

Some workers who come by my office ask: What are you going to do to protect pensions which we have worked a lifetime for?

There is a long list of things we could do not driven by special interest groups. No. The first item on the agenda for the Senate is the asbestos bill, the clash of the special interest titans.

That is where we are going to spend our time.

When it is all over, I am afraid those who couldn't afford lobbyists, couldn't afford the people who stand outside the corridors with signals, hand signals, with a wink and a nod on how we are supposed to vote, those are the ones who are going to be the losers.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### ELECTRONIC SURVEILLANCE

Mr. SPECTER. Mr. President, on Monday, the Judiciary Committee held a hearing on the administration's electronic surveillance program and we dealt solely with the issues of law as to whether the resolution to authorize the use of force on September 14 provided authority in contradistinction to the Foreign Intelligence Surveillance Act, which flatly prohibits any kind of electronic surveillance without a court order. Then we got into the issue of the President's inherent powers under article II. It is difficult to define those powers without knowing more about the program and we do not know about the program. It was beyond the scope of our hearing, but it is something that may be taken up by the Intelligence Committee.

But I made a suggestion to the administration in a letter, in which I wrote to Attorney General Gonzales and put in the RECORD at our Judiciary Committee hearing, that the administration ought to submit this program to the Foreign Intelligence Surveillance Court. They have the expertise and they are trustworthy. It is a regrettable fact of life in Washington that there are leaks from the Congress and there are leaks from the administration, but the Foreign Intelligence Surveillance Court has been able to maintain its secrecy. The Attorney

General said the administration was disinclined to do that.

In response to the letter, he wrote, a written response, he said that they would exercise all of their options. I am now in the process of drafting legislation which would call upon the Congress to exercise our article I powers under the Constitution to make it more of a matter for congressional oversight, but respecting the constitutional powers of the President under article I. The Congress has very substantial authority. The President has powers under article II; the Congress has very substantial powers under article I. In section 8, there are a series of provisions which deal with congressional authority on military operations. One which hits it right on the head is to make rules for the Government and regulations of the land and naval forces. That would comprehend what is being done now on the electronic surveillance program.

The thrust of the legislative proposal I am drafting and have talked to a number of my colleagues about, with some affirmative responses, is to require the administration to take the program to the Foreign Intelligence Surveillance Court.

I think that they ought to do it on their own because I think that there are many questions which have been raised by both the Republicans and Democrats. We want to be secure and we want the military, the administration and the President to have all the tools that they need to fight terrorism, but we also want to maintain our civil liberties. If that unease would be solved by having the Foreign Intelligence Surveillance Court tell the administration that it is constitutional, if they say that it is unconstitutional, then there ought to be a modification of it so what the administration is doing is constitutional.

This comes squarely within the often-cited concurring opinion of Justice Jackson in the Steel Seizure case about the President's authority being at its utmost when Congress backs him, on middle ground when Congress has not spoken, and weakest when Congress has acted oppositely in the field, which I think Congress has done under the Foreign Intelligence Surveillance Act because the President's congressional authority then is whatever he has minus whatever Congress has that is taken away from him.

As Justice Jackson said, what is involved is the equilibrium of the constitutional system. That is a very weighty concept—the equilibrium of the constitutional system.

The legislation I am preparing will set criteria for what ought to be done to establish what the Foreign Intelligence Surveillance Court should apply in determining whether the administration's program is constitutional. The standard of probable cause ought to be the one which the Foreign Intelligence Surveillance Court should apply now—not the criminal standard,

but the one for gathering intelligence. Then they ought to weigh and balance the nature of the threat, the scope of the program, how many people are being intercepted, what is being done with the information, what is being done on minimization—which is the phrase that the information is not useful in terms of deleting it or getting rid of it—how successful the program has been, if any projected terrorist threats have been thwarted, and all factors relating to the specifics on the program—its reasons, its rationale for existence and precisely what is being undertaken, its success—and that the Foreign Intelligence Surveillance Court ought to look to this, essentially, prospectively.

