

Testimony of

The Honorable Patrick Leahy

July 10, 2003

Statement of Senator Patrick Leahy
Senate Judiciary Committee Executive Business Meeting
S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003
July 10, 2003

As we resume consideration of legislation to enact an effective national trust fund for victims of asbestos-related disease, I want to thank Senators on both sides of the aisle who have been working with us in good faith to try to achieve a consensus bill. Last month we were able to make some progress on important aspects of this matter. We began moving toward a bipartisan measure.

The last week in June the Committee unanimously adopted the Leahy-Hatch amendment on medical criteria and several other bipartisan amendments that we were able to work through to reach consensus.

We then began tackling the issue of solvency and, again, we were able to make bipartisan improvement on that front by adopting a proposal by Senator Feinstein, Senator Kohl and Senator Hatch.

We then began considering the critical issue of award values. I am extremely disappointed that we have yet to reach consensus on this fundamental aspect of a fair and effective national trust fund. We still need to find common ground on appropriate award values.

At times over the last month, I had genuine hope that we would be able to agree upon a real solution to the asbestos litigation crisis. We had worked hard, and then harder, to reach consensus.

But that movement toward consensus seems to have stalled just as we have approached the fundamental issue of whether we are willing to compensate asbestos victims fairly.

That should, of course, be the goal of this bill and of our efforts. It is not just to provide a jump in stock prices for certain companies or to allow other companies windfall releases from the settlements they have already agreed upon to resolve their asbestos liability.

I again re-emphasize one basic, bedrock principle: I will not support a bill that contains inadequate compensation for victims. I will not adjust fair award values into some discounted amount just to make the final tally come within a pre-determined, artificial limit.

We will have failed if we leave those poisoned by asbestos without fair compensation.

Some in the business community and their insurers seem to have determined that they do not want or intend to pay more than \$94 billion, and will fight fair awards if they are projected to total more than that amount. When we consider that future asbestos liability has been estimated to range upwards from \$275 billion, that would amount to a discount on their liability of almost 75 percent.

I come today prepared to offer an amendment that will provide fair but certainly not exorbitant victim compensation. The estimated likely cost of that system of awards is \$128 billion. That is less than half the future liability in the tort system. That is quite a significant discount, and certainly a fair resolution of this issue.

Our medical criteria provisions have already eliminated what some businesses interests contended were the problem claims. We all say that we need to compensate the sick. Fair compensation is not free.

During our consideration of resolving the asbestos litigation crisis, the theme that all Senators have been sounding is fair compensation to those who suffer from asbestos exposure. We have already adopted the Leahy-Hatch medical criteria amendment that defines those victims for purposes of this proposed trust.

We now need to ensure fair compensation for all 10 categories of asbestos-related disease, the five levels of non-malignant disease of increasing severity and the five levels of cancer, including colorectal cancer, lung cancer and Mesothelioma.

Both Senator Specter and Senator Biden spoke last month about the need to be sure this bill is fair and provides an alternative process and outcomes that will be fair in compensating asbestos victims before taking away people's rights. I agree.

Last month's agreement on medical criteria will be meaningless if we, in effect, rewrite the categories by failing fairly to compensate many who fall within them.

Even with consensus on medical criteria, if the award values are unfair, the bill will be unfair and unworthy of our support.

There are, of course, other aspects of the bill that need correction and modification. We have to be wary that the administrative system we are seeking to establish also be a fair, no-fault process. We do not want, in our zeal to remove cases from the tort system, to do so in a way that leaves victims with years of delay before the new system is operational. It would be a cruel result to lock the doors to our courthouses before the administrative process was ready to award compensation to victims. We need to be sure that we proceed correctly so that the administrative process is not swamped by 300,000 claims on the day it theoretically opens its doors, ending up stalling victims' compensation for years.

Given the current lack of consensus, I caution that forcing through a final vote of this measure will, in my view, not be productive. A party-line vote on this kind of legislative measure may well turn out to be more of a setback than a step forward. Proceeding in that manner may harden the positions of the parties and lessen the prospects for success. Proceeding without consensus would open this matter to weeks of debate on the floor, just as it has required weeks on consideration before this Committee. Proceeding without consensus would likely result in numerous amendments and extended debate before agreement, if agreement could be reached at all. Consensus remains the best hope for us to successfully to pass a bill this year.

