

"We've held on dearly to our cultural heritage, perhaps at the expense of economic development."

The frontier buildings were neither razed nor improved as the city's economy stagnated during the last century. Few businesses moved here; a factory made parachutes during World War II, and today the biggest employer is the government.

Not that progress isn't being made.

The city is renovating the railroad depot, at a cost of \$500,000; the Montezuma Castle resort was renovated and is now used as one of 10 Armand Hammer United World College campuses around the world.

And the citizens committee for historic preservation purchased an 1895 mercantile building for its own use, investing about \$500,000 to turn it into a Santa Fe Trail interpretive center.

Slowly, building owners are renovating their structures, although some remain empty. Among them: two century-old storefronts owned by the Maloof family, which settled here in 1892 and became wealthy New Mexico business owners and bankers. Today, one branch of the family owns the Sacramento Kings professional basketball team and a Las Vegas, Nev., casino hotel.

Among the town's boosters is Anne Bradford, who moved here from Carlsbad, Calif., nine years ago and spent \$150,000 to turn a 109-year-old home into a bed-and-breakfast inn.

Her guests, she said, enjoyed this Las Vegas for what it is. "People will always recognize our Las Vegas," she said. "It'll always be a little bit behind. That's part of its charm."

PAYING TRIBUTE TO DR. FRANK C. HIBBEN

Mr. DOMENICI. Mr. President, today I rise to pay tribute to Dr. Frank C. Hibben who passed away this past Tuesday, June 11, in my State.

Dr. Hibben was a world-renowned archeologist, anthropologist, big-game hunter, author, and philanthropist. He also held the title of Professor Emeritus of Anthropology at the University of New Mexico.

As a lifelong hunter and conservationist, Dr. Hibben played a key role in many of New Mexico's conservation and restoration programs. For 30 years, Dr. Hibben served on the New Mexico Fish and Game commission, including 28 years as chairman. In this capacity, he spearheaded efforts to introduce endangered, and exotic new species to the State of New Mexico in an effort to protect these dwindling game herds from around the world.

As an archeologist and professor, Dr. Hibben wrote numerous articles and books with an emphasis on big-game hunting and the American Southwest. For his work, he was awarded the University of New Mexico's Zimmerman award, a notable award given by the university to honor an alumnus who has contributed significantly to the university and the world at large.

However, in spite of his many achievements in archeology and conservation, I believe Dr. Hibben will be most remembered for his philanthropy. He was the founding Director of the UNM Maxwell Museum of Anthropology and played a key role in its de-

velopment. In addition, he has been the lead advocate for the development of the Hibben Archaeological Research Center which is currently in development. Dr. Hibben donated \$4 million of his own funds to construct this new center which would showcase the 1.5 million artifacts from the Chaco Culture National Historic Park.

New Mexico has lost an invaluable treasure in a man whose accomplishments cannot be overstated in their importance both to UNM and the State of New Mexico. I join with his friends and family in mourning their loss.

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TERRORISM RISK INSURANCE ACT OF 2002—Continued

AMENDMENT NO. 3862

Mr. SPECTER. Mr. President, I call up amendment No. 3862.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 3862.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The amendment is as follows:

(Purpose: To provide for procedures for civil actions, and for other purposes)

On page 29, strike line 1 and all that followed through page 30, line 17, and insert the following:

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for such claims, except as provided in subsection (f).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for claims arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (f).

(b) GOVERNING LAW.—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined under paragraph (1), is inconsistent with or otherwise preempted by Federal law.

(c) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days

after the date of the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall assign a single Federal district court to conduct pretrial and trial proceedings in all pending and future civil actions for claims arising out of or resulting from that act of terrorism.

(2) SELECTION CRITERIA.—The Judicial Panel on Multidistrict Litigation shall select and assign the district court under paragraph (1) based on the convenience of the parties and the just and efficient conduct of the proceedings.

(3) JURISDICTION.—The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all actions under paragraph (1). For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(4) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a Federal district court other than the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1) shall be transferred to the Federal district court so assigned.

(5) REMOVAL OF CASES FILED IN STATE COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a State court shall be removable to the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1).

(d) APPROVAL OF SETTLEMENTS.—Any settlement between the parties of a civil action described in this section for claims arising out of or resulting from an act of terrorism shall be subject to prior approval by the Secretary after consultation by the Secretary with the Attorney General.

