

when he was home visiting friends and family during his leave in May.

It is clear that Noah had a caring heart, as his friends recount that he was known to give Beanie Babies to the children in Iraq.

In tribute to Noah, members of the Gilmer County community will assemble at Gilmer High School Friday June 24 at 2 p.m. to distribute yellow ribbons across Gilmer County in preparation for the celebration of Noah's life on Saturday June 25, what would be his 24th birthday.

The ribbons will line highway 52 East in Ellijay to Highway 515, which stretches from the county line to the Ellijay First United Methodist Church, the site of the memorial service.

Another soldier in the vehicle was killed, and the driver was injured severely in the explosion. Noah and his fellow soldiers were transporting two captured insurgents during night operations in the Baquba neighborhood of Buhritz.

Noah's fellow soldier, Corporal William A. Long of Lilburn, GA, also died from injuries sustained in the blast. Three years ago, after talking with his stepfather and stepbrother, who are former members of the military, William joined the Army.

After his enlistment expired, he was very aware that his unit would be deployed to Iraq. His desire to serve our country and free the Iraqi people, however, led him to re-enlist.

A resident of Atlanta for most of his life and a Berkmar High School alumnus, William was well-mannered and well-liked by all. His family describes him as a "perfectionist" and "basketball-lover."

Ironically, before going to Iraq, William participated in more than 700 funerals as a member of the prestigious "Old Guard." Many of those funerals were held at Arlington National Cemetery, the cemetery where William will be buried.

President Ronald Reagan once said:

Putting people first has always been America's secret weapon.

That secret weapon drives the American spirit to dream and dare, and take great risks for a greater good. Noah and William represented the true heart of servant leadership. Their desire was to first, serve others, not themselves.

My wife Julianne and I wish to extend our sympathies and our prayers to both Noah's and William's family, friends, and fellow soldiers. Their sacrifice will not be lost or forgotten. May God bless Noah Harris and William Long.

#### IRAQ

Mr. KENNEDY. Mr. President, this morning in the Armed Services Committee, Secretary Rumsfeld and Generals Myers, Casey, and Abizaid briefed us on the status of the war effort.

Secretary Rumsfeld said, once again, that it is a tough road ahead but that we must persevere and he sees reasons

to be hopeful. Secretary Rumsfeld was describing a different war than most persons are concerned about. The war in Iraq they see is one of mistake after mistake after mistake. Whatever our position on the Iraq war, we should all be concerned that the administration has not handled it competently.

Secretary Rumsfeld needs to see what the American people see very clearly: The President does not have a winning strategy in Iraq. Our troops have been asked to do more with less. Our current strategy isn't working and the Congress and the American people know it.

Secretary Rumsfeld insists today that it is false to say the administration is painting a rosy picture. But that is exactly what he continues to do. It is time for Secretary Rumsfeld to take off his rose-colored glasses and admit to the American people and to our men and women in uniform who are paying the price with their lives for its failures that he had no realistic strategy for success.

It is time to level with the American people instead of continuing to paint an optimistic picture that has no basis in reality because of his failed strategy. And it is time for Secretary Rumsfeld to resign.

Despite the elections last January and the formation of a new transitional Iraqi government, many are increasingly concerned that the administration has no effective or realistic plan to stabilize Iraq. It continues to underestimate the strength and the deadly resilience of the Iraqi insurgency and it has failed shamefully to adequately protect our troops. More than 1,700 American service men and women have been killed in Iraq so far and over 13,000 more have been wounded. The families of these courageous soldiers know all too well that the insurgents are not desperate or dead-enders or in their last throes, as administration officials have repeatedly claimed.

Instead, General Casey indicated that the insurgency is around 26,000 strong, an increase over the 5,000 the Pentagon believed were part of the insurgency 1 year ago.

As General Myers said in April, the capacity of the insurgents "is where they were almost a year ago." General Abizaid told the committee today that the overall strength of the insurgency is "about the same as it was" 6 months ago. Looking ahead, as General Vines said this week, "I'm assuming that the insurgency will remain at about its current level."

In the last 2 months, America has lost an average of three soldiers a day in Iraq, and no end is in sight. As General Myers said on May 12.

I wouldn't look for results tomorrow . . . One thing we know about insurgencies is that they last from . . . three, four years to nine years.

Because of the war, our military has been stretched to the breaking point.

