

Testimony of

The Honorable Patrick Leahy

June 12, 2003

Opening Statement of Senator Patrick Leahy
Business Meeting of the Senate Judiciary Committee
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Last week the Committee held a hearing on asbestos-related illnesses and how best to compensate the victims. I urged that the interested parties resume their discussions and that we all continue to work toward consensus. That hearing identified a number of problems that we ought to be able to solve. I thank Senator Hatch for his willingness to reconsider the issues of collateral payments and take home exposures, for addressing the tragic circumstances in Libby, Montana, and for entertaining Senator Murray's proposal, about which Senator Feinstein spoke so eloquently. Unfortunately, the discussions our staffs have been conducting so far this week have not been as productive as I had hoped. I reiterate that I believe all interested private parties and their representatives ought to be discussing ways to resolve remaining differences and reach consensus solutions. I also want us and our staffs to make more progress toward a consensus that can be the basis for a legislative solution.

I remain committed to moving a consensus plan through the legislative process and into law. We have not yet reached consensus. Acting 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 am pleased that the Chairman has agreed to hold oversight hearings, including a hearing on the issues raised by the Office of Inspector General's report on the Justice Department's treatment of immigrants detained as part of the investigation into the September 11, 2001, attacks. It remains critical that this Committee fully examine the conclusions and recommendations of the Inspector General, and ask questions of the officials whose conduct is discussed in the report. I look forward to working with the Chairman to put together a prompt, fair and complete hearing.

With the national terror alert recently lowered again, we must not forget the burdens placed on our state and local first responders who are being called upon to do more. 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. Preparedness has become a costly unfunded mandate on our first responders. 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.

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. I read that the spokesperson for the Attorney General and the Department of Justice scorn such local actions, I do not. 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 meeting 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 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.

This week the Senate has already confirmed four more of the President's judicial nominations. In the past 23 months we have confirmed 131 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President. 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 31 this year, we have the lowest number of judicial vacancies in 13 years.

The Administration has too often 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. The 131 judges confirmed so far - with six months remaining this year -- are 20 more judges than were confirmed in all of 1995, 1996 and 1997 and already a dozen more judges than Republicans allowed to be confirmed in all of 1996, 1997 and 1998 combined.

The Committee has already held its 11th hearing for judicial nominees this year for 43 judicial nominees overall, including 12 circuit court nominees. This stands in sharp contrast to the way President Clinton's nominees were treated. During the entire year of 1996, when vacancies were higher and growing, this Committee held only six hearings all year and those hearings included only five circuit court nominees. Thus, the Republicans have now considered more than twice as many circuit court nominees in one-third the amount of time they considered President Clinton's nominees that year. In 1997, the Committee only had nine hearings all year and included only nine circuit court nominees. During the entire year of 1999, only seven hearings were held on judicial nominees and, during the entire year of 2000, only eight judicial nominations hearings were held.

In the 1996 session, the Senate did not confirm a single circuit judge all year and confirmed only 17 judges that entire session. Indeed, by this point in 1999, the third year of President Clinton's last term, the Committee had not held or scheduled a single judicial nominations hearing on a single judicial nominee.

As I have noted throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. Unfortunately, far too many of this President's nominees have records that raise serious concerns about whether they will be fair judges to all parties on all issues.

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