or Republicans, has estimated that the cost of the current problem is somewhere around \$300 billion. So at the outset we are talking about a trust of only \$155 billion.

While we disagree over actual dollar amounts at this point, I believe that people of good will, sitting down, can come to an honest compromise that would satisfy all parties involved in this debate.

Another open issue is the value of the claims themselves. If we are able to reach agreement on the medical criteria and able to reach agreement on an administrative system, it seems to me, again, that good people who care about this should be able to resolve this issue and provide fair compensation to victims of asbestos.

Another outstanding issue that needs resolution is what to do with pending claims. There are some claims that have been adjudicated. Some are completely adjudicated, others are only in the discovery process. I do not want to get too technical legally, but I think most people would understand there are some cases that are already mature in the judicial system. Determining at what point in the judicial process, should cases be abrogated and claimants directed into the trust fund is a difficult question. When is the judicial process allowed to be completed where those claims exist? I do not have an answer for that one today, but, again, I think people of good will who care about this issue and realize what a huge problem this is could come to some thoughtful, reasonable compromise on how to deal with pending claims.

That is not the complete universe of all the problems, but those are the major ones. Two of them we have solved. Three or four of them deserve additional time and effort to resolve. Certainly the intent of the amendments adopted in Committee by Senators FEINSTEIN and BIDEN that addresses pending claims and returning back to the tort system in the event of insolvency are ideas that should be reconsidered and adapted. There may be others ideas that are also helpful.

The point is there are people making suggestions to resolve these questions. I do not understand why this body is being asked to make a definitive decision on this bill that none of us have seen because it was introduced only 2

or 3 days before the last senatorial recess. We are being asked to accept voting on cloture on this matter on Wednesday or Thursday of this week. I might point out that last November or early December we reached an agreement, a compromise, on how to proceed to the class action issue. I happened to be one of those involved in that negotiation. Why do we not bring up that bill? That bill is ripe and ready to go, not that many of my colleagues would support it. But for those of us who are willing to support a class action reform bill, we reached an agreement on that 4 or 5 months ago, and yet that bill is not being brought up. Why not? That bill is ready to go. This bill is not ready to go.

Why are we taking 3 days in a very abbreviated session of the Senate, when we do not have much time remaining, some 30 days, to bring up a matter where there is so much disagreement that could be resolved if we would spend the time doing it as Senator SPECTER has done, as Senator DASCHLE has done, and as Senator LEAHY has done? I know Senator HATCH and his staff have also worked tirelessly on this topic.

Legislating on a matter like this is hard work. It is labor intensive. Any one of my colleagues, Republican or Democrat, who has been in the Senate for any length of time will say that on major legislation, particularly legislation that is precedent setting such as this is, people are required to roll up their sleeves and put in a tremendous amount of hours to resolve these matters. In my view, it cannot be done thoughtfully or carefully by engaging in open-ended floor debate with amendments flying around that no one really knows the implications of, some of which are passed 51 to 49, others defeated 51 to 49. When we are dealing with something as serious as this, where literally thousands and thousands of lives depend upon receiving adequate compensation, we know we are dealing with a very complex problem.

I urge that a cloture motion not be filed. I know one has not yet been filed, and my strong appeal to the majority leader would be please do not file this cloture motion. There is still time. This is only April. I presume we are going to be here until sometime in early October. Give us the chance, insist upon people meeting and trying to resolve these issues. It may come down that a few of these matters are not resolvable through negotiation, and the only way to resolve them is by having some floor votes on them. I accept that may be the final determination. But we ought not to jump to that when there still is an opportunity to resolve some of these outstanding questions.

I have spoken to organized labor, John Sweeney, and his representatives. They want a bill. It is their membership, many of them, who suffer from the exposure to asbestos. It is their membership that is losing jobs in com-

panies that are declaring bankruptcy. They want a bill, but they want to make sure when they have a bill that the resources will be there to provide adequate compensation.

By and large, the insurance industry, with some exceptions, wants a bill because they realize that the current system is flawed and could cause untold economic hardships on some of these companies. It could cause some of them to collapse, and I am not exaggerating when I say that. They are very interested in getting a bill. I know the overwhelming majority of manufacturers, those that were either involved in the production or use of asbestos over the years, in most cases before anyone knew of the great harms caused by this product, they want a bill.

This is one of those unique situations where all of the parties, all of them, and including, I might add, many of the trial lawyers involved in this area, understand some different resolution of this issue is needed other than the present tort system. Obviously, that is not the view of everyone who is a trial lawyer, but many of them have already spoken out on this issue.

So we have a unique political environment where the major participants are anxious to get a bill. I rarely find that. Normally one finds people highly divided where labor or business is at complete opposite ends of the spectrum on a matter that is before us. Here, nearly all stakeholders want a bill. Instead of sitting down and keeping people at the table and working it out, we are prematurely bringing up something causing this bill likely to fail, and fail before we have an opportunity to resolve the differences. As I said a moment ago, why not bring up class action? Why not bring that up? That is ready to go. Where is the business community that has said to me over and over again: Why don't we get a class action bill here? We have been ready since November and December. Here it is April and nothing has happened on class action. Yet you bring up and consume 3 days of time on the floor of the Senate with a bill that everyone knows, if you invoke cloture or file a cloture motion on the motion to proceed, it is going to fail. And it should fail. It should fail. I say that with deep regret.

I have committed the time of staff members and my own time over the last number of years on this issue. I think to come this close to resolving a major issue affecting the lives of hundreds of thousands of people and their families and attempt to address it in a premature fashion is a huge mistake.

So my appeal to my colleagues is: Sit back and work this out. It is hard, but it can be done. And, if we get near the end of the session and we have not been able to resolve everything, either wait until we get back in January or bring it up and leave a smaller number of issues out on the floor to be resolved

by votes on the floor and healthy debate. But don't jam this now, particularly when we know the outcome, taking up the valuable time of this body on the floor where the time can be better used to take up issues where there has been agreement, at least agreement by a significant majority of us to move forward on the legislation. That has been done now on class action.

Why doesn't the majority leader come over and move to proceed to that bill so we can vote on it? We have been ready for that now, as I said, since 3 or 4 or 5 months ago. There has been no action at all. No action. Why not? Why is that bill not on the floor right now, being debated and discussed?

Of course we have seen the same thing with medical malpractice. There is no effort to negotiate it out. There is a proposal on the Democratic side. It is different from what the majority has proposed, but not that different. You could bring those two sides together and resolve the issue. Doctors deserve better than they are getting. They are being told the Democrats are stopping everything. Why is it the majority refuses to even sit down and try to work out the differences?

I stand ready. My staff does. Again, I am not a member of the committee. Obviously, Senator HATCH and Senator LEAHY, as I mentioned earlier, have done a tremendous amount of work on this and deserve a great deal of credit for trying their best at this.

The leader on this side, politically, is Senator DASCHLE. I have been with him on numerous occasions when we met with the manufacturers, met with the insurance industry. As Senator DASCHLE has said over and over again, his door has been open to do whatever it takes to try to get a bill done. I know from personal knowledge he has offered on numerous occasions to meet with the majority leader and others to try to figure these things out.

I mentioned Senator SPECTER already. Senator BIDEN, obviously, Senator FEINSTEIN, and a number of others have been involved in this, trying to get this done. My hope is that the majority leader will not wait until Thursday. Listen to us over here. We can get this done. It could be a proud moment of this Senate's session, to have actually come up with an answer to a major problem in this country. We are getting very close to resolving it. It will take a little more work, in my view, over the next coming weeks, but it could be done.

My plea this afternoon would be that filing a cloture motion on the motion to proceed would be withheld, that we bring up other matters that are ripe and ready to go forward, and send the people back to work on this bill and let's see if we cannot draft a piece of legislation of which America can be proud.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

JOBS ACT

Mr. REID. Mr. President, right before we had our break we were asked, Senator DASCHLE and I, to see what we could do to move the FSC bill along. The majority has affixed the name the jobs and opportunity bill, or something like that.

We have always known the importance of this legislation, and we did our very best to move this along. It was held up initially because we wanted a vote on overtime. The majority, for reasons I fully don't understand, refused to allow us to have a vote on this.

As the Chair will recall, this amendment passed previously. What our amendment would do is say the President does not have the right to take away the ability of American nurses, firemen, police, and a total of 8 million people, from getting overtime. In effect, what we have been told by the administration is they were going to promulgate a rule that would take away overtime pay for people who make more than \$22,000 a year.

We wanted a vote on this. You can't do that. It passed once; it was stricken in a Republican-only conference. The House passed a resolution saying they wanted their conferees to do the same thing the Senate did and stop the President from doing this.

We have been told by the majority—the distinguished majority leader has come out here on a number of occasions and said this is a must-pass bill. American businesses are getting hurt. So Senator DASCHLE and I worked for the better part of a day calling individual Members. We had 75 amendments. We worked to get them cut down. We not only cut down the amendments to 18, but we have time agreements on these amendments, as little as 5 minutes on some of the amendments. We clearly could have finished all of these amendments in 1 day. All of them wouldn't require votes but, if they did, we would be willing to put in an extra-long day. Therefore, we, through our Democratic leader, went to the Republican leader and said, Here is what we have. Some of these amendments, quite frankly, would not require votes and some would not even be offered. So we wait one night, come back to the majority and say, We are willing to do this deal. We know this is an important bill, that tariffs are being applied against American manufacturers and other business people; what is the problem?

To make a long story short, we were told the majority had 50 amendments with no time limits on them whatever.

The FSC bill is not going forward not because of anything we have done. It is because this Congress, I am sorry to

say, using the Harry Truman term, is a do-nothing Congress. We do not do anything. If we have to work past 5 or 6 o'clock at night, that is not a good idea. We cannot even consider coming in and voting at noon on Monday. To think we could vote past 9 or 10 o'clock on Friday, even on a bad day, is out of the question. We usually vote Tuesday afternoon and finish the votes as early on Thursday as we can. This is not a good way to accomplish things. That is why this Congress is doing nothing.

I don't want another word ever said about the FSC bill not going forward because of the Democrats. We want to go forward. We have done everything we can to move this forward. We have wasted on this piece of legislation many days of legislative business when we could be working on things that need to be done in addition to that.

Gasoline prices in Nevada have increased 46 cents a gallon since the beginning of the year, almost 50 cents a gallon. I have not checked today. They may be up another 4 cents. Since the first of the year the prices in Nevada have gone up 46 cents per gallon.

I talked to a contractor who is the largest contractor, he says, in northern Nevada, the Reno area. Diesel fuel prices for his company are costing his company \$7,500 a day in addition to what he was paying at the first of the year. This is in addition to the mess we have with steel prices. This is a tremendous burden.

There is no doubt the price of crude oil has contributed to higher prices in Nevada and throughout the country. However, the outrageous 46-cent-a-gallon increase in Nevada since January is not driven by crude oil but corporate greed and profit.

We are used to it in Nevada because during the Enron debacle we were told it was supply and demand. It had nothing to do with supply and demand. It had everything to do with Enron reaping windfall profits. Enron told consumers it was a matter of supply and demand. But it turned out Enron was manipulating the supply of electricity.

In Nevada we get all of our gasoline from California refineries, so any problem with the supply in California is a problem for Nevada. This is a lot of talk about the tight California gasoline market, where prices are typically 20 to 30 cents above the national average. We hear about the law of supply and demand all the time driving prices higher.

One thing I know for certain about the law of supply and demand with the Enron situation, is that it cost the Nevada ratepayers nearly \$1 billion during the electricity crisis almost 3 years ago. Based on this bitter experience which is still being litigated in the courts, I was concerned Nevadans might be getting ripped off again when gasoline prices went through the roof early this year. I asked the Federal Trade Commission to investigate these wild price increases, particularly with an eye toward any possible manipulation of gasoline markets. After 5

weeks, the FTC responded by saying prices in Nevada were "unusually high" and above predicted norms. An informal FTC investigation is still looking into the cause of the price hike.

There are spikes FTC says they cannot understand. They are having a hard time showing collusion or market manipulation, but they know something is wrong. As they said, the usually high prices are above predicted norms.

I don't need an investigation to tell me big oil profits have soared at the expense of working families. These markets are not competitive when a handful of companies can decide what price they are willing to sell for and what price a consumer is forced to pay.

As a nation, we need to address both the supply and demand side of the energy equation to promote a truly competitive market. On the demand side, we have to increase the fuel efficiency of cars and promote public transit. Maybe that is wishful thinking. On the supply side, we can increase the use of alternative fuels and renewable energy.

In the short term, we have to increase supply. We can do that, in my opinion, by having the President at this time, when the Saudis and others are turning off the spigots and making the supply less—we can increase supply by pulling oil from our petroleum reserves. We need to do that. President Clinton did it. The first President Bush did it.

In the long term, we have to do something with alternative energy. We have to. It is important. I was encouraged before the recess when the energy tax incentives were added to the FSC bill, which I just talked about. I applaud Senators GRASSLEY and BAUCUS for the excellent provision dealing with section 45 production tax credit for renewable energy resources that expands and extends the credit for wind, geothermal, solar, and biomass energy. We must harness the brilliance of the sun, the force of the wind, and the heat within the Earth. By using the bountiful resources to diversify our energy supply, we protect the air we breathe and we protect consumers from these wild price swings.

We cannot lose sight of the fact renewable energy will make our Nation more secure because it is made in the United States of America. I was disappointed to learn we will put off consideration of the FSC bill, even though we have agreed to the finite list of amendments.

The other thing the President can do on a short-term basis is have the Saudis provide more oil. We are told in Woodward's book he has a deal to do this in the fall. Move it up, make the deal a little earlier.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, it is time for us to bring the asbestos bill to a floor vote and to bring it to discussion so we can continue the progress that needs to be made on this important bill. As I said earlier this morning, every day we do not act is a day victims are not receiving appropriate compensation for what they need and deserve.

The bill we put forward provides a reasonable solution to the asbestos litigation crisis and has numerous consensus-building changes that have been added to the underlying bill, many made at the request of Democrats and representatives of organized labor.

What has emerged is a collective effort to date on a proposal that comes from the original S. 1125 and has critical modifications that have been added on the counsel of stakeholders. As I said this morning, there will be a lot of constructive proposals put on the table through the amendment process from Senators on both sides of the aisle to further refine and improve this bill.

I encourage this process. We have had numerous discussions throughout the day, solidly since this morning. I have had the opportunity to talk to the Democratic leader on several occasions discussing both options and how we can best bring this bill to appropriate closure. We will continue these conversations over the course of this evening and tomorrow. A lot of stakeholders are at the table discussing issues that are very important.

Reference has been made to Judge Becker on numerous occasions and over the course of the day and in the statements this morning, and of the mutual respect both sides of the aisle have of the work he has done to date. I would like to continue those discussions tonight and tomorrow to see if there is some way we and the Democratic leadership can put a process in order where we can help mediate some of the differences we all know exist.

My colleagues on the other side of the aisle say we need more time, and I respect that. In truth, we have made real progress, and we are getting real focus on a very important bill. We have been discussing and negotiating and changing and working on this bill for over a year now, and I believe all our colleagues are coming to the table in earnest at this point.

We are going to be filing a cloture motion. The cloture vote will give everyone an opportunity to put their views on the record as we go forward and continue to work on this bill.

Again, every day we do not reach an agreement on this bill is another day victims of asbestos litigation malfunction are suffering. Therefore, I believe working together we are going to be able to bring resolution.

Having said that, we will be filing a cloture motion.

CLOTURE MOTION

Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to calendar No. 472, S. 2290, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Orrin Hatch, Gordon Smith, Lamar Alexander, Saxby Chambliss, Ted Stevens, Michael B. Enzi, Trent Lott, Kay Bailey Hutchison, Susan M. Collins, Pete Domenici, Rick Santorum, Jon Kyl, George Allen, George Voinovich, John Ensign, Wayne Allard.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. FRIST. Mr. President, we will continue discussions tonight and tomorrow. We will talk with the Democratic leadership as we go forward over the next several days. I am very hopeful we are going to work out a suitable and appropriate process to address these important issues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I have been listening to the discussions today on asbestos litigation, and there have been some provocative statements made on both sides. This is a very important issue. I have to say I have some sympathy for the businesses. But the sympathy I have for the businesses is overwhelmed by what I have seen in the personal suffering of the people who have been injured, some of whom are dead. We do not know how many thousands will die this year. Estimates are probably 10,000 from asbestos.

We still import thousands of pounds of this poison into our country. So I hope all the people who have good intentions—I know they all do—talking about this asbestos reform will, first of all, understand Judge Becker, whom I have never met, is not a Senator. It is nice he has agreed to come in and work on these proposals, but Judge Becker is not a Senator, I repeat. He is not a member of the staff. I do not know who he is meeting with, why he is meeting with them. There are a lot of judges in America, retired judges. It so happens this one is from Pennsylvania. There are retired judges in other places who have the same expertise he has.

I listened to Senator HATCH speak today. I listened to Senator LEAHY speak today. We cannot write an asbestos bill in the Senate. We cannot write it outside here in some office building downtown. The only way I will ever feel comfortable about legislation dealing with asbestos is if it goes through

the channels it is supposed to go through: the Judiciary Committee.

We have men and women on the Judiciary Committee, both from the majority and the minority, who have spent years working on this issue. They are certified experts. They not only understand litigation, they understand legislation.

So I hope everyone understands it is good people who are interested in this legislation do everything they can to weigh in on this issue, but I hope we all look to the Judiciary Committee to come to us with a product. It cannot come out of the Environment and Public Works Committee that I work on. It cannot come out of the Appropriations Committee. It cannot come out of the Governmental Affairs Committee. It cannot come out of any other committee. It has to come out of the Judiciary Committee.

But we have people who have worked on this issue—not only the two leading members of the committee; that is, the ranking member and the chairman—but also people on that committee who have listened to hours and hours and days of testimony. Maybe they should listen to some more. But this is legislation we are talking about that is going to have a price tag on it from \$150 billion—I should say, the figure in this bill is a very ridiculously low figure of \$109 billion, to maybe as much as \$700 billion or \$800 billion, maybe \$1 trillion. So this is not something we need to rush into.

We need to help victims of asbestosis, mesothelioma. I would hope we would do as the State of Illinois has done, have some type of pleural registry so people who have worked around asbestos and are afraid they are going to get sick would be able to go on to that registry so the statute of limitations is not tolled.

In short, the Judiciary Committee has jurisdiction over this legislation, and this is from where the legislation should come that we deal with on the floor, not some retired judge, or not a Senator who feels he knows more about it than others. I am not pinpointing any Senator. I am saying there are a lot of people who think they have an interest in this issue. Everyone has an interest in this issue. All 100 Senators care greatly about this issue. Some feel more strongly about the businesses than I do; others feel for the victims.

But I would hope we do not try to rush into this and do something that is written here or downtown someplace; that whatever we do, whatever suggestions, whatever people feel will improve our ability to pass this legislation, they will work through Senators HATCH and LEAHY and have the full committee vote on what we do.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I did not hear all the Senator from Nevada had to say about this subject. I have listened to some of the presentations this afternoon. I want to make a couple

of comments about the asbestos issue and then I want to talk about a couple of other unrelated matters.

First, on the asbestos issue, I am one of those Senators who has in the past year or year and a half written letters to my colleagues, to Senator FRIST and to Senator DASCHLE, in support of efforts to find a negotiated solution.

On July 31 of last year, I sent a letter to our joint leadership urging that we reach a bipartisan compromise on the issue of asbestos. That letter was signed by a number of other colleagues: Senators MILLER, BREAUX, BEN NELSON, BAUCUS, CARPER, KOHL, LINCOLN, LEVIN, and STABENOW.

In late October, I sent another letter to Senators FRIST and DASCHLE urging that we seize the moment and pass an asbestos bill, but recognizing that in order to do that, there needs to be serious negotiation. All of the stakeholders—and there are big stakeholders on this matter—need to come together to resolve the issues in a way that reflects a true compromise.