Consensus would pave the way forward for this bill, and consensus should continue to be our goal.

In the spring, we were being told that the Committee had to conclude its deliberation by the end of June or early July in order to turn its attention to vacancies on the Supreme Court. Well, those vacancies have not arisen.

We need to continue our work to achieve the common ground needed to enact a good law. Acting together through consensus remains, in my view, the best way to move a bill through the legislative process and into law. I hope we can make real progress today, and I know that with the adoption of the fair compensation awards I will be offering, we can do that.

#

Statement of Senator Patrick Leahy
Nomination of Karen Tandy to be Administrator of Drug Enforcement
Executive Business Meeting
July 10, 2003

We vote today on the nomination of Karen Tandy, a long-time prosecutor and Justice Department official, to head the Drug Enforcement Administration. As the FBI has reduced its involvement in drug crimes to focus greater attention on terrorism since the September 11, 2001, attacks, the DEA has been charged with even greater responsibility for fighting drug abuse.

Ms. Tandy's experience in enforcing narcotics laws makes her well-qualified for this important post. She served as the Chief of Narcotics for the U.S. Attorney's Office for the Eastern District of Virginia, and has more recently served as Associate Deputy Attorney General and Director of the Organized Crime Drug Enforcement Task Forces at the Justice Department.

This position is particularly important to me because Vermont, and indeed all of New England, is struggling mightily because of growing rates of heroin use. Heroin use has doubled over the last five years, and the average age of a heroin user in Vermont dropped from 27 to 17 during the 1990s. There were 53 overdose deaths in Vermont in 2002, many from heroin, and 47 in 2001. A number of my constituents have lost family members and friends who succumbed to addiction to heroin or other drugs, and I repeatedly hear from my constituents how heroin abuse is damaging

the state and their lives. Law enforcement agencies in Vermont are performing valiantly in battling this wave, but they cannot do it alone. I know that the New England High Intensity Drug Trafficking Area (HIDTA) has provided invaluable assistance to the Vermont State Police in its efforts to prevent drugs from coming across the Canadian border and addressing the heroin problem within the state. I urge Ms. Tandy to offer her full support to this HIDTA and to make New England a priority.

I continue to be concerned about the DEA's actions in states that have chosen to legalize marijuana for medicinal purposes. It has been my view that although the Supreme Court has stated clearly that the Federal government has the right to enforce the Federal prohibition on marijuana in these states, it would be a wise exercise of discretion and resources for the DEA to focus its attention elsewhere. The apparent decision of the DEA and the Justice Department not to follow this advice has led to serious conflict between the Federal government and state and local governments, particularly in California. I would hope that we will see a less confrontational approach under Ms. Tandy's leadership. I am not encouraged, however, by her response to my written questions in this regard, in which she seems to suggest that the Federal government's attitude toward those who distribute marijuana for medicinal purposes should not differ from its attitude toward those who sell heroin or methamphetamine. I believe this approach will lead to further resentment on the part of local law enforcement, at a substantial cost in Federal resources.

I am also disappointed by her strong support for mandatory minimum sentences. As both Republicans and Democrats reconsider their past support for these sentences, I had hoped that Ms. Tandy would show some concerns about the effectiveness and justice of our current sentencing scheme, as her predecessor Asa Hutchinson did, both as a Congressman and during his DEA confirmation hearings.

#

Statement Of
Senator Patrick Leahy
Bulletproof Vest Partnership Grant Act of 2003
July 10, 2003

I am pleased that the committee is considering the Campbell-Leahy-Hatch-Biden "Bulletproof Vest Partnership Grant Act of 2003, S. 764, a bill to reauthorize an existing matching grant program to help State, tribal, and local jurisdictions purchase armor vests for use by law enforcement officers.

This bill marks the third time that I have had the privilege of teaming with my friend and colleague Senator Campbell to work on this legislation. We authored the Bulletproof Vest Partnership Act of 1998 in response to the tragic Carl Drega shootout in 1997 on the Vermont-New Hampshire border, in which two state troopers who did not have bulletproof vests were killed. The federal officers who responded to the scenes of the shooting spree were equipped with life-saving body armor, but the state and local law enforcement officers lacked protective vests because of the cost.

