

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
April 22, 2004

Opening Statement of Senator Patrick Leahy  
Executive Business Meeting of the Senate Judiciary Committee  
April 22, 2004

Members of this Committee have been engaged in debate on the Senate floor this week on a number of matters, including our efforts to come together to provide fair compensation to the victims of asbestos injuries. The Republican majority did not proceed from the basis of the Committee bill but unilaterally. That effort was poorly conceived, did not provide fair compensation or certainty for the victims and has not been embraced by the Senate or the American people.

By contrast, we will end this week by acting together to pass crime victims legislation. It is National Crime Victims' Rights week and we are working hard this week to join together to pass a federal crime victims' rights act, S.2329. Senator Feinstein has shown great leadership and determination in this effort and her work will be rewarded today. Senator Kyl and Chairman Hatch are the lead Republican sponsors of this effort. Many Senators on this Committee from both sides of the aisle have contributed to this legislation. It is unfortunate that the circumstances under which we worked this week prevented our bringing the bill through this Committee with hearings and fuller consideration. But we wanted to complete action if at all possible this week and through bipartisan compromise and extraordinary efforts by many have been able to achieve a broad consensus is allowing us to proceed through the Senate on an expedited basis.

While Chairman Hatch was able to proceed last week with a field hearing in Utah, we have yet to engage in the thorough oversight hearings that are this Committee's responsibility with respect to the Department of Justice, Homeland Security and many aspects of the Administration's policies and practices. We witnessed rather than conducted the follow up to the hearings we began in 2001 on the events leading up to the disastrous September 11 attack and failures within the Department of Justice and FBI.

I look forward to working with Chairman Hatch to schedule the oversight hearings we should be holding on a number of topics. I hope that the Attorney General is making swift progress after his surgery and will be able to join us, without too much more time passing by, for some thorough oversight sessions. We have not had the Attorney General appear before the Committee for more than a year, and he has not made an extended appearance for much longer than that. There are many outstanding requests for information and many more matters that need to be explored.

We join all Americans in expressing our gratitude to the 9/11 Commission for taking its mandate seriously and for performing some of the investigation that we on this Committee had proposed and hoped that we could perform in 2002. Unfortunately, our efforts were blocked by Republican objections that fall. Now, almost two years later, some of the facts are coming out. It took only two weeks for President Roosevelt to appoint a Commission on the December 7, 1941, attack on Pearl Harbor. It will have taken us almost three years to fight through the White House opposition and delays before the 9/11 Commission issues its report later this summer. The government's preparedness in the fall of 2001 for potential terrorist attacks is an important issue and one that for too long has been avoided.

This week the Supreme Court heard arguments in the first in a series of cases arising from the Administration's policies and practices. This week's case involved the detentions at the U.S. military facility at Guantanamo. That was one of the topics on which I had expected we would have held hearings. Other cases are upcoming, including the challenges to the Administration's position that it has the power to detain American citizens and others whom the

President declared enemy combatants without a hearing, without a trial and without allowing a lawyer. I will work with the Chairman to work toward timely hearings on those important matters.

I have argued for some time that we are strengthened as a country and certainly practices affecting civil liberties would be on more solid legal footing if Congress had been allowed by this Administration to be a full partner in the development of legal structures and practices. Another effect of the Administration's unilateralism is that without the bulwark of congressional authorization, its practices should be subject to more searching inquiry by the judicial branch as the last remaining check and balance of executive excess. Just as I commend the 9/11 Commission for its attention to its duties, I want to acknowledge the judiciary for playing its vital role in our constitutional democracy.

With respect to the agenda, I appreciate the Chairman proceeding with S. Res. 310 at my request. This resolution to commemorate the dedication and sacrifice of our law enforcement officers is a measure on which we have worked with Senator Campbell for a number of years. National Peace Officers Memorial Day is an important occasion for the families of those who have sacrificed in law enforcement and for all Americans.

I also thank the Chairman for including the NOPEC bill, S.2270, on today's agenda at our request. Our recent hearing on this measure helped demonstrate that it is important for us to move forward against the illegal oil cartel. I thank Senators Kohl and DeWine for their leadership on this measure.

That having been said, I am deeply disappointed that the majority has refused to act on either of the bills introduced in the Senate to solve the H-2B visa crisis. H-2B visas are used by employers throughout the nation who need seasonal labor and are unable to find U.S. workers. The Department of Homeland Security announced last month that for the first time ever, the statutory cap on this program has been reached. As a result, employers who were depending on foreign workers for summer industries -- such as tourism -- have been harmed severely. Dozens of businesses in Vermont have pleaded for help in meeting this unexpected problem. I know they have been joined by thousands of businesses from across the country.