The Department of Defense has had to activate a stop-loss policy, to pre-

vent service members from leaving the military as soon as they fulfill their commitment.

Nearly 50 percent of the persons serving in the regular Armed Forces have been deployed to Iraq or Afghanistan since December 2001, and nearly 15 percent of them have been deployed more than once.

Thirty six percent of all those serving in the Armed Forces, including in the National Guard and the Reserves, have been deployed to Iraq or Afghanistan of since December of 2001.

The alarm bell about the excessive strain on our forces has been ringing for at least a year and a half. In January 2004, LTG John Riggs said it bluntly:

I have been in the Army 39 years, and I've never seen the Army as stretched in that 39 years as I have today.

As LTG James Helmley, head of the Army Reserve, warned at the end of 2004, the Army Reserve "is rapidly degenerating into a 'broken' force" and is "in grave danger of being unable to meet other operational requirements."

These continuing deployments are taking their toll not only on our forces in the field but also on their families here at home. The divorce rate in the active-duty military has increased 40 percent since 2000.

The war in Iraq and the casualties and the strain on families have seriously undermined the Pentagon's ability to attract new recruits and retain members already serving. Both the Regular and Reserve components of the Armed Forces are increasingly unable to meet recruitment goals. MG Michael Rochelle, head of the Army Recruiting Command, stated the problem succinctly in May when he said that this year is "the toughest recruiting climate ever faced by the all-volunteer Army."

In March, the Pentagon announced it was raising the maximum age for Army National Guard recruits from 34 to 39, and was also offering generous new health benefits for Guard and Reserve members activated after the September 11 terrorist attacks.

Despite these facts, Secretary Rumsfeld insisted today that we will not have a broken Army as a result of the war.

The severe strain the war is placing on our Armed Forces and on our ability to protect our national security interests in other parts of the world concerns us all.

The Army has been forced to go to all-time new lengths to fill its ranks. In May, it began offering a 15-month active duty enlistment, the shortest enlistment tour in the history of the Army.

To recruit and retain more soldiers, the National Guard has increased its retention bonus from \$5,000 to \$15,000. The first-time signing bonus has gone up from \$6,000 to \$10,000. GEN Steven Blum, Chief of the Army National Guard, said:

Otherwise, the Guard will be broken and not ready the next time it's needed, either here at home or for war.

We all know that these problems of recruiting and retention cannot be fixed through enlistment bonuses, health benefits, and raising the age of service. These are short-term Band-Aids on the much larger problem of the war. Only progress in bringing the war to an honorable conclusion will lead to a long-term solution to the problem which is clearly undermining our ability to respond to crises elsewhere in the world.

Despite claims by the administration of progress, Iraq is far from stable and secure. We have made very little progress on security since sovereignty was transferred to the interim Iraqi Government 1 year ago.

Today, Secretary Rumsfeld insisted we are not stuck in a quagmire in Iraq. He insisted that "the idea that what's happening over there is a quagmire is so fundamentally inconsistent with the facts." What planet is he on? Perhaps he is still living in the "Mission Accomplished" world.

By last June, 852 American service members had been killed in action. Today, the number has doubled to more than 1,700.

By last June, 5,000 American service members had been wounded in action. Today, the number has more than doubled, to over 13,000.

DIA Director Admiral Jacoby told the Armed Services Committee in March that:

the insurgency in Iraq has grown in size and complexity over the past year. Attacks numbered approximately 25 per day one year ago.

Just last week, General Pace said:

the numbers of attacks country-wide in Iraq each day is about 50 or 60.

A year ago, the United States had 34 coalition partners in Iraq. Nine of those partners have pulled out in the past year. Today, we have just 25. By the end of the year, another five countries that are among the largest contributors of troops are scheduled to pull out.

One year ago, 140,000 American troops were serving in Iraq. Today, we have the same number of troops.

The training of the Iraqi security forces continues to falter. The administration still has not given the American people a straight answer about how many Iraqi security forces are adequately trained and equipped. They continue to overestimate the number of Iraqis actually able to fight. In the words of the General Accounting Office:

U.S. government agencies do not report reliable data on the extent to which Iraqi security forces are trained and equipped.

In February last year, Secretary Rumsfeld preposterously said:

We accelerated the training of Iraqi security forces, now more than 200,000 strong.

In fact, the numbers of Iraqis who are adequately trained is far, far lower. As General Meyers conceded a year later, only about 40,000 Iraqi security forces "can go anywhere and do anything."

