

# NOMINATION

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## HEARING OF THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS UNITED STATES SENATE ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

JOHN L. HENSHAW, OF MISSOURI, TO BE ASSISTANT SECRETARY OF  
LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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AUGUST 2, 2001

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# C O N T E N T S

## STATEMENTS

THURSDAY, AUGUST 2, 2001

	Page
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts ...	1
Gregg, Hon. Judd, a U.S. Senator from the State of New Hampshire .....	2
Wellstone, Hon. Paul D., a U.S. Senator from the State of Minnesota .....	3
Enzi, Hon. Michael B., a U.S. Senator from the State of Wyoming .....	6
Henshaw, John L., Director of Environment, Safety, and Health, Astaris, LLC, St. Louis, MO .....	10

## ADDITIONAL MATERIAL

Articles, publications, letters, etc.:	
Senator Carnahan .....	22



## NOMINATION

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THURSDAY, AUGUST 2, 2001

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:02 a.m., in room SD-430, Dirksen Senate Office Building, Senator Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Wellstone, Clinton, Gregg, and Enzi.

### OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. The committee will come to order.

Today the Committee considers the nomination of John Henshaw to be Assistant Secretary of Labor for the Occupational Safety and Health Administration. The head of OSHA plays a central role in ensuring that our Nation's workplaces are healthy and safe, and Mr. Henshaw is well-qualified for this important responsibility.

I commend Mr. Henshaw for his impressive record of achievement and his clear commitment to workplace health and safety programs. He has nearly 30 years of experience in the field, working as an industrial hygienist, an industrial hygiene director, and most recently as director of environment, safety and health for an international corporation. He has served skillfully in each of these capacities, and throughout his career, he has shown a commitment to strong health and safety protections.

Mr. Henshaw will need those qualities at OSHA. Congress passed the Act in 1970 to guarantee every worker a safe and healthy working environment; OSHA was created to set and enforce the standards needed to achieve this promise.

Clearly, we need continuing vigorous enforcement of OSHA's responsibilities. Since 1971 when OSHA was created, workplace fatalities have been cut in half, and occupational injury and illness rates have declined by 40 percent.

Reductions in workplace fatalities and injuries have been much greater in industries where OSHA has targeted its standards and enforcement. By the year 2000, the fatality rate in manufacturing had declined by 63 percent and the injury rate by 37 percent since passage of the Act. Similarly in construction, the fatality rate had declined by 79 percent and the injury rate by 55 percent.

OSHA's actions save lives. Before OSHA issued its cotton dust standard in 1978, several hundred thousand textile industrial workers developed brown lung, a crippling and sometimes fatal respiratory disease. In 1978, there were an estimated 40,000 cases,

amounting to 20 percent of the industry's work force. By 1985, the rate had dropped to one percent.

OSHA's standards also save money for employers and increase productivity. Compliance with OSHA's vinyl chloride standard led to improvements in the production process, increased profits, and lowered worker exposures. The OSHA cotton dust standard enhanced investment in the textile industry, making textile mills more productive and healthier for workers.

Despite these advances, there is much more to be done. Although injury and fatality rates are falling, too many workers are being killed and injured on the job. In 1998, 6,000 workers died from traumatic injuries, and more than 50,000 died from occupational diseases. More than 5.9 million workers were injured on the job.

On an average day, 153 workers lose their lives as a result of workplace injuries and illnesses, and another 16,000 are injured. That is one workplace death or injury every 5 seconds.

We know the enormous human cost imposed by occupational illness and injury. All we need to do is to ask the families of workers like Fredi Canales, killed on the job at a garbage-sorting plant when he fell from a beam to which he had climbed to clear jammed garbage from a giant sorting machine.

We owe it to working men and women of this country to do better, and there are numerous ways in which the next administrator of OSHA can do better.

We need a strong new ergonomics rule. Ergonomic injuries are the most serious health and safety issue facing workers today. Nearly 2 million workers will suffer such injuries this year, resulting in economic losses of over \$50 billion.

Workers deserve a strong ergonomics standard to protect them from these painful and often crippling injuries. The standard should be based on the best available evidence and should emphasize the prevention of injuries before they occur.

OSHA must also maintain a fair balance between enforcement and compliance assistance. I strongly support efforts to encourage voluntary employer compliance with OSHA rules, but those efforts must be accompanied by a commitment to vigorous enforcement action as well.

Other priorities are important for OSHA, too, including occupational exposure to tuberculosis, protection for workers exposed to beryllium, employers' payment for personal protective equipment, health and safety programs in all workplaces, permissible exposure limits for toxic chemicals, a new standard on silica, and protections for immigrant workers, especially those in the most dangerous jobs.

So we look forward to Mr. Henshaw's testimony today and to working closely with him in this and many other pressing issues of worker health and safety.

Senator Gregg?

#### OPENING STATEMENT OF SENATOR GREGG

Senator GREGG. Thank you, Mr. Chairman.

Mr. Henshaw, it is a pleasure to have you here today. I notice you have a fair amount of family with you also.

Mr. Henshaw has a long and distinguished career of more than 25 years as a corporate health and safety executive, and I am

pleased that he is now willing to bring that sort of hands-on, real life experience into the public sector where it is sorely needed.

In the 21st century, OSHA will, like the rest of the Department of Labor, face a great many tests as it tries to address the challenges of the new millennium. From ergonomics to employer-employee cooperation to rules that respond to the emerging flexible workplace of the 21st century, OSHA will play a very large role and, as has been outlined by Senator Kennedy, has played a large role in protecting workers in America.

I am encouraged that the President has nominated such an extraordinarily highly capable person who has demonstrated a commitment to the protection of employees' health in the workplace for this job. It is a critical job, and it is one which this committee has focused a great deal of attention on over the last few years.

Therefore, I welcome you to this hearing and look forward to supporting your nomination.

I am going to have to leave, Mr. Chairman, but I will leave the Republican side in the good hands of Senator Enzi, who is an extraordinarily talented individual, but especially a specialist on this issue.

The CHAIRMAN. I am not trying to encourage long statements, but we have two individuals who are particularly interested and active on our committee. I would ask Senator Wellstone if he would say a word and then Senator Enzi, and then we will make a brief introduction and hear from our witness.