(e) LIMITATION ON DAMAGES.—

(1) IN GENERAL.—Punitive or exemplary damages shall not be available for any losses in any action described in subsection (a)(1), including any settlement described in subsection (d), except where—

(A) punitive or exemplary damages are permitted by applicable State law; and

(B) the harm to the plaintiff was caused by a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty plea or plea of nolo contendere.

Conviction under subparagraph (B) shall establish liability for punitive or exemplary damages resulting from the harm referred to in subparagraph (B) and the assessment of such damages shall be determined in a civil lawsuit.

(2) PROTECTION OF TAXPAYER FUNDS.—Any amounts awarded in, or granted in settlement of, an action described in subsection (a)(1) that are attributable to punitive or exemplary damages allowable under paragraph (1) of this subsection shall not count as insured losses for purposes of this Act.

(f) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(g) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including any applicable extension period.

SEC. 11. CRIMINAL OFFENSE FOR AIDING OR FACILITATING A TERRORIST INCIDENT.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“§2339C. Aiding and facilitating a terrorist incident

“(a) OFFENSE.—Whoever, acting with willful and malicious disregard for the life or safety of others, by such action leads to, aggravates, or is a cause of property damage, personal injury, or death resulting from an act of terrorism as defined in section 3 of the Terrorism Risk Insurance Act of 2002 shall be subject to a fine not more than \$10,000,000 or imprisoned not more than 15 years, or both.

“(b) PRIVATE RIGHT OF ACTION.—Any person may request the Attorney General to initiate a criminal prosecution pursuant to subsection (a). In the event the Attorney General refuses, or fails to initiate such a criminal prosecution within 90 days after receiving a request, upon petition by any person, the appropriate United States District Court shall appoint an Assistant United States attorney pro tempore to prosecute an offense described in subsection (a) if the court finds that the Attorney General abused his or her discretion by failing to prosecute.”.

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

“2339C. Aiding and facilitating a terrorist incident.”.

Mr. SPECTER. Mr. President, last week I voted against tabling the McConnell amendment which would have conditioned punitive damages for private parties arising out of a terrorist attack to situations where there had been a criminal conviction establishing malicious conduct. Had the McConnell amendment not been tabled, I intended to offer a second-degree amendment which I am now discussing. Since the McConnell amendment was tabled, I am now calling my amendment up as a first-degree amendment.

This amendment establishes a crime for anyone acting with willful and malicious disregard for the life or safety of others, and by such action leads to, aggravates, or is a cause of, property damage, personal injury, or death resulting from an act of terrorism.

This amendment further provides for a private right of action as follows: Any person may request the Attorney General to initiate a criminal prosecution of the criminal offense I just described. In the event the Attorney General refuses or fails to initiate such a criminal prosecution within 90 days, upon petition by any person, the appropriate U.S. district court shall appoint an Assistant United States Attorney pro tempore to prosecute the criminal offense if the court finds that the Attorney General abused his or her discretion by refusing or failing to prosecute.

In considering legislation to provide for Federal Government assumption of some of the losses resulting from terrorist attacks in order to provide insurance coverage, there has been considerable sentiment to curtail punitive damages. Understandably, the bill precludes punitive damages against the Federal Government.

In one sense, there is no more reason to preclude punitive damages against private defendants in this situation than in any other. For example, if a building owner chain-locked emergency exits, why should he or she be exempted from punitive damages because people are injured or killed by terrorist attack instead of by fire? Perhaps this is just another chapter in the continuing effort to reduce civil remedies for tortious conduct.

There is another sense that everyone should make some concessions in dealing with terrorists. In any event, this situation presents an opportunity to deal in a more meaningful way with malicious conduct causing injury or death.

It is my judgment that punitive damages have not been an effective deterrent for malicious conduct. Punitive damages are consistently reversed or reduced. Cases involving automobiles such as the Ford Pinto and the Chevrolet Malibu illustrate the practice of knowingly subjecting consumers to the risk of death or grievous bodily injury because it is cheaper to pay civil damages than to fix the deadly defect.

In the case of “Grimshaw v. Ford Motor Company,” 119 Cal. App. 3d 757, the driver died and a passenger suffered permanently disfiguring burns on his face and entire body when the Pinto’s gas tank exploded in a rear-end collision. When attorneys got into Ford’s records, it was disclosed that the gas tank had not been relocated to a safe place because the correction would cost \$11 per car while the calculation for damages from civil suits was only \$4.50. So it is a dollars and cents calculation.

