Testimony of

The Honorable Patrick Leahy

May 22, 2003

Opening Statement of Senator Patrick Leahy
Business Meeting of the Senate Judiciary Committee
May 22, 2003

I want to thank Senator Graham for working with me and thank all Senators for agreeing to pass our Hometown Heroes Survivors Benefits Act, S.479, late last week. With cooperation from Chairman Sensenbrenner in the House this important measure can be enacted without further delay to ensure that the survivors of firefighters, police officers and EMS personnel who die of heart attacks or strokes in the line of duty be eligible to receive financial assistance through the Public Safety Officer Benefits (PSOB) program.

With the national terror alert being raised again this week, our state and local first responders are being called upon to do more but being made to carry the burden of doing so. In Vermont, the last yellow-to-orange alert change in connection with the war in Iraq required the State and our local governments and agencies once again to dig even more deeply into their depleted coffers in order to accomplish these prevention and preparedness duties, and those costs are only partially covered by federal assistance. Raising the alert level is prudent when circumstances warrant, but each time the Federal Government does so it results in direct costs to state and local governments. It means added precautions for events and buildings and transportation hubs. Preparedness has become a costly unfunded mandate on our first responders. We are continually tapping the coffers of local police, fire and rescue units to counter these threats and many of them are being tapped out. Preparedness is supposed to be a partnership, and more federal help is needed to make this partnership work.

That is why I have been urging throughout this year that we focus Committee attention on pending first-responder legislation that I have previously asked be considered by the Committee. Senator Daschle and I have introduced the First Responders Partnership Grant Act of 2003, S. 315 and S. 466. These pieces of legislation are of great interest to our state and local emergency response communities because they will supply our police officers, firefighters and EMS providers with the resources they need to bolster our security against terrorists. This is essential federal support that our law enforcement officers, firefighters and emergency personnel need and deserve.

Last week, the Department of Justice responded to a letter dated April 1, 2003, from Chairman Sensenbrenner and Ranking Member Conyers, posing questions about how the USA PATRIOT Act is being implemented. The fact that it took the Department less than six weeks to produce a 60-page response only validates my suspicions that the Department can -- if it chooses - respond to oversight questions in a reasonably prompt manner.

Effective oversight requires an open and constant dialogue between Congress and the Administration. We should not have to wait for many months or even years to have our questions answered. We should not have to pull teeth to get the information we need to do our jobs. We should not have to rely on press leaks and whistleblowers to learn what is really going on at the Department of Justice.

The American people want, expect and deserve effective congressional oversight of the law enforcement powers being employed in the struggle against terrorism. Clear signals are being sent to Washington from across the country, as cities and towns in Vermont and elsewhere debate and vote on resolutions regarding this issue. Robust congressional oversight helps ensure that those who enforce the laws in the name of the American people do so with full regard for the safety and the liberties of the American people, and do so in a manner that is as open as possible.

At our hearing on March 4th, Chairman Hatch announced that the Committee would hold an oversight hearing with Director Mueller on issues relating to the Foreign Intelligence Surveillance Act, or FISA. It has been nearly three

months, and we are still waiting for that hearing to be noticed. There is strong bipartisan support for that hearing. Director Mueller promised to make himself available. There is no reason for further delay.

There is also no reason to delay Committee consideration of S.436, the Leahy-Grassley-Specter "Domestic Surveillance Oversight Act of 2003." This bill reflects bipartisan efforts to strengthen effective oversight of the FBI. This bill does not in any way diminish the government's powers, but it does allow Congress and the public to monitor their use. It would let some much-needed sunlight into the domestic surveillance activities of our government.

I see that the Chairman has chosen, instead, to list two bills I have cosponsored and intend to support: our cameras in the courtroom bill and a judicial pay raise bill. I will have more to say on each as we debate them.

On legislation concerning asbestos-related claims, I remain committed to moving a consensus plan through the legislative process and into law. We have not yet reached consensus. Action together, and allowing the negotiations to progress is, in my view, the best way to achieve that goal. When I scheduled our first hearing on this matter last year, I committed to a good faith effort on this important matter. I have not varied from that course. There remain a number of important issues on which we are working toward consensus. Working together we stand the best chance of success. I want to thank Senator Dodd, Senator Feinstein, Senator Carper and a number of others for working with me on this important matter.

Additionally, the Committee meets today to vote on the nominations of three individuals who have served in the Department of Justice during times when issues of enormous import to our nation have been debated and decisions on those issues were implemented.

I want to report briefly on progress we are making on judicial nominations. In the past 25 months we have already confirmed 125 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President. I hope the Republican leadership will work with us to schedule a vote on the nomination of Consuelo Callahan to the Ninth Circuit without additional delay. She is a consensus nominee for which I expect bipartisan support, especially given the support of Senator Feinstein and Senator Boxer, her home-state Senators.

We should all acknowledge how far we have come from the 110 vacancies that we faced in the summer of 2001, after the 100 confirmations during Democratic control and the 25 this year, to this point when we have the lowest number of judicial vacancies in13 years. The Administration has chosen confrontation with the Congress, with the Senate and with this Committee. With a modicum of cooperation we could achieve so much more. As it is, we have worked hard to repair the damage to the confirmation process, and we have achieved some significant results.

