violations of the Clean Air Act, comes across. Look how it inundates the States in this area. My own State of Vermont is basically hidden under the deepest red of mercury pollution on the chart.

The new EPA proposal to reduce mercury emissions was supposed to bring the powerplants into the 21st century and clean up their emissions. It does not do that. It falls short of what is necessary and falls far short of what is possible.

Despite the Administration's best efforts to use every tactic in its public relations arsenal to convince Americans more mercury in the water, food, and environment over a long period of time is the best we can do, it is not working.

In the last 2 months, much has come to light about the Administration's close collusion with polluting industries and devising its policy on mercury. The lobbyists from the industry sent their proposal to the Administration. The Administration does not even pretend to look at this scientifically or be independent. They just take it verbatim. They might as well have kept the letterheads from some of these companies. Instead of using the EPA letterhead, they could put "Polluters R Us," or whatever industry sent to them. There are 20 examples where industry helped ghostwrite the mercury proposal.

In a way, it is almost humorous that they would be so blatant about turning this over to the polluters, except that it suggests a very serious breach of the public rulemaking process and undermines the public trust in EPA's ability to be an independent decision-maker and perform its mission to protect human health and safeguard the natural environment.

This Administration has a credibility problem about its approach to the Clean Air Act and to mercury pollution. New warnings about mercury risk from tuna, increasing numbers of pregnant women with mercury levels above safe levels, more newborns being born with high mercury levels, all are adding up to widespread and growing public demand for prompt action. We know from reports in the New York Times that the Bush administration employed a favorite tactic of sweeping science under the rug when it was drafting the mercury proposal.

But we must ignore the facts. This chart shows the estimates of newborn children and women with unsafe mercury blood levels. They have doubled. These are some of the estimates from EPA scientists about which the White House wished the American people did not know.

Anyone who has children or grandchildren should worry about this issue. Anybody who is expecting a child should wonder what this Administration is doing. Anybody who has young children should worry about what they are doing. The estimate of women of childbearing age with mercury levels above what EPA considers safe has doubled. Apparently, the administration does not want the public to know that their mercury proposal does not go far enough to protect mothers and newborns from mercury.

The same strategy is to ignore career staff and public health experts in the administration's proposal to write a giant loophole into the Clean Air Act New Source Review, called NSR. For anyone who has not seen it, I suggest a careful reading of a New York Times magazine article from several weekends ago titled "Up In Smoke" to see how the Bush administration strategically placed industry lawyers in key positions at EPA, spending the last few years helping the biggest utility companies in the country get off the legal hook of pollution control plans. They put the fox in to guard the henhouse. They have said to industry—and these are industries that contributed mightily to the election—they have said: We will set aside the nonpartisan nonpolitical scientists; we will set aside the people whose sworn duty is to be here to protect the American public; we will put your lawyers in place, and we will let them write the rules for the rest of the country.

Agency experts repeatedly warned the political appointees at the EPA that through new policy, this new NSR policy would undercut the lawsuits. And they did. And they did. They gave industry even more than they asked for and now industry attorneys are going to court where cases have been brought and are saying they should be dismissed because of the administration's actions. This is a very real problem in States like mine, if you are downwind.

If Government wins the NSR cases despite the administration's back-door tactics and hundreds of thousands of tons of toxic pollutants will be cut. Unfortunately, the Bush administration is not satisfied. Retreating from strong mercury controls, undermining the NSR cases, is not enough. We now have reports that say the administration is considering new guidelines to States to limit their ability to require that new coal-fired plants use the best available technology to reduce emissions. That should set off alarm bells in the Northeast.

This chart shows where new proposed mercury plants are. The power industry has plans to build nearly 100 new coal-fired powerplants in the United States over the next 10 years, but the administration is considering new guidelines to States to limit their ability to require that new coal-fired plants use the best available technology to reduce emissions. That should set off alarm bells in the Northeast.

Mr. HATCH. What is the parliamentary situation?

The PRESIDING OFFICER. There are 30 minutes on the majority side for morning business.

The PRESIDING OFFICER (Mr. Ensign). The Senator from Utah.

PRO-ENVIRONMENT ADMINISTRATION

Mr. HATCH. Mr. President, I do not know how anybody can walk on the Senate floor and say Republicans—any Republicans or Democrats—are not for the environment.

Now, I have to say we from the West understand the importance of balancing the environment with jobs and families and opportunities. I think we do a pretty good job. We have to continue to be vigilant about the environment. But I think to try to make the case that this administration is anti-environment is not only a stretch, it is false.

This administration is pro-environment, but it is also pro-jobs, pro-family, pro-geographical areas, pro-West, and pro-proper utilization of Federal lands—almost all of which the environmental extremists decry.

To accuse the administration of putting arsenic in the water or being part of something that puts arsenic in the water is, I think, beyond the pale. The fact is, in many municipalities and towns the small bits of arsenic in the water are not dangerous, according to the EPA and others, but the costs of trying to change their water systems are so exorbitant they could not exist as towns.