It is still far from clear how many Iraqi forces are actually capable of

fighting without American help and assistance.

Our reconstruction effort has faltered as well over the last year—and faltered badly. The misery index in Iraq continues to rise. As of June 15, only \$6 billion—one third—of the \$18 billion provided by Congress last summer for Iraq reconstruction had been spent.

The Iraqi people desperately need jobs. But we are unable to spend funds quickly, because the security situation is so dire. Of the amount we do spend, it is far from clear how much is actually creating jobs and improving the quality of life. We need greater focus on small projects to create jobs for Iraqis, not huge grants to multinational corporations that create more profits for corporate executives than stability in Iraq.

By the State Department's own accounting, up to 15 percent of reconstruction funding is being used to provide security for the reconstruction. That estimate itself may be too low. A Department of Energy analysis this month says that perhaps 40 percent or more is actually being spent on security, as opposed to actual reconstruction.

These costs have increased—not decreased—over the past year as insurgent attacks have continued to escalate. We are spending ever-increasing amounts of assistance on security to guard against an insurgency that the Vice President insists is in its last throes.

A joint survey by the United Nations Development Program and the Iraqi Government released last month shows Iraq is suffering from high unemployment, widespread poverty, deteriorating infrastructure, and unreliable water, sewage, sanitation, and electricity services—despite its immense oil wealth and access to water.

Estimates of the number of unemployed range between 20 and 50 percent of the population. Every unemployed person is ripe for recruiting by the insurgents, who offer as little as \$50 a person for those willing to plant explosives on a highway or shoot a policeman.

Iraq still suffers heavily from severe electricity shortages. According to the Department of Energy assessment, the causes are numerous, "including sabotage, looting, lack of security for workers, disruptions in fuel supplies . . ."

A year ago, Iraqis had an average of 12 hours of electricity per day. Today, they have just over 10 hours a day.

Almost all of Baghdad's households suffer from an unstable supply. In parts of the city, electricity is turned on for 3 hours and then turned off for 3 hours. As a result, 29 percent rely on private generators for electricity. In areas with high incidences of poverty, many families have no alternative supply to turn to.

Water and sanitation are enormous problems as well. Just this week, water was unavailable in many parts of Baghdad because insurgents blew up the water pipes.

According to the United Nations Development Program, only 54 percent of families in Iraq have safe drinking water, and 80 percent of families in rural areas use unsafe drinking water.

What happened to all of the oil that was supposed to pay for the costs of reconstruction and drive the recovery of Iraq's economy? Last year, the Iraqi Oil Minister said that 642 attacks on the oil system had cost the economy \$10 billion. In 2005, pipelines are still under attack, and analysts believe it will be 2 to 3 years before Iraq is able to increase its oil production.

The administration has been consistently wrong about Iraq. They wrongly insisted there was no guerilla war. They repeatedly—and wrongly—called the insurgents dead-enders who are in their last throes. They repeatedly—and wrongly—sent our service men and women on patrol without proper armor, a shortage that continues with the marines even today. When Secretary Rumsfeld was challenged about it by a soldier, to huge applause from the troops, on the Secretary's visit to Iraq last December, he responded:

You go to war with the army you have. They're not the army you might want or wish to have at a later time.

That response from the troops says it all. Surely, no Secretary of War or Secretary of Defense in our history has ever been so humiliated by his troops or received such a resounding vote of no confidence.

The Secretary's failed strategy has created an impossible situation for our forces. The administration has undermined our national security and undermined our ability to protect our national security interests elsewhere in the world.

Our colleague, Senator HAGEL, summed it up brilliantly when he told U.S. News and World Report last week:

Things aren't getting better; they're getting worse. The White House is completely disconnected from reality . . . It's like they're just making it up as they go along. The reality is that we're losing in Iraq.

Mr. President, next Tuesday marks the 1-year anniversary of the transfer of sovereignty in Iraq, and to mark the occasion, President Bush will address the Nation.

When he does, all of us hope that he will state a new, more realistic and more effective strategy for the United States to succeed in Iraq.

The war has clearly made America less safe in the world. It has strengthened support for al-Qaida and made it harder to win the real war against terrorism—the war against al-Qaida.

The President needs an effective strategy to accelerate the training of a capable Iraqi security force.

