SENATOR
ARLEN SPECTER
PENNSYLVANIA

Volume III, Issue 1

Fall 2005

ARLEN SPECTER SPEAKS

INSIDE THIS ISSUE:

Appointing the Next Supreme Court Justice	1 & 2
Televising the Court	2
Finding an Asbestos Solution	3 & 4
Research for the Future	3 & 4
Specter Office Contacts	4

In the News:

Senator Specter recently managed the Labor, Health and Human Services Appropriations Bill, which decides federal funding levels for Pell Grants, the Centers for Disease Control, and National Institutes of Health (NIH), and other important health and education programs. The most notable accomplishment of the bill was a $7.975 billion amendment for the pandemic flu, which was spearheaded by Senators Specter and Tom Harkin (D-Iowa).

Following the passage of the amendment, Senator Specter accompanied President Bush on his visit to the NIH where the President announced his plan for flu preparedness. The next day, Senator Specter chaired a hearing of his Subcommittee on Labor, Health, and Human Services and questioned Health and Human Services Secretary Michael Levitt on the anticipated effectiveness of the United States plan to address any potential flu outbreak.

THE NEW SUPREME COURT

Senator Specter swears in now Chief Justice Roberts at the start of his confirmation hearings on September 12, 2005

On September 29, 2005, I was honored to be a participant in the historic confirmation of Chief Justice Roberts as the United States' 17th Chief Justice of the Supreme Court. Chief Justice Roberts *came to the* position uniquely qualified, with an academic record of superior standing, *magna cum laude, summa cum laude* at Harvard College and Harvard Law School. He *had* a distinguished career clerking first with Circuit Judge Henry Friendly, a very distinguished judge in the Court of Appeals, then for then Associate Justice Rehnquist; and then *serving* as an assistant to Attorney General William French Smith. He was later an associate White House counsel in the Reagan administration; ran a distinguished practice in the law firm of Hogan & Hartson; *and* argued 39 cases before the Supreme Court of the United States.

His answers to the questioning before the committee, which was *a* very intense *proceeding*, were that he saw the Constitution as a document for the ages responding to societal changes. *He said* he saw the phrases ``equal protection of the law'' and ``due process of law'' as expansive phrases which can accommodate societal changes.

While the votes for Judge Roberts among the Democrats were not as strong as the 41 Republicans who voted for President Clinton's nomination of Justice Ginsburg, *Judge Roberts did receive a strong bipartisan vote of 78-22 and was confirmed as the Chief Justice of the Supreme Court of the United States.*

Following the confirmation of Chief Justice Roberts, the President set to replace retiring Justice Sandra Day O'Conner. But on October 27, 2005, the White House withdrew the nomination of Ms. Harriet Miers who had been nominated to fill the seat. I respect Ms. Miers' decision to withdraw from consideration for the Supreme Court. At the same time, I do regret our constitutional process was not completed. Instead of a hearing before the Judiciary Committee and a debate on the Senate floor, Ms. Miers' qualifications were subject to a one-sided debate in news releases, press conferences, radio and TV talk shows, and the editorial pages.

I acknowledge the rights of everyone to express themselves as they see fit, but that should not have precluded Ms. Miers from getting basic due process. There was a decisive imbalance in the public forum, with the case for Ms. Miers not heard because of the heavy decibel level against her.

I have repeatedly noted her excellent work in handling. complex civil cases.

Continued on Page 2

THE NEW SUPREME COURT (CONT. FROM PAGE 1)

Had the constitutional process been followed with a hearing, she would have had an opportunity to establish that her intellect and capabilities demonstrated in her 35-year professional career could be carried over in the field of constitutional law and the work of the Court. Whether she would have been confirmed remains an open question, but at least she would have had the major voice in determining her own fate.

Ms. Miers did deliver, on time, her responses to the committee request for supplemental information on her questionnaire. Eight large boxes were in the committee's possession, but there was no reason to read or analyze those responses.

The Judiciary Committee carefully did not intrude on the President's executive privilege. The committee studiously avoided asking what advice Ms. Miers gave to the President, and that limitation would have been continued in any hearing, with an adequate range of questions available to enable the committee to decide on her qualifications for the Court.

We must guard against having the Miers proceedings become a precedent for the future.

Four days after Ms. Miers' withdrawal, on October 31, President Bush nominated Judge Samuel Alito to be an Associate Justice. On that day, I met *with him* for about an hour and a quarter to talk about a wide variety of issues which will come before the Judiciary Committee during his hearings.

Judge Alito brings to this nomination a very longstanding record in public service. He clerked immediately after graduation from the Yale Law School. He was valedictorian of his high school class. He had high marks at Princeton and at Yale. He was on the Yale Law Journal.

After being a clerk, he was an assistant United States attorney. He then served in the Solicitor General's office, and then as a United States attorney. For 15 years, he has been a judge on the Court of Appeals for the 3rd Circuit and comes highly recommended by his colleagues on the 3rd Circuit. I have known him—although not well—for the better part of 20 years.