There are a couple of things that are necessary to say at this point. One, I believe there is an urgency to deal with this issue. The failure to deal with it causes great economic uncertainty for companies and for our economy. The failure to deal with it means there are some who are sick as a result of having contact with asbestos during their lifetime and who will not be compensated. There are others who are not sick who will receive compensation. There are lawyers in the middle of some of these suits who will receive a disproportionate percentage of awards. I don't think this system works at all. The system is broken.

For that reason, I believe it is in the interest of everyone for us to have legislation in the Senate that can truly reflect a bipartisan compromise. But the bill before us now is not such legislation.

I was surprised, frankly, the week before last, just before the Senate took a 1-week break, to read statements made on the floor of the Senate. I shall not ascribe them to any particular colleague, but those who want to know can look in the RECORD.

One of the colleagues who brought this bill to the Senate floor suggested that the asbestos negotiations were being blocked because the personal injury bar would not otherwise put up \$50 million for JOHN KERRY in the election. This colleague of mine said that such a suggestion, if true, was "pathetic." Well, these words are an affront to all those colleagues on my side of the aisle who have been working very hard to get a good asbestos bill through the Senate this year. And these words are hardly appropriate from someone bringing a bill to the Senate floor, for which he seeks bipartisan support.

This is not a serious proposal. We understand that. Senator SPECTER, who I think has done much of the serious work in the Senate trying to bring people together and reach a compromise,

does not support this proposal. Let me read what Senator SPECTER said, again a Member of the majority party:

I decline to join with Senator FRIST and Senator HATCH in their substitute bill because I think it is the better practice to try to work through these problems.

I completely agree with Senator SPECTER. I think the approach to have taken on this would have been for Senator FRIST to have engaged with Senator DASCHLE and have all of the stakeholders work over a period of months to reach a compromise. And it is not too late to do that.

In recent months, Senator DASCHLE has attempted numerous times to meet with Senator FRIST to hammer out these issues, but those meetings have not taken place. I don't know all that has happened with respect to that, but I do know this: Putting a bill on the floor of the Senate that is far short of a true compromise with the stakeholders is not going to solve the problem.

Yet this is an urgent problem that needs solving. I believe, as some of my colleagues do—Senator CARPER, for example, on my side, who has worked very hard on this issue, who believes very strongly, as do I—that there needs to be a solution. I certainly believe that if we end this session of the Congress without addressing this issue, without passing some legislation, we will have failed. All of us will have failed.

It is simple enough to bring legislation that is unacceptable to the Senate floor so you can then have a press conference and say: Well, the other side killed this legislation. That is simple enough, but it does not address any problem or solve any issue.

My hope is that in the coming days, the joint leadership—Senator FRIST, Senator DASCHLE—might join with the stakeholders in this issue around a table and have some hardnosed negotiating and hammer out and develop a proposal that represents a true bipartisan proposal that represents a true compromise by all of those engaged in this issue so that we can pass legislation. Bringing what has been brought to the floor of the Senate the week before last and filing cloture on it is not a way to legislate. They know and we know that this means this legislation does not advance. I fail to see how that solves a problem or begins to address an issue that I believe is urgent.

Once again, there are some principles involved. One, I don't believe that people who are not sick and have never been sick should be compensated. Two, I believe those who are sick should be compensated and compensated fairly and not have to go through a tort system and spend a lot of money for lawyers to be compensated. Three, I believe that the American business community deserves some certainty and that certainty does not exist at this point. That is why I believe a trust fund of sorts that is set up and established with appropriate medical criteria and other definitions is the best

way for us to resolve the issue. I believe we should get to that point—the sooner, the better. But we have wasted a great deal of time.

The process that has now been embarked upon by the majority leader will almost certainly guarantee we will not get to that point. I regret that because I hope at the end of this process, this Congress will understand the urgency for workers, for business, for all of the stakeholders to pass asbestos legislation.

THE OFFICE OF FOREIGN ASSET CONTROL

Mr. DORGAN. Mr. President, I would like to speak for a moment about a subject I discussed with the Treasury Secretary this morning when he testified before my Appropriations subcommittee. We are fighting terrorists who want to attack this country. They have killed thousands of innocent Americans. They wish to attack this country and kill innocent Americans once again. It is an enormous challenge to fight and defeat terrorism. It takes all of our energy every day in our law enforcement areas, in the intelligence community. It takes a lot of coordination and good work. It takes getting it right.

So we have the homeland security office. We have the CIA. We have the FBI, the Defense Department. We have everybody working on these issues—the U.S. Customs Service, and a little agency in the Treasury Department called OFAC, the Office of Foreign Asset Control. These are the people whose principal responsibility is to try to track the financial transactions happening between terrorists, to shut down the financial connections that finance terrorist activities.

But that is not all that is done in the Treasury Department with respect to OFAC. This rather small office is doing other things. Their principal job ought to be to track terrorism and to shut down the financial root that funds terrorist activities. But there are some at the OFAC who are doing other things. Let me describe them.

First, from a speech in December by the Under Secretary of Homeland Security, in Miami, a speech by Asa Hutchinson, where he talked about the crackdown on enforcement of the U.S. embargo against Cuba and goes into some detail; and then the Secretary of the Treasury, also in Florida, on February 9 gives a speech. The Office of Foreign Assets Control at Treasury, he said, is working closely with customs agents inspecting all direct flights to Cuba at Miami, JFK airport, Los Angeles Airport. That is hundreds of aircraft, tens of thousands of passengers, and agents are being meticulous.

Well, I wonder if we are checking quite so closely with respect to trying to track terrorists. You know what they are looking for? I will give you an example. They are enforcing the embargo that we have with respect to Cuba, and part of that embargo is to prohibit Americans from traveling in Cuba, so we have all of these resources

and personnel at airports tracking every passenger and every plane to see if someone has done something wrong. This is an example of what they discovered.

This agency in the Treasury Department that is supposed to track terrorism tracked down Joanie Scott. She went to Cuba 4 years ago to distribute free Bibles. Four years later, the folks who wear suspenders at OFAC at the Treasury Department decide they are going to slap her with a \$10,000 fine because 4 years ago she went to Cuba to give away free Bibles. She said she didn't know she needed to get a license. Four years later, they slapped her with a \$10,000 fine. That is not all of it.

This is a picture of Joan Slote, a 74-year-old grandmother, who is a bicyclist. She is a senior olympian. She rides bicycles all over the world. She happened to ride one in Cuba with a bicycling group from Canada. Guess what happened to Joan Slote? She got fined by OFAC, this little agency in Treasury that is supposed to be tracking terrorists. They are tracking little grandmothers who are riding bicycles in Cuba, in order to punish Castro and enforce the travel ban. They fine American citizens for traveling in Cuba. So she gets fined \$7,630 for riding a bicycle in Cuba.

These are some folks who are disabled athletes. They got to go to Havana about 2 years ago for the games for disabled athletes, the world games. They applied again this year, but as the Treasury Secretary and Mr. Hutchinson and others have said, including President Bush, we have this crack-down now on travel to Cuba; so these folks were denied a license to compete in the games for disabled athletes in Havana. The result is that they lost the \$8,000 they paid to a travel agency for transportation to Havana to participate in world team sports for disabled athletes. Quite the terrorists, aren't they?

So we have people down at the Treasury Department tracking these folks, a retired grandmother, a woman who takes free Bibles for distribution in Cuba, to see if we can find them. That is what is going on—levying fines of \$5,000, \$10,000.

There is another man from the State of Washington who decided his father's last wish was to be buried or have his ashes distributed in the church he once ministered at in Cuba. Cevin Allen of Washington State traveled to Cuba to bury his father's ashes on the church grounds where his father once ministered. They decided to fine him \$20,000.

That is what they are tracking down at OFAC. They ought to be ashamed of themselves. Their job is to track terrorists.

Let's look at what they have done. They have people stationed at airports. They have trained Homeland Security agents. Hundreds have been trained to do this. Here is what they have nabbed with 45,000 passengers. They have actu-

ally worked overtime to thwart terrorists importing cigars from Cuba.

On October 10 of last year, they had this directive from the President and, boy, they went at it. Homeland Security and OFAC at Treasury grabbed this issue. They found that 215 of the 45,461 travelers to Cuba were suspected of taking a vacation. Maybe that is a felony. They were suspected of taking a vacation. What an awful thing. And 283 tobacco and alcohol violations were found. The Homeland Security spokesperson, Christine Halsey, said each violation involved a small amount of rum or cigars; 245 are going to take a vacation, and a small number are bringing in rum. There were 42 narcotics seizures, but it involved prescription drugs, not heroin. There was one hazardous material violation. We have this ramp-up and we are supposed to protect America against terrorism, and you have these folks in green eyeshades trying to levy fines on Americans, and you have agents at airports trying to see who comes back from Cuba, and who traveled illegally so we can fine them. One hazardous material violation was discovered. It was apparently a carbon dioxide canister, which was probably used to add fizz to seltzer water.

Does this sound stupid? It does to me. That is a harsh word. Sometimes our public policies seem flatout dumb. We are confronted with the specter of terrorists who want to kill Americans, cross our borders and commit acts of terror. Yet we have people at airports, Homeland Security agents, and OFAC trying to track little old ladies that went on bicycle trips in Cuba. What are they thinking at the Department of Treasury? Is that the way they want to use their resources?

All of us know that lifting the travel ban to Cuba would happen instantly if we had a vote in the House and Senate. The only way they prevent it is to prevent a vote. But to use assets at the Department of Treasury, agents are supposed to be tracking terrorists, but instead are tracking little grandmothers riding bicycles, or women distributing Bibles, or a son who wants to bury his father's ashes at his home church in Cuba. That defies description to me.

So I am going to find a way during the appropriations process to find out how many resources they are using at the Department of Treasury to do this, and if they don't want to use them properly, they should lose them. If they want to keep them, they ought to use them to protect us against terrorists, not to slap a fine on a grandmother who rode a bicycle in Havana. I think that is nuts.

As we go into the appropriations process, I want to bring attention to that single issue. That is an important issue, and one that I think ought to be dealt with.

I wish to make a comment on an additional issue today. We are heading into an appropriations process. We

have a huge budget deficit, significant fiscal policy problems. Three years ago, it looked as if there were going to be surpluses forever. Now we have the biggest budget deficit in the history of this country. There is no prospect in sight of anything resembling a surplus for the next 10 years and beyond. Despite all that, we still have some needs in this country. We need to find a way to meet them.

With respect to a number of functions, it is Katie bar the door, whatever they need. We are spending \$100 billion more for defense than we used to spend. I understand that. We are spending \$130 billion already in Iraq, \$5 billion a month, \$4 billion in Iraq, \$1 billion in Afghanistan. Nobody is being asked to pay for it. Increases in homeland security spending, I understand that. Tax cuts, tax cuts, and more tax cuts, and a President who says: Let's make all of them permanent. I understand why he is saying that as well. I don't support it.

I think someone who makes \$1 million a year is fortunate, and good for them. I am all for them, but suggesting they should have a \$123,000 tax cut per year on their \$1 million salary, at a time when we are up to our neck in deficits, in my judgment, defies description.

Let me mention one other issue that I think we need to deal with—the issue of the Indian Health Service. I want to show a picture of a little girl named Avis Littlewind. She died 2 weeks ago. Her aunt said she took her own life around noon in her home. She missed 90 days of school since the start of the school year. She is a 14-year-old girl who apparently felt there was no hope. She lives on an Indian reservation. On the reservations, there are precious few resources to deal with the kinds of problems this young girl obviously confronted—one psychologist, a social worker, no psychiatrist, no automobile to provide necessary transportation.

There is a crisis in resources to deal with these issues. A young girl takes her own life and nobody seems to say much about it. It is just what happens. The fact is, this should not happen. It should not ever happen.

I remember speaking one day on the floor of the Senate about another young girl, a Native American, a young Indian girl, age 3, placed in a foster home, but they did not check out the foster home before they placed her there. The caseworker worked 150 separate cases and did not check out the foster home.

This young girl had her nose broken, her hair pulled out by its roots, and her arms broken at a drunken party. She will never outlive the scars of that beating she took. Why? Because one person was handling 150 cases involving children.

We have a full-blown crisis on Indian reservations in this country dealing with the basic social services that every American family ought to be able to expect to access. When a young

girl has serious problems, serious emotional difficulties, and needs help, that young girl ought not to take her own life at age 14 because help is not available. This is a better country than that.

When we come to funding the Indian Health Service this year, we can no longer pretend Third World conditions do not exist on some of the Indian reservations in this country when it comes to health care for kids. We just cannot any longer pretend. Lives are being lost, lives are being ruined, and we can do something about it.

I am going to have more to say as we get into the appropriations process, but I did want to simply say there is a tragedy that is unfolding every day, every hour in parts of this country that are in America's shadows. Out of mind, out of sight for some, but not for all. We, in this Congress, must shine a light on these problems and begin to solve them.

Mr. President, I yield the floor, and 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. CORNYN. 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. CORNYN. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for such time as I may consume.

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

PATRIOT ACT

Mr. CORNYN. Mr. President, I rise to speak about the PATRIOT Act, a subject which has been much misunderstood. I think some of the misunderstanding has been perhaps just from lack of information or has been misinformation that has been spun in an effort to confuse people and perhaps even to scare people about what is in this important legislation. Indeed, we are all committed to making sure not only that our Nation is secure, and I believe the PATRIOT Act has contributed tremendously to improving the security of the United States of America, but at the same time we have a fundamental commitment in this country to civil liberties. I believe, and I think the American people believe, the Founders of this country believed firmly that we can have both our national security and our civil liberties. Particularly, in a time of war such as we are in now, while there will be some tension, we need not sacrifice our civil liberties.

Nevertheless, there are those who would play politics with this issue in an effort to score political points, or I think others who perhaps for more benign reasons might just be not very well informed and kind of go along, not really knowing the truth. So I want to talk just a few minutes about the PATRIOT Act and what it has done.

Of course the PATRIOT Act has passed overwhelmingly, just a short

time after the terrible events of September 11. Indeed, the purpose of the PATRIOT Act was to give law enforcement the tools and our counterterrorism experts and agents the tools they needed in order to prevent future 9/11s.

Indeed, the evidence is clear that the PATRIOT Act has served that important purpose. The Department of Justice has broken up four terrorist cells in the United States since September 11, in Buffalo, Portland, Detroit, and Seattle. It has filed criminal charges related to terrorism against more than 300 individuals. So far it has secured 176 convictions or guilty pleas. Perhaps the best evidence of the success of the PATRIOT Act has been the fact that, thank goodness, America has not suffered another horrific event like 9/11 since that terrible day some 2½ years ago.

I might add we have also been successful in freezing some of the funding that has been essential to financing terrorism around the world. In fact, the PATRIOT Act has allowed us to freeze more than \$200 million in funds from organizations that have been sponsoring and funding international terrorism.

Particularly, last week, I guess it was, when we heard the testimony of the former FBI Director Louis Freeh, the former Attorney General Janet Reno, and the current Attorney General John Ashcroft, the American people became introduced more or less the same way that law students are to fundamental principles of law enforcement and due process. Even more than that, the American people were introduced to something that was referred to as "the wall."

The wall was the subject of a 1995 memo by Jamie Gorelick, then Deputy Attorney General, now on the 9/11 Commission. Indeed, as she has pointed out, the wall between our antiterrorism and intelligence-gathering efforts and our law enforcement efforts has been longstanding. But it is not a matter that is constitutionally required; it is something the American Government had done to itself. It is a limitation that Congress had placed on information sharing between law enforcement officials. Some only investigate crimes after they have occurred, trying to root out the guilty and then to convict the guilty of the crimes they have committed. The wall is between those law enforcement officials and those intelligence agencies, counterterrorism officials whose job it is to prevent a terrorist attack from even occurring and to preempt that terrible event from occurring. So it was through the PATRIOT Act that we saw this wall come down that has been so important to information sharing.

Indeed, this is not a partisan issue. Attorney General Janet Reno said just a few short days ago, on April 13, with respect to the problems of information sharing within the FBI and other Federal officials, that:

Many of these issues will be or have been resolved by the passage of the PATRIOT Act or other statements.

Indeed, to my recollection, that is not the same words but essentially the same testimony that was presented by former FBI Director Louis Freeh. Former FBI Director Louis Freeh, who served during the previous administration, in talking about this wall that had been brought down as a result of the PATRIOT Act said:

... the wall is not an appropriate one with respect to counterterrorism, and that's been repaired both by the PATRIOT Act and the court of review.

I believe the court of review he is referring to is the Foreign Intelligence Surveillance Act, which creates a court of seven Federal judges who review requests for various intelligence mechanisms that try to make sure or, in fact, do make sure as much as is humanly possible that the rights of people who are accused of crimes are not unfairly jeopardized in this process.

The point is that the wall that had been erected separating our law enforcement personnel and preventing them from sharing information with our counterterrorism officials has now been torn down and we now allow information sharing which, indeed, has made America safer.

The PATRIOT Act specifically makes it easier to track terrorists in the digital age. When journalist Daniel Pearl of the Wall Street Journal was kidnapped in Pakistan, the terrorists made the mistake, as it turned out, of sending the ransom demands by e-mail. The PATRIOT Act, having brought our laws into the information age, allowed investigators to quickly obtain essential information from the Internet service provider that the terrorists were using. This in turn led them to cybercafes in Pakistan and then to some of Daniel Pearl's killers, who are now in prison thanks to the expanded tools provided by the PATRIOT Act.

Some have worried aloud that we are jeopardizing our civil liberties by creating a law which allows expanded authority to law enforcement and counterterrorism authorities. But what many people don't understand, or don't know—there is no reason they should know other than the fact that they have now learned more about it—is the PATRIOT Act actually applies tools that have already been in use in other contexts. For example, before September 11, investigators had better tools to fight organized crime than they did to fight terrorism. For example, for years law enforcement officials used roving wiretaps to investigate organized crime. I think it was Senator JOE BIDEN who said if roving wiretaps are good enough for the mob, then they are good enough for terrorists. He, of course, advocated, as many on this floor did, for that. Here is a copy of his remarks. I paraphrased it. Let's go to the exact quote. He said:

... the FBI could get a wiretap to investigate the Mafia, but they could not get one

to investigate terrorists. To put it bluntly, that was crazy. What's good for the Mob should be good for terrorists.

Those are statements with which I agreed, made by Senator JOE BIDEN on October 25, 2001, which I submit were true then and remain true today.

I already mentioned that aspect of the PATRIOT Act which has made it easier for us to cut off the financial support that has been used to support terrorist acts. Osama bin Laden, when he first left Saudi Arabia and went to Afghanistan as part of the anti-Communist Jihad, after the Soviets invaded Afghanistan, he and other Jihadists declared holy war against the Soviets at the time. The way he got started in his terrorist activities was financially supporting the acts of other Jihadists, other Muslim extremists. At that time, he directed their fire at the Soviet Union until, of course, the Soviet Union left Afghanistan. Then they turned their fire on America and other freedom-loving countries.

My point is, getting at the financial support for terror was very important. Indeed, the PATRIOT Act has made it much easier to get to that and was responsible for capturing some \$200 million in terrorist financing, which has been very important.

One of the things that has concerned me, and no doubt others, about the PATRIOT Act has been the way people have used the PATRIOT Act as almost a dirty word. It has been used to scare people. It has been used to mislead people about what the act does. It is important to understand what the act does and what it does not do.

It has also been used to raise money. This is part of the scare campaign the American people deserve to know about and we as Members of this body need to remind ourselves of and make ourselves aware of. I happened to get a solicitation from the American Civil Liberties Union at my home. This is an excerpt. It caught my eye because I thought, now I understand why there are so many people who are misled and frightened by the PATRIOT Act because there are organizations such as the ACLU that are misleading people about what it does. They are using that fear to raise money. We know one of the strongest motivations there is for human beings is to scare them. Indeed, that is exactly what is happening by misleading the American people about what the PATRIOT Act does, by organizations such as the ACLU.

This solicitation letter I received at my residence said in part:

We need your immediate help to stop radical anti-liberty proposals from becoming radical anti-liberty laws of the land with Congress' and the White House' seal of approval.

