

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.