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Senate

The Senate met at 9:15 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.

Ever loving and eternal God, source of light that never dims and of the love that never fails, life of our life, parent of our spirits, draw near to us. You are so high that the heaven of heavens cannot contain You, yet You dwell with those who possess a contrite and humble spirit. Thank You for Your kindness and mercy, for showering compassion on all creation. Today, we ask for a special blessing for our Senators. Open their minds to the counsels of eternal wisdom; breathe into their souls the peace which passes understanding. Increase their hunger and thirst for righteousness and feed them with the bread of heaven. Give them the grace to seek first Your kingdom and help them to grow as You add unto them all things needful. Hasten the day when all people shall pay due homage to You, the King of kings. 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.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning at 9:30, we will resume consideration of the nomination of Alberto Gonzales to be Attorney General of the United States. Yesterday, we were able to lock in an agreement on the nomination. We will debate the nomination throughout the course of the morning and the afternoon.

As we all know, at 9 p.m. tonight, the President will deliver the State of the Union Address. Therefore, we will recess at approximately 4:30 this afternoon to accommodate arrangements for that address. I do want to remind our colleagues that we will assemble in the Chamber at 8:30 so we can proceed at 8:40 sharp to the Hall of the House of Representatives.

Tomorrow, we will continue debate on the Gonzales nomination as the order provides, with the vote occurring Thursday afternoon or evening.

WISHES FOR POPE JOHN PAUL'S QUICK RECOVERY

Mr. FRIST. Mr. President, a couple of comments before we return to the Gonzales nomination. Yesterday, it was reported that Pope John Paul has been hospitalized or had been hospitalized. He had fallen ill with the flu apparently on Sunday. I, along with the American people, wish him a swift and full recovery.

TORT REFORM

Mr. FRIST. Mr. President, I will close by making a few very brief remarks on Judge Alberto Gonzales. The opportunity is being provided for all Senators to express themselves on this very important nomination. I am confident that the nomination will be confirmed tomorrow afternoon or tomorrow evening. The debate is important, and I encourage all of our colleagues to keep it civil and nonpartisan, as much as practically possible, over the next 48 hours.

I will talk very briefly about a topic the President will speak to tonight, I am quite certain, and that is restoring commonsense balance to our legal system and to our tort system. I mention that because as the Democratic leader and I have agreed, we will be coming to an important aspect of class action reform next week.

I think of Dr. Chet Gentry of the Cumberland Family Care Clinic in Sparta, TN, who does not deliver babies anymore, does not practice obstetrics anymore. When one asks him why, without any hesitation, crystal clear, it is because his insurance premiums grew too high. Simply, he could not afford to deliver babies, and by dropping obstetrics he cut the insurance premiums he has to pay for this privilege of practicing medicine by two-thirds, down from \$38,000 a year to \$14,000 a year. So by not delivering babies, he cuts his insurance premiums down that dramatically. There is an incentive to not take care of moms when they are going through this wonderful process of giving birth.

In a rural community as small as Sparta—and it has a relatively small population, only 5,000 people—losing Dr. Gentry's services for families is a huge blow. Eighteen months ago, that town had five family physicians. Today, there are three doing obstetrics, delivering babies, and only two of them will perform C-sections.

Dr. Gentry—again, I use him as an example—warns:

In this small community of Sparta, which serves several surrounding rural counties, the cost of malpractice insurance is affecting access to care. It's already difficult to recruit physicians to rural areas, and the malpractice crisis threatens to make it worse.

The issue is not just cost, it is not just money, it is access to care, whether it is trauma care or finding an obstetrician who will take care of you through the 9 months of pregnancy and deliver your baby. It is an access issue.

This out-of-control litigation is reaching a crisis point in Tennessee. In

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29 other States it has already reached a crisis point. Seventy percent of doctors who have practiced in Tennessee for more than 10 years have had a claim filed against them. Does that mean that 7 out of 10 doctors in one State are conducting malpractice, bad health care? No, of course not.

If one looks at the studies of obstetrics, OB/GYN, 92 percent have had a claim against them. That is 9 out of every 10 doctors who have been delivering babies for more than 10 years. For cardiac surgeons, heart surgeons, not a higher risk but in some ways a higher risk field, one of the more common operations done across the country today is cardiac surgery—92 percent out of the physicians, 9 out of 10 physicians who have practiced more than 10 years, have had a suit filed against them.

Average malpractice insurance premiums have increased, so it is a problem, but it is a problem that is getting worse. Look over the last 5 years; these premiums have increased by 84 percent. The premiums go up because when the frivolous lawsuits increase, it creates a heavier burden and that is passed on, of course, to physicians. In Tennessee, OB/GYNs can expect to pay \$60,000 a year in insurance premiums; heart surgeons, about \$55,000; and general surgeons, \$40,000. All of that is high. That is just to pay for the insurance. Remember, Tennessee is not yet a crisis State. If a doctor is in Pennsylvania, Ohio, or down in Florida, they are paying two to three times that. Some neurosurgeons, trauma surgeons, are having to pay insurance of \$300,000, some even \$400,000, a year for the privilege of taking care of people in the event there is an accident.