Indeed, that sort of statement is not alone. We have another chart that talks specifically about the PATRIOT Act, and another excerpt from the same solicitation by the ACLU:

The USA PATRIOT Act expands terrorism laws to include "domestic terrorism" which

could subject political organizations to surveillance, wiretapping, harassment, and criminal action for political advocacy.

If that were true, I would be standing and saying we need to look at this twice. We need to do something about it. We need to look further to see whether perhaps we have done something wrong or it needs correction or review.

I was at a hearing of a subcommittee of the Senate Judiciary Committee, and Senator FEINSTEIN put her finger on this and pointed out the kind of hysterical scare tactics the ACLU and others have used in mischaracterizing what the PATRIOT Act does are flatly unfounded. I was there at this hearing, but I had the statement made into a chart so the quote is clear. Senator FEINSTEIN, to her credit, is always a Senator who does her homework. She does her homework in every case, sometimes to my aggravation when she is on the other side of an issue, but sometimes I am glad she does. This is a case where I am glad she did her homework as she always does.

I have never had a single abuse of the PATRIOT Act reported to me.

She was not just sitting passively back waiting for people to write or call as they do to our offices to complain or to register some concern about legislation or some Federal activity.

She went on to say:

My staff e-mailed the ACLU and asked them for instances of actual abuses. They e-mailed back and said they had none.

It is very disturbing that the same organization that mails solicitations to houses of not just Members of Congress but to people all across America, trying to frighten them, mislead them, and scare them into believing Congress has acted without concern for civil liberties or perhaps some law we passed has been abused by Attorney General John Ashcroft and others, when, in fact, it is just not true. Everyone should be concerned about that. It ought to be exposed for what it is.

Notwithstanding the comments of people like Senator BIDEN, who supports the PATRIOT Act, Senator FEINSTEIN, who has done this investigation to find out whether, in fact, there has been abuse—and there has been none reported, even when asked for examples to support their scare tactics—there are some now who say it is time to eliminate the PATRIOT Act or to replace it, using other similar scare tactics.

I might point out this is not limited to the Congress. I had my staff refresh my recollection because I had remembered—indeed, the Presiding Officer may remember, too—there are press reports about city councils around the United States that passed resolutions condemning the PATRIOT Act based on the disinformation and scare tactics the ACLU and others have used to mislead them about whether there was, indeed, a threat to the civil liberties of their constituents. In fact, 287 local governments across the United States

of America have passed such resolutions condemning the PATRIOT Act. I am sad to say, three of those were in Texas: If my recollection is correct, the Dallas City Council, Austin City Council, and one from a smaller municipality.

So we know at least there is some evidence that the kind of scare tactics and misinformation people have been spreading, people at the ACLU have been spreading, is, unfortunately, working, because not enough people like me and others in this body are standing up and correcting the record and providing the truth.

Unfortunately—it is not unfortunate; it is our system. We have elections for President every 4 years. We have elections for the House every 2 years and every 6 years for the Senate, but it should not be too surprising some of this disinformation and misinformation and scare tactics have gotten into the Presidential campaign.

Indeed, I listened with some concern during the race for the Democratic nomination for President where various candidates for that Democratic nomination for President continued along this line of disinformation, misinformation, and scare tactics specifically regarding the PATRIOT Act. The current nominee for President of the Democratic Party participated in that, what I call “piling on.” He said in a speech at Iowa State University:

So it is time to end the era of John Ashcroft.

Unfortunately, this is an instance, I will interject in the quote, in which Attorney General Ashcroft has been reviled, he has been called all sorts of names, held up as a boogeyman in part of the scare tactic for doing his job, for enforcing the laws Congress has passed and the President has signed. If the Attorney General of the United States of America will not enforce the laws Congress passes and the President signs in order to make America more secure, who will? Thank goodness, we have a courageous individual who is willing to stand up against unwarranted criticism and this sort of misinformation or disinformation campaign and enforce the law Congress passes because he believes, as Congress believed when it passed the law, as the President believed when he signed the law, the PATRIOT Act makes America more secure.

Going back to the quote by Senator KERRY at the Iowa State University:

So it is time to end the era of John Ashcroft.

He goes on to say:

That starts with replacing the PATRIOT Act with a new law that protects our people and our liberties at the same time.

He later had an interview on “Morning Edition” on National Public Radio on August 18, 2003. He said:

If you are sensitive to and care about civil liberties, you can make provisions to guarantee that there is not this blind spot in the American justice system that there is today under the Patriot Act.

Unfortunately, this disinformation campaign, which stands in stark contrast to the lack of any evidence that Senator FEINSTEIN found in her investigation about abuses, continues now into the Presidential campaign, now that the Presidential nominee of the Democratic Party has been chosen.

Indeed, this is on Senator KERRY's Web site, John Kerry for President Web site. He said:

John Ashcroft has used new authority under the Patriot Act to perform “sneak and peek” searches without ever notifying anyone and without any judicial oversight.

Well, besides this campaign of disinformation and misinformation and scare tactics, I can assure you neither the Attorney General nor any other United States attorney or Federal law enforcement official can legally perform any kind of search without judicial oversight. That is wrong. It is a false statement.

Even if we pulled this out of all the other contexts I have talked about—the disinformation, the misinformation, and the scare tactics—this is a flat misstatement. I hope Senator KERRY will correct that on his Web site because no search under any kind of warrant can be conducted without the approval of a judge or an impartial magistrate. That is a basic part of our criminal law. But, here again, I am worried that unless people stand up and correct the record, this kind of disinformation will continue.

But the worst part of it is this: Notwithstanding the kind of statements I covered by Senator KERRY and others, these are some of the same people who voted for the PATRIOT Act when it passed. Indeed, on October 25, 2001, Senator KERRY said:

I am pleased at the compromise we have reached on the antiterrorism legislation, as a whole, which includes the sunset provision on the wiretapping and electronic surveillance component.

Then later, more specifically to the subject at hand, this quote is talking generically about the laws that changed included in the PATRIOT Act and others. But he was interviewed on Fox News on October 25, 2001. John Gibson of Fox News said:

Senator KERRY, today, Attorney General Ashcroft said that terrorists have reason to be afraid, very afraid of this new terror legislation. Why? What's in it that has so much sharper teeth?

Senator KERRY said:

It streamlines the ability of law enforcement to do its job. It modernizes our ability to fight crime.

Well, I agree with the comments of Senator KERRY in October of 2001 about the benefits of the PATRIOT Act. And I disagree with the comments Senator KERRY—the same person—made when he decided to run for President, and now that he is a Presidential nominee, where he is using the misinformation, this disinformation, these scare tactics, unfortunately, in contrast to the lack of evidence Senator FEINSTEIN was able to glean from even the ACLU about any evidence of abuses.

The fact is, the PATRIOT Act has made America a safer place. And no political campaign, no fundraising goal justifies misleading the American people about what is good about the PATRIOT Act and how it has contributed to bringing down this wall separating law enforcement and counterterrorism officials from sharing information. Indeed, as I said, the best evidence about why the PATRIOT Act is good law, good public policy, is the fact we have not been hit like we were on 9/11. Thank God for that. I know, of course, we hope and pray we never will again be hit in that way. But we are not going to be safer if we play politics with our national security, even in a Presidential year when the attraction is so irresistible, it appears, to some.

The PATRIOT Act has made America safer. Janet Reno, John Ashcroft, Louis Freeh, people on both sides of the aisle, people who have put their hand on a Bible and sworn to uphold the laws of the United States of America, to protect the Constitution—these are people who have testified under oath the PATRIOT Act has made America safer.

So I say, let's not play politics with this important law. Let's not play politics and risk American lives by continuing the disinformation and misinformation and the scare tactics to the point where we would go back and eliminate or revise or neuter this important protection which has made our country so much safer.

So, Mr. President, with that, I would like to turn to some additional matters on behalf of the majority leader.

I see Senator REID on the floor. At this time, on behalf of the majority leader, I would ask—

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. AL-EXANDER). The assistant Democratic leader.

Mr. REID. If the Senator would yield for a comment?

Mr. CORNYN. I would be happy to yield.

Mr. REID. The staffs are not quite ready to do the close yet. They should be ready in a matter of a few minutes. So if the Senator would allow us a few more minutes?

Mr. CORNYN. Under the circumstances, Mr. President, I ask—

Mr. REID. I will make a statement that will take a couple minutes. Senator DASCHLE is going to make a statement. We can go ahead and do the close, and he can speak after the close, but we are not quite ready on this side to close. It will take another few minutes.

Mr. President, if the Senator will yield for me to make a very brief statement?

Mr. CORNYN. I will be glad to yield.

The PRESIDING OFFICER. The assistant Democratic leader.

PATRIOT ACT

Mr. REID. Mr. President, I would agree with my friend, the former attorney general of Texas, the PATRIOT

Act has made America a safer place. I think that is a fair statement. But I would also say the PATRIOT Act is something we have to watch very closely. We realized when we passed this legislation there may be provisions in it that went too far, not far enough. As a result of that, we have put a provision in this very important bill, the PATRIOT Act, that it would sunset; that if we did not renew that legislation, it would fail; therefore, next year we have to renew this act.

I am confident, based on what is going on around the country, in spite of the statement from the American Civil Liberties Union—we can look to Las Vegas, my home, on one criminal prosecution, what the authorities did there. It is my understanding they used the PATRIOT Act. A person bought a car with global positioning in it. The reason they bought that, of course, is in case something went wrong you could press a button and come and find out where the car is, or, if it was an emergency, someone trying to hijack the car, emergency authorities would be notified. The person never realized law enforcement authorities could focus on that vehicle and listen to everything that went on in that car. That is what they did.

I would have to think without getting a judge's order, without doing some things in addition to what I have described, that was probably going a little too far. The point being, the PATRIOT Act is something we need to take a look at. That is why we have this legislation that will sunset.

I hope the Judiciary Committee and other committees that believe they have jurisdiction will begin as soon as possible taking a look at this legislation to see if there are provisions that should be revised, eliminated, added to. I don't think we need to criticize Senator KERRY because he thinks we need to take a look at the PATRIOT Act. I believe we do, and that is certainly appropriate. The Senate agreed. That is why we included a sunset provision in this most important legislation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST— S.J. RES. 1

Mr. CRAPO. Mr. President, on behalf of the majority leader, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 271, S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRAPO. Mr. President, the majority leader has been attempting to clear this request to allow us to proceed to the consideration of the constitutional rights for victims resolution. Given the objection, and on behalf of the majority leader, I now ask unanimous consent to withdraw the request.

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

CONSTITUTIONAL AMENDMENT TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED

CLOTURE MOTION

Mr. CRAPO. Mr. President, I now move to proceed to S.J. Res. 1, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 271, S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

Bill Frist, Jon Kyl, Gordon Smith, Ted Stevens, Trent Lott, Kay Bailey Hutchison, Susan Collins, Pete Domenici, Rick Santorum, George Allen, John Ensign, Wayne Allard, Mitch McConnell, Jim Inhofe, C. Grassley, Mike DeWine.

Mr. CRAPO. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. CRAPO. I now withdraw my motion.

The PRESIDING OFFICER. The motion is withdrawn.

MORNING BUSINESS

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

EQUAL PAY DAY

Mr. REID. Mr. President, today, April 20th, is being observed as Equal Pay Day.

I wish I could say it is a celebration of Equal Pay for women. But it isn't.

Instead, this day symbolizes the fact that women continue to earn only 77 percent as much as men, 77 cents on the dollar.

Today, April 20, marks how many extra days a woman has to work to

earn as much money as a man earned last year.

Women are paid less than men even when they have the same experience, the same education, the same skills, and live in the same parts of the country.

And they are paid less for doing the same jobs.

For example, women lawyers and women doctors both have median weekly earnings that are nearly \$500 less than those of male lawyers and doctors.

Women food service supervisors are paid about \$100 less each week than men in the same job, and waitresses earn about \$50 less than waiters.

Women professors' weekly earnings are nearly \$300 less each week than men's, and the median weekly salary for women elementary school teachers is \$70 per week less than that of male elementary school teachers.

When women are short-changed in their paychecks, it doesn't just hurt them. It hurts their whole family, including their children and spouses.

Lower pay for women means a family can't afford as nice of a home, or give their children the same opportunities, as they could if women were paid as much as men.

If married women were paid the same as comparable men, their family incomes would rise by nearly 6 percent. And the poverty rate among families of working women would decline from 2.1 percent to 0.8 percent.

On average, every working family loses \$4,000 every year because of unequal pay for women.

If single working mothers earned as much as comparable men, their family incomes would increase by nearly 17 percent, and their poverty rates would be cut in half, from 25.3 percent to 12.6 percent.

If single women earned as much as comparable men, their incomes would rise by 13.4 percent and their poverty rate would fall from 6.3 percent to 1 percent.

Women lose 23 cents on the dollar compared to men—almost a quarter.

Over a lifetime of work, that 23 cents adds up fast. It adds up to real money.

For an average 25-year old working woman, it adds up to about \$523,000 during her working life. That's more than a half-million dollars less than a man will be paid.

Because women are paid less when they work, they can't save as much toward their retirement. Half of all older women who received a private pension in 1998 got less than \$3,486 per year, compared with \$7,020 per year for older men. In other words, the pensions for women were less than half of the pensions for men.

The figures are even worse for women of color. African-American women earn only 67 cents and Latinas 55 cents for every dollar that men earn. Asian Pacific American women still earn only 83.5 cents on the dollar compared to men's salaries.

These statistics remind us that we still have a long way to go, even though we have been fighting for decades to win equal pay for women.

When President Kennedy signed the Equal Pay Act in 1963, it became illegal for companies to pay women less than men who were doing exactly the same work.

Unfortunately, other forms of discrimination have continued, including relatively low wages for jobs that have traditionally been considered "women's work," like teaching, nursing and child care.

Some recent legal settlements provide insight into the kind of discrimination that women still face in the workplace: In 1997, Home Depot and Publix Supermarkets each agreed to pay more than \$80 million to settle major lawsuits charging them with sex discrimination against thousands of working women. The lawsuits alleged that, among other things, the companies had assigned women to lower-paying jobs, refused to give them raises, and denied them promotions. In 1999, Texaco agreed to pay \$3.1 million in a "glass ceiling" settlement to women who alleged they were consistently paid less than their male counterparts in similar positions. In 2000, Ford Motor Co. agreed to pay \$3.8 million to women and minority applicants who claimed they were denied jobs as entry-level assemblers. In 2002, American Express Financial Advisors Inc. agreed to pay \$31 million to settle a sex discrimination case alleging that female professionals were paid less and unfairly denied promotions.

Everyone agrees that women deserve equal pay. But we still haven't reached that goal.

That's why we must vigorously enforce the equal pay laws that are already on the books. Pass stronger and better equal pay laws, such as the Paycheck Fairness Act, which I am proud to co-sponsor. And protect the rights of workers to organize and bargain with employers.

It is simply not fair that a young woman beginning a career in the workplace today will earn a half-million dollars less than a man.

It isn't fair that pensions for women are half as much as pensions for men.

And it isn't fair that the families of working women are penalized in every paycheck.

Let's pass the Paycheck Fairness Act, and let's work to finally ensure that women who work get paid as much as men.

ENVIRONMENTAL ACHIEVEMENT AWARD

Mr. REID. Mr. President, I rise today to congratulate the Washoe Tribe and Stephanie Lefevre of Nevada on receiving the 2004 Environmental Achievement Award from the U.S. EPA's Region 9 Office.

One of the greatest legacies we can bequeath to our children is a clean and

protected environment. I take this opportunity to recognize the Washoe Tribe and Ms. Lefevre for their strong commitment to preserving our State's rich natural heritage.

Headed by Marie Barry, the Washoe Tribe Environmental Department has helped restore a section of the Carson River corridor through Jacks Valley in Douglass County, NV.

The tribe has contributed significantly to the environmental health of its ancestral land, while engaging the local community in a constructive and educational experience. Its "Washoe on the River Day" events attracted dozens of volunteers to participate in the restoration process, and learn about the environmental history of the Carson River and its cultural connection to the Washoe people.

As Director of the Nevada Outdoor School, Stephanie Lefevre has developed an environmental education plan to teach students about the problems posed by illegal dumping in local areas. She has also created several other environmental programs in Winnemucca, including a community garden and composting program and a volunteer community recycling program. The recycling program expands conservation efforts and teaches students about responsible environmental stewardship.

Please join me in congratulating the Washoe Tribe Environmental Department and Stephanie Lefevre on their outstanding work and well-earned recognition.

HONORING OUR ARMED FORCES

PVT NOAH L. BOYE

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of PVT Noah L. Boye, a Nebraskan serving in the United States Marine Corps. Boye was killed on April 13 when he came under enemy fire near Fallujah, Iraq. He was 21 years old. Boye served in the 1st Battalion, 5th Marine Regiment, 1st Marine Division, 1st Marine Expeditionary Force based in Camp Pendleton, CA.

A resident of Grand Island, NE, Private Boye was a proud and dedicated soldier who was committed to his country. Private Boye enlisted in the Marine Corps when he was 17 years old. He died courageously performing his duty. Our thoughts and prayers are with his family at this difficult time. All of America mourns Noah Boye and is proud of his service.

Private Boye and thousands of brave American service men and women confront danger every day in Iraq and their tremendous sacrifices must never be taken for granted or forgotten. For his service, bravery, and sacrifice, I ask my colleagues to join me and all Americans in honoring PVT Noah L. Boye.

Mr. NELSON of Nebraska. Mr. President, PVT Noah Boye was a dedicated Marine who served his country with honor. He joined the Marine Corps right after he graduated from high school in 2001. He was deployed to Ku-

wait in February 2003 and was part of the initial coalition forces that helped bring down Saddam Hussein in March. Private Boye spent 4 months in Iraq that year and redeployed to Iraq last month. He is described as a caring person who was always there for everybody and anybody. His family remembers him as the life of the party and a genuine and gentle man. The last contact he had with his mother was a letter that she received from him 3 weeks ago that was dated March 7. When his mother showed concern about her son going to Iraq, he told her, "Mom, that's my job. It's what I have to do." Private Boye fought for his country with no regrets and with great honor.

I would like to express my deepest sympathy for the Boye Family, and I know all Nebraskans join me in remembering and honoring Noah's contributions to Grand Island and his sacrifice on behalf of his country. Private Boye's sacrifice will forever remind this Nation of the danger that comes with the duty to protect our Nation's interests and the freedoms of others around the world. As a nation, we are grateful to Marines like Private Boye who make the ultimate sacrifice so that all Americans can live in freedom.

SP DENNIS MORGAN

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of SP Dennis Morgan, a Nebraskan serving with the South Dakota National Guard. Specialist Morgan was killed on April 17 south of Baghdad, Iraq when a roadside bomb exploded as a convoy passed. He was 22 years old. Specialist Morgan was a member of the 153rd Engineer Battalion based in Winner, South Dakota.

Specialist Morgan, of Valentine, NE, worked to protect others by finding and disarming explosive devices along the roads. He died courageously performing his duty.

Specialist Morgan is survived by his wife, Cassie; his mother, Diane Mangelson; and his grandmother, Doris Morgan. Our thoughts and prayers are with all of them at this difficult time. All of America mourns Dennis Morgan and is proud of his service.

Specialist Morgan and thousands of brave American service men and women confront danger every day in Iraq and their tremendous sacrifices must never be taken for granted or forgotten. For his service, bravery, and sacrifice, I ask my colleagues to join me and all Americans in honoring SP Dennis Morgan.

PFC ANTHONY P. ROBERTS

Mr. CARPER. Mr. President, I would like to set aside a few moments today to reflect on the life of Marine PFC Anthony P. Roberts. Anthony epitomized the best of our country's brave men and women who fought to free Iraq and to secure a new democracy in the Middle East. He exhibited unwavering courage, dutiful service to his country and, above all else, honor. In the way he lived his life—and how we remember him—Anthony reminds each of us how good we can be.

