

have a conversation that he does not mention the importance of this bill that he, working with the ranking member, Senator LEAHY, has spent so much time and focus on. I commend them for those tireless efforts to forge a bipartisan—and we do not hear that word very much around here—consensus.

I had hoped that the Senate would be able to bring the legislation to the floor some time in the last several weeks or months and that we could debate it and pass asbestos litigation reform this year. Unfortunately, as we all know, there have been a number of circumstances, with Katrina, the fact that we have indeed taken each of the appropriations bills across the floor individually, the Supreme Court nominations, all of which have slowed down our work on asbestos in terms of bringing it to the floor.

Now that wait is over. No more delay. After 4 hearings—10 including markups—2 years of intense negotiations, the Senate will finally resolve the asbestos litigation crisis that currently is clogging our Nation's courtrooms and threatening America's economic health. There is wide agreement that the current asbestos litigation system is disastrous. It is disastrous for everybody. It is disastrous for victims who suffer from asbestosis or mesothelioma. It is disastrous for an ever-widening circle of companies that it bankrupts. It is disastrous for the tens of thousands of jobs that are lost, and it is disastrous ultimately for the American people.

More than 700,000 individuals have filed claims with at least 8,400 defendant companies. More than 300,000 claims are currently pending. More than \$70 billion has already been spent trying to resolve these claims that have bankrupted nearly 80 companies. It is time to fix the system. The system is out of control. It is time for commonsense reform.

According to the 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 jobs and \$200 million in lost wages. That is wrong. Employees' retirement funds have shrunk by 25 percent. Meanwhile, the sickest victims of asbestos exposure are not getting their efficient compensation or their fair compensation. Instead, they are waiting in line behind thousands of claimants who are themselves unimpaired.

A recent RAND study put the number of unimpaired claimants at 60 percent—6-0 percent. Even if after years of waiting and an ill claimant finally does get a court settlement, that award is whittled down, gets smaller and smaller because of lawyer's fees and other expenses until it is less than half of the original sum that was awarded. It is too little too late for far too many people.

We do have a solution, and we will bring that to the floor. The \$140 billion fund that is on the table will ensure that victims receive proper compensa-

tion without delay. Unlike the tort system, the \$140 billion trust fund—and this is not taxpayer money—will provide certainty and fair relief. The money will go to the victims instead of to the trial lawyers.

Mesothelioma, just to give an example, is a devastating disease. In the mid-1980s I spent almost a year in England operating, doing thoracic surgery, chest surgery, lung surgery, at South Hampton Hospital in South Hampton, England. It was not unusual to see mesothelioma, which is an asbestos-related disease that encases the lung with thick fibrous plaques which restrict the expansion of the lung, and people end up suffocating to death.

Under this bill, a victim suffering from mesothelioma will get \$1.1 million within months to help pay for medical expenses and the suffering. It will not be delayed 6 months, 1 year, or 2 years. The entire \$1.1 million will go to the victim instead of half of it going to a system that is out of control.

A person suffering from asbestosis, which is a manifestation of asbestos exposure, will receive as much as \$850,000 under this bill. The fund provides significant compensation because we recognize that these are serious illnesses. These are dire illnesses that can be caused by asbestos exposure. They are life threatening and life altering and the victims deserve that fair, just, and timely compensation which they are not getting today.

I commend both Chairman SPECTER, Senator LEAHY, and all of my colleagues on the Judiciary Committee for tackling asbestos reform. Again, we will bring that to the floor in late January. The committee is holding a hearing on asbestos on Thursday, tomorrow. I applaud them for moving forward on this bill to help people understand what is at stake.

I call upon my colleagues to work directly with Senator SPECTER and Senator LEAHY over the next few weeks so that this bill can be considered and approved expeditiously in January. I know there is bipartisan support for S. 852 in this Chamber. I understand that it will involve debate and amendment, and that is appropriate. Yet I am confident that by pulling together we can pass S. 852 and put the asbestos crisis where it belongs, and that is behind us.

I look forward to getting this done, and I look forward to continuing to deliver meaningful solutions to the American people.

I yield the floor.

The PRESIDENT pro tempore. The Democratic leader is recognized.

#### THE NOMINATION OF JUDGE ALITO

Mr. REID. Mr. President, 2 weeks ago the President nominated Judge Samuel A. Alito to serve on the Supreme Court of the United States. I congratulate Judge Alito on this high honor. I pledge that the Senate Democrats will help ensure a thorough and dignified

confirmation process. While I approach the confirmation process with an open mind, even at this early stage I have a number of significant concerns I want to share with my colleagues.