#### OPENING STATEMENT OF SENATOR WELLSTONE

Senator WELLSTONE. Thank you, Mr. Chairman.

As the chair of the Subcommittee on Employment, Safety, and Training, I had a chance to meet with Mr. Henshaw, and I thank him for coming by. I thought it was an excellent meeting, and I really look forward to working with him.

It is clear, Mr. Henshaw as the Senator from New Hampshire said, that you have rich professional experience in the area, and you are being nominated for I think one of the most important positions not only in the Department of Labor but in Government.

I would ask, Mr. Chairman, that my full statement be included in the record, if that is all right.

The CHAIRMAN. It will be so included.

Senator WELLSTONE. OSHA has been in existence for 30 years, and this is an agency that is extremely important. It is the best bet for millions of workers whose lives would otherwise be put on the line simply because they have to earn a paycheck, and they have got to work, and even if it is not civilized working conditions, and it is a risk to their lives, they have got to do it, and there has to be some protection. This is really OSHA's mission.

Experience has shown over and over and over again that in the absence of strong Government-mandated safeguards, the results are workplace exposures to everything from odorless carcinogens to repetitive stress to combustible grain dust and other dangers are all out there, and they are too numerous to mention. So this is a critically important position you will have when it comes to protecting workers and their children and their families.

Earlier in the week, we had a hearing on the devastating impact of asbestos. It was one of the most dramatic hearings that I have ever attended. At one point, Senator Baucus was talking about the guilt of one of the workers because he would come home and hug his children and be with his family, and it turned out the problem of asbestosis and mesothelioma was transferred to them as well through the dust on his clothing. There was no protection for this worker.

Mr. Chairman, since its founding, hundreds of thousands of workers did not die in the workplace because of OSHA. This is an agency with a record of real success. We have seen a 50 percent reduction in workplace fatalities between December of 1970 and December of 2000. OSHA can be proud of that. And the occupational injury and illness rate has dropped 40 percent. OSHA can be proud of that.

If you look at industries which have had the most dramatic decline, it has been in some of those industries, for example, manufacturing and construction, where OSHA was most involved. Sometimes you have seen the fatality rate decline by 60 percent and the injury rate by 33 percent. So it is an important agency that I think has done a good job.

Let me simply say that I think the message from OSHA to workers has to be "You are not expendable." And I think the message to companies is that the private sector is critically important to our country, and you have the right to run your business and maximize profits in any way you want to up to the point where you start injuring or killing workers. Then you cannot. Then the Government steps in.

That is what the Government and that is what OSHA is supposed to do.

Mr. Chairman, I had a chance to look at the legislative history of OSHA, and I want to finish with a quote. And Mr. Henshaw, you seem like the kind of man who would be moved by this from what I know of you, and all of your family I think will probably feel the same way.

This quote is from Senator Yarborough when the legislation first passed. This is what he said about the argument that OSHA protection would be too expensive: "One may well ask, Too expensive for whom? Is it too expensive for the company who, for lack of proper safety equipment, loses the service of its skilled employees? Is it too expensive for the employee who loses his hand or leg or eyesight? Is it too expensive for the widow trying to raise her children on a meager allowance under workmen's comp and Social Security? And what about the man, a good, hardworking man—and we should add "woman"—"tied to a wheelchair or hospital bed for the rest of his life? That is what we are dealing with when we talk about industrial safety. We are talking about people's lives, not the indifference of certain cost accountants."

That is the importance of your job. I look forward to working with you. I look forward to the testimony. I have I hope some important questions. Thank you for your commitment to public service.

Thank you, Mr. Chairman.

[The prepared statement of Senator Wellstone follows:]

## PREPARED STATEMENT OF SENATOR PAUL D. WELLSTONE

Mr. Chairman, I want to join you in welcoming Mr. Henshaw before our committee today. And I want to thank you, Mr. Henshaw, for taking the time to meet with me earlier this week.

It is clear that you have sound professional experience in the occupational safety and health arena-and for that we are grateful. In my mind the position for which you have been nominated-the read of the Occupational Safety and Health Administration (OSHA)-is one of the most important positions at the Department of Labor.

In its thirty years of existence OSHA has made its presence felt in the lives of tens of millions of Americans at all levels of the workforce. OSHA and its related agencies are literally the last, best hope for millions of American workers whose lives would otherwise be put on the line simply because they need to earn a paycheck. Experience has shown, over and over, that the absence of strong government-mandated safeguards results in workplace exposure to everything from odorless carcinogens to repetitive stress to combustible grain dust to other dangers too numerous to mention.

Earlier this week we held hearings on the devastating impact of asbestos in the workplace. OSHA's role in protecting workers from this hideous poison is extremely important.

Mr. Chairman, since its founding, hundreds of thousands of American workers did not die on the job thanks to OSHA. Workplace fatalities have declined 50 percent between December 1970 and December 2000, while occupational injury and illness rates have dropped 40 percent.

Not surprisingly, declines in workplace fatalities and injuries have been most dramatic in precisely those industries where OSHA has targeted its activities. Let's take, for example, the manufacturing and construction sectors. Since OSHA came into existence, the manufacturing fatality rate has declined by 60 percent and the injury rate by 33 percent. Also during this period, construction fatality rates have declined by 80 percent and injury rates by 52 percent.

Mr. Chairman, it is not a coincidence that these rates have fallen in these two industries which are also ones that have received some of OSHA's closest attention.

OSHA's role in assuring so far as possible that every worker is protected from on-the-job hazards cannot be denied. A strong OSHA voice is a way of saying to the American worker: "you are not expendable."

It is a way of saying to businesses: "yes, you have a right to run your business and to maximize your profits. But you are only free to do that up to the point where you start injuring or killing your workers. Your freedom to pursue that profit ends at that point."

That's where government-that's where OSHA-is supposed to step in to protect workers.

That's why this nomination is so important. That's why, Mr. Henshaw, the burden of responsibility is so heavy.

I recently had occasion to look at some of the legislative history from when the Occupational Safety and Health Act was passed. I mentioned this at our recent hearings on repetitive stress injuries. I think it's well worth repeating here.