A resident of Middletown, Anthony's passing has deeply affected the community. A 2003 graduate of Middletown High School, Anthony was the son of Emma Roberts and the late William Roberts, Jr. Friends, family, and school officials recalled Anthony Roberts as a bright young man who saw military service as a way to give something back to his country. He viewed the Marine Corps as an opportunity to get away from a small town, meet new people, and start a career.

Anthony always had a strong interest in the military. He was a member of Middletown High School's Air Force Junior ROTC program. His participation in that program enabled me to meet him and many of his fellow cadets several years ago when I visited their high school. Friends and family remember Anthony as standing extra tall after earning his Marine Corps uniform.

After graduating from school, Anthony underwent basic training at Camp Lejeune, NC, before being stationed at Camp Pendleton, CA. Anthony became a member of the 2nd Battalion, 4th Marine Regiment. He died in fighting around Ramadi.

Anthony was a remarkable and well-respected young soldier. His friends and family remember him as an honorable man. He enjoyed spending time in Philadelphia, writing rap music lyrics, reading automobile magazines, and playing computer games.

I rise today to commemorate Anthony, to celebrate his life, and to offer his family our support and our deepest sympathy on their tragic loss.

1LT ROBERT HENDERSON II

Mr. BUNNING. Mr. President, today I would like to take the opportunity to honor the service of 1LT Robert Henderson II of Alvaton, KY. His death while performing his duty to his country is a great loss to us all.

On April 17, 2004, LT Henderson was leading a convoy near Diwaniyah. As they were passing through, they were ambushed and LT Henderson was wounded. He later died at a field hospital. I offer my sincerest condolences to LT Henderson's family and loved ones.

His service with the Kentucky Army National Guard's 2123rd Transportation Company was exemplary and duly appreciated. Lieutenant Henderson, according to reports, showed bravery by continuing to drive his lead vehicle toward safety after he was wounded. As one of the U.S. Senators from Kentucky, I know that Lieutenant Henderson served as a fine example of what it means to be a true patriot and an American of the highest caliber.

We are humbled and honored by the sacrifice Lieutenant Henderson has made. His loss reminds us of the heavy cost exacted for our freedom. We must remember that the American way of life has been made possible by the bravery of men and women like Lieutenant

Henderson. When freedom has been challenged many like him have answered the call to arms. We must never forget that.

ARMY SERGEANT DAVID MCKEEVER

Mr. NELSON of Nebraska. Mr. President, SGT David McKeever was a soldier who fought honorably for his country. He joined the Army in 1997, right after graduation from South Park High School in South Buffalo, NY. Before going to Iraq to try to help keep peace, he served proudly in Bosnia. He just recently reenlisted to serve his country. He was also approved for a promotion from army specialist to the rank of sergeant just before his death. This well-deserved honor was given to him posthumously.

David had 15 days remaining before he would have left Iraq for Germany, and then return home. His family describes him as a dedicated soldier, proud American, and hero who was fully aware of the high cost of freedom.

SGT David McKeever will be greatly missed and our thoughts and prayers will be with his family and friends. He leaves behind a wife, a one-year-old son, his parents and his four sisters. As a nation, we are grateful to David McKeever and other soldiers like him who make the ultimate sacrifice so that others can live free.

BUDGET SCOREKEEPING REPORT

Mr. NICKLES. Mr. President, I submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under Section 308(b) and in aid of Section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the 2004 budget through April 8, 2004—the last day that the Senate was in session before the recent recess. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 2004 Concurrent Resolution on the Budget, H. Con. Res. 95, as adjusted.

The estimates show that current level spending is above the budget resolution by \$7.6 billion in budget authority and under the budget resolution by \$13 million in outlays in 2004. The current level for revenues is \$3.1 billion above the budget resolution in 2004.

Since my last report dated March 23, 2004, the Congress has cleared and the President has signed the following acts: the Welfare Reform Extension Act of 2004, Pub. L. 108-210; an act to reauthorize certain school lunch and child nutrition programs through June 30, 2004, Pub. L. 108-211; and, the Pension Funding Equity Act of 2004, Pub. L. 108-218. In addition the Congress has

cleared for the President's signature S. 2057, an act to require the Secretary of Defense to reimburse certain transportation expenses of members of the U.S. Air Force. These actions changed the level of budget authority, outlays or revenues for 2004.

I ask unanimous consent that the report, with its accompanying letter, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 2004.

Hon. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2004 budget and are current through April 8, 2004 (the last day that the Senate was in session before the recent recess). This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, as adjusted.

Since my last letter dated March 23, 2004, the Congress has cleared and the President has signed the following acts, which changed budget authority, outlays, or revenues for 2004:

The Welfare Reform Extension Act of 2004 (Public Law 108-210);

An act to reauthorize certain school lunch and child nutrition programs through June 30, 2004 (Public Law 108-211); and

The Pension Funding Equity Act of 2004 (Public Law 108-218).

In addition the Congress has cleared for the President's signature S. 2057, an act to require the Secretary of Defense to reimburse certain transportation expenses of members of the U.S. Air Force. Also, a correction was made to the final scoring of the Surface Transportation Extension Act of 2004 (Public Law 108-202), reducing the budget authority that had been scored for that legislation.

The effects of these actions are detailed in Table 2.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

TABLE 1.—SENATE CURRENT-LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF APRIL 8, 2004

| [In billions of dollars] | | | |
|--------------------------------|-------------------|----------------------------|---|
| | Budget resolution | Current level ¹ | Current level over/under (-) resolution |
| ON-BUDGET | | | |
| Budget Authority | 1,873.5 | 1,881.1 | 7.6 |
| Outlays | 1,897.0 | 1,897.0 | * |
| Revenues | 1,331.0 | 1,334.1 | 3.1 |
| OFF-BUDGET | | | |
| Social Security Outlays | 380.4 | 380.4 | 0 |
| Social Security Revenues | 557.8 | 557.8 | * |

¹ Current level is the estimated effect on revenue and spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made.

Note.— * = Less than \$50 million.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF APRIL 8, 2004

[In millions of dollars]

| | Budget Authority | Outlays | Revenues |
|---|------------------|-----------|-----------|
| Enacted in previous sessions: | | | |
| Revenues | n.a. | n.a. | 1,330,756 |
| Permanents and other spending legislation ¹ | 1,117,131 | 1,077,938 | n.a. |
| Appropriation legislation | 1,148,942 | 1,179,843 | n.a. |
| Offset receipts | -365,798 | -365,798 | n.a. |
| Total, enacted in previous sessions | 1,900,275 | 1,891,983 | 1,330,756 |
| Enacted this session: | | | |
| Surface Transportation Extension Act of 2004 (P.L. 108-202) | 1,328 | 0 | 0 |
| Social Security Protection Act of 2004 (P.L. 108-203) | 685 | 685 | 0 |
| Welfare Reform Extension Act of 2004 (P.L. 108-210) | 107 | 58 | 0 |
| An act to reauthorize certain school lunch and child nutrition programs through June 30, 2004 (P.L. 108-211) | 6 | 6 | 0 |
| Pension Funding Equity Act of 2004 (P.L. 108-218) | 0 | 0 | 3,363 |
| Total, enacted this session | 2,126 | 749 | 3,363 |
| Passed, pending signature: | | | |
| An act to require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses (S. 2057) | 13 | 7 | 0 |
| Entitlements and mandates: | | | |
| Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs | -21,334 | 4,221 | n.a. |
| Total Current Level ^{1,2} | 1,881,080 | 1,896,960 | 1,334,119 |
| Total Budget Resolution | 1,873,459 | 1,896,973 | 1,331,000 |
| Current Level Over Budget Resolution | 7,621 | n.a. | 3,119 |
| Current Level Under Budget Resolution | n.a. | 13 | n.a. |

Notes.—n.a. = not applicable; P.L. = Public Law.

¹ Pursuant to section 502 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level excludes \$82,460 million in budget authority and \$36,644 million in outlays from previously enacted bills.² Excludes administrative expenses of the Social Security Administration, which are off-budget.

Source: Congressional Budget Office.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 3, 2002, a 17-year-old transgender woman, Gwen Araujo, was viciously killed and buried in a shallow grave near South Lake Tahoe. Gwen was beaten severely—with fists, canned goods and a metal skillet—then strangled to death. Before driving her to a remote location to be buried, the attackers wrapped her body in blankets and hit her in the head with a shovel to make sure she was dead.

After a confession to police by one of Gwen's attackers, her body was finally found 2 weeks later. Currently, three men—Michael Magidson, 23, and Jose Merel and Jason Cazares, both 24—stand trial for her murder. A fourth man was also charged with her murder but pled guilty to manslaughter in exchange for testifying against the others. Despite this confession and eyewitness testimony in this case, defense attorneys have suggested that Gwen's murder was a result of something the victim provoked because of her lifestyle choice. The defense has asserted that Gwen "deceived" her attackers. Once learning of her biological sex, it caused one defendant to become enraged "beyond reason," thereby resulting in her attack. One attorney has even claimed that no hate crime has been committed in this case.

Clearly, the murder of Gwen was motivated by hatred. I believe that the government's first duty is to defend its citizens, and to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become one of

substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

1139TH MILITARY POLICE COMPANY OF MOBERLY, MO

Mr. TALENT. Madam President, I rise today to express my appreciation for the service and the sacrifice of the service men and women of the 1139th Military Police Company of Moberly, MO, for their contributions to Operation Iraqi Freedom.

The 1139th was mobilized in January 2003, and served in Iraq from May to December 2003. Their missions included convey security, securing the flow of personnel and material to sustain the U.S. mission in Iraq; ensuring the security of fixed-site locations in Iraq, performing law enforcement and presence missions to maintain law and order, and to train Iraqi police as they prepare to assume an ever-greater share of the day-to-day duties of stabilizing the country.

Their efforts, and their willingness to leave their families and homes, to assist in the larger effort to stabilize and return Iraq to the family of freedom and peace-loving nations, says much regarding their understanding of the word service, and their appreciation for the obligations of citizenship.

The United States is a wealthy and powerful Nation, but it is the willingness of young men and women such as these that makes us great. In a dangerous world, they make the difference, both here and overseas. Their efforts will set men free. Their efforts will break the shackles of despotism. Their efforts will secure the safety of Americans here at home.

To the 65 service men and women of the 1139th, you have my respect and my heartfelt thanks for your service.

May God bless these fine young men and women and their families. And

may God bless the United States of America.

REAUTHORIZE THE ASSAULT WEAPONS BAN

Mrs. FEINSTEIN. Mr. President, a little before noon 5 years ago today, Dylan Klebold and Eric Harris began a killing spree at Columbine High School that left a dozen of their fellow students and a teacher dead, and more than two dozen others wounded.

The Columbine incident was a wake up call to a nation awash with guns, and showed us all once again what one or two grievance killers or malcontents can do with powerful, semi-automatic assault weapons.

Klebold and Harris were troubled young men who chose, tragically, to take out their angst on fellow students.

Twenty or thirty years ago, that decision might have simply led to a fist fight during recess outside on the playground. But now, with the prevalence of high-capacity, high-powered firearms, that decision quickly led to the deaths of more than a dozen innocents, and then the two shooters themselves.

Using several long guns and a TEC-DC9 semi-automatic assault pistol, Klebold and Harris were able to move through their high school with impunity, firing shot after shot in rapid succession, and quickly ending the hopes and dreams of so many youngsters.

Nobody could take them down, because their weapons made them, for all intents and purposes, invulnerable.

And while Columbine was tragic, it was not unique.

Similar grievance killings have occurred across the nation, in every forum:

In a San Ysidro, CA McDonald's in 1984, when a gunman with an Uzi killed 21 and wounded 15 others.

In Stockton, CA, in 1989, when drifter Patrick Purdy walked into a schoolyard with an AK-47 and killed 5, wounding 30 others.

In Long Island, NY, in 1993, when a gunman killed 6 and wounded 19 others on a commuter train—he was only brought down when he finally stopped to reload.

In Pearl, MS, in 1997 when two students were killed.

In Paducah, KY, in 1998 when three students were killed.

In Jonesboro, AR, in 1998 when five were killed, and ten more wounded.

In Springfield, OR, in 1998 when two were killed, and 22 wounded.

In Atlanta, GA, in 1999 when a troubled day trader killed his wife, two children and several people trading stocks.

At a Granada Hills, CA Jewish Community Center when a gunman wounded three and killed one.

At a Fort Worth, TX Baptist church where seven were killed and seven more wounded at a teen church event, all by a man with two guns and 9 high capacity clips, with a capacity of 15 rounds each.

And the list goes on, and on.

Just last week, I spoke at the funeral of San Francisco Police Officer Isaac Espinoza, who was shot and killed by a gang member armed with an AK-47 and a 30-round clip. Officer Espinoza took three shots in his back as a gunman fired 15 rounds in just seconds, giving Officer Espinoza and his partner, who was also shot, no time to seek refuge.

Officer Espinoza was a bright young star in the San Francisco Police Department, and he had a promising future and loving family. Now, that future is gone. His wife Renata is without a husband. His beautiful three-year-old girl Isabella is without a father.

These are the real consequences of assault weapons. This is not a political debate about a theoretical issue. This is about the death, and tragedy, and loss.

That is why Senator WARNER, Senator SCHUMER and I are seeking to pass legislation to reauthorize the federal assault weapons ban for another 10 years, before it expires on September 13 of this year.

This amendment received 52 votes in this body just last month, but the NRA scuttled the underlying gun immunity bill rather than allow the assault weapons bill to pass.

As a result, we are running out of time. The ban expires on September 13th of this year. We cannot afford to let these weapons back on our streets. We owe the American people more than that. It is just that simple.

This should really be an easy issue.

After all, this amendment already passed the Senate once.

The President has said many times that he supports the current law, and supports renewing the current law.

Every major law enforcement organization in the country supports renew-

ing the ban, as do countless civic organizations, including: Fraternal Order of Police, National League of Cities, United States Conference of Mayors, National Association of Counties, International Association of Chiefs of Police, International Brotherhood of Police Officers, U.S. Conference of Catholic Bishops, National Education Association, NAACP, and the American Bar Association.

And the list goes on, and on.

More than three-fourths of the American people, and two-thirds of gun owners, support renewing the ban.

In a poll conducted by Mark Penn and Associates October 1-6 of last year: 77 percent of all likely voters supported renewing the assault weapons ban; Only 21 percent opposed renewal; 72 percent of Republicans supported renewing the ban, as did 71 percent of those describing themselves as "conservatives"; 66 percent of gun owners supported renewal, and only 32 percent of gun owners opposed it.

So one might wonder, why don't we just pass the ban by unanimous consent, get it through the House and have it signed into law tomorrow?

But an interesting dynamic is at work here. An interesting dynamic that relates to one, very powerful interest group that has violated the trust of its members and has used threats, distortions and bullying tactics to fight against common sense gun control at every level, and at all costs.

That group, of course, is the National Rifle Association.

But it is my hope that in the coming weeks, this body will stand up to the NRA and instead listen to the President of the United States, who supports the ban.

Listen to law enforcement all across the nation who know that this ban makes sense, and saves lives.

Listen to the studies that show that crime with assault weapons of all kinds has decreased by 50 to 66 percent since the ban took effect almost ten years ago.

A 1999 National Institute of Justice Study found that crime gun traces of assault weapons fell 20 percent in just the first year following enactment of the ban, from 4,077 traces in 1994 to just 3,268 in 1995.

Murder rates that year dropped 6.7 percent below what they had been projected to be before the ban, once researchers had isolated for other factors.

Murders of police officers with assault weapons also dropped from about 16 percent of gun murders of police in 1994 and early 1995 to 0 percent in the latter half of 1995 and 1996.

A recent study released by the Brady Center shows that the proportion of assault weapons used in crimes fell from a high of 6.15 percent in the year before the ban, to just 2.57 percent by 2001. This is a 58 percent decrease in just 8 years, and includes not only the banned guns, but copycat guns, as well.

The analysis in this study was performed by Gerald Nunziato, who for 8

years served as the Special Agent in Charge of ATF's National Tracing Center. So this is not some fly-by-night study. This is by the one person who perhaps knows what these numbers mean better than anybody.

This follows a statistical analysis by the Department of Justice indicating that banned assault weapons used in crime fell by an even greater percentage—almost 66 percent—between 1995 and 2001.

The bottom line is that this ban has worked.

If we let these guns back on the streets, we open the door to more and more killings.

If we let these guns back on the streets, we tell Steve Sposato, whose wife Jody was killed in the 101 California shooting more than ten years ago, that we have forgotten his pain.

If we let these guns back on the streets, we send an invitation to terrorists to come to America and arm themselves, as recommended in an Al Qaeda training manual. Is now the time to do this?

If we let these guns back on the streets, we ignore ten years of success.

What is the argument for letting these banned guns back on the streets?

Who is clamoring for newly manufactured AK-47s?

Who is clamoring for new TEC-9s?

These are guns that are never used for hunting. They are not used for self defense, and if they are it is more likely that they will kill innocents than intruders.

These guns—and everyone knows it—have but one purpose, and that purpose is to kill other human beings. Why would we want to open the floodgates again and let them back on our streets? There is simply no good reason.

So in the coming weeks I will again offer my amendment to extend the assault weapons ban, and I urge the President to come forward and "put his money where his mouth is" in terms of helping us get this legislation passed.

The families of the students killed at Columbine five years ago, Officer Espinoza's wife, and so many other victims of gun violence demand that we act.

NOMINATION OF EPA DEPUTY ADMINISTRATOR STEPHEN JOHNSON

Mr. WYDEN. Mr. President, on March 10, I announced my intention to object to any unanimous consent request for the Senate to take up the nomination of Stephen Johnson to be Deputy Administrator of the Environmental Protection Agency, EPA. I did this because I had been trying to obtain information concerning EPA's decision to become involved with the City of Portland combined sewer overflow program since last August. Despite numerous requests, EPA failed to answer my questions and failed to provide me with the documents I had requested, with the exception of a limited number of documents that EPA

would have to provide to any requester under the Freedom of Information Act, FOIA.

Today, I am releasing my hold on Mr. Steve Johnson to acknowledge that EPA has made a good faith effort to provide documents on the Portland sewer situation since I placed a hold on his nomination. Although I am lifting my hold on Mr. Johnson, I remain troubled by EPA's policy for withholding documents from Members of the Senate and the Environment and Public Works Committee, in particular. I believe the EPA position on this critical issue is contrary to the law and the controlling court decisions. I have also voiced my concern that EPA policy would mean the end of Congressional oversight. I believe that Senators should not be forced to place holds on nominees in order to obtain documents they need to conduct their oversight duties as members of the committee with primary responsibility for oversight of EPA.

I will lift my hold on Mr. Johnson's nomination today to acknowledge recent EPA efforts to respond to my requests. I will also be monitoring EPA cooperation in responding to my requests for information in the future. And if EPA again tries to stonewall as it did to my requests for information on the Portland sewers, I will put a hold on other EPA nominations if that is what it takes to get the agency's attention and cooperation.

OFFICER ISAAC ANTHONY ESPINOZA

Mrs. BOXER. Mr. President, I have just returned from San Francisco, a city whose heart has been broken by the tragic shooting death of a brave young police officer. On April 10, Isaac Espinoza was killed in the line of duty at the age of 29.

Officer Espinoza died doing the duty he loved: protecting the community from gang violence. He had volunteered to work as a plain clothes officer in the gang suppression unit of Bayview Police Station, where he served with distinction for 7 of his 8 years on the San Francisco police force.

Officer Espinoza was well known and liked in the Bayview neighborhood. Residents trusted him, and they appreciated his efforts to defuse violence and get guns off the streets. His outstanding work was recognized by the Police Department, which honored him with a Silver Medal of Valor and a Purple Heart as well as a Police Commission commendation.

Isaac Espinoza was also a loving husband, father, and son. My heart goes out to his wife, daughter, and family. I want them to know that the entire community shares their grief. All San Francisco feels the loss of Isaac's death, just as we all appreciate the gift of his life and work.