The President needs an effective strategy to rescue the faltering reconstruction effort and create jobs and hope for the Iraqi people, and neutralize the temptation to join the insurgents.

The President needs an effective strategy for serious diplomacy to bring

the international community into Iraq, to support the adoption of a constitution that protects all the people of Iraq.

He needs an effective strategy to repair the damage the war has caused to our reputation in the world and to our military. Our men and women in uniform deserve no less.

We are muddling through day by day, hoping for the best, and fearing the worst. Our men and women in uniform deserve better—and so do the American people.

#### ASBESTOS

Mr. SPECTER. Mr. President, I have sought recognition to talk briefly about the contents of S. 852 to provide for asbestos reform. This is a subject which has been before the Senate in one way or another for the better part of two decades. I recall my first contact with the issue when then-Senator Gary Hart of Colorado was soliciting members of the Judiciary Committee because of the deep problems of Johns-Manville.

The Supreme Court of the United States, on a number of occasions, has importuned the Congress to take over the subject because the asbestos cases are flooding the courts and because class actions are inappropriate to address the issue.

The result of the avalanche of asbestos litigation has seen some 77 companies in the United States go into bankruptcy and thousands of people suffering from asbestos-related injuries—mesothelioma, deadly diseases—and unable to collect any compensation because of the fact their employers or those who would be liable for their injuries are in a state of bankruptcy.

Senator HATCH took the lead as chairman of the Judiciary Committee in the 108th Congress in structuring a bill which created a trust fund which has been established at \$140 billion to pay asbestos victims. This is a sum of money which has been agreed to by the insurance companies and by the manufacturers and had the imprimatur of the leadership of the Senate.

In the fall of last year, 2004, Senator FRIST and Senator Daschle came to terms as that being a figure which would take care of the needs. The victims have never been totally satisfied with that figure, but it represents a very substantial sum, obviously, and according to the filings of the Goldman Sachs analysis, should be adequate to compensate the victims.

They made a detailed analysis and came to the conclusion that \$125 billion was the figure necessary. Then when we removed the smokers, a figure of \$7 billion, it came to a net of \$118 billion, leaving a substantial cushion between \$118 billion on the projection and \$140 billion.

When the bill was passed out of the Judiciary Committee in late July of 2003, largely along party lines, the aid of a senior Federal judge was enlisted to serve as a mediator. Chief Judge Edward R. Becker had taken senior status

the preceding May and was willing to convene the parties, the so-called stakeholders, in his chambers in Philadelphia in August of 2003. He brought together the insurers, the trial lawyers, the AFL-CIO representing claimants, and the manufacturers, a group of four interest groups who are very powerful in our community.

From those two meetings, there have been a series of approximately 40 conferences in my offices where we have worked through a vast number of problems where I think we have accommodated many of the interests.

In May, the Judiciary Committee voted the bill out of committee on a 13-to-5 vote, with bipartisan support, and during the course of the markup some 70 amendments were agreed to. There are still some outstanding issues, but we have been soliciting cosponsors and have found very substantial interest in the Senate on trying to move through legislation on this important issue. There is no denial that this is a very major national problem. There is no denial that there are many victims of asbestos who are now destitute because the people who were responsible for their damages have gone into bankruptcy. There is no denial that there has been a tremendous drain on the U.S. economy and that if we could solve this issue it would be a bigger boost to the economy than a gigantic tax break or most any other remedy which might be found to stimulate our economy.

There are, obviously, risks in any bill. We have worked through the complexities of a startup procedure where the people who have exigent claims—that is, where they may die within a year—we have an elaborate system of offers and inducements to try to settle those cases within a brief period of time, some 9 months. Obviously, we cannot have a stay of judicial proceedings forever, so there has to be some resort to the courts if we are unable to get the program set up.

Without going into greater detail, we have worked assiduously to try to resolve this issue. We either have it solved or are very close to a solution. We have worked through complex questions on subrogation, complex questions on the Federal Employers Liability Act, and there are still ongoing decisions with a controversy as to how the \$90 billion will be divided up among the manufacturers. That essentially is the question that only the manufacturers themselves can guarantee.

Similarly, there are issues as to how the \$46 billion will be divided up among the insurers. Candidly, the insurance industry is split on the issue, but we are still working, and I have meetings in the course of the next week to 10 days with people who have outstanding concerns to try to resolve those issues.

When the vote came out of committee, some of those who voted in favor of the bill did so with reservations. We have worked through this, and I think those issues are either resolved or resolvable.

