

Jones and Ambassador Thomas Pickering, puts it bluntly, and I quote in part:

The progress achieved after 6 years of international engagement is under serious threat from resurgent violence, weakening international resolve, mounting regional challenges, and a growing lack of confidence on the part of the Afghan people about the future direction of their country. The United States and the international community have tried to win the struggle in Afghanistan with too few military forces and insufficient economic aid, and without a clear and consistent comprehensive strategy.

That is the Jones and Pickering report from which I am quoting.

When Secretary of Defense Gates is forced to go public with criticisms of the refusal of our NATO allies to deploy more forces in Afghanistan and his skepticism of their ability to conduct counterinsurgency operations, we must admit that the situation on the ground is getting worse in Afghanistan, not better. Military officials expect the coming year to be even more deadly, as the Taliban becomes more deadly and deploys greater numbers of suicide bombers and roadside explosives. U.S. forces remain largely isolated in Afghanistan, with key NATO allies refusing to provide ground support and imposing onerous restrictions on where and how they can fight. The end result is that the very future of NATO, the most successful alliance in modern history, is now in grave danger.

In a welcome display of straight-talk, Secretary Gates admitted that the very reason large segments of the European public do not support NATO operations in Afghanistan is due to their antipathy toward U.S. policy in Iraq. Secretary Gates recently asserted in Munich:

Many of them, I think, have a problem with our involvement in Iraq and project that to Afghanistan, and do not understand the very different—for them—the very different kind of threat.

That is what Secretary Gates said recently.

Mr. President, let me conclude with this thought: The war in Iraq has indeed strained our military, limiting the number of combat divisions we can provide in Afghanistan. It has undermined our global leadership, depriving us of the moral authority to demand more of our allies, and it has diverted the attention of our senior military and civilian leadership, allowing the Taliban to mount a comeback under our very eyes. We are losing a war we cannot afford to lose in a futile and misguided effort to force success in another conflict that can only be won politically, not militarily. Our priorities are tragically mistaken, and our Nation is paying a severe cost.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

REMEMBERING DENISE ANN PHOENIX

Mr. REID. Mr. President, I rise today to recognize Denise Ann Phoenix, a role model, native Nevadan, and hero. Ms. Phoenix, known by her nickname "Auntie," devoted her life to improving her Native American community and promoting child safety. Following in the footsteps of her father, Leroy Phoenix, Sr., she pursued a career in law enforcement and became one of few women to serve as an investigator with the Bureau of Indian Affairs. She died in the line of duty on February 14, 2008, after coming into contact with an unidentified substance and contracting a fatal lung disease. She was 42 years old.

Ms. Phoenix grew up on the Pyramid Lake Paiute Reservation in northern Nevada. After graduating from Sparks High School, she began her career as a tribal ranger on the reservation and later became BIA chief of police of Carson City, NV. She emphasized the importance of community-oriented policing and her service was exemplary. She will continue to be an inspirational example to young Native American women.

The dedication Ms. Phoenix demonstrated as an officer was complemented by her dedication to children. In 2000, she lost her own children, Shasta and Justin, along with her brother Ronald, to a car accident along the Pyramid Highway in Sparks, NV. In response to this devastating tragedy, she established youth outreach programs in her children's memory. She was also instrumental in getting a median divider installed on the stretch of road where the accident occurred, once again showing her profound commitment to the safety of others.

Though I am saddened by her passing, I share with this body my gratitude for her devotion to her community. I also extend to her family, friends, and colleagues my condolences.

PRESERVE ACCESS TO AFFORDABLE GENERICS ACT

Mr. KYL. Mr. President, I ask unanimous consent to have the following let-

ter from the Justice Department commenting on S. 316, the Preserve Access to Affordable Generics Act, printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,

OFFICE OF LEGISLATIVE AFFAIRS,

Washington, DC, February 12, 2008.

Senator Jon Kyl,

U.S. Senate,

Washington, DC.

DEAR SENATOR KYL: This responds to your request for the Department's views regarding the competitive implications of S. 316, the "Preserve Access to Affordable Generics Act." S. 316 addresses the issue of reverse payments associated with the settlement or resolution of an infringement lawsuit in the context of the Hatch-Waxman Act. The bill would make it a per se violation of the anti-trust laws to be a party to an agreement in which an Abbreviated New Drug Application (ANDA) filer receives value and agrees not to research, develop, manufacture, market, or sell the ANDA product for any period of time. The Department believes that the bill addresses a serious competition issue, but, for the reasons discussed below, the Department has concerns with this bill as drafted.

As an initial matter, there is the potential for such settlements to be anticompetitive. For example, if the potential losses in profits due to increased competition from entry by the ANDA filer are large, the ANDA filer may be persuaded to drop a strong claim of patent invalidity or non-infringement in return for significant payments. As described below, however, settlements between an ANDA filer and the patent holder also can benefit consumer welfare. Accordingly, the Department of Justice does not believe per se liability under the antitrust laws is the appropriate standard. Per se liability generally is reserved for only those agreements that unequivocally have an anticompetitive effect, while a rule of reason analysis is better suited to instances when the economic impact of the agreement is less certain. In this context, per se illegality could increase investment risk and litigation costs to all parties. These factors run the risk of deterring generic challenges to patents, delaying entry of competition from generic drugs, and undermining incentives to create new and better drug treatments or studying additional uses for existing drugs.

The United States has a strong policy of encouraging settlement of litigation. A settlement reduces the time and expense of litigation, which can be quite substantial. Further, it reduces the uncertainty associated with the pending litigation. A settlement can thereby free up management time and resources and reduce risk, enabling a company to focus on developing new and better products.

The Hatch-Waxman Act context presents a distinct set of circumstances, but settlements creates a structure designed to encourage generic drug makers to challenge these patent rights by asserting either that the relevant patents are not valid or that the generic version would not infringe the patents. Among other things, the Hatch-Waxman Act provides an opportunity for the generic company and the patent holder to litigate those issues prior to the generic's launch of a potentially infringing product. Thus, unlike most patent litigation in which the patent holder has a claim for damages,