The court does not have punitive powers, and I do not believe that it is of matter, except to work from this day forward as to what is being done. No one doubts—or at least I do not doubt—the good faith of the President, the Attorney General, and the administration on what they have done here. But as I said in the hearing, I said to Attorney General Gonzales, the administration may be right but, on the other hand, they may be wrong.

The Foreign Intelligence Surveillance Court ought to take a look at the program, make a determination from this day forward whether it is constitutional, and if it is constitutional, then they ought to, under the statute, report back to Congress with their determination as to whether it is constitutional.

The court ought to further make a determination as to whether it ought to be modified in some way which would be consistent with what the administration wants to accomplish but still be constitutional and not an unreasonable invasion of privacy.

The President has represented that his program is reevaluated every 45 days. That is in terms of the evaluation of the continuing threat and what ought to be done. I think a 45-day evaluation period would be in order here as well.

This question is one which is not going to go away. We had, yesterday, the comment by a Republican Member of the House of Representatives in the Intelligence Committee who chairs the subcommittee that oversees the National Security Agency. There are quite a number of people on both sides of the aisle who have expressed concerns regarding this program. It is my judgment that having it reviewed by the Foreign Intelligence Surveillance Court would accomplish all of the objectives, would maintain the secrecy of the program, would allow the President to continue it when there has been the determination by a court—that is how we determine probable cause on search warrants, on arrest warrants, on the activities, the traditional way of putting the magistrate, the judicial official between the Government and the individual whose privacy rights are being involved.

I yield the floor.

#### OIL AND GAS EXPLORATION IN GULF OF MEXICO

Mr. MARTINEZ. Mr. President, the Senator from New Mexico, chairman of the Energy Committee, whom I greatly admire and respect and consider a good friend, spoke about the bill he proposes to create opportunities for oil and gas exploration in the Gulf of Mexico.

I rise to point out that last week Senator NELSON and I offered a bipartisan bill that also deals with opening some aspects of lease area 181 to oil and gas exploration. The bill Senator NELSON and I propose is a bill that I believe should find favor with many Senators. It allows protection to Florida's coast of 150 miles. It is the kind of protection that Florida's economy depends upon and demands. The people of Florida fully understand the significance of this. This is what jobs in Florida are about, opportunities for people to continue to come to our State to enjoy the wonderful open air, the beaches, the great environment that we have to offer. It also protects the military mission line. This is a very important area for military training out of Eglin Air Force Base and other adjoining bases that utilize this area of the Gulf of Mexico as a primary area for training exercises.

More than that, it also gives the State of Florida permanent protection. This buffer of protection around the State, unlike all the other proposals, gives the State of Florida permanent protection. Once and for all we will define where in the Gulf of Mexico we will drill and where we will not drill, where in the Gulf of Mexico the State of Florida will find permanent protection.

The chairman's bill opens more area for drilling in lease area 181. We don't like that as well as what the Senator from Florida and I proposed, but we understand it does also conflict with what is being proposed and today was outlined by the Minerals Management Service of the Department of the Interior. The Department of the Interior today proposed the next 5-year leasing area for the Gulf of Mexico in lease area 181, and they speak of an area open for drilling that is even less than what the Senator from New Mexico is proposing. But equally flawed, this is protection for 5 years. It is another 5-year moratorium.

Five years from now, we will be right back here where we are today discussing how yet another portion of the Gulf of Mexico might be open to oil exploration. The bill Senator NELSON and I propose is the only one that opens areas in lease area 181 and a substantial portion south of lease area 181 to further oil and gas exploration but also provides the State of Florida with permanent protection, permanent protection the State of Florida ought to decide whether they wish to have. And we representatives of the State of Florida

believe strongly this is important to us.

What is the rationale for this? Why must we continue this quest for more and more drilling in the gulf? We are talking about the price of gas. Since we were debating this a couple months ago, the price of gas has dropped dramatically. It is now not almost but almost 50 percent of what it was a couple of months ago. In addition, for the last 15 years, we have gone to a very inefficient way of producing electricity by generating electricity with gas. Almost 95 or 92 percent of all new generating facilities that have been built over the last 10 years or so have been powered by gas, a very inefficient way of doing it. Why? Because it was cheap. Because gas was so cheap, this was the best alternative, just as the energy companies moved in the direction of gas because it was inexpensive. As the price of gas has risen, it will dictate that they will move to other fuel sources.