Senator LEAHY and I have worked very closely. It is a bipartisan bill which had the 10 members of the Judiciary Committee on the Republican side voting in favor—to repeat again, subject to some reservations—and three Democrats voting in favor of the bill. Senator LEAHY and I are determined to retain our core provisions, but we are open to suggestions.

It is my hope that this bill will come to the Senate right after the Fourth of July recess. That, of course, is a decision which the majority leader has to make in setting the calendar. There is a momentum in hand where it would be very much in the national interest, for the reasons I stated, to move ahead.

I ask unanimous consent that the text of the Dear Colleague letter sent by Senator LEAHY and myself to Members of the Senate be printed in the RECORD at the conclusion of my presentation.

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

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, June 22, 2005.

DEAR COLLEAGUE: We write to detail the problem our nation now faces with the asbestos crisis and to inform you on the substance of Senate Bill 852, the Fairness in Asbestos Injury Resolution Act of 2005, which was voted out of committee on May 26 with a bipartisan 13-5 majority. We urge you to support this bill, and reiterate our interest in working with you to improve this legislation while preserving its core provisions. This is more detailed than the customary "Dear Colleague" letter, but we felt this extensive discussion was necessary because of the complexities of the issues and proposed legislation.

#### INTRODUCTION

The asbestos issue has been before the Senate Judiciary Committee for more than twenty years, since Senator Gary Hart of Colorado sought the assistance of Judiciary Committee members in enacting federal legislation to address Johns-Manville's asbestos claims.

Since that time: asbestos litigation has overwhelmed both federal and state court systems; 77 companies have gone into bankruptcy, with more on the brink, due to the rising tide of asbestos claims; and thousands of impaired asbestos victims have received pennies on the dollar since many of the companies liable for their exposure have gone into bankruptcy.

Since the 1980's, the number of asbestos defendants has risen from about 300 to more than 8,400, spanning approximately 85 percent of the U.S. economy. As a result, some 60,000 workers lost their jobs. Employees' retirement funds have shrunk by an estimated 25 percent. This is a problem that extends beyond the victims of asbestos disease alone. It has a growing impact on the average American and little question remains that it is a crisis of serious proportions.

#### THE COURTS ENLIST THE HELP OF CONGRESS

In 1997, the Supreme Court commented for the first time on the growing asbestos problem by stating (in the context of holding that asbestos litigation was not susceptible to class action treatment):

The most objectionable aspects of this asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials

are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether. . . .

Given the escalating problem, the Supreme Court has repeatedly called upon Congress to act through national legislation: "[T]he elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation." The current asbestos crisis "cries out for a legislative solution." "Members of this Court have indicated that Congress should enact legislation to help resolve the asbestos problem. Congress has not responded." As recently as 2003, the high court observed that "this Court has recognized the danger that no compensation will be available for those with severe injuries caused by asbestos . . . It is only a matter of time before inability to pay for real illness comes to pass."

#### THE 2005 RAND REPORT

On May 10, 2005, the Rand Corporation issued a report highlighting the problems that many asbestos victims face in today's tort system. In addition to discussing the number of corporate bankruptcies, and other alarming economic consequences of asbestos liability, the report summarized the average disbursements on asbestos payments to claimants for the year 2002, the most recent year available: Asbestos victims filing claims receive an average of forty-two (42) cents for every dollar spent on asbestos litigation; Thirty-one (31¢) cents of every dollar have gone to defense costs; and Twenty-seven (27¢) cents have gone to plaintiffs attorneys and related court cost.

#### LEGISLATIVE HISTORY LEADING TO S. 852

The current bipartisan bill is the product of years of negotiations, discussion, and compromise. On May 22, 2003, then-Chairman Hatch introduced S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003. He deserves great credit for establishing in that bill a national trust fund with a schedule of payments, analogous to workers' compensation. We have built on that aspect of S. 1125, ever mindful that the primary objective of legislation must be to ensure fair and timely compensation to victims of asbestos disease.