When the Occupational Safety and Health Act was passed, there was much talk of whether it would be “too expensive” to implement. Senator Yarborough at the time addressed those concerns. What he had to say then is just as fitting today:

“One may well ask too expensive for whom? Is it too expensive for the company who for lack of proper safety equipment loses the services of its skilled employees? Is it too expensive for the employee who loses his hand or leg or eyesight? Is it too expensive for the widow trying to raise her children on meager allowance under Workmen’s Compensation and Social Security? And what about the man—a good hardworking man—tied to a wheel chair or hospital bed for the rest of his life? That is what we are dealing with when we talk about industrial safety . . . we are talking about people’s lives, not the indifference of some cost accountants.”

So Mr. Henshaw, I look forward to hearing your views on how you will shoulder this immense responsibility. I look forward to hearing what you will do to ensure that OSHA can continue to be a force for protecting worker health and safety—for ensuring workers that indeed they are not expendable.

Thank you.

The CHAIRMAN. Thank you.  
Senator Enzi?

#### OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman. I appreciate this opportunity to make a statement.

I had the opportunity also to meet with Mr. Henshaw earlier this week and was extremely impressed with what he has done, the organizations that he belongs to, and what he has inspired those organizations to do. I have had the opportunity to work with those organizations and know that they make a tremendous difference from the professional aspect of really reviewing what needs to be done in the workplace and seeing that it gets done.

One of the things I am always fascinated with is that that is in spite of OSHA. When I came here, there was a tremendous effort to eliminate OSHA. I have not been part of that effort, and I have enjoyed working with Senator Wellstone and Senator Kennedy and others on the other side of the aisle and everybody on this side of the aisle to make OSHA more effective, to change the concentration a little bit from that attitude that all business is interested in is making money and hurting employees. I have not found that to be the case anywhere.

We have a tremendous potential to help industry to understand what can be done, and you have the kind of credentials that can help them to understand that.

I have got to say that the way that I got into this was being one of those “cost accountants.” I was doing some work for a client, and I went to him and said, “Look how much it is costing you in employee accidents. You have tremendous potential here to change your bottom line.”

And the guy said, “OK, do it.”

I said, “Whoa, wait a minute. I am an accountant; I am not a safety guy. I do not do that kind of work.” I looked like that fellow in the commercial on television.

And he said, "Well, you already know more about our safety problem than anybody else—so, do it."

So I got involved in safety at that point, and I can tell you that in a 3-year period, they got a national award for safety. Now, I relied a lot on people like you who have expertise in the area, but when business understands how they can help the worker and thereby help their business and thereby help their bottom line, they do it.

I too am pleased that since OSHA went into effect, injuries have dropped 50 percent. But I went back and looked 20 years previous to that, and do you know—injuries dropped by 50 percent. That is because business realized ways that they could improve their business by protecting workers. I think we should get that kind of reduction each and every year.

My dad always said that if you are still talking about what you did yesterday, you have not done very much yet today. So the challenges are before us, and I think we have the right man for the job to begin the next era of OSHA, and I thank you for being committed and willing to take on this monstrous task; I know that you will do a good job.

Mr. Chairman, I would ask that my full statement be included in the record.

The CHAIRMAN. It will be included.

[The prepared statement of Senator Enzi follows:]

#### PREPARED STATEMENT OF SENATOR ENZI

Thank you Mr. Chairman. Thank you Mr. Henshaw for appearing before the Committee today.

I am pleased to announce my support for the appointment of John L. Henshaw as Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA).

As a highly respected occupational safety and health professional, Mr. Henshaw has demonstrated a strong commitment to reducing and preventing injuries and illnesses in the workplace. With over twenty-five years of experience in the field, he brings to the position technical expertise as well as a practical perspective on effectively addressing workplace safety issues.

The broad support that Mr. Henshaw's nomination has received is a testament to his ability to work well among various constituencies in order to promote occupational safety and health. It is also a testament to the leadership skills he has exhibited in the private sector, most recently as the Director of Environment, Safety and Health at Astaris, and in professional organizations, as President of the American Industrial Hygiene Association and the Safety Council of Greater St. Louis.

I am confident that OSHA's mission to save lives, prevent injuries and protect the health of America's workers will be well-served by Mr. Henshaw's appointment. I am particularly encouraged by Mr. Henshaw's proactive approach to workplace safety. Under his leadership, I hope to see OSHA commit resources to initiatives designed to prevent injuries from occurring.

As the ranking member on the Employment, Safety and Training Subcommittee, as well as a former small business owner, I am extremely eager to work with Mr. Henshaw to improve two aspects

of OSHA's functioning. First, I'd like to see OSHA consider and ultimately include the unique needs and limitations of small employers in all of the agency's regulatory operations. Second, I'd like to see OSHA devote energy towards the prevention of workplace injuries with more education and compliance activity.

Mr. Chairman, we have before us an excellent nominee who possesses the skills, experience and character to bring OSHA to a new level of effectiveness in promoting workplace safety and health. I look forward to working with Mr. Henshaw towards this goal and I look forward to his speedy confirmation.

I thank you Mr. Chairman.

The CHAIRMAN. I would like to put this in a bit of context. During the Reagan administration, enforcement was weakened, and injury rates actually increased from 7.6 per 100 in 1983 to 8.9 per 100 in 1992.

During the Clinton administration, when the balance between enforcement and voluntary compliance was restored, injury rates fell from 8.6 per 100 in 1993 to 6.3 per 100 in 1999—the lowest in OSHA's history. So there may be an inevitability of companies trying to reduce injury rates, but we also see the result where there is a balance between enforcement and compliance, done effectively, which all of us want to see you do. We want you to be effective. We know that you have some different emphases, but we want it to be done effectively, so we can see some real progress.

I want to apologize on behalf of Senator Bond and Senator Carnahan, both of whom communicated with me. Both had intended to be here, but they are currently involved in other activities on the floor and in committee, in a very important mark-up in the case of Senator Carnahan, as well as on the floor in terms of the appropriations bill. But they wanted to extend a very warm welcome and introduce you to the committee.

[The prepared statement of Senator Bond follows:]

#### PREPARED STATEMENT OF SENATOR BOND

This morning I am delighted to introduce John Henshaw, a fellow Missourian who has been nominated for the position of Assistant Secretary of Labor for OSHA. I think the President has chosen exceptionally well for this position, he has certainly come to the right state. John Henshaw is the right person at the right time for this agency.