In the celebrated case “Anderson v. General Motors,” 1999 WL 1466627, a Chevrolet Malibu fuel tank ruptured in a rear-end collision causing six people to sustain serious burns. The design defect of the gas tank was not corrected because a cost-benefit analysis showed it would have cost General Motors \$8.59 to fix the fuel system compared to \$2.40 to pay the civil damages. The Pinto case resulted in a punitive damage award in the amount of \$125 million, frequently cited as an excessive punitive damage award. Very infrequently is it noted that the trial court later reduced the award to \$3.5 million.

Similarly, the Malibu verdict of \$4.8 billion in punitive damages was reduced by the trial judge, with an appeal slashing it even more.

Punitive damage awards have resulted in virtually endless delays. In one of the most celebrated punitive damage cases, “In re the Exxon Valdez,” 270 F.3d 1215, started in 1989, the Ninth Circuit vacated some 12 years later the previously decided, largest-in-history \$5 billion punitive damage award.

I ask unanimous consent that the text of a memorandum be printed in the RECORD at the conclusion of my presentation. This memorandum details punitive damage awards which

were reversed and the lengthy period of time, demonstrating what I am submitting is the ineffectiveness of punitive damages in deterring malicious conduct.

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

(See exhibit 1.)

Mr. SPECTER. The principal problem with punitive damages or a principal problem with punitive damages, in addition to the long delays and the fact that the awards are reduced, is that if, at the end of the long litigation process punitive damages are collected, they come from the shareholders of the company. They come from General Motors. They come from Ford, or they come from some major corporation. That is why it has been my view that an effective deterrent would be to hold the individuals liable for their malicious conduct. And malicious conduct, as defined in this bill, is conduct which has a wanton disregard for the life or safety of another person.

From my experience as district attorney of Philadelphia, I know that people are very concerned about going to jail, much more concerned than if at the end of a long litigation process there may be the requirement for a corporation to pay punitive damages, especially in the context where we know from records from Ford Motor Company in the Pinto case that they made a calculated decision that it was cheaper to pay the damages.

Here you have an official locating a gas tank in the rear end of the car resulting in death, resulting in serious bodily injury again and again, and no deterrence, right back at it again and again.

A similar case, “White v. Ford Motor Company,” CV-N-95-279-DWH (PHA), involved a 3-year-old child who was run over, backed over by a Ford truck with a defective brake. Here, again, in “White v. Ford Motor Company,” the calculation was made that it is cheaper to pay the damages than it is to correct the defect.

That case resulted in a verdict of punitive damages of \$150 million in a case tried in Reno, NV, and later reduced to \$69 million. Years have passed and the matter is still under appeal.

The effective way of dealing with this kind of malicious conduct is to provide a criminal penalty. A criminal penalty was provided in a case involving Firestone tires, which were mounted on Ford vehicles which had disclosed numerous problems in 1998 and 1999. Some 88 deaths resulted when these tires gave way, the vehicles rolled over. Eighty-eight people were killed, hundreds were injured, and there was a calculation on the part of Ford and Firestone not to make that disclosure, not to file it with the appropriate Federal officials.

An internal Ford memorandum on March 12, 1999, considered whether governmental officials in the United States ought to be notified and a decision was made not to notify Federal officials, so they could keep on selling

the Firestone tires on the Ford cars. It is one of the really great tragedies. I had introduced legislation to make that conduct a crime.

With some modifications that provision was incorporated in Public Law 106-414 on November 1, 2000, creating a 15-year sentence for officials where they withhold information on defective products from governmental regulators.

Mr. President, in offering the amendment which I am currently discussing, the effort is being made to substitute an effective remedy which would hold corporate officials liable for the damages which they cause as a result of malicious conduct.

The provisions which were offered by Senator MCCONNELL in the amendment which was tabled last week required that a criminal conviction be established before someone would be liable for punitive damages, and that provision has been carried over to the amendment which I am offering today.

I have added to that amendment a provision for a private right of action. It is very difficult on some occasions to persuade the prosecuting attorney to initiate a criminal prosecution. That is a matter which is customarily viewed as discretionary.

