TRIBUTE TO JUDGE JOHN MENDOZA

Mr. REID. Mr. President, I rise before the Senate today to call attention to one of Nevada's finest advocacy programs. This year marks the 30th Anniversary of the Court Appointed Special Advocate Program, CASA. In Clark County, NV, the CASA program became a reality as a direct result of the efforts of Judge John F. Mendoza. Today I ask my colleagues to join with me in applauding the noble deeds performed by Judge Mendoza and the CASA Program.

Born and raised in Las Vegas, NV, John received his juris doctor degree from the University of Notre Dame in 1952. After returning to Nevada, he eventually served as Clark County district attorney, North Las Vegas city attorney, and Justice of the Peace of Las Vegas Township. His Honor was elected to district court judge of the State of Nevada, a position he held for 24 years. Judge Mendoza served as the president of the National Council of Juvenile and Family Court Judges.

During his career, Judge Mendoza recognized the desperate need for skilled and timely decisionmaking in the lives of abused, neglected and abandoned children, not only in Nevada but across the country. He used his knowledge, passion, and energy to educate and extract a level of excellence when dealing with caseworkers, parents and court proceedings in regard to appropriate needs evaluation and placement. He demanded a clear vision of roles and procedures. He held caseworkers responsible to the children they represented and answerable to the court for decisions they made.

Judge Mendoza recognized the lack of quality in the court process and did not tolerate the unfortunate delays in court hearing dates which often resulted in children literally growing up without permanent homes. As a result, Judge Mendoza championed national guidelines for improving court practices in child protective cases. He helped to establish methods for monitoring court schedules to prevent unnecessary delays and to control continuances. He urged competent representation thru the CASA and guardian ad litem programs. Through his tireless efforts, family courts began to take into account not only the children's safety but also the emotional impact of separation.

A lifetime of dedication to the rights of the children of Nevada and beyond has resulted in a national program that engages volunteers to be a voice for neglected and abused children. Each CASA volunteer in turn has an opportunity to walk in the footsteps of Judge John Mendoza in making a meaningful and constructive difference. Those footsteps lead to protecting and preserving the rights and interests of children who are unsafe in their own homes; to insuring that all aspects of the family court system perform in a child's best interest and secures a safe and permanent home for that child.

I am deeply grateful for the work performed by CASA and its many volunteers. The chance to advocate on behalf of someone in need is the greatest opportunity afforded to those who serve in our legal system. I stand before the Senate today and thank the CASA program and Judge Mendoza for these 30 years of remarkable service.

TRIBUTE TO CHIEF JUSTICE JEFF AMESTOY

Mr. LEAHY. Mr. President, this summer, Marcelle and I were honored to be at the Vermont Supreme Court with former Supreme Court Justice Jeff Amestoy, his wife Susan, and their daughters. Like all Vermonters, I have respected his tenure, both as attorney general and as chief justice, as both were exemplary. While the portrait captures the image of the Jeff Amestoy his friends honor and care for, his words are what should be read by everyone who cares about our judiciary. Jeff's commitment to the law, our justice system, and our sense of what makes Vermont the State we love is in his words. They were so impressive I asked him for a copy, and I ask unanimous consent that they be printed in the RECORD.

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

REMARKS OF CHIEF JUSTICE JEFF AMESTOY (RETIRED) AT PORTRAIT CEREMONY

VERMONT SUPREME COURT

(Montpelier, VT, Aug. 13, 2010)

Governor Douglas, Senator Leahy, Chief Justice Reiber, family and friends:

Thank you for the honor you do me by attending this ceremony. Thank you Justice Burgess for your generous introductory remarks. Brian Burgess served as Deputy Attorney General when I was Attorney General. I doubt that either of us could have foreseen this day but here we are together again. History may not repeat itself, but it sometimes rhymes.

Thank you Kenneth McIntosh Daly—artist, rancher, and friend who has once again made the trip from California to Vermont.

And thank you to my daughters Katherine, Christina, and Nancy for the unveiling.

This September I begin my seventh year as a Fellow at the Harvard Kennedy School nearly as long as I served on the Supreme Court of Vermont.

For those of you wondering how a Harvard Fellow spends his time, I can say I have spent the better part of the last two years living in the nineteenth century—more precisely in the Boston of the decade before the Civil War.

It was a time when a young man working as a waiter in a coffee house, or a clerk in a clothing store, could be seized by agents of the United States Government, brought before a Judge, and under the provisions of the new Fugitive Slave Law (where no process was due), be sent back into slavery.

Contrary to what I thought I knew about American history, Boston in the period leading up to the Civil War, was in the words of Charles Francis Adams, Jr., ''almost avowedly a proslavery community.'' ''It was a time'' wrote Emerson, ''when judges, bank presidents, railroad men, men of fashion, and lawyers universally all took the side of slavery.''