In July 2003, the Judiciary Committee voted out S. 1125, largely along party lines, in an effort to move the legislation forward. However, the bill foundered on unresolved issues. In August, Judge Edward R. Becker, who had recently taken senior status after being Chief Judge of the Third Circuit, and having authored the opinion in the asbestos class action suit which was affirmed by the U.S. Supreme Court, convened a two-day conference in Philadelphia—with manufacturers, labor (AFL-CIO), insurers, and trial lawyers to determine if some common ground could be found. Subsequently, from September 2003 through January 2005, we held 36 stakeholder meetings here, with Judge Becker as a pro bono mediator. These meetings were usually attended by at least 25 stakeholder representatives with as many as 75 representatives attending on some occasions. These stakeholder sessions have included many Senators, as well the staffs of Senators Feinstein, Carper, Cornyn, DeWine, Ben Nelson, Baucus, Biden, Chambliss, Craig, Dodd, Durbin, Feingold, Graham, Grassley, Kennedy, Kohl, Kyl, Landrieu, Levin, Lincoln, Murray, Pryor, Schumer, Sessions, Snowe, Stabenow, and Voinovich.

Over the last few months, in anticipation of bill introduction and during Committee markup, we convened 26 meetings with our Judiciary Committee colleagues to address their concerns with the bill. During these deliberative sessions, we addressed issues in-

cluding disease categories, award amounts, Fund sunset, and judgments and verdicts pending at the time of enactment.

After hundreds of hours of extensive analysis and deliberation, we found we could accommodate many, if not most, of the myriad issues raised by stakeholders and Senators before formal introduction of S. 852. After introduction, the Judiciary Committee held six markups lasting over a month. During this bipartisan process, and through continuing meetings, we were able to further resolve a number of complex issues, including medical criteria, Fund start-up, insurer allocation, the Equitas hardship issue, and Fund contribution transparency. Indeed, the markup process resulted in the Committee's acceptance of over 70 amendments from Republican and Democratic members. After extensive deliberation, the Committee discharged S. 852 on a solid bipartisan vote of 13-5.

#### S. 852

We have sought an equitable bill which takes into account, to the maximum extent possible, the concerns of stakeholders and Senators. The bill establishes a privately-funded \$140 billion trust fund that compensates asbestos victims through a no-fault system administered by the Department of Labor. S. 852 in no way holds the taxpayer responsible for contributing to the Fund. In fact, during markup, the Committee accepted an amendment that explicitly absolves the federal government from any funding obligations or liabilities with respect to the Fund.

Once established and capitalized through the private contributions from defendant and insurer participants, asbestos victims will simply submit their claims to the fund through an administrative process designed to compensate them quickly. Claimants would be fairly compensated if they meet medical criteria for certain illnesses and if they show past asbestos exposure.

The major features of this bill reflect consensus on core principles, but all are directed to ensuring fair and adequate compensation to the victims of asbestos exposure:

**Funding:** The size of the fund was a principal issue of contention during the 108th Congress. Last October, Majority Leader Frist and then-Democratic Leader Daschle agreed that the Fund should be set at \$140 billion, which has been generally accepted as sufficient to ensure adequate payment to victims and is now embodied in S. 852. The manufacturers and insurers have agreed to pay that sum—a guaranteed amount—into the trust fund.

**Removal of the Old Level VII's:** Some members raised concerns about compensating the so-called "exposure only" Level VII lung cancers, fearing that this disease category would create a "smokers" compensation fund. Without sufficient markers to show a stronger causal connection between asbestos exposure and lung cancer, this disease category could have required \$7 billion from the Fund. After serious consideration, we removed this disease category from the bill.

**No Subrogation:** A key issue for to determine compensation for asbestos victims has been workers' compensation subrogation. Allowing for subrogation would permit insurers to impose a lien on Fund awards recovered by claimants. The value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. To be fair to victims, claimants should be allowed to retain and receive the full value of both their Fund awards and workers' compensation payments.

**More Effective Start-Up:** Perhaps one of the most difficult issues was how pending

claims in the tort system will be treated upon S. 852's enactment. With general agreement that if the fund was not up and running within a reasonable amount of time, some or all pending claims could return to the tort system. The bill as introduced provides for a 9 month stay of claims for exigent cases and a 24 month stay for nonexigent cases. Furthermore, the legislation creates a procedure enabling exigent claimants to receive prompt payment even during the initial startup period authored by Senator Feinstein. Taking into consideration concerns raised by victims, insurers, and defendant participants, Senators Kyl and Feinstein worked through compromise language during the markup process that greatly improves the start-up process.