The prosecutor—and I have had a lot of experience with this myself has many cases he has to try and may choose not to initiate the prosecution. So, in order to activate the provision for punitive damages, where someone is convicted of a crime with the requisite malicious conduct, my amendment provides that any person can ask the Attorney General of the United States to initiate a prosecution. If the Attorney General refuses to initiate the prosecution within 90 days, then the individual may petition the court for leave to be appointed as an Assistant United States Attorney pro tempore. In other words, on a private prosecution there would have to be a showing that the prosecuting attorney had abused his or her discretion in failing or refusing to initiate the prosecution. Such private actions are commonplace in U.S. courts.

New York has such a procedure, Minnesota, North Dakota, Florida, Arkansas, Iowa, Montana, Ohio, and Oklahoma. I ask unanimous consent that a memorandum be printed in the RECORD at the conclusion of my oral presentation which summarizes the specifics of where private prosecutions have been initiated.

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

(See exhibit 2.)

Mr. SPECTER. Mr. President, I think it is worthy of note that this was a subject of considerable interest to this Senator during my law school days. I wrote a comment which appears at Yale Law Journal, volume 65, page 209, "Private Prosecution: A Remedy for Unwarranted District Attorneys' Inaction."

As this package was put together, I think it offers some guidance for a way

where there might be some relief from punitive damages; although, to repeat, I think they have resulted in very little by way of liability, for the reasons I have cited and the authorities I have cited.

I believe it is true the punitive damage possibility is a factor on leveraging settlement, but there have been enormous objections to punitive damages, and they have created quite a lot of public furor, as one can see in the \$5 billion punitive damage award I discussed earlier. The public thinks it is being paid with real money; whereas, in fact, when we trace them down, the funds are not paid.

I think we need a comprehensive analysis. There is none to my knowledge as to what has resulted when punitive damages are sought, where punitive damages are obtained on a verdict, and what happens, how many of them are actually collected. It would be a good deal more difficult to quantify the effect of punitive damages as leverage on settlements, but I think that, too, would be worthy of study.

Most importantly, the justice system ought to be able to reach people who are malicious. Wanton disregard for the safety of another constitutes malice and supports a prosecution for murder in the second degree, which can carry a term up to 20 years. This bill carries a penalty up to 15 years because in the Federal system, that is the equivalent of a life sentence. Following the precedent of the Ford-Firestone matter, the 15-year penalty was provided.

I know this amendment is subject to being stricken as being non-germane. When the cloture motion was offered this morning, I voted in support of it, and it was agreed to. Sixty-five Senators voted in favor of it; 31 Senators voted against it. Voting in favor of the cloture motion, I was well aware that were it to pass, this amendment would be precluded, but I considered it much more important to get this bill moving to a conference so that we can have the Government standing behind certain insurance policies so we can move ahead with very important commercial transactions in this country which are now being held up.

It may be that this format will be useful in the conference committee where I believe the House has stricken punitive damages.

This may be an accommodation where punitive damages would still be available, but there would first have to be a criminal conviction. A more important part of the provision would be that those who are malicious and cause death or injury to other people would be held for a very serious criminal sanction.

EXHIBIT 1

The prototype case for the proposition that punitive damages litigation is "virtually endless" is in re the *Exxon Valdez*, the latest iteration of which is found at 270 F.3d 1215, (9th Cir. 2001). In the 2001 decision, the 9th Circuit vacated a previously-decided, larg-

est-in-history, \$5 billion punitive damages award, and remanded the case to the District Court to determine a lower award under standards specified in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)(substantive due process review of punitive damage awards under the three "guideposts" of defendant reprehensibility, ratio analysis, and criminal penalties comparability), and *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001)(requiring de novo review on appeal). Thus, litigation stemming from a March 1989 accident/oil spill continues into its 11th year—and, essentially, is back to "square one" on the issue of punitive damages. See also *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991)(ten-year litigation stemming from insurance agent's 1981 misappropriation of insurance premium payments).