A gallant police officer is gone, but he will not be forgotten. We can and must carry on his work by giving com-

munity police officers and other first responders the resources they need to bring peace and safety to our Nation's streets and neighborhoods.

VOTE EXPLANATION

Mr. AKAKA. Mr. President, due to a previous obligation, I was unable to vote on the conference report to H.R. 3108, the Pension Funding Equity Act of 2004. If I had been present, I would have voted in support of the conference report. I appreciate the work done on this conference report by my colleagues, Senators GRASSLEY, GREGG, MCCONNELL, BAUCUS, and KENNEDY. As others have mentioned before, this legislation is very important to many businesses and their employees suffering from the recent economic downturn and in need of pension relief that the act will provide.

While the act will help millions of employees who are covered under this measure, I am concerned that approximately 9.7 million Americans who belong to multi-employer pension plans, many of them in the construction industry, who are facing the same problems as employees covered by other pension plans, will not be receiving this relief. In January, when the Senate overwhelmingly passed H.R. 3108, we agreed that our pension laws should affect not just single-employer plans but also multi-employer plans. We thought including multi-employers was fair and just. Unfortunately, in conference, there were some that agreed with the Bush administration that multi-employer plans should only receive partial relief. Some would say that the relief will be four percent, others will say it is even less than that. All I know is that millions of hard-working Americans, who report to work just as any other employee, will not receive this relief.

However, with the April 15 deadline where many employers were facing an inflated contribution to their pension plans and the administration's threat of a veto if the final bill included multi-employer relief, I could not penalize approximately 35 million Americans who are covered by single-employer defined benefit plans. The low 30-year Treasury bond interest rates and the unpredictable stock market have adversely affected many companies that contribute to these defined benefit plans. Again, while I believe these conditions affected not just single-employer plans, but also multi-employer plans, I could not jeopardize the 35 million Americans who could have lost their pensions if this important legislation were not enacted into law.

ADDITIONAL STATEMENTS

HONORING ERIN SMALLEY: A REMARKABLE YOUNG WRITER

• Mr. GRASSLEY. Mr. President, today I rise to honor a fine young

Iowan, Erin Smalley of Johnston. Erin is a seventh-grade student at Johnston Middle School. Erin wrote the following essay for a school-wide contest for American Education Week on the topic "Great public schools for every child—America's promise." Erin's eloquent and inspiring words remind us of the importance of education in America. I would like to take a moment to share with you what Erin Smalley wrote in her essay, *A Passion for Education*.

William Butler Yeats, an Irish poet who won the Nobel Prize for Literature in 1923, once said, "Education is not the filling of a pail, but the lighting of a fire." He made an excellent point, but reading through is quote just once will not make the meaning sink in. I am going to break it down to make it more easily understood.

The first part of Yeats' quote states, "Education is not the filling of a pail." I believe it means this: Education is not just putting information and knowledge into someone's mind. You can't dump fact, after fact, after fact onto someone because it will just go in one ear and out the other. Putting a lot of information into someone's head is just like filling a pail with a lot of water. It will probably just sit there, but it won't sink in. That is why education means something more.

The rest of the quote says: "... but the lighting of a fire." I believe this means that education is all about enlightening students and making them wonder. To light their fire is to make them want to learn more, to build a passion for what they are being taught. When they have an interest, then they will go for it. When kids are given an education, and they discover a passion for something important to them, then they will go higher and higher and never give up, until they reach their dreams. When the light goes on, that's when they start to discover and learn. That's when education is most important, because then it will hopefully become a turning point in their life.

Everyone should get to go to a free school to learn freely and learn new things. I want every kid to be able to have a passion for something, and be able to have the chance to go for their dreams. I want every kid to get the chance, because it's not fair if only some do. I hope that having an education will light all of the flames, and not just fill up the pails. •

CENTRAL COLLEGE SESQUICENTENNIAL

• Mr. HARKIN. Mr. President, last fall, Central College kicked off a year of festivities to celebrate its sesquicentennial. Founded in 1853 by a determined group of immigrants from the Netherlands, Central College has grown in size and stature during the last century and a half, but remains grounded in the tradition and faith of its founders. This weekend, the celebration continues with the Happy Birthday Dear Central Gala.

Currently affiliated with the Reformed Church in America, the college was originally created through the efforts of the Baptists of Iowa. The Iowa Baptist Society worked to establish an "institution of liberal and sacred learning" in the early days of our State. An enterprising, open-minded Pella resident, Dominie Scholte, believed in the

power of higher education and campaigned to bring the new institution to his community. Scholte, a member of the Dutch Reformed Church, sealed the deal for Pella by donating land and money to the new school.

The new Central University of Iowa opened its doors on October 8, 1854, with 37 students in a rented building on Washington Street. From a humble beginning, Central College has grown into a state-of-the-art liberal arts college with 1,700 students. The college offers degrees in 36 disciplines and is well known for its ambitious study abroad program.

The study abroad program began in the summer of 1962 when a group of Central students ventured to the Yucatan Peninsula in Mexico. The program also sent students to Paris, France the following summer and was expanded to a full year of study in 1965. The popularity of the program and the number of foreign locations has increased and now includes England, Wales, Austria, Spain, Holland, China and Kenya. Today, approximately half of Central students spend at least one semester abroad.

Central College alumni, students, staff and Pella residents have participated in a variety of special events over the past several months. The sesquicentennial celebration has showcased the strong liberal arts tradition of the college with special performances, lectures, exhibits and social events. As the college community comes together for the Happy Birthday Dear Central Gala, I offer my heartfelt congratulations on 150 years of excellence in the education and my best wishes to Central College for the next 150 years.●

IN RECOGNITION OF THE LADY PANTHERS OF DRURY UNIVERSITY

● Mr. BOND. Mr. President, I rise to congratulate the Drury University Lady Panthers basketball team on their fantastic march to the NCAA Division II championship game in St. Joseph, MO, on March 27, 2004. Fans and alumni in Southwest Missouri and across the country are justifiably proud of the Lady Panthers.

For years fans from the great State of Missouri have enjoyed watching some of America's most outstanding sports legends. The Lady Panthers are continuing this tradition of excellence, ending their year with an enviable record of 36-2. In an amazing performance, the Drury team battled until the end for the NCAA Division II National Championship. In the words of Coach Nyla Milleson, it was a tremendous journey.

What makes this story remarkable is the fact that the Lady Panthers basketball team was established just 4 years ago under the direction of the late Dr. Bruce Harger, Drury's athletic director for 15 years. Many teams work for years to gain preeminence and respect in their sport. Thanks to the bril-

liant coaching of Nyla Milleson and her staff, along with the team's strong commitment and hard work, the Lady Panthers were able to achieve this distinction in a very short time.

Coach Milleson skillfully assembled a group of talented young women, many from southwest Missouri where basketball takes center stage in most communities during the winter months. The women's team played their first game in 2000, joining a Drury men's team that is rich in tradition. With strong support from the University and its boosters, the Lady Panthers enjoyed immediate success, culminating in their championship appearance this March.

Long known for academics, Drury University can now add women's basketball to its list of nationally recognized sports programs, continuing its tradition of excellence. There is no doubt that the Drury Lady Panthers are poised to compete in many more games. I congratulate Coach Milleson and all the Lady Panthers team members, coaches and supporters who worked hard to turn their dreams into reality.●

CONGRATULATIONS TO MR. TOM DIBELLO

● Mr. BUNNING. Mr. President, I would like to take a moment today to pay tribute to Mr. Tom DiBello of Covington, KY who has served with great distinction as the Executive Director of the Covington Community Center since 1995.

Tom has strong roots in Covington, KY, even though he first came to the community as a 1-year VISTA, Volunteers in Service to America, worker. Mr. DiBello then worked his way through the Covington Community as an outreach worker, community organizer and program director. As he rose through the ranks, his dedication to the community and list of achievements only grew.

Some of Mr. DiBello's early accomplishments include organizing grassroots efforts for welfare reform and developing the Covington Neighborhood Action Coalition, now known as the Covington Neighborhood Collaborative.

Mr. DiBello is responsible for marked growth of the Community Center, transforming it from a small organization on the west side of Covington to a truly city-wide support and development organization. From developing partnerships to running a capital campaign, Tom's leadership has been integral to the success of the Covington Community Center.

Congratulations again, Mr. DiBello, on your dedicated service to the Covington Community Center. You are an inspiration for all of us throughout the Commonwealth of Kentucky. We look forward to your continued success and achievement.●

RECOGNIZING THE CONTRIBUTIONS OF ALEC BRINDLE

● Ms. MURKOWSKI. Mr. President, I would like to take a few minutes to offer a tribute to a very significant figure in one of my State's largest industries: seafood processing. This man is Alec Brindle, who was for many years with Wards Cove Packing Company, and who has now entered retirement. In addition to having played an important role in the development of Alaska's salmon industry, Alec has also been a friend of mine, and of my family, for many years. It seems to me that anyone with the stamina and perseverance to work in the fish business for 50 years deserves some recognition.

Although Alec was born in the Seattle area, his life has long been tied to Alaska's fisheries. Almost his entire extended family has been involved in Alaskan fisheries since well before Alaskan statehood. As a young boy he spent summers in Ketchikan, at first playing around the cannery, and then, at age 13, he began his career as an employee of the family salmon packing operation. This was the beginning of a career, and a commitment, that would last for 50 years. Alec is one of those people about whom you can say, "He has truly seen it all". At various points in his long career fish prices for red salmon have varied from pennies a pound to a point in the late 1980's when a single fish was worth more than a barrel of North Slope crude oil. As Alec himself has pointed out, the fish business is one where at the beginning of the season the processor doesn't know how much fish he will be able to buy, what price he will pay, or at what price he will be able to sell the finished product. Needless to say, trying to craft and maintain a business plan under such circumstances is not an easy task. But Alec, to his great credit, was able to maintain his grace and charm in the face of all these challenges. He was a true gentleman in a very tough business.

Alec did take enough time off from the family business to obtain a law degree. He spent a year clerking for well known Alaska Supreme Court Justice John Dimond. Since Alaska had only recently been granted statehood, these were exciting times for our young State as we sorted through the growing pains of creating a judicial system. As a young attorney Alec contributed to this process.

Most people outside of Alaska aren't aware that the fishing industry has traditionally been my State's largest private employer. Each year, thousands of fishermen and other workers come to Alaska to help in the harvesting and processing of the amazing variety of fishery resources of my State. Although most of Alec's career was spent in the salmon business, he and his family have also been involved in the crab, herring and groundfish sectors. Many fishermen and processing workers have spent their entire careers enjoying an association with Alec and other members of the Brindle family.

But Alec didn't just make a living from Alaska's fisheries; he also gave back a great deal. He was always active in the various industry trade associations which work to maintain the sustainability and profitability of our fisheries. Among these were the Pacific Seafood Processors Association, the Alaska Seafood Marketing Institute, the National Fisheries Institute, and the National Food Processors Association. Alec's other business activities resulted in his being named to the Board of Advisors for Wells Fargo Alaska and becoming Chairman of the Board of the Tongass Trading Company.

Achieving educational goals has always been very important to the Brindles and in addition to his law degree, Alec proudly holds an Honorary Doctorate degree from the University of Alaska Southeast. And the Brindle family has also provided generous financial assistance to many young Alaskans seeking higher education through their support of the Winn Brindle Scholarship program, named for Alec's father.

After knowing Alec for so many years, it is hard for me to believe that he will no longer be actively involved in the seafood industry on a day-to-day basis. However, I know him well enough to say that he isn't about to head for a rocking chair. He will undoubtedly continue to share his time and expertise with those in the seafood industry, and throughout Alaska. He will be missed, but his many contributions and achievements will live on for many years.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, April 20, 2004, she had presented to the President of the United States the following enrolled bill:

S. 2057. An act to require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-7101. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements" (FRL#7642-6) received on April 9, 2004; to the Committee on Environment and Public Works.

EC-7102. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plan; Florida Broward County Aviation Department Variance" (FRL#7643-3) received on April 9, 2004; to the Committee on Environment and Public Works.

EC-7103. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Sections 126 Rules" (FRL#7644-7) received on April 9, 2004; to the Committee on Environment and Public Works.

EC-7104. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training" (FRL#7341-5) received on April 9, 2004; to the Committee on Environment and Public Works.

EC-7105. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Chesapeake Bay Program; to the Committee on Environment and Public Works.

EC-7106. A communication from the Vice President for Communications and Government Relations, Tennessee Valley Authority, transmitting, pursuant to law, the Authority's Statistical Summary for Fiscal Year 2003; to the Committee on Environment and Public Works.

EC-7107. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "2003 Nonconventional Source Fuel Credit" (Notice 2004-33) received on April 9, 2004; to the Committee on Finance.

EC-7108. A communication from the Regulations Coordinator, Centers for Medicaid and Medicare Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Manufacturer Submission of Average Sales Price, Data for Medicare Part B Drugs and Biologicals" (RIN0939-AN05) received on April 9, 2004; to the Committee on Finance.

EC-7109. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Application of EGTRRA Remedial Amendment Period" (Rev. Proc. 2004-25) received on April 9, 2004; to the Committee on Finance.

EC-7110. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Intercompany Financing Using Guaranteed

Payments" (Notice 2004-31) received on April 9, 2004; to the Committee on Finance.

EC-7111. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice" (Notice 2004-32) received on April 9, 2004; to the Committee on Finance.

EC-7112. A communication from the Secretary of Labor, transmitting, pursuant to law, a report relative to the Andean Trade Preference Act; to the Committee on Finance.

EC-7113. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Jordan; to the Committee on Foreign Relations.

EC-7114. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Pakistan's cooperation with the United States in the Global War on Terrorism; to the Committee on Foreign Relations.

EC-7115. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$100,000,000 or more to Italy and Japan; to the Committee on Foreign Relations.

EC-7116. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$100,000,000 or more to Australia, New Zealand, and Canada; to the Committee on Foreign Relations.

EC-7117. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Russia and Kazakhstan; to the Committee on Foreign Relations.

EC-7118. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Russia, Ukraine, and Norway; to the Committee on Foreign Relations.

EC-7119. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Kazakhstan; to the Committee on Foreign Relations.

EC-7120. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of the export of defense articles or defense valued at \$14,000,000 from the United Arab Emirates to Morocco; to the Committee on Foreign Relations.

EC-7121. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more to Mexico; to the Committee on Foreign Relations.

EC-7122. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-7123. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Amendment to the International Traffic in Arms Regulations" (RIN1400-Z) received on April 13, 2004; to the Committee on Foreign Relations.

EC-7124. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to appropriations for the 1998 Tropical Forest Conservation Act; to the Committee on Foreign Relations.

EC-7125. A communication from the Staff Director, Commission on Civil Rights, transmitting, pursuant to law, the Commission's Fiscal Year 2003 Government Performance and Results Act; to the Committee on Governmental Affairs.

EC-7126. A communication from the Chief Judge, Superior Court of the District of Columbia, transmitting, pursuant to law, a report relative to the District of Columbia Family Court Act; to the Committee on Governmental Affairs.

EC-7127. A communication from the Director and Chief Financial Officer, Holocaust Memorial Museum, transmitting, pursuant to law, the Museum's Performance and Accountability Report for Fiscal Year 2003; to the Committee on Governmental Affairs.

EC-7128. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report under the Government in Sunshine Act for calendar year 2003; to the Committee on Governmental Affairs.

EC-7129. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, a report relative to the export of technologies and technical information to countries and entities of concern; to the Committee on Governmental Affairs.

EC-7130. A communication from the White House Liaison and Executive Director, White House Commission on Remembrance, transmitting, pursuant to law, the Commission's second Annual Report; to the Committee on the Judiciary.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GREGG for the Committee on Health, Education, Labor, and Pensions.

*Lisa Kruska, of Virginia, to be an Assistant Secretary of Labor.

*Edward R. McPherson, of Texas, to be Under Secretary of Education.

*David Wesley Fleming, of California, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring May 29, 2007.

*Jay Phillip Greene, of Florida, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring November 17, 2005.

*John Richard Petrocik, of Missouri, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring September 27, 2008.

*Patrick Lloyd McCrory, of North Carolina, to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 2005.

*Juanita Alicia Vasquez-Gardner, of Texas, to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 2009.

*Robert C. Granger, of New Jersey, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

*Gerald Lee, of Pennsylvania, to be a Member of the Board of Directors of the National Board for Education Sciences for a term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. NICKLES:

S. 2320. A bill for the relief of Renato Rosetti; to the Committee on the Judiciary.

By Mr. BYRD (for himself, Mr. STEVENS, Mr. BREAU, Mr. LANDRIEU, Mr. ROCKEFELLER, Mr. SMITH, Mr. BINGAMAN, and Mrs. BOXER):

S. 2321. A bill to amend title 32, United States Code, to rename the National Guard Challenge Program and to increase the maximum Federal share of the costs of State programs under that program, and for other purposes; to the Committee on Armed Services.

By Mr. AKAKA (for himself and Mr. VOINOVICH):

S. 2322. A bill to amend chapter 90 of title 5, United States Code, to include employees of the District of Columbia courts as participants in long term care insurance for Federal employees; to the Committee on Governmental Affairs.

By Mr. SHELBY (for himself, Mr. MILLER, Mr. BROWNBACK, Mr. GRAHAM of South Carolina, Mr. ALLARD, Mr. INHOFE, and Mr. LOTT):

S. 2323. A bill to limit the jurisdiction of Federal courts in certain cases and promote federalism; to the Committee on the Judiciary.

By Mr. CHAMBLISS (for himself, Mr. KENNEDY, Mr. HATCH, Mr. LUGAR, Mr. INOUE, Mr. GREGG, Mr. GRAHAM of Florida, Mr. CRAIG, Mr. AKAKA, Mr. HAGEL, Mr. SUNUNU, Mr. TALENT, Mr. ALLEN, and Mr. BROWNBACK):

S. 2324. A bill to extend the deadline on the use of technology standards for the passports of visa waiver participants; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID (for himself and Mr. ENSIGN):

S. Res. 341. A resolution to urge the resolution of claims related to the confiscation of certain property by the Government of Italy; to the Committee on Foreign Relations.

By Mr. HATCH (for himself and Mr. CRAPO):

S. Res. 342. A resolution designating April 30, 2004, as "Dia de los Niños: Celebrating Young Americans", and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 333

At the request of Mr. BREAU, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 501

At the request of Mr. GRASSLEY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 501, a bill to provide a grant program for gifted and talented students, and for other purposes.

S. 896

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 896, a bill to establish a public education and awareness program relating to emergency contraception.

S. 976

At the request of Mr. WARNER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1083

At the request of Mr. LUGAR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1083, a bill to give States the flexibility to reduce bureaucracy by streamlining enrollment processes for the medicaid and State children's health insurance programs through better linkages with programs providing nutrition and related assistance to low-income families.

S. 1092

At the request of Mr. CAMPBELL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1092, a bill to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans.

S. 1545

At the request of Mr. HATCH, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 1545, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

S. 1549

At the request of Mrs. DOLE, the names of the Senator from New Jersey

(Mr. LAUTENBERG), the Senator from Idaho (Mr. CRAPO), the Senator from Colorado (Mr. CAMPBELL), the Senator from Delaware (Mr. CARPER) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 1549, a bill to amend the Richard B. Russell National School Lunch Act to phase out reduced price lunches and breakfasts by phasing in an increase in the income eligibility guidelines for free lunches and breakfasts.

S. 1700

At the request of Mr. HATCH, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1796

At the request of Mr. COLEMAN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1796, a bill to revitalize rural America and rebuild main street, and for other purposes.

S. 1948

At the request of Mr. REID, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1948, a bill to provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs.

S. 2099

At the request of Mr. MILLER, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2099, a bill to amend title 38, United States Code, to provide entitlement to educational assistance under the Montgomery GI Bill for members of the Selected Reserve who aggregate more than 2 years of active duty service in any five year period, and for other purposes.

S. 2100

At the request of Mr. MILLER, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2100, a bill to amend title 10, United States Code, to increase the amounts of educational assistance for members of the Selected Reserve, and for other purposes.