**Sunset:** The stakeholders generally agree that if the Fund cannot pay all valid claims, a claimant's right to a jury trial cannot be barred. But such a sunset should not occur before there is an extensive and rigorous "program review." During markup, Senators Kyl and Leahy worked towards refining the sunset procedures by enabling the Administrator to submit recommendations to Congress regarding possible changes to the medical criteria or the funding formula. In the event of a sunset, the bill now allows claimants to bring their lawsuits only in federal court or in a state court in the state in which the plaintiff resides or where the exposure took place.

**Attorneys' Fees:** Before S. 852 was introduced, and after extensive deliberation with Judiciary Committee members, agreement was reached on a 5% attorneys' fee cap for all monetary awards received by asbestos victims within the Fund. The nature of the claims process justifies this cap, for once the fund is established, recovery is fairly straightforward and there will no longer be a need for substantial and time-consuming attorney involvement. Moreover, fee caps in federal compensation programs are fairly common. We are working on further refinements in the bill to assist claimants in processing their claims through a paralegal program that the Administrator will be authorized to implement.

**Level VI Claimants:** Members raised concerns about the strength of the causal connection between asbestos exposure and the development of cancer in areas other than the lungs (e.g., colon, stomach, esophageal and laryngeal cancers). To assuage these concerns, the bill commissions an Institute of Medicine study to assess this causal connection, which will come out no later than April 2006. The findings of the study will become binding on the Administrator when compensating asbestos victims for each cancer in this disease category.

**Silica Claims:** We heard concerns that many asbestos claims might be "repackaged" as silica claims in the tort system. We also, however, heard concerns that liability for non-asbestos diseases not be abrogated simply because S. 852 becomes law. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims, but that workers with genuine silica exposure disease should be able to pursue their claims in the tort system. A hearing was held on this issue on February 2, 2005, which established that exposure to asbestos and silica are easily distinguishable on x-rays and that markings from asbestos and silica disease are rarely found in the same patient. Consequently, the bill requires claimants, prior to pursuing a silica claim in the tort system, to provide rigorous medical evidence establishing that their injury was caused by exposure to silica, and that asbestos exposure was not a significant contributing factor to their injuries.

**Medical Screening:** Some Committee members were concerned about a medical screening program within the Fund. Although earlier versions of the asbestos bill excluded such a program, we concluded that one was necessary as an offset to the reduced role of a claimant's attorney. It is reasonable to have routine examinations for a discrete population of high-risk workers as a matter of basic fairness. By establishing a program with rigorous standards (such as a provision offered by Senator Coburn requiring service providers to be paid at Medicare rates), as has been done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard. This program is vastly different from any screening in the current tort system.

**Pending Claims and Settlements:** Prior to bill introduction, and as a result of the numerous stakeholder meetings, agreement was reached on how the bill affects pending claims and settlements in the tort system. The bill preserves: (1) cases with a verdict or final order or final judgment entered by a trial court; (2) any civil claim that, on the date of enactment, is in trial before a jury or judge at the presentation of evidence phase; and (3) written settlement agreements, executed prior to date of enactment, between a defendant and a specific named plaintiff, so long as the agreement expressly obligates the defendant to make a future monetary payment to the plaintiff and plaintiff fulfills all conditions of the settlement agreement within 90 days.

**CT Scans:** Unlike prior iterations of the asbestos bill, S. 852 permits greater use of CT scans. During markup, the Committee accepted an amendment that commissions a study by the Institute of Medicine to evaluate whether CT scans are well accepted and reasonably reliable to diagnose certain lung cancer claims. In addition, after extensive discussions between Senators Leahy and Coburn, the Committee accepted an amendment that calls on the American College of Radiologists to establish guidelines for comparing claimants' CT scans.

**Transparency:** Several members raised concern over the specific sources of defendant funding. After numerous briefing sessions from claims analysts and financial projection experts, the Committee accepted an amendment which provides that within 60 days after the date of enactment the contributors to the Fund must submit to the Administrator information sufficient to determine their contribution levels. The Administrator must publish this funding allocation information in the Federal Register within 60 days of receipt and before the Fund can be deemed operational.

**Asbestos Ban:** Despite the known danger involved with asbestos, a number of products and processes still use asbestos today. As Congress considers creating an alternative compensation program to address past exposures to asbestos, it is only sensible that we also prevent future asbestos-related illnesses from occurring by banning asbestos use. Therefore, this bipartisan bill contains a ban on the commercial manufacture, use and distribution of asbestos and asbestos-containing products, originally authored by Senator Murray. This provision was unanimously modified in Committee last month by the adoption of Senator Kyl's amendment to provide narrow exceptions to the ban for national security purposes.