I continue to believe that inefficient power, generating decisions made 10 years ago, should not inure to the detriment of the people of Florida, Florida's economy, and environment. It is fine to use the Gulf of Mexico for oil exploration in areas where it is sufficiently far away from the State of Florida. It is fine to go into lease area 181. We are willing to open up more of 181 to oil and gas exploration. What we are not willing to do is not insist that the State of Florida be provided with some permanent protection.

There is more than one bill to discuss. There is more than one way to go here. I believe that we offer a way for more gas and oil exploration in the State of Florida while at the same time providing our State with the vital permanent protection that the people of Florida expect and demand.

I yield the floor.

#### STAMINA, LEADERSHIP, AND RESPECT FOR THE SENATE

Mr. LEAHY. Mr. President, all of us who are friends and colleagues of the senior Senator from Pennsylvania, Senator SPECTER, are delighted with his robust recovery from a difficult illness.

Nearly a year ago Senator SPECTER announced that he had been diagnosed with Hodgkin's disease. He declared that he was going to beat it, just as he had beaten a brain tumor, heart surgery and several other challenges. We are delighted that his promise has been fulfilled, as we knew it would be.

Over the last year he underwent a regimen of grueling treatments. Throughout dozens of Judiciary Committee hearings and voting sessions on difficult topics, he and I sat side by side, month after month, as his treatments progressed. He slowly lost his hair, but he never lost his grit, his sense of fairness or his respect for the Senate and its special role in our system of Government. Nor did he lose his legislative skill, or his humor. Then,

and now, he has maintained for himself, and for our committee—a brisk schedule, fueled by an energy level that would be daunting to many who are half his age.

He has all of the vigor of his earlier days, and maybe more. His hair is back, and if I may say so, he looks better than ever.

He is an inspiration to us all, and his example is a particular inspiration to millions of victims and survivors of cancer, and their families, across the Nation.

I value the partnership that he and I have forged over the years, and especially during the time that he has been our committee's chairman. One product of our partnership is the asbestos trust fund bill that is now before the Senate. Bringing this bill on its long journey to the Senate floor has required unending commitment and effort. I have been proud to work with him on this project, and I applaud him for all he has done to bring the bill to this point.

I commend to the attention of our colleagues an editorial about Senator SPECTER in today's edition of *The Hill* newspaper.

I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Hill, Feb. 8, 2006]

#### LOOMING SPECTER

The past year has been tumultuous for Sen. Arlen Specter (R-Pa.), but he has emerged from its trials triumphant.

It is not quite 12 months since the lawmaker announced he had been diagnosed with Hodgkin's disease, a form of cancer. In his statement disclosing his ailment and the imminent start of chemotherapy, Specter said, "I have beaten a brain tumor, bypass heart surgery and many tough political opponents, and I'm going to beat this, too."

He has been as good as his word. He lost his hair but continued to shoulder his heavy workload (and to keep in shape playing squash before he got to his desk in the morning). He was never absent, and his hair is back. At 75, Specter is looking spry.

At the time of his diagnosis, the senator had only just secured his chairmanship of the Judiciary Committee, after a tough battle against conservative Republicans who feared he would not fight hard for conservative Supreme Court justices should President Bush have the opportunity to nominate them.

Those fears have proved unfounded. There are now two new members of the high court, Chief Justice John Roberts and Justice Samuel Alito, whose conservative credentials are not in doubt. Those on the right trust and hope (just as those on the left believe and fear) that the new justices, replacing the late Chief Justice William Rehnquist and Justice Sandra Day O'Connor, will move the court toward conservative textualism and away from the "living Constitution" ideas that have produced liberal change on social issues for the past two generations.

It is Specter, a supporter of abortion rights, who has presided over these changes to the bench. And he has done so with aplomb and without any hint either of truckling to those on either his right or his left. He rejected, for example, conservative demands that Alito's confirmation hearings be