He comes from the real world where companies survive or crumble depending on whether they can make sense of OSHA's regulations and edicts. I am pleased the new administration has decided to go with someone from the "customer" side of this equation. John's role in creating exemplary safety records for large chemical manufacturers has earned him respect and support from all sides of the workplace safety issue, including organized labor.

His experience in the field has taught John what is needed to restore credibility and integrity to OSHA. Basic fairness suggests that if an agency is going to tell an employer that they are not doing something properly, they should be able to help that employer do it better. Many businesses, especially the many small businesses that have come to me, complain that OSHA is merely out to harass employers without any interest in helping them.

These are employers who truly want to make their workplaces safer, but have been frustrated when they turn to the agency for help. To really move forward in improving workplace safety, OSHA needs to reach out to these employers and provide more assistance so that they can learn how to do the right thing, instead of just focusing on punishing them when they have not lived up to their obligations. I am looking forward to John bringing a fresh perspective to this agency and making OSHA a resource for employers to use in solving their workplace safety problems, rather than just an agency they have to fear when they come calling.

At the same time, I know that John will uphold OSHA's tradition of enforcement against those employers who violate the trust that employees place in them each day when they show up for work, and look forward to going home that evening in one piece. John knows that the customers of OSHA are not just the employers who must comply with OSHA's regulations, but also the employees who expect reasonable and responsible safety procedures in their workplace, as well as their children and families who count on them to return home at the end of the day.

I am confident that the Senate will find John to be a superb choice for this position, and I am deeply grateful that he has been willing to take it on.

So it is a pleasure to welcome John Henshaw, the President's nominee. He is a well-regarded and capable safety and health professional. He is director of environment, safety, and health at Astaris, LLC, located in St. Louis, MO. He has had extensive expertise in issues of workplace health and safety throughout his career, including his work at the Monsanto Company.

Mr. Henshaw graduated from Appalachian State University in Boone, NC and did graduate work at the Universities of Delaware and Michigan.

We are delighted to have you here today. I was reminded by my Republican colleague that, in the middle of my opening statement, there was a cry from a 3-year-old—in the middle of my statement, I would note. I said, "That is good—usually, I put them to sleep." [Laughter.] But as a member of a very large family, I take special delight in seeing that many of the members of your family are here with you today. If you would be good enough to introduce them, and if they would stand, our committee would love to welcome them.

Mr. HENSHAW. Senator, in respect of time, I would like to introduce them all, and there are another 100 outside, but I will probably just introduce my immediate family if that is all right, in respect of time. [Laughter.]

The CHAIRMAN. Fine.

Mr. HENSHAW. I will move from my right to left—my son, John Paul, and one grandchild—I have four—Emily; and John Paul's wife, Sandy; daughter, Whitney; and the little vocal one, Schuyler—and she will be vocal her entire life, so be prepared; my son-in-law, Rick; my mother, May; my wife, Jane—and she is obviously a special person in my life, the brains and the beauty behind the whole thing; my daughter, Shannon; and my son, Josh.

The CHAIRMAN. Very good.

Mr. HENSHAW. My sister is behind them, in blue, Carol; and Marilyn is on the other side; and their husbands, Arnie and Dick. And everybody else, I am just going to leave unsaid. They will get a chance to meet you, I am sure.

The CHAIRMAN. Fine.

Senator WELLSTONE. Mr. Chairman, I had some critical questions, but I am not going to ask them now.

Mr. HENSHAW. That is why I brought all of them. [Laughter.]

The CHAIRMAN. We are glad to have you and look forward to your statement.

**STATEMENT OF JOHN L. HENSHAW, DIRECTOR OF ENVIRONMENT, SAFETY, AND HEALTH, ASTARIS, LLC, ST. LOUIS, MO**

Mr. HENSHAW. Senator, I would like to start with my opening remarks.

Good morning, Mr. Chairman and distinguished members of this committee. I appreciate the opportunity to appear before you today as President George W. Bush's nominee for Assistant Secretary of Labor for OSHA.

I want to thank first of all my wife, Jane—and I will continue to thank her for my tenure in this position—and my family and friends for their encouragement and support. As you know, we are a product of our environment, and as I have already explained, I have a good part of my environment here today.

If I am confirmed, this job will consume a great deal of my time and energy and require that I miss some of those family events that I would normally participate in. A commitment to public service and to fulfillment of the mandate under the Occupational Safety and Health Act is not an easy task, and I will depend on my family's continued support and understanding as I proceed with this mission.

I have been in the business of safety and health for over 25 years. I am committed to what I do, and I would not have even wanted to be considered for this position if I did not seriously believe that the administration shared this commitment. Like Secretary Chao, my top priority is the safety and health of the American worker. I want to make a positive difference in the safety and health of every working man and woman in this great country, and the Occupational Safety and Health Administration is where that objective can be realized. If confirmed, it would be my honor to work with Secretary Chao and with this committee to achieve our mutual goals.

Over the last 25 years, I have served in several professional and corporate management positions in environment, safety, industrial hygiene, quality assurance and compliance assurance—which is auditing—for companies such as Monsanto Company, Solutia Incorporated and, most recently, Astaris LLC, a joint venture between Solutia and FMC Corporation, where I served as director of environment, safety, and health.

During those years, I have also been very active in local and national professional and trade associations and served on numerous boards and committees associated with advancing safety and health. Make no mistake—there are thousands of dedicated managers, employees, association and union leaders, and safety and

health professionals in this Nation who are working toward the same goal—effectively reducing workplace injuries and illnesses. I believe OSHA should be a leader in this collective effort. By working together with these stakeholders, we can impact a result that is greater than the sum of individual efforts.

In my career, I have seen firsthand the value of properly developed and executed safety and health programs for large, medium, and small businesses—programs that fit the culture of the organization, programs that are effective, programs that work in achieving injury and illness reductions, programs that are consistently, forcefully, and fairly enforced.

I have also seen and experienced the business interruptions, additional cost burdens, and resource diversions that poorly-conceived programs, regulations, and enforcement strategies have on today's business. Poorly-conceived programs not only waste limited resources; they also undermine the credibility of existing safety and health programs.