First, the President's selection of Judge Alito was not at all the product of consultation with Senate Democrats, as envisioned by the Founding Fathers. On two prior occasions President Bush spoke with me. He invited Senator LEAHY and me to the White House to discuss the future of the Supreme Court. The President listened seriously to our views and appeared to understand that the job of filling judicial vacancies is a constitutional responsibility that he shares with the Senate.

But this time, instead of an invitation to the White House, I received nothing more than a pro forma telephone call from the President's Chief of Staff, telling me he had selected Judge Alito about an hour before he announced the nomination. In fact, the President did consult about the Alito nomination but with the wrong people. It wasn't with me and it wasn't with Senator LEAHY. According to widely recognized press reports, the White House consulted with conservative activists to make sure the President would not disappoint them with his selection. I think the term conservative activists is probably very broad, too broad; with some extremes—extreme on the right wing. Some of these extreme Web sites received word of the Alito nomination before any Senate Democrat was even consulted or informed.

Consultation is not just a courtesy; it is a way for the President to ensure that a candidate for a lifetime appointment to the Supreme Court receives broad bipartisan support in Congress. That was what our Founding Fathers talked about. That is why that provision is in the Constitution. The constitutional design commands a partnership in this endeavor, not mere notification of the coequal branch of Government.

The second reason I have early concerns about this nomination is that it represents an abandonment of the principle that the Supreme Court should be comprised of highly qualified individuals with diverse backgrounds, experiences, and heritages. It is so striking that President Bush has chosen a man to replace Justice Sandra Day O'Connor, the first of only two women ever appointed to the Supreme Court. Today, unlike 24 years ago, when Sandra Day O'Connor herself was nominated, more than half of the Nation's law students are women. There are countless qualified women on the bench, in elective office, in law firms, and serving as law school deans and law professors. I cannot believe the President searched this country and was unable to find a qualified female nominee. But maybe he was unable to find a qualified female nominee who happened to satisfy the extreme right wing of the Republican Party.

Meanwhile, for the third time the President has turned down the opportunity to make history by nominating the first Hispanic to the Supreme Court. How much longer must Hispanics wait before they see someone on the Nation's highest Court who shares their ethnic heritage and their shared experiences?

At the same time, the appointment of Judge Alito largely fails to diversify the Court in terms of professional experience. Judge Alito is a long-serving Federal appellate judge who would join eight other justices with that very same professional credential. While his prior service as a Federal prosecutor is commendable and worthwhile, he was essentially an appellate lawyer like a number of the sitting justices.

We have come a long way from the days when Senators, bar leaders, trial lawyers, leading professors and others with a wide range of life experiences were routinely appointed to the Supreme Court. If Judge Alito is confirmed, the range of professional diversity on the Court will extend all the way from those who served on the D.C. Circuit to those who served on the First, Third, Seventh, or Ninth Circuit before their promotions.

The third and most important basis for my early concern about the Alito nomination is the fact that he was nominated following the forced withdrawal of White House Counsel Harriet Miers. Harriet Miers received a raw deal from her critics. This woman had been the managing partner of a major American law firm, the first female president of the Dallas Bar Association—which, by the way, is larger than most State bar associations. She was the first female president of the Texas Bar Association. She had been one of the Nation's leaders in promoting opportunities for women lawyers and minority lawyers. She has been a champion of ensuring legal representation for the poor. She was a trial lawyer. The one-dimensional portrait her opponents painted of her was malicious and unfair.

Let's not sugarcoat the truth. The nomination of Harriet Miers was derailed by the overwhelming opposition of the extreme right wing. They campaigned against her, they ran paid advertising against her, and they finally succeeded in having the President cave in to these radical right wing activists. They succeeded in defeating her nomination even before this fine woman was afforded an opportunity to make her case to the Senate Judiciary Committee.

Earlier this year we heard Senator after Senator on the other side of the aisle, and conservative commentators across the airwaves, declare that every judicial nominee is entitled to an up-or-down vote. I have a question for those Senators, those commentators: When exactly will Harriet Miers receive her up-or-down vote?

The White House made a half-hearted effort to argue that the Miers nomina-

tion was withdrawn in the face of an impasse over what documents would be provided to the Senate. That is a pretext, a laughable cover story.