S. 2179

At the request of Mr. BROWNBACK, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 2179, a bill to posthumously award a Congressional Gold Medal to the Reverend Oliver L. Brown.

S. 2194

At the request of Mr. CORNYN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2194, a bill to amend part D of title IV of the Social Security Act to improve the collection of child support, and for other purposes.

S. 2258

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2258, a bill to revise certain requirements for H-2B employers for fiscal year 2004, and for other purposes.

S. 2261

At the request of Mr. DEWINE, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2261, a bill to expand certain preferential trade treatment for Haiti.

S. 2262

At the request of Mr. BINGAMAN, the names of the Senator from South Dakota (Mr. DASCHLE), the Senator from Arkansas (Mrs. LINCOLN), the Senator from California (Mrs. BOXER), the Senator from Illinois (Mr. DURBIN), the Senator from Delaware (Mr. BIDEN), the Senator from Hawaii (Mr. AKAKA), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator from New York (Mrs. CLINTON), the Senator from Indiana (Mr. BAYH), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Florida (Mr. NELSON), the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 2262, a bill to provide for the establishment of campaign medals to be awarded to members of the Armed Forces who participate in Operation Enduring Freedom or Operation Iraqi Freedom.

S. 2271

At the request of Mr. DURBIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2271, a bill to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as "National Visiting Nurse Association Week".

S. CON. RES. 78

At the request of Mr. LIEBERMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S.

Con. Res. 78, a concurrent resolution condemning the repression of the Iranian Baha'i community and calling for the emancipation of Iranian Baha'is.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the names of the Senator from Hawaii (Mr. INOUE) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. CON. RES. 99

At the request of Mr. BROWNBACK, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Con. Res. 99, a concurrent resolution condemning the Government of the Republic of the Sudan for its participation and complicity in the attacks against innocent civilians in the impoverished Darfur region of western Sudan.

S. RES. 221

At the request of Mr. SARBANES, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 221, a resolution recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities.

S. RES. 311

At the request of Mr. BROWNBACK, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thadeus Nguyen Van Ly, and for other purposes.

S. RES. 317

At the request of Mr. HAGEL, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. Res. 317, a resolution recognizing the importance of increasing awareness of autism spectrum disorders, supporting programs for increased research and improved treatment of autism, and improving training and support for individuals with autism and those who care for individuals with autism.

S. RES. 330

At the request of Mr. WYDEN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S.

Res. 330, a resolution expressing the sense of the Senate that the President should communicate to the members of the Organization of Petroleum Exporting Countries ('OPEC') cartel and non-OPEC countries that participate in the cartel of crude oil producing countries the position of the United States in favor of increasing world crude oil supplies so as to achieve stable crude oil prices.

S. RES. 331

At the request of Mr. FITZGERALD, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 331, a resolution designating June 2004 as "National Safety Month".

AMENDMENT NO. 2941

At the request of Mr. THOMAS, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of amendment No. 2941 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAMBLISS (for himself, Mr. KENNEDY, Mr. HATCH, Mr. LUGAR, Mr. INOUE, Mr. GREGG, Mr. GRAHAM of Florida, Mr. CRAIG, Mr. AKAKA, Mr. HAGEL, Mr. SUNUNU, Mr. TALENT, Mr. ALLEN, and Mr. BROWNBACK):

S. 2324. A bill to extend the deadline on the use of technology standards for the passports of visa waiver participants; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator CHAMBLISS and the other cosponsors on this important bipartisan bill to prevent serious problems for both border security and our travel and tourism industries.

These provisions, called the Visa Waiver Program Compliance Amendments of 2004, will extend for 2 additional years the October 26 deadline in current law for countries participating in the Visa Waiver Program to begin issuing biometric passports.

It has become increasingly clear in recent months that this extension is essential. Strengthening the security of the Nation's borders is a critical part of the ongoing effort to prevent future terrorist attacks. A key part of meeting our security needs is the use of technology to screen out potential terrorists. We enacted specific legislation 2 years ago to authorize the development and implementation of biometric identification methods for visas and other immigration documents, in order to produce better screening of foreign nationals traveling to the United States, and provide front-line agencies with better intelligence for their decisions on applications for admission.

Good technology is essential in fulfilling this mission. So are hiring additional personnel, retaining experienced workers, providing adequate training, and developing effective ways to facilitate coordination and information-sharing among Federal agencies. These measures all enhance our security and create protections against potential terrorist attacks.

If we do not extend the biometric passport requirement for countries in the Visa Waiver Program, we will lose the real value of that particular protection. The current deadline has turned out to be impractical, because it forces countries to meet it, even if they are not ready to do so. The biometric passport process has been plagued with legitimate problems of global interoperability, privacy, chip durability, and production and procurement delays. The deadline was not realistic even from the start, and it is now clear that countries are unable to meet it.

As an official from the Department of Homeland Security testified at a recent Judiciary Committee hearing, "If we force people to rapidly try to meet the deadline, we are going to get inferior technology that is going to be much more difficult for us to make useful at the ports of entry."

If we do that, our borders won't be safe. Inferior technology was not what was intended when Congress passed the Border Security Act.

In addition to the danger to border security, the current deadline will have a harsh economic impact. If countries miss the deadline, all their tourists and business travelers will have to obtain visas. The State Department estimates that over 5 million visas will need to be issued in the first year. Department officials believe that even with additional staffing for granting visas, they could process only about 10 percent of the additional workload.

The resulting delays in granting visas would obviously prevent large numbers of legitimate travelers from coming to the United States and produce chaos in the Visa Waiver Program. The Department of Commerce estimates that "the elimination of the program would cost the United States economy \$28 billion in tourism-related exports over the next five years, result in a loss of 475,000 jobs, and completely erode the travel-trade surplus."

We all agree that we need to screen out terrorists, but we need to do so in ways that will not increase our border security problems instead of solving them. I urge my colleagues to support this needed legislation. It is not a setback for the war on terrorism to wage it more realistically.

Mr. CHAMBLISS. Mr. President, I rise today to introduce, along with Senator KENNEDY, a bill to extend the biometric deadline that is currently set for October 26, 2004 in accordance with the Enhanced Border Security Act. Our bill will extend the deadline to November 30, 2006 in an overall effort to improve our homeland security.

The biometric passport requirement applies to the 27 visa-waiver countries. Millions of these foreign citizens travel to the United States each year for tourism or business and currently these citizens are not required to obtain a visa to enter the United States. All other countries must obtain a visa which includes an interview and background check at the overseas consulate.

There are a number of significant reasons for extending the deadline. I have heard from many businesses very concerned about the adverse impact of the current deadline on travel and tourism to the United States and negative effect on our economy as a result. I have heard from the State Department and Department of Homeland Security about the lack of manpower to conduct interviews and issue visas to over 5 million new entrants per year. But the strongest reason to move the deadline is that it is in our best interests for homeland security.

This bill will allow visa-waiver countries to implement the most effective biometric technology to deter terrorists from entering the United States. Although the United States is not required by law to meet the same standards, today we are still a ways off from implementing biometric features in our passports. Passage of this bill will encourage our allies in the war on terror to continue in their cooperation with us and our security efforts both at home and abroad. In conjunction with extending the deadline, the US VISIT entry-exit system will apply to all visa-waiver country entrants. Under US VISIT, these foreign visitors will undergo the same security measures, including fingerprinting, which other visitors must meet.

A couple of weeks ago I held a hearing in my Immigration and Border Security Subcommittee on the topic of border security. Several Senators asked questions concerning the biometric deadline, and Department of Homeland Security Assistant Secretary Stewart Verdery made the case. Secretary Verdery said: "We have gone to Congress and asked for this extension, and we believe that within 2 years those countries will be able to meet the deadline. The technology will be more mature. It will make sense to have it in place at that time. . . . If we force people to rapidly try to meet the deadline, we are going to get inferior technology that is going to be much more difficult for us to make useful at the ports of entry."

Since September 11, the administration has taken significant and effective steps to strengthen our homeland security. The entry-exit system, US VISIT, is up-and-running and now collecting information on aliens traveling to the U.S. through air and sea ports. The Department of Homeland Security has the SEVIS foreign student tracking system in place and doing its job.

The President has created the Terrorist Screening Center to improve information-sharing and coordinate our

efforts. The extension of the biometric deadline is another step in the right direction as we fight the war on terror.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 341—TO URGE THE RESOLUTION OF CLAIMS RELATED TO THE CONFISCATION OF CERTAIN PROPERTY BY THE GOVERNMENT OF ITALY

Mr. REID (for himself and Mr. ENSIGN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 341

Whereas the Government of the Italian Republic confiscated the property of Mr. Pier Talenti, a citizen of the United States, and has failed to compensate Mr. Talenti for that property;

Whereas the Government of Italy has an obligation under the Treaty of Friendship, Commerce and Navigation, signed at Rome February 2, 1948 (63 Stat. 2255) between the United States and the Italian Republic to provide compensation to Mr. Talenti for the confiscated property;

Whereas the failure of the Government of Italy to compensate Mr. Talenti runs counter to such Government's treaty obligations and to accepted international standards;

Whereas section 1611 of H.R. 1757, 105th Congress, as passed by the Senate on June 17, 1997, expressed the sense of Congress that the "Italian Republic must honor its Treaty obligations with regard to the confiscated property of Mr. Pier Talenti by negotiating a prompt resolution of Mr. Talenti's case, and that the Department of State should continue to press the Italian government to resolve Mr. Talenti's claim.";

Whereas the Government of Italy has not responded to Diplomatic Note 674 issued in 1996, urging such Government to negotiate a settlement with Mr. Talenti; and

Whereas Mr. Talenti has exhausted all legal remedies available to him under the Italian judicial system and has not received "just and effective compensation" for the confiscated property from the Government of Italy as required under the Treaty of Friendship, Commerce and Navigation: Now, therefore, be it

Resolved, It is the sense of the Senate that—

(1) the Government of Italy should—

(A) fulfill the requirements of the Treaty of Friendship, Commerce and Navigation signed at Rome February 2, 1948 (63 Stat. 2255) between the United States and the Italian Republic with respect to the property of Mr. Pier Talenti that was confiscated by such Government; and

(B) make reasonable efforts to effect a prompt resolution of Mr. Talenti's claims under such Treaty; and

(2) the Secretary of State should—

(A) continue to press the Government of Italy to resolve Mr. Talenti's claims; and

(B) take any further measures, including all appropriate diplomatic initiatives, that the Secretary determines could assist Mr. Talenti in receiving such compensation from the Government of Italy.

SENATE RESOLUTION 342—DESIGNATING APRIL 30, 2004, AS "DÍA DE LOS NIÑOS: CELEBRATING YOUNG AMERICANS", AND FOR OTHER PURPOSES

Mr. HATCH (for himself and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 342

Whereas many nations throughout the world, and especially within the Western hemisphere, celebrate "Día de los Niños" on the 30th of April, in recognition and celebration of their country's future—their children;

Whereas children represent the hopes and dreams of the people of the United States;

Whereas children are the center of American families;

Whereas children should be nurtured and invested in to preserve and enhance economic prosperity, democracy, and the American spirit;

Whereas Hispanics in the United States, the youngest and fastest growing ethnic community in the Nation, continue the tradition of honoring their children on this day, and wish to share this custom with the rest of the Nation;

Whereas 1 in 4 Americans is projected to be of Hispanic descent by the year 2050, and as of 2003, approximately 12,300,000 Hispanic children live in the United States;

Whereas traditional Hispanic family life centers largely on children;

Whereas the primary teachers of family values, morality, and culture are parents and family members, and we rely on children to pass on these family values, morals, and culture to future generations;

Whereas more than 500,000 children drop out of school each year, and Hispanic dropout rates are unacceptably high;

Whereas the importance of literacy and education are most often communicated to children through family members;

Whereas families should be encouraged to engage in family and community activities that include extended and elderly family members and encourage children to explore, develop confidence, and pursue their dreams;

Whereas the designation of a day to honor the children of the United States will help affirm for the people of the United States the significance of family, education, and community;

Whereas the designation of a day of special recognition for the children of the United States will provide an opportunity for children to reflect on their future, to articulate their dreams and aspirations, and to find comfort and security in the support of their family members and communities;

Whereas the National Latino Children's Institute, serving as a voice for children, has worked with cities throughout the country to declare April 30 as "Día de los Niños: Celebrating Young Americans"—a day to bring together Hispanics and other communities nationwide to celebrate and uplift children; and

Whereas the children of a nation are the responsibility of all its people, and people should be encouraged to celebrate the gifts of children to society—their curiosity, laughter, faith, energy, spirit, hopes, and dreams: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 30, 2004, as "Día de los Niños: Celebrating Young Americans"; and

(2) requests that the President issue a proclamation calling on the people of the United States to join with all children, families, organizations, communities, churches, cities, and States across the United States to

observe the day with appropriate ceremonies, including—

(A) activities that center around children, and are free or minimal in cost so as to encourage and facilitate the participation of all our people;

(B) activities that are positive and uplifting and that help children express their hopes and dreams;

(C) activities that provide opportunities for children of all backgrounds to learn about one another's cultures and to share ideas;

(D) activities that include all members of the family, and especially extended and elderly family members, so as to promote greater communication among the generations within a family, enabling children to appreciate and benefit from the experiences and wisdom of their elderly family members;

(E) activities that provide opportunities for families within a community to get acquainted; and

(F) activities that provide children with the support they need to develop skills and confidence, and to find the inner strength—the will and fire of the human spirit—to make their dreams come true.

Mr. HATCH. Mr. President, it is with great pleasure that I rise to submit a resolution designating the 30th day of April 2004 as Día de los Niños: Celebrating Young Americans.

Nations throughout the world, especially within Latin America, celebrate Día de los Niños on the 30th of April, in recognition and celebration of their country's future—their children. Many Americans Hispanic families continue the tradition of honoring their children on this special day by celebrating Día de los Niños in their homes.

We have no greater resource than our children and the designation of a day to honor them will help affirm their importance to the future of our country. This special recognition of children will also affirm to the people of the United States the significance of family, education, and community.

This resolution calls on the American people to join with all children, families, organizations, communities, churches, cities, and states across the Nation to observe the day with appropriate ceremonies and activities.

I urge you to join me in supporting America's youth by supporting this resolution designating April 30, 2004 Día de los Niños: Celebrating Young Americans.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 21, 2004, at 10 a.m. in Room 106 of the Dirksen Senate Office Building to conduct a business meeting on S. 344, a bill expressing the policy of the United States regarding the United States' Relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes; and S. 1721, a bill to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land,

and for other purposes, to be followed immediately by a hearing on S. 297, the Federal Acknowledgement Process Reform Act of 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224-2251.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources:

The hearing will be held on Tuesday, April 27, 2004, at 2:30 PM in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 1064, to establish a commission to commemorate the sesquicentennial of the American Civil War, and for other purposes; S. 1092, to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans; S. 1748, to establish a program to award grants to improve and maintain sites honoring Presidents of the United States; S. 2046, to authorize the exchange of certain land in Everglades National Park; S. 2052, to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail; and S. 2319, to authorize and facilitate hydroelectric power licensing of the Tapoco Project.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Tom Lillie at (202) 224-5161 or Sarah Creachbaum at (202) 224-6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on April 20, 2004, at 9:30 a.m., in open session to receive testimony on U.S. policy and military operations in Iraq and Afghanistan.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, April 20, 2004, at 2:30 p.m., to

conduct a hearing on "Examination of the Current Condition of the Banking and Credit Union Industries."

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 20, 2004, at 9:30 a.m., to hold a hearing on Iraq Transition: Civil War or Civil Society (1).

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 20, 2004, at 2:30 p.m., to hold a Subcommittee on International Economic Policy, Export and Trade Promotion hearing on NAFTA: A Ten Year Perspective and Implications for the Future.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 20, 2004, at 2:30 p.m., to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON FINANCIAL MANAGEMENT, THE BUDGET, AND INTERNATIONAL SECURITY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on Financial Management, the Budget, and International Security be authorized to meet on Tuesday, April 20, 2004, at 2:30 p.m., for a hearing entitled, "Oversight Hearing on Expensing Stock Options: Supporting and Strengthening the Independence of the Financial Accounting Standards Board."

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Government Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, be authorized to meet on Tuesday, April 20, 2004, at 9:30 a.m., for a hearing entitled, "Pirates of the 21st Century: The Curse of the Black Market."

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

PROVIDING FOR THE DISTRIBUTION OF JUDGMENT FUNDS TO THE COWLITZ INDIAN TRIBE

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate

now proceed to the consideration of H.R. 2489, which is at the desk.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2489) to provide for the distribution of judgment funds to the Cowlitz Indian tribe.

There being no objection, the Senate proceeded to consider the bill.

Mr. CRAPO. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 2489) was read the third time and passed.

DESIGNATING THE ORVILLE WRIGHT FEDERAL BUILDING AND THE WILBUR WRIGHT FEDERAL BUILDING IN WASHINGTON, DC

TRANSFERRING FEDERAL LANDS BETWEEN THE SECRETARY OF AGRICULTURE AND THE SECRETARY OF THE INTERIOR

Mr. CRAPO. Mr. President, I ask unanimous consent that the EPW Committee be discharged from further consideration of H.R. 3118 and S. 1814, en bloc, and the Senate move to the consideration of these two bills, en bloc.

Mr. REID. Mr. President, reserving the right to object, I am going to let these matters go forward, but I have spoken personally with the chairman of the EPW Committee, which has jurisdiction over these matters. I have told him I am going to be very direct in my opposing anything that comes out of the committee until we get something resolved regarding a nomination of Gregg Jaczko, which has been sent here from the White House. As I said, I am going to let this go. This is fair warning to my distinguished chairman and friend, Senator INHOFE. I am not going to let anything else move, period, until we get a hearing date set on Gregg Jaczko. Here is a man who is a distinguished scholar in physics; he worked in the Senate; he is a Democrat, and we are entitled to have a Democrat on the Nuclear Regulatory Commission. It has been sent here by the White House. That doesn't happen very often.

I don't want this to be held up in committee. If it is, everything will be held up in committee. With that, I have no objection.

The PRESIDING OFFICER. The clerk will state the bills by title.

The legislative clerk read as follows:

A bill (H.R. 3118) to designate the Orville Wright Federal Building and the Wilbur Wright Federal Building in Washington, District of Columbia.

A bill (S. 1814) to transfer Federal lands between the Secretary of Agriculture and the Secretary of the Interior.

There being no objection, the Senate proceeded to consider the bills, en bloc.

Mr. CRAPO. Mr. President, I ask unanimous consent that the bills be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, en bloc.

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

The bill (H.R. 3118) was read the third time and passed.

The bill (S. 1814) was read the third time and passed, as follows:

S. 1814

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES AND DEFINITIONS.

(a) PURPOSES.—The purposes of this Act are—

(1) to transfer administrative jurisdiction of certain Federal lands in Missouri from the Secretary of the Interior to the Secretary of Agriculture for continued Federal operation of the Mingo Job Corps Civilian Conservation Center; and

(2) to not change the Secretary of Labor's role or authority regarding this Job Corps Center.

(b) DEFINITIONS.—For the purposes of this Act—

(1) "Center" means the Mingo Job Corps Civilian Conservation Center in Stoddard County, Missouri, referenced in section 2(a) of this Act;

(2) "eligible employee" means a person who, as of the date of enactment of this Act, is a full-time, part-time, or intermittent annual or per hour permanent Federal Government employee of the Fish and Wildlife Service at the Mingo Job Corps Civilian Conservation Center, including the two fully funded Washington Office Job Corps support staff;

(3) "Environmental Authorities" mean all applicable Federal, State and local laws (including regulations) and requirements related to protection of human health, natural resources, or the environment, including but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.); the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.); the Clean Air Act (42 U.S.C. 7401, et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.); the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Safe Drinking Water Act (42 U.S.C. 300f, et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);

(4) "U.S. Fish and Wildlife Service" means the United States Fish and Wildlife Service as referenced at title 16, United States Code, section 742b(b);

(5) "Forest Service" means the Department of Agriculture Forest Service as established by the Secretary of Agriculture pursuant to the authority of title 16, United States Code, section 551;

(6) "Job Corps" means the national Job Corps program established within the Department of Labor, as set forth in the Workforce Investment Act of 1998, Public Law No. 105-220, §§141-161, 112 Stat. 1006-1021 (1998) (codified at 29 U.S.C. 2881-2901);

(7) "National Forest System" means that term as defined at title 16, United States Code, section 1609(a); and

(8) "National Wildlife Refuge System" means that term as defined at title 16, United States Code, section 668dd.