In the business world today, where global competition is keen, health and safety professionals spend a considerable amount of time articulating the value and effectiveness of good safety and health programs. Improperly written programs or regulations that are costly and ineffective in achieving their intended purpose destroy or tarnish the value argument for safety and health in general.

Mr. Chairman, the Occupational Safety and Health Act of 1970 remains a model for the entire world. In my opinion, the workplaces in this country are the safest in the world because of OSHA and the collaborative and collective efforts it has inspired among employers, health and safety professionals, labor organizations, professional and trade associations.

When the agency opened for business in April of 1971, a year before I started my education in this field, OSHA covered 56 million workers at 3.5 million workplaces. Since then, workplace fatalities have been cut by 60 percent, and occupational injury and illness rates by 40 percent; while at the same time, U.S. employment has nearly doubled to now 105 million workers at nearly 6.9 million worksites.

I am a believer in OSHA.

But those accomplishments provide us no resting point. The agency must continue to lead this Nation toward further reductions in injuries and illnesses. To be effective in this endeavor, OSHA must maintain a forceful and fair enforcement strategy using properly trained and skilled inspectors. Strong and consistent enforcement serves as a deterrent to those who may be tempted not to protect workers. Enforcement cannot be diminished.

However, enforcement alone cannot reach all 6.9 million worksites. By design, it is reactive in nature and provides little proactive leadership in preventing workplace accidents and illnesses. In addition to effective enforcement, Congress has also instructed the agency in Section 2(b)(1) of the OSH Act to accomplish its charge, quote, "by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment and to stimulate employers

and employees to institute new and to perfect existing programs providing safe and healthful working conditions.”

OSHA must continue to utilize creative partnerships, voluntary programs like VPP that reach out to small and large business alike, state-of-the-art education and training programs, and effective compliance assistance.

OSHA must use all the tools in its tool bag. The hammer must always be in our bag and used where necessary. But like a good craftsman, we must know how to use all our tools and to pick the right tool for the job.

Thank you, Mr. Chairman, for the opportunity to meet with you today. I look forward to working with you and the distinguished members of this committee as well as President Bush, Secretary Chao, the career professionals in OSHA, employers, employees, safety and health professionals and their societies, labor and trade organizations, and many others as we continue to reduce injuries and illnesses and to assure a safe and healthful workplace for all working men and women of this country.

Thank you. I will be glad to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Henshaw.

We will have 8-minute rounds for questions, and I will ask staff to remind us of the time.

Let me ask you, Mr. Henshaw, if you are confirmed as Assistant Secretary for OSHA, what will be your major workplace safety and health priorities? Let me ask it a little differently. What do you think are the major problems and what will be the major priorities? Maybe that is the same question, but it might not necessarily be.

Mr. HENSHAW. Mr. Chairman, coming from the private sector, I can speak from where I see the agency, and once confirmed, I will get more involved in the detail. But in general terms, these are what I see as the issues, and they are fairly simple in the sense that I see my mission as to improve the credibility and effectiveness of OSHA, of the agency. To me, that means really four different areas.

One area is strong and effective enforcement, and to be effective, we have to have competent inspectors, as I mentioned in my opening statement, and we have to have proper enforcement strategies.

The second point is we want to focus on outreach and education—and to that, we have to understand our customers, all the individuals who have to comply with these regulations and rules—and advance safety and health. We have got to provide the proper outreach and the proper education to make that happen.

The third point is to encourage and improve voluntary efforts. There are a lot of voluntary efforts out there today, and I would like to do my best to improve those; they are very productive.

Finally, I think OSHA should be the leader in the national dialogue in advancing safety and health. I think that in the past, we may not have taken the opportunity to be that leader. I think there are so many resources out there trying to do the same thing and that OSHA ought to be taking a leadership role in advancing that dialogue.

The CHAIRMAN. We note that there has been a reduction in the President’s budget proposal, which you obviously had no control

over, by \$1.2 million, which translates into a real decrease of 3 or 4 percent and the loss of 94 full-time-equivalent jobs. So you are going to be heavily pressed, and I think you will find after your confirmation, which I am confident of, that the committee will want to make sure that you have the kinds of both resources and personnel that are necessary for you to do the job.

One of the major challenges that you are very familiar with is the length of time it takes for OSHA—approximately 10 years—to develop and issue safety and health standards, even when the hazards are well-recognized, and there is agreement that regulation is needed.

Have you thought about what can be done to speed up the standard-setting process so that workers are protected in a timely way?

Mr. HENSHAW. Mr. Chairman, obviously, I was not involved in the budgetary process or any prioritization processes. If I am confirmed, one of the first things I would do is analyze the resources that we have available given the budget that we have available and the various activities and prioritize those appropriately.

So I have not really gotten into any detail in respect to how that priority would look. I do know that we have some pressing issues today, and those pressing issues will take a major part of our effort in the first few months at least of this administration.

The CHAIRMAN. One of the primary areas will be the issue of ergonomics and development of regulations. Some have claimed that employers do not understand how to implement ergonomic programs and make ergonomic adjustments in the workplace, that it is too costly or not feasible. You implemented an ergonomics program at Monsanto, and Secretary of Treasury Paul O'Neill has spoken eloquently about the benefits of ergonomics programs he instituted at Alcoa. I toured Alcoa with Secretary O'Neill, and I can tell you that that program works.

Do you believe that there are successful ergonomics programs in existence now?

Mr. HENSHAW. Yes, sir, I do. We did have an integrated—and I use the word “integrated” because to me, repetitive motion injuries or hazards are one of the many hazards we have to handle in today's workplace—so we did not have an ergonomics program per se, but it was integrated into the total safety and health program. That program was centered around recognizing all hazards associated with the workplace, identifying the corrective measures that would be necessary to reduce injuries. How each individual company may address that, I do not know. I know how we did it in my previous practice, and it was quite effective.

The CHAIRMAN. Well, this is important, because even in the regulations that were effectively suspended, they gave the maximum flexibility. There had to already be an injury in the particular company, and then there was flexibility by the company in developing its program. So this is an issue which this committee is very interested in. There are obviously divisions, but I believe there is very strong support for effective regulations in this area.

Can we have your assurance that you will work with the committee and with us—work with the administration, with also work with us—to try to deal effectively with this issue?