We will proceed with very thorough, incisive hearings on Judge Alito. My Democratic colleague on the Committee, Senator Leahy, and I have worked out what we think is a sensible schedule for the confirmation hearings on Judge Alito. The White House has understandably been interested in an early confirmation process, with the request that it be completed before Christmas. That is not, in my judgment, practical or realistic because, as Judge Alito has outlined himself, in 15 years he's decided about 250 cases a year, which multiplies out to 3,750 cases, and he has some 300 opinions.

And that is a considerable amount of research to undertake.

Then there's also the issue of papers from the Reagan Library. At this stage, we have begun the inquiries, but we do not know what is there or what will be made available.

Our staffs have also been stretched very thin, having given up August *to prepare for the Roberts hearings*. We had to go through a very difficult scheduling process to have Chief Justice Roberts seated by October 3rd, but we did that.

So the schedule will be that we'll start hearings at noon on Monday, January 9, 2006. We'll have the hearings on Tuesday the 10th, Wednesday the 11th, Thursday the 12th, Friday the 13th and Saturday the 14th, if necessary. We will then go to the Committee vote on the 17th. Then we would go to the 18th, 19th and 20th for floor debate with a final vote on nomination on January 20, 2006.

TELEVISING THE COURT

On September 26, 2005, I introduced legislation that will give the public greater access to our Supreme Court. The bill requires the high Court to permit television coverage of its open sessions unless it decides by a vote of the majority of Justices that allowing such coverage in a particular case would violate the due process rights of one or more of the parties involved in the matter.

The purpose of this legislation is to open the Supreme Court doors so that more Americans can see the process by which the Court reaches critical decisions of law that affect this country and everyday Americans. Because the Supreme Court of the United States holds power to decide cutting-edge questions on public policy, thereby effectively becoming a virtual ``super legislature,'' the public has a right to know what the Supreme Court is doing. That right would be substantially enhanced by televising the oral arguments of the Court so that the public can see and hear the issues presented to the Court. With this information, the public would have insight into key issues and be better equipped to understand the impact of the Court's decisions.

Some objections have been raised to televised proceedings of the Supreme Court on the ground that it would subject justices to undue security risks. My own view is such concerns are vastly overstated. Well-known members of Congress walk on a regular basis in public view in the Capitol complex. Other very well-known personalities, presidents, vice presidents, cabinet officers, all are in public view. Even incumbent presidents are exposed to risks as they mingle with the public. Such risks are minimal in my view given the relatively minor exposure that Supreme Court justices would undertake through television appearances.

The Supreme Court could, of course, permit television through its own rule but has decided not to do so. Congress should be circumspect and even hesitant to impose a rule mandating the televising of Supreme Court proceedings and should do so only in the face of compelling public policy reasons. The Supreme Court has such a dominant role in key decision-making functions that their proceedings ought to be better known to the public; and, in the absence of a Court rule, public policy would be best served by enactment of legislation requiring the televising of Supreme Court proceedings.

WORKING TOWARDS AN ASBESTOS LITIGATION SOLUTION

Asbestos litigation legislation has been before the Senate in one way or another for the better part of two decades. My first contact with the issue was when then-Senator Gary Hart of Colorado was soliciting members of the Judiciary Committee because of the deep problems of Johns-Mansville.

The Supreme Court of the United States, on a number of occasions, has importuned the Congress to take over the subject because the asbestos cases are flooding the courts and because class actions are inappropriate to address the issue.

"The Supreme Court of the United States, on a number of occasions, has importuned the Congress to take over the subject because the asbestos cases are flooding the courts and because class actions are inappropriate to address the issue."

The result of the avalanche of asbestos litigation has seen some 77 companies in the United States go into bankruptcy and thousands of people suffering from asbestos-related injuries–mesothelioma *and* other deadly diseases–unable to collect any compensation because their employers or those who would be liable for their injuries are in a state of bankruptcy.

Senator Hatch took the lead as chairman of the Judiciary Committee in the 108th Congress in structuring a bill to create a trust fund that would be established at $140 billion to pay asbestos victims. This is a sum of money which has been agreed to by the insurance companies and by the manufacturers and had the approval of the leadership of the Senate.

In the fall of last year, 2004, Senator Frist and Senator Daschle came to terms as that being a *monetary* figure which would take care of the needs. The victims have never been totally satisfied with that figure, but it represents a very substantial sum, obviously, and according to the filings of the Goldman Sachs analysis, should be adequate to compensate the victims.

They made a detailed analysis and came to the conclusion that $125 billion was the figure necessary. Then, when we removed the smokers–a figure of $7 billion–it came to a net of $118 billion, leaving a substantial cushion between $118 billion on the projection and $140 billion.

When the bill was passed out of the Judiciary Committee in late July of 2003, largely along party lines, the aid of a senior Federal judge was enlisted to serve as a mediator. Chief Judge Edward R. Becker had taken senior status on the Third Circuit Court of Appeals the preceding May and was willing to convene the parties, the so-called stakeholders, in his chambers in Philadelphia in August of 2003. He brought together the insurers, the trial lawyers, the AFL-CIO representing claimants, and the manufacturers, a group of four interest groups who are very powerful in our community.