She was forced to withdraw by conservative activists who want to change the legal landscape of America. They decided she was inadequately radical or insufficiently aggressive for their purposes, so they gave her the boot. You don't have to take my word for it. Listen to the words of John Danforth, our former colleague, Senator from Missouri and, until recently, President Bush's Ambassador to the United Nations. He was asked on CNN recently who he thought were the winners in the Miers episode. I quote his answer:

The big winner is the right wing of American politics. They have scored a big victory. This was a power play on their part. And they won it . . . they took on Harriet Miers for no explainable reason. It was really an outrage, in my opinion, that this happened.

Senator Danforth is himself a pro-life Republican and an ordained Episcopal priest, but listen to what he says about his fellow Republicans:

I am very concerned about the ascendancy of the political right, particularly in the Republican Party. It's very obvious that nobody can do enough to please them. The President certainly can't. . . . They gave him a kick in the teeth. I think [the Republican Party has] been taken over by people I feel uncomfortable with and a lot of Republicans feel uncomfortable with . . . They want a political judge. They want a judicial activist.

Senator Danforth has revealed an important truth about today's Republican Party. His warnings are precisely why the Senate needs to take a long, hard look at the Alito nomination.

Even in the first 2 weeks of the confirmation process, a picture of Sam Alito is emerging that may explain why the extreme right wing is popping champagne corks. Earlier this week we learned of the 1985 memo in which Alito said, "I am, and always have been a conservative." He also spoke proudly of his work on behalf of an extremely conservative agenda of the Reagan Justice Department.

We don't have to guess whether Judge Alito's description of himself in that memo would predict what kind of a judge he would be. For the past 15 years, Judge Alito has been one of the most conservative judges in the country—some would say extreme. For example, in civil rights cases he has often dissented to argue for higher barriers to recovery for people with claims of discrimination. In *Bray v. Marriott Hotels*, his colleagues said Title VII of the Civil Rights Act "would be eviscerated" if Judge Alito's approach were followed. In *Nathanson v. Medical College of Pennsylvania*, he dissented in a disability rights case where the majority said, "few if any Rehabilitation Cases would survive" if Judge Alito's views were the law. And in *Sheridan v. DuPont*, he was the only one of 11 judges on the court who would apply a higher standard of proof in sex discrimination cases.

In another area of law, Judge Alito has been quick to limit the authority of Congress, even when it is working to help people solve real problems. In *Chittester v. Department of Community Development*, he held that the Constitution did not allow a State employee to enforce the Family and Medical Leave Act. The Supreme Court effectively repudiated that view 3 years later in the *Hibbs* case from my own State of Nevada.

These are a few of Judge Alito's many judicial opinions which merit close review by the Senate. By all accounts, Sam Alito is a decent man, well liked by his colleagues. He has devoted his entire legal career to public service, and for that I admire him. Throughout the confirmation process I will work to ensure that Judge Alito is treated with civility and respect. But there is nothing disrespectful about an open and fair-minded review of a nominee's approach to the Constitution and his commitment to the core American values such as equality, privacy, fairness.

One final point. This nomination will be governed by the 200-year-old rules of the Senate. I was very dismayed to read an essay by the majority leader in the *Chicago Tribune* last week in which he threatened to change the rules of the Senate to ensure that Judge Alito would be confirmed. Think about that. My friend, the majority leader, wrote:

If members of the Democratic minority persist in blocking a vote on Alito's nomination, the Senate will have no choice but to change the rules.

The majority leader's accusation is baseless. Democrats can hardly persist in an activity in which we are not engaged. No Democrat has even raised the issue of extended debate. At this early stage of the process, 2 months before committee hearings on this nomination will begin, it is silly to argue about the terms of floor debate. Earlier this year, the entire Senate breathed a sigh of relief when the so-called "nuclear option" was averted by an agreement of a bipartisan group of Senators. We don't know what is going to happen on this nomination. The majority leader should put his sword back in its sheath and let the Senate move forward on this nomination without idle threats. Let's not talk about changing the Senate rules illegally. Let's not start talking about blaming the Democrats for something in which they are not engaged.

I am confident the Senate Judiciary Committee, under the able leadership of the senior Senators from Pennsylvania and Vermont, will do a good job of illuminating Judge Alito's record and views. The rest of the Senate and the rest of our Nation will pay close attention.

#### THE ASBESTOS BILL

Mr. REID. Mr. President, I want to comment briefly on the statement of the distinguished majority leader this