Mr. HENSHAW. Yes, sir, you do.

The CHAIRMAN. There are some who claim that ergonomics is “junk science.” I guess you would not agree with that characterization.

Mr. HENSHAW. I do not know the context in which that was made.

The CHAIRMAN. All right. That is fair enough.

Mr. HENSHAW. Obviously, repetitive trauma injuries and illnesses are real, and we need to address them appropriately.

The CHAIRMAN. My time is moving on, and I want to ask you about—and I mentioned this to you just prior to the hearing—a July 29 article in The Chicago Tribune that detailed how workers in electronics, recycling, machining, and the dental industry among others have been harmed by exposure to highly toxic beryllium metal. The article states that employers are not complying with OSHA and that OSHA is not enforcing regulations and guidelines covering beryllium. For example, on a spot-check of 30 businesses working with beryllium, the newspaper found that none of the companies was following OSHA’s recommended safeguards. The newspaper found that OSHA rarely inspects the companies handling beryllium.

Are you aware of health problems caused by exposure to beryllium?

Mr. HENSHAW. I know of the toxicology and the standards associated with preventing those kinds of injuries. I do not know the circumstances of which you are speaking.

The CHAIRMAN. That is fine. I mentioned that, and in fairness, you had not seen the article before, and I do not expect you to be able to comment on it other than to give the assurance that wherever these beryllium or other kinds of hazards, you are going to be vigilant in terms of ensuring that the greatest protection possible will be there for those workers.

Mr. HENSHAW. Yes, sir.

The CHAIRMAN. After you are confirmed, will you review that situation and let us know what your own reaction is to that particular problem?

Mr. HENSHAW. Yes, sir.

The CHAIRMAN. My time is up.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman. I particularly want to thank you for bringing Mr. Henshaw’s hearing up today and will, of course, appreciate any efforts that are made to expedite getting the appointment completed so that we have people on staff so that we do not have vacancies over there and they can take care of that. So I do thank you very much for that.

The CHAIRMAN. We will attempt, Mr. Henshaw, after we complete the hearing, which I anticipate we will, to work to see if we cannot get the approval prior to the August break. That would be my intention, and Senator Enzi, if you can help us to work that out with our Republican colleagues, we would be glad to try to do that—we do not want to anticipate, Mr. Henshaw. We have still got to go over on this side of the aisle and hold out that little carrot. [Laughter.]

Mr. HENSHAW. I am anxious; I am ready.

Senator ENZI. I do want to join the chairman in his comments about the need for funds as well. I would be interested in your evaluation of your budget. I have also appreciated the effort on both sides of the aisle to see that funding increases that came in were divided between the enforcement and the consultation. I think that that has been a very helpful trend for bringing both sides together to make sure we do have a concentration in safety.

In light of the ergonomics questions that you just had, I cannot help but mention that in following the press this week, I noticed that California, often considered a leader in all kinds of laws and one of the States that I mentioned during the debate on ergonomics, had about one and a half pages of regulations. Somebody must have decided they needed to review that since they only had one and a half pages of regulations on ergonomics, so they took a look at whether to incorporate what we had looked at on the Federal level as a California law, and I noticed that they rejected it. So I am hoping that any reviews that are done on that take into consideration and hopefully some review of why they chose to reject what we also rejected.

But that is not where my concentration of questions will be, of course. One of the things that I found in my time here is that the VPP program, which is a program that is pretty much limited to big companies that are able to put a professional on staff to spend his or her time reviewing health situations, has made a dramatic change in major businesses in the country. I would be interested in making that a permanent program, making it a part of law, and I would be interested in your viewpoint on that.

Mr. HENSHAW. Senator, I am a very strong supporter of voluntary efforts, efforts that will encourage groups to take initiative on their own and devise and be innovative in how to advance the safety and health of various work forces. So I would be interested in any kind of voluntary effort to ensure that innovation and dialogue continue. I think the VPP program is an excellent program for those who choose to accept it and use it.

There should be other tools in our toolbox where we can encourage others who may be at a different level than the VPP sites to use those tools and to advance the safety and health of the work force.

Senator ENZI. Something that has disturbed me—I used to fill out reports for some of the companies on accidents, and I knew that that had to be in by January 31 and that it had to be posted on the bulletin board. So I was anxious to see what kinds of accidents there were around the Nation when I got back here, and I was very distressed to find out that I could not get—I could not get—access to the most frequent accidents, the most frequent body parts that are injured. I started looking at some of the compilation and found out that nothing is done with a lot of this effort. It would be my hope that I could encourage you to be more a part of the reporting process so we can get that out to people and that you would take a look at it and see how we can make that more effective. I would be interested in any ideas that you might have on that.

Mr. HENSHAW. Senator, I agree, and coming from the private sector, that is precisely what we did with our own data. We analyzed

our data to find out what kinds of injuries, and that helped us to direct our resources in the right area.

So to the extent that I can impact the way we record data and the way we analyze data, I will do that. It is a useful tool.

Senator ENZI. Thank you.

Another thing that I have done is looked at some of the safety records, and I have found that those States that are State plan States seem to have a lower accident rate. Would you care to reflect on that and tell me how you think the Federal effort ought to go in regard to State plan States or encouraging more States? What do you think can be done there?

Mr. HENSHAW. Certainly, Senator, I have seen similar reports about State plan effectiveness and State plan programs, and there must be something there, because certainly the data show that some of them are much safer and have lower incidence rates.

What causes that, I do not know, and it would be speculation on my part to speculate now as to what the reasons are. However, it seems appropriate to encourage more States to take that action. Again, anything we can do to advance safety and health, we ought to try, and that could be one of the tools in our tool box to get more States to come up with State plan programs.

Senator ENZI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wellstone?

Senator WELLSTONE. Thank you, Mr. Chairman.

First of all, Mr. Henshaw, the chairman asked you the question, and I think your answer was important—that is to say, as a certified industrial hygienist and safety professional, the chairman asked whether you thought excessive repetition, force, and manual handling put workers at increased risk, and I think you said that yes, it is a problem.

Then, the second part was about “junk science,” and you did not know the context of that quote. Obviously, we are focused on the National Academy of Sciences study which we think is terribly important.