SEC. 2. TRANSFER OF ADMINISTRATION.

(a) TRANSFER OF CENTER.—Administrative jurisdiction over the Mingo Job Corps Civil-

ian Conservation Center, comprising approximately 87 acres in Stoddard County, Missouri, as generally depicted on a map entitled "Mingo National Wildlife Refuge", dated September 17, 2002, to be precisely identified in accordance with subsection (c) of this section, is hereby transferred, without consideration, from the Secretary of the Interior to the Secretary of Agriculture.

(b) MAPS AND LEGAL DESCRIPTIONS.—

(1) The map referenced in this section shall be on file and available for public inspection in the Office of the Chief, Forest Service, Washington, DC, and in the office of the Chief of Realty, U.S. Fish and Wildlife Service, Arlington, Virginia.

(2) Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall file a legal description and map of all of the lands comprising the Center and being transferred by section 2(a) of this Act with the Committee on Resources of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and such description and map shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may make typographical corrections as necessary.

(c) APPLICABLE LAWS.—

(1) Subject to section 3, the Center transferred pursuant to subsection (a) shall be administered by the Secretary of Agriculture and shall be subject to the laws and regulations applicable to the National Forest System.

(2) This transfer shall not conflict or interfere with any laws and regulations applicable to Job Corps.

SEC. 3. IMPLEMENTATION OF TRANSFER.

(a) REVERSION REQUIREMENT.—

(1) In the event that the Center is no longer used or administered for Job Corps purposes, as concurred to by the Secretary of Labor, the Secretary of Agriculture shall so notify the Secretary of the Interior, and the Secretary of the Interior shall have 180 days from the date of such notice to exercise discretion to reassume jurisdiction over such lands.

(2) The reversionary provisions of subsection (a) shall be effected, without further action by the Congress, through a Letter of Transfer executed by the Chief, Forest Service, and the Director, United States Fish and Wildlife Service, and with notice thereof published in the Federal Register within 60 days of the date of the Letter of Transfer.

(b) AUTHORIZATIONS.—

(1) IN GENERAL.—A permit or other authorization granted by the U.S. Fish and Wildlife Service on the Center that is in effect on the date of enactment of this Act will continue with the concurrence of the Forest Service.

(2) REISSUANCE.—A permit or authorization described in paragraph (1) may be reissued or terminated under terms and conditions prescribed by the Forest Service.

(3) EXERCISE OF RIGHTS.—The Forest Service may exercise any of the rights of the U.S. Fish and Wildlife Service contained in any permit or other authorization, including any right to amend, modify, and revoke the permit or authorization.

(c) CONTRACTS.—

(1) EXISTING CONTRACTS.—The Forest Service is authorized to undertake all rights and obligations of the U.S. Fish and Wildlife Service under contracts entered into by the U.S. Fish and Wildlife Service on the Center that is in effect on the date of enactment of this Act.

(2) NOTICE OF NOVATION.—The Forest Service shall promptly notify all contractors that it is assuming the obligations of the

U.S. Fish and Wildlife Service under such contracts.

(3) DISPUTES.—Any contract disputes under the Contracts Disputes Act (41 U.S.C. 601, et seq.) regarding the administration of the Center and arising prior to the date of enactment of this Act shall be the responsibility of the U.S. Fish and Wildlife Service.

(d) MEMORANDUM OF AGREEMENT.—

(1) IN GENERAL.—The Chief, Forest Service, and the Director, U.S. Fish and Wildlife Service, are authorized to enter into a memorandum of agreement concerning implementation of this Act, including procedures for—

(A) the orderly transfer of employees of the U.S. Fish and Wildlife Service to the Forest Service;

(B) the transfer of property, fixtures, and facilities;

(C) the transfer of records;

(D) the maintenance and use of roads and trails; and

(E) other transfer issues.

(e) AGREEMENTS WITH THE SECRETARY OF LABOR.—In the operation of the Center, the Forest Service will undertake the rights and obligations of the U.S. Fish and Wildlife Service with respect to existing agreements with the Secretary of Labor pursuant to Public Law 105-220 (29 U.S.C. 2887, et seq.), and the Forest Service will be the responsible agency for any subsequent agreements or amendments to existing agreements.

(f) RECORDS.—

(1) AREA MANAGEMENT RECORDS.—The Forest Service shall have access to all records of the U.S. Fish and Wildlife Service pertaining to the management of the Center.

(2) PERSONNEL RECORDS.—The personnel records of eligible employees transferred pursuant to this Act, including the Official Personnel Folder, Employee Performance File, and other related files, shall be transferred to the Forest Service.

(3) LAND TITLE RECORDS.—The U.S. Fish and Wildlife Service shall provide to the Forest Service records pertaining to land titles, surveys, and other records pertaining to transferred real property and facilities.

(g) TRANSFER OF PERSONAL PROPERTY.—

(1) IN GENERAL.—All federally owned personal property present at the Center is hereby transferred without consideration to the jurisdiction of the Forest Service, except that with regard to personal property acquired by the Fish and Wildlife Service using funds provided by the Department of Labor under the Job Corps program, the Forest Service shall dispose of any such property in accordance with the procedures stated in section 7(e) of the 1989 Interagency Agreement for Administration of Job Corps Civilian Conservation Center Program, as amended, between the Department of Labor and the Department of the Interior.

(2) INVENTORY.—Not later than 60 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service with an inventory of all property and facilities at the Center.

(3) PROPERTY INCLUDED.—Property under this subsection includes, but is not limited to, buildings, office furniture and supplies, computers, office equipment, vehicles, tools, equipment, maintenance supplies, and publications.

(4) EXCLUSION OF PROPERTY.—At the request of the authorized representative of the U.S. Fish and Wildlife Service, the Forest Service may exclude movable property from transfer based on a showing by the U.S. Fish and Wildlife Service that the property is needed for the mission of the U.S. Fish and Wildlife Service, cannot be replaced in a cost-effective manner, and is not needed for management of the Center.

SEC. 4. COMPLIANCE WITH ENVIRONMENTAL AUTHORITIES.**(a) DOCUMENTATION OF EXISTING CONDITIONS.—**

(1) IN GENERAL.—Within 60 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, all reasonably ascertainable documentation and information that exists on the environmental condition of the land comprising the Center.

(2) ADDITIONAL DOCUMENTATION.—The U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, with any additional documentation and information regarding the environmental condition of the Center as such documentation and information becomes available.

(b) ACTIONS REQUIRED.—

(1) ASSESSMENT.—Within 120 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, an assessment, consistent with ASTM Standard E1527, indicating what action, if any, is required on the Center under any Environmental Authorities.

(2) MEMORANDUM OF AGREEMENT.—If the findings of the environmental assessment indicate that action is required under applicable Environmental Authorities with respect to any portion of the Center, the Forest Service and the U.S. Fish and Wildlife Service shall enter into a memorandum of agreement that—

(A) provides for the performance by the U.S. Fish and Wildlife Service of the required actions identified in the environmental assessment; and

(B) includes a schedule for the timely completion of the required actions to be taken as agreed to by U.S. Fish and Wildlife Service and Forest Service.

(c) DOCUMENTATION OF ACTIONS.—After a mutually agreeable amount of time following completion of the environmental assessment, but not exceeding 180 days from such completion, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, with documentation demonstrating that all actions required under applicable Environmental Authorities have been taken that are necessary to protect human health and the environment with respect to any hazardous substance, pollutant, contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product on the Center.

(d) CONTINUATION OF RESPONSIBILITIES AND LIABILITIES.—

(1) IN GENERAL.—The transfer of the Center and the requirements of this section shall not in any way affect the responsibilities and liabilities of the U.S. Fish and Wildlife Service at the Center under any applicable Environmental Authorities.

(2) ACCESS.—At all times after the date of enactment of this Act, the U.S. Fish and Wildlife Service and its agents shall be accorded any access to the Center that may be reasonably required to carry out the responsibility or satisfy the liability referred to in paragraph (1).

(3) NO LIABILITY.—The Forest Service shall not be liable under any applicable Environmental Authorities for matters that are related directly or indirectly to activities of the U.S. Fish and Wildlife Service or the Department of Labor on the Center occurring on or before the date of enactment of this Act, including liability for—

(A) costs or performance of response actions required under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) at or related to the Center; or

(B) costs, penalties, fines, or performance of actions related to noncompliance with applicable Environmental Authorities at or related to the Center or related to the presence, release, or threat of release of any hazardous substance, pollutant, or contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product of any kind at or related to the Center, including contamination resulting from migration.

(4) NO EFFECT ON RESPONSIBILITIES OR LIABILITIES.—Except as provided in paragraph (3), nothing in this title affects, modifies, amends, repeals, alters, limits or otherwise changes, directly or indirectly, the responsibilities or liabilities under applicable Environmental Authorities with respect to the Forest Service after the date of enactment of this Act.

(e) OTHER FEDERAL AGENCIES.—Subject to the other provisions of this section, a Federal agency that carried or carries out operations at the Center resulting in the violation of an environmental authority shall be responsible for all costs associated with corrective actions and subsequent remediation.

SEC. 5. PERSONNEL.**(a) IN GENERAL.—**

(1) EMPLOYMENT.—Notwithstanding section 3503 of title 5, United States Code, the Forest Service will accept the transfer of eligible employees at their current pay and grade levels to administer the Center as of the date of enactment of this Act.

(b) TRANSFER-APPOINTMENT IN THE FOREST SERVICE.—Eligible employees will transfer, without a break in Federal service and without competition, from the Department of the Interior, U.S. Fish and Wildlife Service, to the Department of Agriculture, Forest Service, upon an agreed date by both agencies.

(c) EMPLOYEE BENEFIT TRANSITION.—Employees of the U.S. Fish and Wildlife Service who transfer to the Forest Service—

(1) shall retain all benefits and/or eligibility for benefits of Federal employment without interruption in coverage or reduction in coverage, including those pertaining to any retirement, Thrift Savings Plan (TSP), Federal Employee Health Benefit (FEHB), Federal Employee Group Life Insurance (FEGLI), leave, or other employee benefits;

(2) shall retain their existing status with respect to the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS);

(3) shall be entitled to carry over any leave time accumulated during their Federal Government employment;

(4) shall retain their existing level of competitive employment status and tenure; and

(5) shall retain their existing GM, GS, or WG grade level and pay.

SEC. 6. IMPLEMENTATION COSTS AND APPROPRIATIONS.

(a) The U.S. Fish and Wildlife Service and the Forest Service will cover their own costs in implementing this Act.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out this Act.

CONVEYANCE TO FRESNO COUNTY, CALIFORNIA, OF THE EXISTING FEDERAL COURTHOUSE IN THAT COUNTY

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate

proceed to the consideration of Calender No. 408, H.R. 1274.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1274) to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county.

There being no objection, the Senate proceeded to consider the bill.

Mr. CRAPO. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon table, and that any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 1274) was read the third time and passed.

ORDERS FOR WEDNESDAY, APRIL 21, 2004

Mr. CRAPO. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, April 21. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and following the time for the two leaders, the Senate then begin a period for morning business for up to 60 minutes, with the majority leader or his designee in control of the first 30 minutes, and the Democratic leader or his designee in control of the final 30 minutes; provided that following morning business, the Senate resume consideration of the motion to proceed to S. 2290, the asbestos bill.

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

PROGRAM

Mr. CRAPO. Mr. President, tomorrow, following morning business, the Senate will resume debate on the motion to proceed to the asbestos bill. The majority leader is hoping to find a way to begin consideration of the asbestos litigation. However, the cloture vote on the motion to proceed to the bill will occur Thursday, unless an agreement is reached during the interim.

Also, as a reminder, the Senate will conduct a cloture vote on the motion to proceed to the victims' rights amendment this week as well. Again, the majority leader has been working on an agreement to begin consideration of the victims' rights amendment. However, this procedural vote will be necessary unless that consent is granted.

ORDER FOR ADJOURNMENT

Mr. CRAPO. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under

the previous order, following the remarks of Senator DURBIN.

Mr. REID. Senator DURBIN will speak for up to 15 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PATRIOT ACT

Mr. DURBIN. Mr. President, I come to the floor this evening to address the pending issue of asbestos reform legislation. It is a very serious and complicated issue. I look forward to speaking for a few moments about what I consider to be the history of this issue and the way we should respond to it.

Before doing so, I am compelled to address the previous speaker, my colleague and friend from the State of Texas, Senator CORNYN, who, within the last hour or so, spoke on this floor about the PATRIOT Act. The reason why this is an issue of great importance to many of us is that it is a law which all but one Senator voted for, and it is a law which many of us, on both sides of the aisle, Democrat and Republican, believe has some serious weaknesses and flaws that need to be remedied.

In response, I have introduced a bill called the SAFE Act with Senator LARRY CRAIG of Idaho. Senator CRAIG and I are about as far apart on the political spectrum as humanly possible. Yet we have come together with the understanding that whether you are conservative or progressive liberal—whatever your label may be—we all value our constitutional rights in America.

Senator CRAIG and I looked closely at the PATRIOT Act and think that there are three or four specific areas that need to be addressed.

However, President Bush wants to keep the PATRIOT Act as it is, making it permanent law, and change some provisions to give the Government even more power and further reduce judicial oversight. He has chosen to make this one of the bedrocks of his campaign for reelection. My friend from Texas, Senator CORNYN, and the President have made an issue over differences that they have with Senator JOHN KERRY on this issue.

I call the attention of the President and his supporters to the fact that the SAFE Act, which we brought to the floor, enjoys bipartisan sponsorship. In fact, when we had the press conference announcing the changes we proposed for the PATRIOT Act, we were joined by some of the most liberal and the most conservative organizations in Washington.

Rarely do they come together. But on the issue of civil rights and constitutional rights, we finally find common ground. Yet the President sees it differently, and Senator CORNYN as well.

A little history is worth noting at this moment. We all remember September 11, 2001, and what happened, the fear we had that another attack might be imminent, and because of the belief that the Government needed additional tools and weapons to fight terrorism, there was a bipartisan effort between Congress and the White House to write a bill giving our Government more authority and more power to deal with terrorism, changes in the law which were long overdue to deal with modern technology and the scope of the terrorist threat.

The bill was debated on a bipartisan basis and passed the Senate and the House with overwhelming numbers of support. We understood as well that September 11, 2001, was a unique moment in American history and that our response was not only to the terrible tragedy of September 11 but also to many of the fears which were welling in the breasts of every American family. Because of our concern that this fear and emotion may have taken us too far in the PATRIOT Act, we put in an insurance policy. We said, after a period of time, after a few years, we are going to come back and look at many elements of this law. We are not going to make it permanent forever. We will come back after a few years and decide whether we went too far.

In the heat of the moment with the fear of September 11, did we give the Government more power than was necessary to protect us? Did we endanger or in any way lessen our constitutional protections more than necessary? So this review provision, this sunset clause, was just basically common sense.

The President has chosen this as one of his areas of attack, and his argument yesterday was, why do we need to review this law? Is the threat of terrorism gone now?

I think the President does not understand why this sunset provision was put in the law. I am certain we will decide that the majority of the elements of the PATRIOT Act are still necessary, but that does not mean that every word in that act should be treated like the Ten Commandments. We need to take that act and honestly ask whether it was done in the heat of the moment, whether too much authority was given to the Government, and whether we have infringed basic liberties and rights which we are here to protect.

The President and Senator CORNYN seem to argue that it is the burden of the citizens of America to come forward and explain why their rights should not be taken away by the Government. I think they are both totally wrong. It is the burden of the Government to announce and rationalize why

any individual rights of American citizens should ever be taken away. These God-given rights, as we refer to them in the Declaration of Independence and the Constitution, are basically ours by virtue of our human existence. For any government to take them away, there must be a compelling reason.

The PATRIOT Act gets to the issue of privacy and freedom versus security and government control. We recognized in the PATRIOT Act the need for the government to monitor the new powers carefully. The 4-year sunset provision will force Congress and the administration to honestly look at the PATRIOT Act and see if we have gone too far.

Some provisions expire at the end of 2005. None of them expire at the end of this year. So there is no need to reconsider the PATRIOT Act this year. This has a lot more to do with an election in November than the act itself. If nothing is done by Congress, the Government will continue to have all of its authority under the PATRIOT Act through this year and into next year.

We wanted to keep the review of the PATRIOT Act out of election year politics, and that is why the sunset was 2005. Sadly, the Bush administration and their supporters in Congress want to put the PATRIOT Act on the 50-yard line, right in the middle of this titanic gridiron battle between the two political parties for the Presidency. That is unfortunate. The issues of security for America—stopping terrorism—should not be politicized this year. I hope they will not be, but sadly that is what is happening.

Think of this for a moment: The President and the White House threatened to veto the reform bill which Senator CRAIG and I have introduced, the bipartisan SAFE Act, even before it was heard in committee, even before there was an attempt to amend it, even before there was a vote in either the Senate or the House. It is rare, if not unprecedented, for the President and White House to threaten a veto on a bill so soon after it has been introduced. It shows me that the President is raising this bill to such a high profile in an effort to make it a central part of a political campaign, rather than focusing on protecting America.

During the course of his campaign, Senator KERRY said that in his first 100 days as President he wants to end the era of John Ashcroft. JOHN KERRY has promised to strengthen terrorism laws that work, strengthen money laundering laws to end funds for terrorists, improve information gathering and protect the basic rights and liberties of all of our citizens.

Senator KERRY and I support the SAFE Act, this bipartisan effort to reform the PATRIOT Act. Here are several of the most important provisions: It will protect innocent people from Government snooping by eliminating John Doe roving wiretaps, which do not identify the person or place being tapped. It requires warrants for roving wiretaps to identify either the target

of the wiretap or the places to be tapped. So we say to the Government, if they are going to intercept my conversations at unspecified locations, they must say to the court that they are going after this particular person. They cannot have a wiretap that might sweep up the conversations of my family, my business, my church, whatever it happens to be, without specifically saying to the court, this is the person that we want to wiretap, or this is the phone, this is the place that we want to wiretap. That specificity has always been part of the law. To get away from John Doe roving wiretaps, which allow the Government to just swoop in and collect information and then take a look at it to see if there is anything there of concern, goes way beyond the authority needed to protect America.

This SAFE Act will also impose limits on the Government's ability to carry out what are called sneak-and-peek searches by requiring that immediate notice of a search be given unless the notice would endanger a person's life or physical safety, or result in flight from prosecution or the destruction of evidence.

We have seen on television and in the movies and perhaps in real life the knock on the door and someone has a warrant in their hand, issued by a judge, which says, we have a warrant to search the premises and we are coming in. This is very common. But when it comes to these sneak-and-peek warrants, the search can be undertaken on anyone's premises without immediate notification if that notice would jeopardize an investigation or delay a trial. This could apply in almost every case. We say that immediate notification has to be given of a search unless there is a compelling reason not to—a person's life or physical safety is in danger or there is a risk of flight from prosecution or evidence being destroyed.

Third, it protects libraries and bookstores from Government fishing expeditions, but still allows the FBI to follow up on legitimate leads. This is an issue that really touched a lot of people. To think that because I use the Springfield public library or the library in the City of Chicago that somehow the books that I check out are going to be examined by the FBI to see if I am a suspicious person even though there is no specific reason to look at me goes way too far.