Well, almost all. I am interested in understanding how a society, and particularly the legal establishment of 1850s Boston, was transformed from the beginning of the decade when Daniel Webster said ''no lawyer who makes more than $40 a year is against the Fugitive Slave Law,'' to the end of the decade when lawyers literally went to war against it.

My window on that time, curiously enough, opened when I saw a portrait of a lawyer of that period.

So this day, for many reasons, has prompted me to look to a future as far removed from us today as the Boston of 1850. A century from now when each of us will be someone's memory, there will be, I trust, remembrances of things past.

In some building if not this one, there will be a wall where portraits of forgotten Chief Justices still hang—or where an enterprising curator has retrieved old paintings and artifacts for an exhibit of our times.

And on some class field trip (for those will always be with us), among a group of very bored students, there may be (if the world is lucky to still have teachers as inspiring as Mrs. Amestoy), a bright, curious student who will pause in front of this painting.

She will not, of course, recognize its subject, but as she looks through the window in the portrait, she will see Mt. Mansfield. And the window of the painting will begin to open for her a window on our time.

Our young historian will immerse herself in the flood of newspapers, opinions, and books of those long ago days at the beginning of the twenty-first century. On the basis of the documentation and her own insight, she will attempt to bring to life the color and passion when the social changes were so profound that even on our own time scholars characterized the upheaval as ''The Great Disruption.''

If our young scholar has had a history teacher as good as Mr. Remington, she will know she cannot rely on a single perspective. (In any event, my autobiography, The Indispensable Man, will long be out of print). But our future historian will be struck, as many historians have been, by the disproportionate impact Vermont has had on American history. She will not lack in material looking back at our time.

One Vermont Senator whose unparalleled leadership of the Senate Judiciary Committee, and pivotal endorsement of America's first African-American President, will echo down the halls of history; another whose rejection of the narrow partisanship of his party realigned the political balance of the United States Senate. A Governor whose candidacy for the Presidency altered the nature of presidential campaigns; another whose exemplary service at the beginning of the twenty-first century reflected the virtues Vermont's eighteenth century constitution calls ''absolutely necessary . . . the firm adherence to justice, moderation, temperance, industry, and frugality.''

Our historian will read of an opinion of the Vermont Supreme Court that framed a debate for a nation. And of the people of Vermont who demonstrated what the result is when that debate is conducted with respect and resolved in humanity.

If the Vermont of the twenty-second century is as blessed as ours, there will still be a justice system that ''speaks for principle and listens for change.'' Just as the Commission on the Future of Vermont's Justice System envisioned when on the eve of the twenty-first century a new Chief Justice wrote: ''if the future is realized in the way every member of the Commission devoutly wishes it to be, a century hence our successors will

hear these fundamental principles resonate as clearly as we hear them resonate today.''

I am optimistic about that future. How could I not be with these daughters?

This portrait (assuming, of course, it is actually hung) may gather dust well into the next century. As school field trips will endure, I am confident that so too will the duty of new law clerks to conduct students on tours.

To the question: ''Who is that in the painting?'' I trust that current and future clerks will always know the answer is: ''A Vermonter.''

ROBERT C. BYRD MINE AND WORKPLACE SAFETY ACT

Mr. HARKIN. Mr. President, I rise to express my strong support for the Robert C. Byrd Mine and Workplace Safety Act. This bill establishes vital new workplace safety measures and it deserves consideration here on the Senate floor.

In 2009, there were 4,340 workplace fatalities. In my home State of Iowa, 78 people were killed on the job. This year, we have already witnessed the horrific mine catastrophe that killed 29 people in West Virginia, the fire at the Tesoro oil refinery in Washington State that killed 7 workers, and the BP Deepwater Horizon platform explosion that killed 11 people and was an environmental catastrophe for the Gulf of Mexico.

As the son of a coal miner, I feel these losses very deeply, on a very personal level. My heart goes out to the family and coworkers of every worker who is killed or injured on the job. Too many of these tragedies are preventable, and we should not rest until the day that no hardworking American has to sacrifice his or her life for a paycheck.

History teaches us that stronger laws protecting worker safety make a big difference, but our current laws are not doing the job. That is why I strongly support the Robert C. Byrd Mine and Workplace Safety Act, which would make long overdue improvements to our workplace safety laws and save the lives of many thousands of hardworking Americans.

For months, we have been negotiating with Republicans trying to agree to a bipartisan bill that improves workplace safety. I think it is fair to say there have been setbacks in our discussions recently, but we want and intend to keep working with our Republican colleagues to craft a bipartisan bill—in this Congress or early in the next—that we can get to the President's desk.