Let me ask you this. Have you made a determination in your own mind as to what the approach of OSHA should be, and in particular, have you ruled out the possibility that OSHA should do a rule?

Mr. HENSHAW. Senator, I am coming at this with sort of a fresh set of eyes, because I was not involved in the previous ergonomics rule. I have not read any of the record that is on record of the previous rule, nor have I been involved in the development and reading the information that came through the recent forums on ergonomics.

I think it is very appropriate for us to review the appropriate information and then study that information, analyze it, and determine what our next steps are. Certainly the options, as the Secretary laid out, are within our realm, and we need to consider all of those. What the decision is as far as going forward, we have to wait until we review all of the information—or, I have to review all of the information.

Senator WELLSTONE. At last month’s hearings on repetitive stress injuries, I raised some concerns about particular industries

where we have seen a significant jump in repetitive stress injury rates. Some examples I gave, just looking over the last several years, included from 1998 to 1999, actually, just a one-year period, veterinary services, 80 percent increase; finishing plants, cotton, 202 percent increase; plastics, bottles, 132 percent increase; computer and data processing services, 53 percent increase.

Have you looked at the comparative repetitive stress injury rates? Is it something that you think OSHA should pay attention to? And I guess my question is whether you can make a commitment today that you will for sure look at the data and at other data OSHA might have, and then report back to the committee on your findings and what course of action we could take.

Mr. HENSHAW. Senator, I do not know the data to which you refer; I have not seen those data. My experience has really come from a different side, and I am coming into this, as I said, cold. I have not reviewed the previous record nor the information that we are receiving today and until tomorrow, when I think the record closes for the forum gathering information. I have not read that.

However, it is appropriate—I would not be a responsible professional if I did not consider all relevant data before we make decisions on what the next steps are. We have committed—the Secretary has committed, and I am very much in agreement with this commitment—we will review the information, and we will determine what the next steps are in September.

Senator WELLSTONE. This source was the Bureau of Labor Statistics, Department of Labor.

On the ergonomics record, when you say you are going to now build the record, you are not saying that the prior OSHA record is not appropriate, are you? You did not mean to suggest that, did you?

Mr. HENSHAW. Senator, I have not seen the previous information. All I can say is that going forward, we have to review all the appropriate information, and should the old record contain appropriate information, that needs to be included.

Senator WELLSTONE. Before I run out of time, I received a letter from the International Brotherhood of Electrical Workers, IBEW, in regard to a situation with respect to an electric power line contractor that I would appreciate your investigating. I do not have firsthand information or knowledge about all of this, but if it is accurate, this is a serious problem that I think illustrates some of the inadequacies of the current OSHA penalties—the inadequacy of the “hammer” that you talked about.

I will give you a copy of the letter and ask if you would take a look at it, but the essentials are that this contractor operates in a five-State area spanning from Oklahoma to Georgia and employs linemen, equipment operators, apprentices and groundsmen who work on voltages ranging from 120 volts to as high as 500,000 volts. There have been unusual numbers of deaths, dismemberments, and major illnesses; 12 fatalities in less than 9 years, 10 of which have occurred in the last 4 years, with fines totalling—are you ready for this—\$337,000.

So there is a pattern. You have a fatality, it is investigated by OSHA, there is a fine, the contractor negotiates the fine down, it goes into the history books and is forgotten.

My question is whether you would be willing to look into this matter—again, I will give you the letter—and report back to the committee on your findings and maybe what course of action OSHA could take. And would you include in that review whether this kind of situation might call for more stringent penalties. As you know, I have been a little confused as to why, when the employer—and thank God, there are not very many—but when the employer willfully takes action which leads to the death of worker, it is still a misdemeanor.

Mr. HENSHAW. Senator, I have not seen what you are referring to. Clearly, I think that strong enforcement has to be a deterrent; it has to be a deterrent to those employers who choose not to do the right thing and choose not to protect their employees.

What that number is, what the proper approach is, may vary. I would be willing to work with you on that issue if confirmed.

Senator WELLSTONE. I appreciate it.

I will just take the final minute that I have, and again, I want to talk about your emphasis on enforcement—and I appreciate that. The budget—and the chairman mentioned this—that the administration has submitted basically flat-lines this when it comes to OSHA. My question is whether or not we can have adequate enforcement with this budget. It is interesting—we have 2,000 Federal and State OSHA inspectors responsible for enforcing the law at nearly 8 million workplaces; by contrast, we have 10,000 meat inspectors for a couple of hundred plants. So I am not sure that the resources at this point in time are sufficient, and I wanted to ask you—it is not a trick question, but I ask it with a twinkle in my eye—whether you would join with us in trying to get some additional appropriations for OSHA enforcement.

Mr. HENSHAW. Senator, obviously, if confirmed, resources is going to be a very sensitive subject for me. To accomplish our goals, we need to make sure that we have the proper resources.

However, at the same time, once confirmed, I need to go in and look at the priorities, look at where we are spending money and in which areas.

Also, we need to recognize that, as I mentioned in my testimony, in this tool box, the hammer is needed for some situations; in other situations, other tools will be needed. We need to make sure that we have those tools ready to apply in those circumstances.

So once confirmed, I will be glad to look at our resources and make sure they are allocated appropriately.

Senator WELLSTONE. I have other questions, but I am out of time.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Clinton?

Senator CLINTON. Mr. Chairman, I would like the record to note that Mr. Henshaw's granddaughters fell asleep before I began my testimony. [Laughter.]

Senator WELLSTONE. I would like the record to show that it was before I started my questioning. [Laughter.]

Senator CLINTON. I think that is a matter of some debate.

The CHAIRMAN. Let us blame Enzi.

Senator WELLSTONE. It was over there; it was Enzi, it was Enzi. I watched it. [Laughter.]

Senator CLINTON. I think it might have been a bipartisan effort. It just shows their good sense.

Senator ENZI. I am willing to claim responsibility for having a soothing effect on young people. [Laughter.]

Senator CLINTON. Mr. Henshaw, we are delighted to welcome you here today, and I am personally very pleased that the President has nominated someone of your caliber and concern to head this important governmental function.

To be director of the Occupational Safety and Health Administration is really to be the symbol of worker safety in our country and to stand on the shoulders of so many people going back 100 years who began the march toward concern about, in the first instance, and then action on behalf of workers. From your record and everything that I have been able to learn about you, you are a worthy successor to all those who have come before.