The key cases cited in *Exxon Valdez*, *BMW of North America, Inc.* and *Cooper Industries, Inc.* themselves had lengthy procedural histories—the *BMW* case running from 1990–1997, and *Cooper* running from 1995 to the present. See also 2660 *Woodley Road Joint Venture v. ITT*, 2002 U.S. Dist. LEXIS 439 (D.Del., January 10, 2002)(granting motion for new trial on the issue of the size of punitive damages awarded in a 1997 commercial contract breach case); *Dallas v. Goldberg*, 2002 U.S. Dist. LEXIS 8829 (SDNY, May 20, 2002)(ruling on the admissibility of evidence in computing the amount of punitive damages in ongoing \$1983 action stemming from a 1994 police incident); *Silivanch v. Celebrity Cruise Inc.*, 2000 U.S. Dist. LEXIS 12155 (August 23, 2000)(a procedural ruling on allocation of punitive damages stemming from a 1994 cruise exposure to "Legionnaires' Disease"). State court cases are at least as striking. See, e.g., *Torres v. Automobile Club of Southern Cal.*, 937 P.2d 290 (Cal. 1997)(remanding for a new trial on all issues; litigation initially filed in 1986); *Moeller, et. al. v. American Guarantee Insurance Co.*, 707 So. 2d 1062 (Miss. 1996)(final decision in 1996 on case filed in 1982); *Abramczyk, et. al. v. City of Southgate*, 2000 Mich. App. LEXIS 530 (2000)(reversing award of punitive damages and remanding for new trial; litigation filed in 1996); *Dixie Insurance Company v. Mooneyhan*, 684 So. 2d 574 (Miss. 1996) (remanding for a new trial on the issue of punitive damages; litigation filed in 1987).

To summarize, then, litigation on the issue of punitive damage can—and does—stretch out over a period of years (numerous appellate cases show a pattern of at least 4–6 years and longer, as in the case of *Exxon Valdez* and *Cooper Industries*). Recent trends have caused one commentator to state as follows: "The Supreme Court's . . . decision [in *Cooper*], with its mandate of de novo appellate review of punitive damages jury verdicts in all cases, may consign state and federal courts to an endless round of institutional second-guessing . . ."

Cabraser, E.J. *Engle v. R.J. Reynolds Tobacco Co.: Lessons in State Class Actions, Punitive Damages, and Jury Decision-Making Unfinished Business: Reaching the Due Process Limits of Punitive Damages in Tobacco Litigation Through Unitary Classwide Adjudication*, 36 Wake Forest L. Rev. 979, 986 (2001)(emphasis added). Thus, the "endless" nature of punitive damages litigation will—at least according to this commentator (a tobacco litigation plaintiffs' attorney)—only get worse.

EXHIBIT 2

There are several states that through statute or care precedent allow a court to appoint a special prosecutor in the event that the district attorney is unable or unwilling to prosecute a case. The following is a summary of the applicable statute or case law in several states authorizing the replacement of prosecutors.

STATUTE

New York—NY CLS County §701 provides that when a district attorney cannot attend in a court in which he or she is required by law to attend or is disqualified from acting in a particular case, the criminal court may appoint another attorney to act as special district attorney “during the absence, inability or disqualification of the district attorney.”

Pennsylvania—71 P.S. §732-205 provides that the Attorney General shall have the power to prosecute in any county criminal court upon the request of a district attorney who lacks the resources to conduct an adequate investigation or prosecution or if there is actual or apparent conflict of interest. Also, the Attorney General may petition the court to permit him or her to supersede the district attorney in order to prosecute a criminal action if he or she can prove by a preponderance of the evidence that the district attorney has failed or refused to prosecute and such failure or refusal constitutes an abuse of discretion.

Minnesota—Minn. Stat. §388.12 provides that a judge may appoint an attorney to act as or in the place of the county attorney either before the court or the grand jury.

North Dakota—If a judge finds that the state's attorney is absent or unable to attend the state's attorney's duties, or that the state's attorney has refused to perform or neglected to perform any of his duties to institute a civil suit to which the state or county is a party and it is necessary that the state's attorney act, the judge shall (1) request that the district attorney take charge or the prosecution or (2) appoint an attorney to take charge of the prosecution.

Tennessee—Tenn. Const. art. VI, §6 provides that in all cases where the Attorney for any district fails or refuses to attend and prosecute according to law, the Court shall have power to appoint an Attorney pro tempore.

CASE LAW

Florida—*Taylor v. Florida*, 49 Fla. 69 (1905)—The Supreme Court of Florida held that absent an express legislative statement prohibiting a court from doing so, in the event the state attorney refuses to represent the state, that a court has the inherent power to appoint another attorney.

Arkansas—*Owen v. State*, 263 Ark 493 (1978)—The Supreme Court of Arkansas held that “[i]t is well settled that the circuit judge had the power to appoint a special prosecuting attorney.” Various other state courts have embraced the inherent power concept of a court to appoint a special prosecutor in a criminal case. See *White v. Polk County*, 17 Iowa 413 (1864); *Territory v. Harding*, 6 Mont. (1887); *State v. Henderson*, 123 Ohio St. 474 (1931); *Hisaw v. State*, 13 Okla. Crim. 484 (1917).