Dr. Martin Olsen, chair of OB/GYN division at East Tennessee State University, reports that their clinic in the rural town of Mountain City, TN, had to shut down because of unaffordable insurance costs. Cocke County meanwhile has lost 7 of its 12 doctors who deliver babies.

The problem is not limited to Tennessee. It is not even limited to the practice of medicine. I use that as an example because the impact these litigations costs and frivolous lawsuits have on medicine and health care is so dramatic to me as a physician, as I look at my physician colleagues.

Across the country, American businesses, doctors, plaintiffs, court systems, and taxpayers, are all being victimized by frivolous litigation, by out-of-control litigation. Now is the time to change that. That opportunity is before us.

In 2003, the tort system cost about \$250 billion overall. Much of that, maybe half of that—I do not even know what the figure is—is obviously well spent. What we want to do is squeeze the waste, the frivolous lawsuits, out of the system. That figure of \$250 billion means of an unnecessary tax of about \$850 for every man, woman, and child. So it is bad now. At the current

rate of increase, which outpaces the growth of our GDP, gross domestic product, it is estimated that per capita cost will go above \$1,000 by 2006. That means for a family of 4, there is a tort tax of about \$4,000.

The tort system accounts for about 2.23 percent of our GDP. That is equal to the entire economy of the State of Washington or more than that of the State of Tennessee, my own State. Where does all that money go? Unfortunately, less than half of it gets to the victims, the people who have been victimized and hurt. They need to be fully compensated. We all agree with that. The problem is, less than half of the money goes to the victims, which is the purpose of the tort system, and the other half of it goes to administrative costs and, of course, to the trial lawyers, the personal injury lawyers.

There are lots of different examples. Take the case of the Coca-Cola apple juice dispute. It is really on the apple juice end of this, that the plaintiffs' lawyers charged that the drink company was improperly adding sweeteners to its apple juice. So as compensation, the attorneys managed to secure a 50-cent coupon for each of the apple juice victims while at the same time the lawyers walked away with \$1.5 million for themselves.

The system is out of balance. We will bring it back into balance. Small businesses get dragged into this irrational tort system. There is example after example that we all have. The system clearly needs to be reformed. Cherry-picking favorable counties to land billion-dollar settlements undermines the core principles of our legal system. Those principles are fairness and equity. These are the sorts of issues that the Judiciary Committee will be addressing tomorrow in committee and that we will be addressing on the floor of the Senate next week.

As our distinguished colleague from New York, Senator SCHUMER, has explained on the Senate floor, too many lawsuits are filed in local courts that have no connection to the plaintiff, the defendant, or the conduct at issue. If the case affects the Nation as a whole, it should be heard in a Federal court.

We have other areas of litigation that need to be addressed and hopefully will be addressed in the near future. Asbestos litigation has bankrupted 70 companies; 18 companies have been bankrupted in the last 24 months. It means job losses—60,000 jobs have been lost, with billions of dollars taken out of our economy without the patients or individuals with cancer being adequately compensated in a timely way. So squeeze the waste and abuse and in some cases the fraud out of the system—that is our goal—and return these systems back into systems of integrity.

I am very excited about where we are going in terms of addressing the tort issues in a balanced, bipartisan way. We will justly compensate those who have been injured by careless or reckless actions, and we want to hold those who commit these actions to account.

Since our country's founding, the tort system often has been a force of justice and positive change, but today that justice is being junked by trial attorneys looking for these multimillion-dollar windfalls, and that is what we need to address. We will take action to end the abuse in these lawsuits on the floor of the Senate. It will be done for the sake of true victims who deserve fair compensation, for the prosperity and health of our people, and for the integrity of our Government.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL

The PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session for the consideration of Executive Calendar No. 8, which the clerk will report.

The bill clerk read the nomination of Alberto R. Gonzales, of Texas, to be Attorney General.

The PRESIDENT pro tempore. Under the previous order, the time until 4:30 p.m. shall be equally divided for debate between the Senator from Pennsylvania, Mr. SPECTER, and the Senator from Vermont, Mr. LEAHY, or their designees.

The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, the division basically is going to be from 9:30 we will have Republican speakers and from 10:30 to 11:30 there will be Democratic speakers and then we will be going back and forth.

I am pleased to be able to open today's discussion on the nomination of my friend, Alberto Gonzales. I am pleased because I know Alberto Gonzales personally and have been able to work with him both during the time he was a distinguished supreme court justice in my home State of Texas, and as White House Counsel.

As the senior Senator from Texas and formerly the junior Senator from Texas, I have had a lot of commerce with Alberto Gonzales. I can tell the American public without reservation: He is honest. He is a straight shooter. He has told me some things I didn't want to hear on more than one occasion. But I was absolutely assured that he was doing what he said he was going to do and that he had reasons for what he did.

On the other hand, I have been able to persuade him on issues where our views differed, because he listened. He is not rigid and impenetrable, as some people have described him. Again, he is a person who listens, who is thoughtful, who is a straight shooter, and someone for whom I have the utmost respect.

I am proud to be able to start the floor debate today on Alberto Gonzales, who was nominated and is to be confirmed as Attorney General of the United States.