I want to reiterate a comment that the chairman made in his opening statement, and that is that we have seen what a difference leadership makes in OSHA. During the 1980's, there was a systematic weakening of OSHA, and under the guise of so-called regulatory reform, regulations were rolled back, and enforcement was weakened to the point of being meaningless. The result, to no one's surprise, was that workplace injuries actually increased significantly.

During the past 8 years, there has been a greater focus on enforcement and standard-setting, supplemented and balanced by the kind of compliance assistance and outreach and training and education that you, from your experience, know is essential. You cannot just issue regulations and point fingers at business; you have to be there to help them understand what the potential safety hazards are and work with them to resolve those. In fact, this focus led to a significant decrease in injuries. So we know what works. We know that best practices and the kind of balance and experience that you bring before us today is a very important statement about the priority that OSHA should have.

I think it is understandable that a number of us are concerned about the action taken early on in this Congress to roll back the ergonomics regulation, and we are going to look to you to help us sort all of this out. I think many of us would have been willing to listen to legitimate concerns even though this standard had been 10 years in the making and was based on very solid research from the National Academy of Sciences, but that is water over the dam, and the issue now is how do we protect workers in the modern workplace. We know that the modern workplace requires a lot of small motor movements; it is not principally toting and lifting and bending so much as movements on a keyboard or on a repetitive assembly line.

So we are going to look to you to help us try to ensure that the modern workplace is as safe as it possibly can be.

I know, too, that the balance between enforcement and education is a very important one to you, and I think we could do with some re-education about the importance of workplace safety, and that is not only aimed at employers but really at the public in general.

I want to mention one area of specific concern. Over the past several weeks, *Newsday*, one of New York's great newspapers, has run

a very thoughtful series on the issues of terrible safety and health risks faced by immigrant workers in our Nation. The series was based on a 10-month investigation by Newsday reporter Tom Mayer. I would ask, Mr. Chairman, that this series be submitted for the record of this hearing.

The CHAIRMAN. It will be so included.

[The documents referred are in Newsday, July 22, 24, 25, and August 16, 2001.]

Senator CLINTON. News Day reports that OSHA has done little to educate business, let alone enforce Federal Government safety and health standards in industries where mostly immigrants are employed. And with the President's recent statements of concern about the immigrants in our country and with the recognition that immigrants are doing many of the jobs that keep our economy going and in fact have really fueled a lot of our economic growth, it seems inappropriate, if not grossly unfair, to subject these people to unsafe working conditions.

The series reported additionally that OSHA rarely investigates the deaths of immigrant workers on the job. In fact, the newspaper's reporting concluded that at least 874 immigrant deaths nationwide were not reviewed by safety inspectors, including 202 incidents in New York alone.

So I hope that this will be a priority for OSHA under your leadership. I believe that we should be just as concerned about an unsafe workplace for an immigrant who is trying to improve the lot of himself and his family as we would someone whose family has been here since the Mayflower. It should not matter; our workplaces should be safe.

So I would ask, too, that you perhaps take a look at what could be done. Some of it may go to the budget—that has already been raised—so that we have adequate inspectors to try to protect 874 deaths nationwide. And I think maybe you could help us hold an oversight hearing, since you are beginning your tenure, to find out what we can do better and how we can help you do the best possible job for this.

Based on your experience, do you have just any initial thoughts about what the agency could do to provide more support, both for the businesses that employ largely immigrant workers and for the immigrants themselves so that we do not have to read about these kinds of statistics?

Mr. HENSHAW. Senator, I appreciate that question and comment. I have read some of those accounts, and I share your concern.

I really cannot speculate as to why or the detail around those issues. Certainly we need to address it. Our objective and the mandate by Congress is to cover all workers, and we must do that. I think we also have to make sure that employers know what their obligations are; and that includes reporting. I can only speculate that possibly there might be unreporting because they are immigrants, and that is a concern.

But I would be glad to work with you and others on this committee to make sure we cover all workers, including immigrants.

Senator CLINTON. I look forward to working with you on this issue and on the other important matters under your jurisdiction. And I am delighted that your entire family—and the 100 more out

in the hall—could be here today. I thank you for your commitment to bringing the kind of expertise and balance to this agency that we know makes it work.

Thank you very much.

The CHAIRMAN. Thank you very much.

If there are no other questions, we will leave the record open briefly, and we will do the best we can to expedite your confirmation.

We want to thank you very much, Mr. Henshaw. I think you have gotten the sense that we want to work very closely with you and that you will get broad support from our committee, and we look forward to working with you in the future.

Mr. HENSHAW. Thank you, Senator.

The CHAIRMAN. The committee stands in recess.

[Additional material follows:]

## ADDITIONAL MATERIAL

## PREPARED STATEMENT OF SENATOR CARNAHAN

I regret that I was unable to attend this hearing due to a conflict with another Committee meeting. But I want the Health, Education, Labor and Pensions Committee to know of my support for Mr. Henshaw's nomination to be Assistant Secretary of Labor for the Occupational Safety and Health Administration.

OSHA's mission is to save lives, prevent injuries and protect the health of America's workers.

Since OSHA was created in 1971, occupational deaths have been cut in half and injuries have declined by 40 percent. I believe that these figures demonstrate the important role that OSHA has played, and should continue to play, in promoting workplace safety.

Protecting American workers, however, is an ongoing challenge. In 1999, approximately 6.3 of every 100 workers experienced a job-related injury or illness. And 6,023 workers lost their lives on the job.

Mr. Henshaw's challenge will be to improve the agency's performance to ensure that the more than 100 million American workers who depend on OSHA will have a safe place to work.

I am pleased that President Bush has put forward such an eminently qualified Missourian. Mr. Henshaw is a safety and health professional. For the past two decades, he has held a number of different positions in which he has been responsible for ensuring safe workplaces.

Mr. Henshaw has authored a number of articles and made a variety of presentations on health and safety for trade publications and different organizations.

Mr. Chairman, I am pleased to support this nomination, and I look forward to working with Mr. Henshaw once he is confirmed. Thank you, Mr. Chairman.

[Whereupon, at 11:01 a.m., the committee was adjourned.]