Mr. SPECTER. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I would like to note for the record two previous statements I made on this subject, one on September 7, 2000, appearing in the CONGRESSIONAL RECORD beginning at page S-8188, and also a statement on September 15, 2000, ap-

pearing in the CONGRESSIONAL RECORD on page S-8625. I would note that my statement of September 7, 2000, provides some more detailed facts concerning the Ford-Firestone issue and discusses several other cases involving punitive damages.

I note one other consideration, and that is, I am aware that in subscribing to the requirement that there is a criminal prosecution as a basis for an award of punitive damages, that does require proof beyond a reasonable doubt. On punitive damages, there have been varying standards applied, for example, clear and convincing evidence. And while proof beyond a reasonable doubt is obviously more than a preponderance of the evidence, it is my view that where you deal with these horrendous kinds of cases—the Pinto, where there is a calculation regarding the gas tank in the rear of the car, or the Ford-Firestone case—in these kinds of cases where we are really looking to make an example, that the proof will be there for proof beyond a reasonable doubt.

Having had some considerable experience prosecuting criminal cases, it has been my view that in most situations the vagaries of burdens of proof—beyond a reasonable doubt, clear and convincing evidence, preponderance of the evidence—really are not the ultimate determinants. But to the extent that proof beyond a reasonable doubt is an additional burden, I think the gain in moving in this direction to impose criminal liability is certainly worth it from the point of view of public policy.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Madam President, I ask unanimous consent the order for the quorum call be rescinded and that I be recognized as in morning business.

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

HUMAN CLONING

Ms. LANDRIEU. Madam President, I understand we are going to be voting on a very important bill at about 3:45, in just 20, 25 minutes. I support the bill on terrorism insurance creating a mechanism for us to create a system in this country for a new kind of insurance, unfortunately, one for which there has become an apparent need since September 11, and without which there would be a great hardship for our banking and financial industries and also for our real estate developers. Frankly, all businesses—many in Louisiana—are affected across our Nation.

So I am going to be supportive of this terrorism insurance bill, and have been supportive of it in the process of trying to bring it to the floor for a final vote.

But I want to take a few minutes, before we actually vote on that bill, to speak on an issue that is not directly before the Senate but is something in

which many of us are involved, and for which we are trying to come up with some solutions. This is the very important issue involving the subject of cloning. It involves issues related to potential research in cloning.

We believe this is a subject the Senate and Congress is going to have to address, and we are attempting to address it. There are various differences of opinion about how to do that. So I come to the floor to speak for a minute while we have some time.

First of all, as you know, Madam President, and as many of my colleagues know, I am working with Senator BROWBACK and Senator FRIST and others to try to fashion a position on this bill that would basically create a moratorium of some type—either long term, short term, or intermediate term—because we believe this is an issue with serious ethical considerations and one that we, as a Congress, and as leaders, should have to give very careful consideration to before we would go forward.

That has been the essence of our approach, just trying to slow things down so that perhaps we could get enough information to say that we should not, at any time, under any circumstance, go forward with human cloning. But the basis of our approach has been a moratorium to give us more time to get some of this important information out to the public.

This is an issue of great concern to the public. Generally, I think people want to be supportive of ethical kinds of research, particularly for the development of cures for diseases. Juvenile diabetes comes to mind; also cures for cancer and spinal cord injuries.

We want to be very supportive of ethical approaches to research to provide cures for people who are suffering; children, adults, older people. I think this Senate has gone on record, in a truly bipartisan fashion, supporting the increase in funding for the National Institutes of Health, and it has been a remarkable increase in funding. I, for one, have been very strongly supportive of that funding and want it to continue.

But I want to spend a moment talking about some of the problems—ethical and otherwise—associated with the process of human cloning and to suggest that the Feinstein-Kennedy approach, which basically would be asking the Senate, if you will—and why I am not supporting that approach—and Congress to consider, for the first time, sanctioning or legalizing human cloning.

I do not think there is enough information for us to make that decision. Let me give you a couple of reasons.

First of all, some of the proponents of human cloning—people who say we should go forward with human cloning—try to make a distinction between human cloning and therapeutic cloning or reproductive cloning or nuclear transfer.

One of the points I want to make is that human cloning is human cloning