Nobody wants any dilatory substance in our water. In fact, for years this
CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2290, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the bill (S. 2290) to create a fair and efficient system to resolve claims for bodily injury caused by asbestos exposure, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes for debate equally divided between the chairman and ranking member of the Judiciary Committee or any designee.

The Senator from Utah.

Mr. HATCH. Mr. President, my colleagues and I have been talking all week about the long overdue reforms that the Hatch-Frist-Miller bill will deliver.

I think it is clear to anybody that asbestos litigation has been spinning out of control with no end in sight for far too long. The shortcomings of the current asbestos plaintiffs represents a two-pronged business, and, at the same time, depriving asbestos victims of prompt and adequate compensation for their injuries.

One of the most outrageous aspects of the current asbestos litigation system is that it allows—indeed, encourages—some lawyers of questionable ethics to find and bring claims that may be of questionable merit. In some egregious and hopefully rare instances, an entire plan of action has apparently evolved to track down potential claimants based more upon whether they can be properly coached to present a colorable claim than whether their claim has actual merit.

For example, I am told that several years ago, a first-year associate attorney at the law firm of Baron & Budd apparently inadvertently disclosed to defense counsel a memorandum that provides a sad but startling insight into how asbestos claims are created and spun into recoveries.

The memorandum, titled "Preparing for Your Deposition," offers clients detailed instructions. They are shown how to sound credible when giving testimony that they worked with particular asbestos products. The memorandum seems to make every effort to instruct clients to assert particular points that will act to increase the value of their claim, without regard to whether those assertions are actually true. The memorandum even goes so far as to inform clients that a defense attorney will have no way of knowing whether they are lying about their exposure to particular asbestos products.

One excerpt from the memorandum appears to help claimants identify defenses that might be used to bodily injury caused by asbestos exposure, and for other purposes.

The memorandum appears to be of little value in certain circumstances, the memorandum advises claimants as follows—again, the same law firm:

Keep in mind that these [defense] attorneys are very young and were NOT PRESENT at the jobsites you worked at. They have NO RECORDS to tell them what you recall originally. If the defense attorney asks you if you were shown pictures of products, wait for your attorney to advise you to answer, then say you never saw products before she interviewed them. She will say she has pictures of products, and you can point to pictures of MANUFACTURED products before she interviewed them. "You know, you know, we've talked to some other people, other witnesses, and they recall working with Owens-Corning Kaylo. Don't you think you saw that?" And they'd say, "Yeah, maybe you're right."

Finally, another document obtained by the Observer consisted of handwritten notes apparently taken by a Baron & Budd attorney during an internal training session. I will just say these are the things that are wrong with asbestos litigation. Is this counseling or coaching? The memorandum states: "Warn plaintiffs not to say you were around it—even if you were—after you knew it was dangerous."

These practices, if they indeed took place—and I hope they did not take place in the way the Dallas Observer described them in its investigative report—distort a system that is already struggling to provide fairness. If lawyers for purported asbestos victims try to mislead the court in this manner, they may win some big fees for themselves along with some unjustified awards for clients who aren't actually sick, such practices have a sinister effect: They deprive seriously injured asbestos victims of the swift and fair recoveries that they deserve for their injuries and they cheat the payer firm out of money, they cheat employees of these firms out of their jobs, and they cheat investors and individual retirees of these firms out of their investments. The time to act is now. I urge my colleagues to vote to invoke cloture on this motion and I hope they will do so.

Still another aspect of the Dallas Observer investigation into the Baron firm's handling of asbestos cases revealed a process that put a premium on school clients by planting the right bits of information in their heads.

As the Dallas Observer reported: "A paralegal says that in many cases, the client had no specific recollections of some products before she interviewed them. "My original case load was a thousand, but I didn't interview that many people. It was in the hundreds. I'd say it was 50 per cent of those I had people identify at least one product they couldn't recall originally."

Now, manipulation of claimant memories and stories appear to have gone beyond implanting valuable facts to improve their claims. The Dallas Observer found that the Baron law firm also conveniently helped claimants eliminate facts from their stories where that would suit their purpose. The Observer reported the following:

According to the paralegals, their job did not stop with implanting memories. There were also the asbestos products they had to encourage clients not to recall. Two lawyers told her to discourage identification of Johns-Manville pipe covering, the paralegal says, she would hand them a line. "You'd say, 'You know, we've talked to some other people, other witnesses, and they recall working with Johns-Manville.'"

The Observer reported:

"For a cross-examination that could reveal how flimsy their claim might be. It reads as follows. This is from the Baron & Budd memo "Preparing for Your Deposition":

You may be asked how you are able to recall some product names. The best answer is to say that you recall seeing the names on the containers or on the product itself. The more you thought about it, the more you remembered! If the defense attorney asks you if you were shown pictures of products, wait for your attorney to advise you to answer, then say you never saw products before she interviewed them. She will say she has pictures of products, and you can point to pictures of MANUFACTURED products before she interviewed them. "You know, you know, we've talked to some other people, other witnesses, and they recall working with Owens-Corning Kaylo. Don't you think you saw that?" And they'd say, 'Yeah, maybe you're right.'"

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