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STATEMENT OF PATRICK LEAHY
RANKING MEMBER, SENATE JUDICIARY COMMITTEE
JUDICIAL PAY (S. 1023)
MAY 22, 2003

Several months ago I introduced a bill to restore the many cost of living adjustments that Congress failed to provide the judiciary. I believe strongly that Congress should treat our federal judiciary with the respect that a co-equal branch of government deserves. Recent congressional treatment disrespectful of the judiciary, including passage of the Feeney Amendment and the historical fiscal treatment of the judiciary, is a trend that needs to be changed. I join the Chairman and many other Members of this Committee in support of S. 1023 in recognition that judicial pay should not be linked to congressional pay. While congressional pay-setting has important political implications, our fiscal treatment of the judiciary should be removed from politics. This is why we need to include language from my bill to repeal Section 140 which links Cost of Living Adjustments for Congress and the Judiciary. I plan to offer an amendment to this effect with my colleague Senator Graham.

Also included in my judicial pay bill are several provisions to address concerns about judicial ethics that undermine public confidence in our courts. For the past three years, editorial boards across the country have called our attention to the appearance of impropriety that occurs when federal judges accept gifts and attend lavish private seminars

sponsored by corporations or fail to monitor their stock holdings so that they can properly recuse themselves from cases where there may be a conflict of interest. Senator Grassley and I have both publicly commented on the need to improve the public's access to judges' recusal lists.

Despite my on-going concerns about reports of judicial activities that undermine public confidence, I have decided not to add my ethical provisions to today's judicial pay raise bill. After consulting with the members of the Judicial Conference and the Federal Judges Association, I have been persuaded that the judiciary should be allowed some time to respond to my legislative proposals. Certainly, self-regulation would be the preferred approach toward these important ethical issues. I trust that the Judicial Conference will consider amendments to its financial disclosure rules in the immediate future. Such reforms should include requiring private seminar providers to fully disclose the financial and litigation interests of their sponsors and improving access to judicial recusal lists. I hope that judicial self-governance will address the serious concerns of our constituents but I leave open the possibility of congressional action if they fail to make changes that will preserve the public's confidence in an impartial federal judiciary.

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STATEMENT OF PATRICK LEAHY
RANKING MEMBER, SENATE JUDICIARY COMMITTEE
SUNSHINE IN THE COURTROOM ACT (S.554)
MAY 22, 2003

I am proud to be a cosponsor of the "Sunshine in the Courtroom Act."

Our democracy works best when our citizens are fully informed. That is why I have continually supported efforts during my time in the Senate to promote the goal of opening the proceedings of all three branches of our government. We continue to make progress in this area. Except for rare closed sessions, the proceedings of Congress and its Committees are open to the public, and carried live on cable networks. In addition, Members and Committees are using the Internet and Web sites to make their work available to broader audiences.

The work of Executive Branch agencies is subject to public scrutiny through the Freedom of Information Act, among other mechanisms. Despite the dramatic shift toward excessive secrecy demonstrated by the current administration, the Freedom of Information Act remains a cornerstone of democracy. It establishes the right of Americans to know what their government is doing - or not doing. As President Johnson said in 1966, when he signed the Freedom of Information Act into law:

This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits.

The work of the third branch of government is also open to the public. Proceedings in federal courtrooms around this country are open to the public, and our distinguished jurists publish extensive opinions explaining the reasons for their judgments and decisions. All 50 states currently allow some form of audio/video coverage of court proceedings. This legislation simply extends this tradition of openness to the federal level.

This bill permits presiding appellate and district court judges to allow cameras in the courtroom; they are not required to do so. At the same time, it protects non-party witnesses by giving them the right to have their voices and images obscured during their testimony. Finally, the bill authorizes the Judicial Conference of the United States to promulgate advisory guidelines for use by presiding judges in determining the management and administration of photographing, recording, broadcasting, or televising the proceedings. The authority for cameras in federal district courts sunsets in three years.

In 1994, the Judicial Conference concluded that the time was not ripe to permit cameras in the federal courts, and rejected a recommendation of the Court Administration and Case Management Committee to authorize the photographing, recording, and broadcasting of civil proceedings in federal trial and appellate courts. A majority of the Conference was concerned about the intimidating effect of cameras on some witnesses and jurors.

The New York Times opined at that time, on September 22, 1994, that "the court system needs to reconsider its total ban on cameras, and Congress should consider making its own rules for cameras in the Federal courts."

I understand that the Judicial Conference remains opposed to cameras in the federal courts, and I am sensitive to the Conference's concerns. But this legislation grants to the presiding judge the authority to evaluate the effect of a camera on particular proceedings and witnesses, and decide accordingly on whether to permit the camera into the courtroom. A blanket prohibition on cameras is an unnecessary limitation on the discretion of the presiding judge.

Allowing a wider public than just those who are able to make time to visit a courtroom to see and hear judicial proceedings will allow Americans to evaluate for themselves the quality of justice in this country, and deepen their understanding of the work that goes on in our courtrooms. This legislation is a step in making our courtrooms and the justice meted out in them more widely available for public scrutiny. The time is long overdue for federal courts to allow cameras on their proceedings.

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