Two years later, we successfully passed the Bulletproof Vest Partnership Grant Act of 2000, and I hope we will go 3-for-3 this time around. Senator Campbell brings to our effort invaluable experience in this area and during his time in the Senate he has been a leader in the area of law enforcement. As a former deputy sheriff, he knows the dangers law enforcement officers face when out on patrol. I am pleased that we have been joined in this effort by Judiciary Chairman Hatch, Judiciary Committee Senators Biden, Schumer and Kohl, and five other cosponsors.

Our bipartisan legislation will save the lives of law enforcement officers across the country by providing more help to state and local law enforcement agencies to purchase body armor. Since its inception in 1999, this highly successful Department of Justice program has provided law enforcement officers in 16,000 jurisdictions nationwide with nearly 350,000 new bulletproof vests. In Vermont, 148 municipalities have been fortunate to receive to receive funding for the purchase of almost 1200 vests. Without the federal funding given by this program, I daresay that there would be close to that number of police officers without vests in Vermont today.

The Bulletproof Vest Partnership Grant Act of 2003 will further the success of the Bulletproof Vest Partnership Grant Program by re-authorizing the program through fiscal year 2007. Our legislation would continue the Federal-State partnership by authorizing up to \$50 million per year for matching grants to state and local law enforcement agencies and Indian tribes at the Department of Justice to buy body armor.

Not only should we re-authorize this program, but also we should work to see that it is fully funded. While the Bulletproof Vest Partnership Program funding has been consistently authorized at \$50 million per year, that amount gets whacked in half during the appropriations process. Law enforcement agencies, however, clearly need our help to purchase vests - for the current fiscal year, the Bulletproof Vest Partnership office received funding requests from small jurisdictions, with populations under 100,000, totaling \$59 million - more than double the funds appropriated. The authorizing legislation requires that smaller jurisdictions receive priority funding through this program. Those requests consumed the entire amount of funds available and for the first time ever awards could only be made to small jurisdictions.

We know that body armor saves lives, but the cost has put these vests out of the reach of many of the officers who need them. This program makes it more affordable for police departments of all sizes. Few things mean more to me than when I meet Vermont police officers and they tell me that the protective vests they wear were made possible because of this program. This is the least we should do for the officers on the front lines who put themselves in danger for us every day. I want to make sure that every police officer who needs a bulletproof vest gets one.

I look forward to the Committee approving our bipartisan bill today to better to protect our law enforcement officers.

#

Statement of Senator Patrick Leahy
Proposed Free Trade Agreements with Chile and Singapore
Executive Business Meeting
July 10, 2003

The Committee today takes on the important responsibility of offering its comments on legislation that would implement Free Trade Agreements ("FTA") with Chile and Singapore. Under our trade laws, Congress cannot amend legislation transmitted by the Executive Branch to implement FTAs, but rather may only approve or disapprove them. As such, the informal procedure we engage in today - along with the hearing that the Committee will hold on Monday - presents the only opportunity for Members of this Committee to make their views known on the "temporary entry" provisions included in both agreements, which are substantially identical in relevant part.

I am concerned that the "temporary entry" provisions will undercut our H-1B program by offering workers from Chile and Singapore a path to entry that does not provide that program's protections and benefits for our domestic workforce. Under the H-1B program, which I support, employers can bring in workers with "highly specialized knowledge" to fill employment needs here, but the employer or another third party must pay a \$1000 fee on the worker's behalf. That fee covers both the processing of the petition and worker training programs designed as a longer-term solution to worker shortages. I understand that after concerns were raised in the House about the lack of a fee provision, the Administration yesterday agreed to include language that would assess a fee for "temporary entry" visas from Chile and Singapore that is equal to the H-1B fee. If so, I applaud this decision.

Apart from the fee issue, however, I am also concerned that unlike under the H-1B program, the Secretary of Labor will not have the authority to initiate investigations into employers who abuse the program. Moreover, the agreement allows for visas to be renewable infinitely, unlike the 6-year limit for H-1B visas.

These issues are important because these are not the last trade agreements we will see, and we can reasonably expect that future agreements will be patterned on these two. If we are going to change our employment-based immigration system, Congress must be involved and we must do so consciously, not simply through acquiescence to FTAs presented to us by the Administration.

Further, I want to consider whether these trade agreements present opportunities for us to ensure adequate protection of our U.S. copyright-based industries from international piracy. These industries face real challenges from new technologies that threaten their rights, and do not recognize international borders. Piracy is an international problem, and it may require an international solution.

#####