S. 852 has benefited from a thorough process during this Congress. This legislation is complicated, but it is both integrated and comprehensive and reflects a remarkable and widespread will to enact legislation to finally resolve the asbestos crisis. On the state of a 20 year record, the choice we are pre-

sented with is not between this bipartisan bill and one that takes a dramatically different approach. The choice is between this bipartisan bill and the continuation of the present chaotic system which leaves thousands of victims suffering from deadly diseases without compensation and scores of companies threatened with bankruptcy.

Sincerely,

ARLEN SPECTER.  
PATRICK LEAHY.

#### STRAW PURCHASES AND THE ILLEGAL GUN MARKET

Mr. LEVIN. Mr. President, a report published last week in the Buffalo News further exposes how reckless gun dealers and the use of "straw purchasers" contribute to gun violence in our country. It is important that we recognize their role in adding to our Nation's gun violence problem and work to enact commonsense legislation to keep dangerous firearms out of the hands of violent criminals.

Under current law, when an individual buys a handgun from a licensed dealer, there are Federal requirements for a background check to insure that the purchaser is not an individual who is prohibited by law from purchasing or possessing a firearm. "Straw purchasers" serve as middlemen by purchasing firearms with the intent of transferring or selling them to other individuals who may be prohibited by law from purchasing firearms themselves or who may wish to hide the total number of firearms in their possession from Federal authorities. These "straw purchasers" help to supply the illegal gun market by allowing the true purchaser to obtain firearms, oftentimes in large quantities, without having to pass a background check. This practice is a felony under Federal law.

As the Buffalo News report points out, individuals using "straw purchasers" are often aided by gun dealers who turn a blind eye to the practice. One of the gun show dealers mentioned in the report has been linked to more than 600 guns recovered by New York City police, a semi-automatic rifle used in the 1999 shootings at Columbine High School, and is now prohibited from selling guns in the State of California as a result of a lawsuit brought by several communities there. In addition, reportedly nearly 200 handguns that were illegally resold in Buffalo, NY, were originally sold by the same dealer. Investigations revealed that the handguns were obtained over a 6-month period by a man and several accomplices who made "straw purchases" on his behalf. Since records of multiple gun sales must be filed with the Government, the "straw purchases" were apparently made to avoid alerting Federal authorities to the illegal reselling of the guns in Buffalo. According to the Buffalo News, the "straw purchasers" in this case said that their role was limited to signing and paying for the handguns that the true buyer selected.

Occurrences like those detailed by the Buffalo News are apparently not

uncommon and continue to help fuel the illegal gun market in our country. Reckless dealers and "straw purchasers" indirectly threaten the security of our communities by facilitating the transfer of dangerous firearms to potential criminals who may use them in violent crimes. Unfortunately, instead of strengthening our gun safety laws as they apply to reckless dealers and "straw purchasers," some of my colleagues are seeking to provide irresponsible gun manufacturers and dealers with immunity from liability, even when their actions contribute to the growth of the illegal gun market. I urge my colleagues to support efforts to help stop guns from falling into the hands of violent criminals.

#### LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each day I have come to the floor to highlight a separate hate crime that has occurred in our country.

In Chicago, a bisexual Latina student was threatened by a white male at a local university because of her sexual orientation. Sometime after the incident, the victim was walking outside of her dorm when the same male student followed her into an alley and assaulted her. She was punched and kicked repeatedly in the stomach.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### SUPPORT SPLITTING THE NINTH CIRCUIT COURT OF APPEALS

Mr. CRAIG. Mr. President, I rise today to support legislation splitting the Ninth Circuit Court of Appeals. It is high time Congress took this action. For far too long, the Ninth Circuit has been bogged down by an immense caseload, slowing the wheels of justice. Now we have the opportunity to correct a problem that has been in sore need of a solution for decades. The people of the State of Idaho have long requested this action, but it is not only good for Idaho; it is good for the States of the West represented in the Ninth Circuit, and for the Nation as a whole.

Calls for a split in the Ninth Circuit began as early as the 1930s. Support dwindled when the court expanded into Seattle and Portland to alleviate travel concerns and caseload burdens. In 1973, the Hruska Commission expressed concerns with the size of two circuit