None of the changes we suggest will interfere with law enforcement and intelligence officials preventing terrorism. We retain all of the powers of the PATRIOT Act, but we restore safeguards that are indispensable to democracy and civil liberties. These safeguards are a continuing source of our country's strength. They are not luxuries or inconveniences to be dumped in time of crisis.

I am afraid the administration wants just the opposite. The President wants even broader powers than the PATRIOT Act now allows. Yesterday he called for a new law to let Federal

agents obtain private records and conduct secret interrogations without the approval of a judge or even a Federal prosecutor. This goes way beyond anything that we have ever seen in terms of trying to make America safe. It really infringes on our basic rights. We all agree that law enforcement needs the tools to protect us, but President Bush cannot point to a single terrorism investigation in which officials had any problem obtaining the court orders they needed. Yet he is asking for expanded authority that would undermine civil liberties and judicial review. Frankly, our current laws are adequate to the task. We need to bring terrorism under control but not at the expense of our basic rights as citizens.

THE ASBESTOS BILL

Mr. DURBIN. The bill pending before us is known as the Hatch-Frist asbestos bill. Asbestos is a common material that those of us my age remember throughout our lives. It has been used in building materials, tiles, insulation, coverings for pipes, and so many different uses. We used to view it as that fireproof material that was safe and, frankly, protected us. Over the years, we came to learn that it was much different. It turns out that asbestos is an insidious threat to public health. It is insidious, in that there is virtually no safe level of exposure. It is insidious in that it is a random killer. We know of workers who have been in the asbestos industry their entire lives and never once showed any problem—no illness, no symptom, nothing. We know in the same circumstances that many of these workers find that their wives have come down with serious asbestos-related diseases, even though their wives never set foot in their workplace. Puzzled by this, we started looking into it and found that even though the worker might not have been susceptible to asbestos-related diseases, his wife, who merely laundered his clothes, picked up enough dust in that process to end up infected, diseased, and destined to die. That is how it is such a random killer.

We also know, despite all of the compelling evidence about the danger of asbestos, that we continue to import massive amounts of asbestos each year in the United States. While we sit here and argue about how the companies responsible for asbestos-related disease and death should be held liable, when we talk about how victims should recover, the simple reality is that asbestos is alive and well and still to be found across America. New victims of asbestos are being created every single day by companies that know the risk and are willing to endanger their customers and employees for profit.

I don't have a lot of sympathy for those companies. They know the danger and they continue to use asbestos in some forms in a dangerous manner.

It is regrettable that the bill before us today did not go through com-

mittee. It is regrettable this bill was not debated. This is an extremely important issue. Twenty years ago, I was a brand new Congressman and I was invited to fly to Colorado right outside Denver to visit the national headquarters of Johns Manville Corporation. I didn't know why they wanted me out there 20 years ago, but they asked me to come out so I did fly out. I went to this beautiful headquarters, located outside of Denver in a magnificent building, and they told me they were having a problem with asbestos-related lawsuits.

At that time, in August of 1982, Johns Manville was preparing to file for bankruptcy protection because of the lawsuits being filed against it. At that time, if anyone suggested that 20 years later, in 2004, there would be over 70 companies facing bankruptcy, such as Johns Manville, including some of the Nation's largest manufacturers, people would have said that would be impossible. Certainly these companies still would not be sued like Johns Manville and they still wouldn't be selling asbestos products in America in 2004, would they?

The simple answer is yes. Those products continue to be sold. The people who were victims of those diseases continue to be discovered.

If anyone during the 1970s and 1980s had suggested that by the 21st century, the number of legal claims being filed for asbestos injury would have been rising instead of falling, those predictions would have been ignored. Yet, those predictions have all come true. Let me show you a chart to give you an idea of the incidence of asbestos-related disease in America. This is for 2002.

If you look at asbestos-related deaths here, you will find some 10,000 deaths. As I said, the number of deaths related to asbestos is on the rise in America. So there are only three other areas of death here that are larger in numbers: AIDS, of course, some 20,000 victims, almost twice as many; alcoholic liver disease, some 12,000 victims; firearm deaths, right around 12,000; and then asbestos. Then look at all of the other causes of death that claim fewer victims than asbestos: skin cancer, hepatitis, asthma, drowning, fires, Hodgkin's disease, and tuberculosis.

This is a serious public health problem in America. Asbestos is an ongoing environmental and health issue.

To better understand the true cost of asbestos, we need to recognize both sides of the litigation, not only companies facing bankruptcy but victims facing disease, debilitation, and death. From my experience talking with people, it seems most Americans were under the impression that asbestos has been banned.

I will tell you a story about that and let you know that didn't happen, at least it didn't happen on a permanent basis. Asbestos is still in buildings, schools, homes, offices, and workplaces—in automobiles. It is in and around 200,000 miles of drinking water

pipes that have been underground for 40 years and are now deteriorating. Sadly, very few of these items are being regulated by the Government. Why? Because there has been a systematic and long-term failure by the Government of this country when it comes to reining in asbestos use.

Senator PATTY MURRAY from the State of Washington has a bill to which we need to agree. It is a bill which will virtually ban, permanently, asbestos and asbestos products in America with few notable exceptions—where it is contained and can't be dangerous. Let me tell you the history leading up to S. 1115, the Patty Murray bill, which is so important.

In July of 1989, the EPA announced the manufacture and sale of most asbestos products would be banned. The decision came after 10 years of research and \$10 million in spending. The EPA's ban was premised on authority granted to it by the Toxic Substances Control Act, and it was intended to stop the export of asbestos from America as well. The ban was instituted in three stages: a ban on roofing and flooring felt, tile, and clothing made from asbestos by 1990; brake linings, transmission components, and the like; and a ban on the use of asbestos in pipes, shingles, brake blocks, paper, and the like.

As predicted, a lawsuit was filed by asbestos companies and industrial organizations to challenge the EPA ban. The companies argued the ban was just too costly for industry and that alternatives to the use of asbestos were neither safe nor effective.

The EPA defended the proposed ban. However, it lost in the Fifth Circuit U.S. Court of Appeals. They said the EPA failed to demonstrate "substantial evidence" to justify the ban. Specifically the circuit court found the Agency's administrative record failed to show the ban was the "least burdensome alternative" for dealing with the unreasonable risk posed by asbestos. The circuit court did acknowledge that asbestos was a potential cause of cancer at all levels of exposure—underline all levels of exposure. There is no safe level of exposure to asbestos. If you think, just because you have a ironing board cover at home that gets hit by the iron as you are ironing your clothes, only a tiny bit of asbestos dust is floating around your house, be prepared to accept the obvious. It is dangerous at any level of exposure.

President Bush's father and his administration in 1991 would not appeal this decision by the Fifth Circuit, so since then, the EPA, unfortunately, has made no further effort to ban asbestos, and it is doubtful this administration in the closing months of this year will do so.

For those who are watching this debate, following it, I recommend a book that opened my eyes to the deep and sad history of the use and ongoing danger of asbestos. The book is called "Fatal Deception: The Untold Story of Asbestos." The author's name is Mi-

chael Bowker. He talks about the hazards of asbestos discovered in the mining town of Libby, MT. You ought to read these stories about what happened to the unsuspecting miners and their families who worked for W.R. Grace and other companies, dealing with asbestos in Libby, MT.

He gives a detailed explanation of the dangers of the product, not just for the workers, as I said earlier, but also for their families. This book, and another called "The Asbestos Tragedy" by Paul Brodeur, are significant because they reveal the deep, dark, dangerous secrets of asbestos mining and manufacture.

Let me share a few examples. By the early 1930s, asbestos workers had developed asbestosis and were bringing lawsuits against Johns Manville—the 1930s, more than 70 years ago. The largest asbestos manufacturer—again, Johns Manville—and Raybestos-Manhattan of Connecticut, the second largest asbestos company, faced lawsuits. As a result, the two firms, together with other leading asbestos manufacturers, initiated a systematic coverup of the dangers of asbestos that continued for more than 40 years.

In 1933, Lewis Herold Brown, the president of Johns Manville, advised the company's board of directors that 11 pending lawsuits brought by employees who developed asbestosis while working at the company's plant in Manville, NJ, could be settled out of court, provided the attorney for the injured employees could be persuaded not to bring any more cases. That is 1933. The first asbestos lawsuits were being filed, the first notice being given to American business that they were dealing with a dangerous, toxic, lethal product.

In 1935, Sumner Simpson, the president of Raybestos-Manhattan wrote a letter to Vandiver Brown, of Johns Manville, telling him:

I think the less said about asbestos the better off we are.

Brown, in a followup letter, replied:

I quite agree with you that our interests are best served by having asbestosis receive the minimum of publicity.

Is that corporate misconduct? Is that the kind of irresponsible conduct we would countenance today or even make excuses for? Or do it?

In 1936, Brown and Simpson, together with officials of other companies, arranged to finance animal laboratories at the Trudeau Foundation's Saranac Laboratory in New York. The studies showed significant numbers of animals developed asbestosis after being allowed to inhale it. These results were suppressed, made secret for more than 40 years.

The case goes on and on. Some of the things that were said during the course of events are nothing short of incredible. There is one in particular that is worth noting. On September 12, 1966, more than 30 years after the discovery of asbestos danger to factory workers and people exposed to it, E.A. Martin,

the director of purchasing for Bendix Corporation, wrote to an executive at Johns Manville. This letter was disclosed in the course of a lawsuit from the director of purchasing for Bendix Corporation writing to Johns Manville about asbestos.

He says:

So that you'll know that asbestos is not the only contaminant a second article from OP&D Reporter assesses a share of the blame on trees.

Then he closed:

My answer to the problem is: If you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause.

What an attitude when it comes to the workers and the consumers of asbestos products.

When we debate this issue with appropriate sympathy for the economic plight of many companies that are far removed from those I quote, understand we came to this moment in our history with the epidemic of asbestos-related disease and death because of clear and convincing corporate misconduct for 50 years. Businesses that knew better endangered and imperiled their workers and consumers with this product to make money. And the cavalier, if not demonic response, from people like E.A. Martin is proof positive of that worst example of conduct.

During the last Congress, in September 2002, Senator LEAHY held the first hearing on the state of asbestos injury litigation. We considered what we could do. Senator HATCH has held a couple of hearings since then and moved the ball further along. We heard testimony from expert witnesses on both sides, a lot of different stakeholders being present. There is probably no issue in Washington that has received more attention from both sides.

Last spring, Senator HATCH introduced a bill as a starting point for negotiation. I was skeptical of the bill but told him I was willing to work with him and others in good faith to try to find a way to deal with the increasing number of asbestos-related lawsuits. I generally support the concept of a no-fault trust fund. If we can reach that moment in time where there is an adequate amount of money in a trust fund, where workers and others who have been exposed to asbestos can step forward, make their medical claim, and then receive compensation without lengthy litigation and expensive attorney's fees, this is a good result and a fine and positive thing.

I am sorry to report the bill before the Senate does not reach that level. I agree with many Illinois company representatives who have come to see me that they need certainty about their exposure to liability in the future. We can provide it as long as we have a bill that is fundamentally fair.

I also agree with the victims of asbestos injury and their widows, whom I have met, we need to come up with a quick and easy process to issue these

payments. We have an opportunity now to do it.

Leading up to last summer, I thought we were going to reach that point. But there were several things about Senator HATCH's original bill that we found out were problematic. The Hatch bill was designed to provide certainty to parties who, collectively, was only going to have pay into a trust fund about \$90 billion. It did not provide certainty to the victims, only certainty to the companies in terms of their liability. Certainly, \$90 billion is a lot of money, but when you look at the real cost we may face for asbestos-related claims in the future, it may not be nearly enough. We may need twice as much.

The committee finally increased the value of the trust fund in the Hatch bill to \$153 billion. It is interesting that after we reported that bill, the insurance industry, one of the major players in supplying the money for the trust fund because of their ultimate liability, announced they would not support it because it cost too much. We have been hung up on this issue of how much to put in the trust fund.

There is also a question about what happens if we guess wrong. What if the trust fund does not have enough money? What if there are too many victims? What happens to those victims if the trust fund runs out of money? DON NICKLES, a Republican from Oklahoma, fears from his point of view the Government will be asked to step in and replenish the trust fund with unlimited liability in the future. He is so skeptical of the amount of the trust fund in the bill pending before the Senate he announced he will oppose it. He does not think it will be enough for payouts and taxpayers in the future might be left holding the bag rather than the companies and insurance companies that are today responsible. That is a valid point to raise.

Claims values are another element. What is it worth? What if you have the worst possible asbestos-related disease, known as mesothelioma, which is a form of lung cancer which is ultimately fatal? What is it worth for you in terms of its value if you are an innocent victim of this mesothelioma? I will show some photos in a few moments of the victims. You will understand they are people, many of whom had no idea that exposure to asbestos was dangerous. What do you do if you were exposed to this asbestos and are in a situation where you end up with the disease or face a fatal situation at a later point? How much is it worth?

The question before the Senate on mesothelioma was whether \$1 million is adequate. I can state the current litigation and current awards that are given in lawsuits are significantly larger, even after considering attorneys' fees. That \$1 million might be a good value to a family if it did not take an attorney and years in court to reach that number, but we have to at least be honest that some of the valuations in the pending bill are not adequate.

This bill, since markup in the committee, has disappeared and reappeared, with Senator FRIST and Senator HATCH working together. This was an arrangement, a compromise among the principals on the Republican side which did not involve any Democrats, to my knowledge, and did not involve any of those who were critical of the original bill. It was brought on a take-it-or-leave-it basis—again, with no hearing on the new bill.

The new bill, sponsors claim, will provide up to \$124 billion, \$57.5 billion from defendant companies, \$46 billion from insurance companies, unspecified sums from existing trust funds. There is a concern as to whether that is enough money, as I mentioned earlier. This bill, though it is claimed to be the FAIR Act, may not be fair when it comes to victims and the recovery.

I am concerned with some of the statements made in the Senate. My friend, Senator HATCH of Utah, said in the Senate when he introduced the bill April 7th:

Some say—I think somewhat cynically—many of our colleagues on the other side are not going to vote for this bill because no amount of money is going to make them satisfied because two of their major constituencies are against the bill, and have been, so far, against any bill.

Senator HATCH went on to say:

Some have said they are afraid the personal injury bar will not put up at least \$50 million for JOHN KERRY in this election if they vote for the bill. Others are saying without that money, they might not be able to elect JOHN KERRY President. I think that is a pretty cynical approach, of course.

Let me say to my friend, Senator HATCH, that is an element of this debate which should have been left outside of the record. I don't think it is good to question the motives of either side of the aisle. We see this very contentious issue from a different perspective. But to suggest we are being driven by campaign contributions, I hope, is plain wrong. In my case, it is wrong and I don't believe we should raise that as part of the specter of this debate.

Let me say before I go into the victims' stories, we have an opportunity to do some good and to pass a bill creating an asbestos trust fund, but we need to adequately fund it. We need to also make certain pending settlements and awards are not extinguished by this new trust fund. We need to make sure the level of compensation for victims is adequate. We can do it. But we need to work on a bipartisan basis to achieve it.

Let me show a few of the victims that tell the story. This is John Rackow of Lake Zurich, IL. He grew up in Chicago, IL, and eventually moved to the suburbs. He is a businessman, married, with three kids. He worked for a lot of different companies and was involved in property development. He was athletic, very active. He started noticing shortness of breath. An avid golfer, his game was off. He went to the doctor and his doctor discovered he had mesothelioma, the worst form of asbestos-related lung cancer.

He did not want to believe the result. He went to a lot of different doctors for treatment and relief of the pain. But, unfortunately, he became so weak he was ultimately hospitalized. He became weaker by the day and passed away at the age of 64.

This gentleman shown in this picture is also from my home State of Illinois, former policeman Donald Borzych, of Tinley Park. He grew up in Chicago, IL. He attended parochial schools in the city and studied for the priesthood. Donald eventually chose to become a Chicago police officer.

While in school, he worked with various construction companies. You will find that a recurrent theme. Donald was handy with home and auto repairs.

After retiring, he and his wife enjoyed traveling and spending time with friends. Donald found himself tired and short of breath. He went to a doctor and was diagnosed with malignant mesothelioma. He went through numerous treatments but with no positive results. He was accepted to an experimental program and lost his hair. He has been in treatment for over 2 years.

I met with several widows of the victims of asbestosis and mesothelioma. One of those who really brought the issue home to me was the widow of my former colleague, Bruce Vento. Bruce was a great guy. He was a Congressman from the Minneapolis-St. Paul area. I served with him for 14 years in the House of Representatives. I saw him in the gym every morning. He thought a lot about his health and physical condition. He always worked out and wanted to be in good shape.

Then he started to feel pretty poorly. He went to the doctor, and he said: You have asbestos-related disease. You have mesothelioma. It turned out Bruce contracted this disease even though he did not smoke because he was exposed to asbestos as a youngman when he worked for a company that installed asbestos products at job sites.

He eventually succumbed and died from this disease. It was a great loss to the State of Minnesota and to the U.S. House of Representatives. I think Bruce Vento was a wonderful person. His wife Susan is also a wonderful person. Susan has now taken up Bruce's cause and is arguing for fair compensation for victims.

Let me tell you about a couple of others who may surprise you if you did not know they were victims of mesothelioma, asbestos-related disease.

ADM Elmo Zumwalt, Jr., graduated from the Naval Academy in just 3 years, yet ranked seventh in his class. He was the youngest person to ever serve as Chief of Naval Operations in the United States of America. He commanded the U.S. Naval forces in Vietnam. He was the one who crusaded to help those who were involved in exposure to agent orange after the Vietnam war.

In 1999, doctors found a tumor in the admiral's left lung. He was diagnosed

with mesothelioma, based on exposure to asbestos while serving in the U.S. Navy. He underwent a tracheotomy but only survived for just a few months.

Here is a rather famous actor from my generation, Steve McQueen. He died of mesothelioma. It turns out, as a young man he had been exposed to asbestos when he was working odd jobs in construction areas. And McQueen was one of these handsome, dashing heroes on the movie set who ultimately was reduced to a shell of a man by this crippling and debilitating disease.

I tell you this because I want you to understand in the course of the debate that it is not just the blue-collar workers who are the victims—and many of them are—but people who went on to high and lofty positions in life, whether they served in the U.S. Navy or became movie stars or went on to Congress, never knowing they were carrying within their lungs the seeds of their death, the asbestos-related fibers.

When we say we want to make certain that tomorrow's victims are going to be compensated, it is because we do not know how many time bombs are ticking in America today. I do not know if I have been exposed to asbestos. No one listening to this debate can possibly say whether they have been

exposed to asbestos because it was so prevalent and was to be found in almost every place we turned.

So when we talk about having adequate funds in the trust fund for this to be a payout that is worthy of the disease and death that it has caused, I think it is not an unreasonable request.

Many say this debate this week and the vote is really just symbolic. Sadly, too many things around here have just become symbolism. There was no real genuine effort to hammer out a bipartisan agreement, no effort to compromise. We are being given this bill on a take-it-or-leave-it basis. Each of us will get up and say a few words about the bill. I obviously oppose it. But I sincerely hope, after it is defeated—I think it will be—we will sit down and talk about a trust fund that is fair to victims, a trust fund that is fair to companies. And I would implore those company representatives who come to see me, and their insurance companies, to come up with a dollar figure that is fair, that gives you some certainty about your future. That is what you tell me over and over is what you want. You want to know what your liability is going to be so you can plan for it. It is the uncertainty of the current sys-

tem, you say, that makes it so difficult to stay in business. I want to work with you on that. I think a lot of the Members of the Senate do, on both sides of the aisle.

But bringing a bill with a take-it-or-leave-it number in it of less than \$124 billion is not an answer.

Mr. President, I yield the floor. I want to personally thank you for staying. I did not realize you had a 7 o'clock appointment. I hope I can return the favor to you.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER. The Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 7:25 p.m., adjourned until Wednesday, April 21, 2004, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate April 20, 2004:

THE JUDICIARY

VIRGINIA MARIA HERNANDEZ COVINGTON, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA, VICE RALPH W. NIMMONS, JR., DECEASED.