This has been a long and difficult process as we try to reconcile policy differences between Democrats and Republicans on these important issues. Nevertheless, we will keep working to bridge those differences because it is critical that we find a way to agree on legislation that is consistent with certain core principles:

Every American deserves to go to work without fearing for his or her life;

Responsible businesses that put safety first shouldn't have to compete with businesses that prioritize a quick buck over the safety of their employees;

Employers who put workers' lives at risk should face serious consequences that will force them to change their ways;

Companies shouldn't be able to hide behind high priced lawyers and convoluted corporate forms to avoid being held accountable for their actions;

Critical agencies charged with protecting workers' lives should have all the tools they need to get the job done; and

Whistleblowers are the first line of defense in safe workplaces, and deserve strong protection from discrimination and retaliation.

While there may be many ways to achieve these goals, the Robert C. Byrd Mine and Workplace Safety Act clearly reflects these core principles, and its passage would be a major step forward for workplace safety. That is why I am proud to be a cosponsor of the bill, and that is why I would ask my Republican colleagues to give us an opportunity to debate this legislation on the floor.

This legislation makes common sense reforms to the Occupational Safety and Health Act, which has not been significantly updated since it was passed 40 years ago. For example, whistleblower protection under the act is toothless and unfairly tilted against workers who risk their career to protect the public welfare. This bill makes essential changes to ensure that workers are protected, including lengthening OSHA's 30-day statute of limitation for whistleblowers, providing for reinstatement while the legal process unfolds for cases with an initial finding of merit, and giving the worker the right to file their own claim in court if the government does not investigate the claim in a timely manner.

The bill also strengthens criminal and civil penalties that, at present, are too weak to protect workers. Under current law, an employer may be charged—at most—with a misdemeanor when a willful violation of OSHA leads to a worker's death. Under the Robert C. Byrd Mine and Workplace Safety Act, felony charges are available for an employer's repeated and willful violations of OSHA that result in a worker's death or serious injury. The bill also updates OSHA civil penalties, which have been unchanged since 1990, and sets a minimum penalty of $50,000 for a worker's death caused by a willful violation.

In addition to toughening sanctions for employers who needlessly expose their employees to risk, the bill makes sure that the government is responsive to the worker when investigating the charges. It guarantees victims the right to meet with the person investigating the claim, to be notified of and receive copies of reports or citations issued in the investigation, and to be notified of and have the right to appear at proceedings related to their case. Victims of retaliation should not suffer the double indignity of being ignored by government officials charged with protecting them.

The bill also makes critical changes in our mine safety laws. We still don't know exactly what caused the tragic death of 29 miners at Upper Big Branch, but we do know that the mine had an appalling safety record, and that the tragedy might have been prevented had the Mine Safety Health Administration, MSHA, had effective tools to target such a chronically unsafe mine.

We have provisions in our laws that are supposed to target repeat offenders—called the ''pattern of violations'' process—but this system is broken and badly needs to be revamped.

As bad as Upper Big Branch's record was, the law has been interpreted to allow it to continue operating without ''pattern of violation'' treatment as long as its operators can reduce their violations by more than one third in response to a written warning. With a record as spotty as Upper Big Branch's, a partial reduction in its numerous citations is hardly a sign of a safe mine, and it should not be a ''get out of jail free'' card to escape the intent of the law.

Operators are also finding creative ways to ensure that the system cannot work as Congress intended. Some chronic violators have avoided being placed on ''pattern of violation'' status and avoided paying legitimate penalties by contesting nearly every citation that is assessed against them. Because MSHA uses only final orders to establish a pattern of violations and there is a substantial backlog of cases the Federal Mine Safety and Health Review Commission, repeat offenders are able to evade pattern of violations status by contesting large numbers of violations. At the Upper Big Branch coal mine, for example, Massey contested 97 percent of its ''significant and substantial'' violations in 2007. These appeals can take up to three years to resolve, virtually guaranteeing that mines are never placed on pattern status.

MSHA needs to be able to respond to safety concerns in real time, not 3 years later. This legislation changes the pattern of violation system so that MSHA will be able to address unsafe conditions as they occur, and gives MSHA the enforcement tools it needs to put dangerous mines back on track.

Let me respond to recent suggestions that Democrats have been playing political theatre with important safety and health legislation. We want to pass bipartisan legislation based on a shared commitment to workplace safety. I am thoroughly committed to that process, and I hope it continues. But we will not support weak or ineffective reforms in the name of bipartisanship.

Workplace accidents—whether in a mine, an oil refinery, or wherever—are preventable. All we are asking for is an opportunity to debate, amend, and vote