From those two meetings, there have been a series of approximately 40 conferences in my offices where we have worked through a vast number of problems where I think we have accommodated many of the interests.

In May, the Judiciary Committee voted the bill out of committee on a 13-to-5 vote, with bipartisan support, and during the course of the markup some 70 amendments were approved by the Committee. There are still some outstanding issues, but we have been soliciting cosponsors and have found very substantial interest in the Senate on trying to move through legislation on this important issue.

When the vote came out of committee, some of those who voted in

Continued on Page 4

RESEARCH FOR THE FUTURE

Majority Leader Bill Frist has agreed to make *stem cell research* a priority item at the beginning of the next session of Congress where all facets of the issue may be explored. There have been some recent developments that there may be a way to use stem cells without destroying the embryo. If that can be done, it would be spectacular, but the success of that kind of research is a long way off. I personally would like to see Federal funding devoted to all aspects of embryo research because the potentials are extraordinary. The real opportunity for medical advancement lies in the flexible embryonic stem cells which can, for example, be injected into a diseased heart where the embryonic stem cells could have the potential to replace diseased heart cells. It is my hope that we will be able to move ahead along this line *when the Senate takes up the matter in the next session.*

The Labor, Health and Human Services subcommittee I chair has held 17 hearings on this subject, starting in December of 1998, a few days after embryonic stem cells burst on the scene. Our most recent hearing was on October 19, which coincided with the announcement in South Korea that they were starting a worldwide research program with adjunct facilities in San Francisco and England. While I applaud the efforts of the South Koreans in advancing medical research with stem cells, it is regrettable that the United

Continued on Page 4

A loyal fan...

Senator Specter poses with Philadelphia Phillies player Chase Utley in his Washington, D.C office

Finding an Asbestos Litigation Solution

(CONT. FROM PAGE 3)

favor of the bill did so with reservations. We have worked through this, and I think those issues are either resolved or resolvable.

Senator Leahy and I have worked very closely. It is a bipartisan bill which had the 10 members of the Judiciary Committee on the Republican side voting in favor—to repeat again, subject to some reservations—and three Democrats voting in favor of the bill. Senator Leahy and I are determined to retain our core provisions, but we are open to suggestions.

It *was* my hope that this bill will come to the Senate this year. That, of course, is a decision which the Majority Leader has to make in setting the calendar. There is a momentum in hand where it would be very much in the national interest, for the reasons I stated, to move ahead.

RESEARCH FOR THE FUTURE

(CONT. FROM PAGE 3)

States has not maintained a lead in this research. The objections to embryonic stem cell research come from the contention that these embryos have the potential to create life. The conclusive answer to that argument is that there are some 400,000 embryos that are frozen and are going to be destroyed. Senator *Harkin* and I, and the LHHS subcommittee have taken the lead in putting up some $2 million for embryo adoption.

If all of these embryos could be adopted and produce life, I would not have any interest in advocating scientific research on them. But if they are going to be thrown away, it makes a lot more sense to use them than to destroy them. But to the extent that adoption can be promoted, my subcommittee supports this approach.

The principal piece of legislation is the House-passed bill, which is identical to legislation which Senator Harkin and I have introduced in the Senate, and will remove restrictions so that the federal funds can be used for stem cell research. There is another promising approach which was *explored in the* hearing, *still in its* very early stages, that would be able to preserve the embryo and still harvest the stem cells.

President Nixon declared war on cancer in 1970, and if we'd devoted the resources to that war as we've devoted to other wars, I think we would have found a cure for cancer by this time. We all have very close personal experiences, some more personal than others, with members of our families or loved ones who have been stricken by the maladies where scientific research could have provided cures.

As is well-known from the charitable pictures of me which have appeared in the press and on television, I had recently been engaged in a fierce battle with Hodgkin's Lymphoma cancer, and I can't help but think that had the Nixon war on cancer really been waged with intensity, that there would have been a cure, a preventative. So there's a very strong personal note to my own view.

As has been reported, some 50 Republicans voted for the legislation in the House because of, in many ways, personal experiences. I hope we don't have to come to a point where 535 of us have personal experiences before we lead the battle for some 110 million Americans who suffer directly or indirectly from maladies which could be cured by NIH research or perhaps by stem cells.

A reason to celebrate—Senator Arlen Specter became Pennsylvania's longest serving Senator on November 1, 2005, surpassing the record set by Boies Penrose who served from 1897 to 1921.

Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

202-224-4254p
202-228-1229f

On the Internent at:
specter.senate.gov

and via email at:
arlen_specter@specter.senate.gov

Allentown
504 W.Hamilyon Street
610-434-1444p

Erie
17 South Park Row
Federal Building
Suite B 120
814-453-3010p

Harrisburg
228 Walnut Street
Suite 1104
717-782-3951p

Philadelphia
600 Arch Street
Suite 9400
215-597-7200p

Pittsburgh
1000 Liberty Avenue
Federal Building
Suite 2031
412-644-3400p

Scranton
310 Spruce Street
Suite 201
570-346-2006p

Wilkes Barre
7 N. Wilkes Barre Blvd
Stegmaier Building
Room 377M
570-826-6255p