The Republican leadership has simply ignored these urgent pleas from businesses. I cosponsored bipartisan legislation -- S.2252, the Save Summer Act of 2004 -- that would have solved the problem by increasing the number of visas for the current fiscal year by 40,000. Senator Hatch subsequently introduced S.2258, a competing bill offering a convoluted approach to the problem. His bill was sponsored only by Republicans. Even this partisan bill, however, has failed to pass muster in the Republican cloakroom, where it remains subject to a hold. Meanwhile, time is running out. Obtaining these visas takes weeks, if not months, as the Departments of Labor and Homeland Security must both sign off on them. If we do not pass legislation by May 1, it may well be useless to pass legislation at all. I urge those who are holding up this bill to reverse course and help our nation's businesses meet their summer needs.

I am also personally disappointed that we have not made Senate progress on the Advancing Justice Through DNA Technology Act (S. 1700/H.R. 3214), which includes the Innocence Protection Act. I made many compromises to reach an agreement on this bill. Chairman Sensenbrenner has worked with Congressmen Delahunt, LaHood and others to obtain House passage of the bill last November. This is an important bill with many improvements to our criminal justice system that we have worked on in a bipartisan way over many years. We have made no further Senate progress and a very short legislative year is left to us.

On another important matter, I must report that it is now six weeks since a majority of Senators on this Committee wrote to the Department of Justice urging an investigation into the theft of confidential Democratic computer files by Republican staff from at least 2001 into 2003. We have not heard so much as an acknowledgement of receipt from this Department of Justice. If they have proceeded to begin the investigation that is warranted, they have not responded to our request to be kept apprised of their actions.

With respect to nominations, we are working on the problems created by this Administration's abuse of its recess appointment power and its partisan approach to filling bipartisan boards and commissions. I have spoken to these issues over the last several months - and over the years, as well. I am not in a position to report significant progress, but I am hopeful that our efforts will lead to better understandings and additional confirmations. I look forward to a time when the White House will work with us more closely and cooperatively.

With respect to judicial nominations, this Committee has already held more hearings this year than were held in all of 1996, the last year of President Clinton's first term. We have already considered 24 judicial nominees since the beginning of the year. Those 24 lifetime appointments include seven to the circuit courts. By April 22 in 1996, the Committee had not reported a single circuit court nominee and had reported only four district court nominees. By April 22 in 2000, the Committee had reported only two circuit court nominees and only four district court nominees. Of course, the Senate has already confirmed 173 judicial nominations of this President, more than were confirmed for President Reagan in his entire four-year first term.

We now have 16 vacancies in the circuit courts. That is the number of vacancies that existed when Republicans took majority control of the Senate in 1995. Unfortunately, through Republican obstruction of moderate nominations by President Clinton, those circuit vacancies more than doubled, rising to 33 by the time Democrats resumed Senate leadership in the summer of 2001. We steadily reduced circuit vacancies over the 17 months that Senate Democrats were in charge. Even though an additional 15 circuit vacancies have arisen since July 2001, we have done what Republicans refused to do when President Clinton was in the White House by not only keeping up with attrition but actually working to reduce vacancies. We have now reduced circuit vacancies to the lowest level since Republican Senate leadership irresponsibly doubled those vacancies in the years 1995 through 2001. We have already reduced overall federal court vacancies to the lowest levels in 14 years. The number of vacancies would be even lower if the White House would work with us on presidential nominations.

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On the NOPEC Bill  
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I thank Senator Kohl for again introducing the NOPEC bill, a piece of legislation that I am again proud to cosponsor. And I am glad that today the Committee is taking up this bill, because gasoline prices continue to skyrocket. Without a real correction, consumers across the nation will continue to suffer for no legitimate reason.

On March 25, I requested a hearing of Chairman Hatch to address the skyrocketing cost of gasoline. In that letter, I raised concerns that this increase was largely due to market manipulation by OPEC, and I cited the high average price for a gallon of gasoline, which at the time was around \$1.74.

When the Antitrust Subcommittee held their hearing on gas prices earlier this month, the nationwide average price of gasoline had gone up again, to \$1.78. Experts from several fields, both in and out of government, confirmed for us what we already suspected: the higher prices are due to the OPEC cartel that sets production quotas for member countries and prevents the free market from setting crude oil prices. The testimony at that hearing revealed that most of the gasoline price increase can be explained by OPEC's unfair production quotas.

The artificial pricing scheme enforced by OPEC affects all of us, including hardworking Vermont farmers. As the U.S. Department of Agriculture's Cooperative Extension Office in New Hampshire recently found, the increasing energy costs may add \$5,000 or more to the total costs of operating a 100-head dairy operation in the Northeast. In addition, soaring prices have affected a variety of industries across the United States, and will likely force many Americans to make tough choices about family travel this summer.

Over the last few months, I have expressed concern that gasoline prices would simply continue to rise. I have hardly been alone in that belief and I am sorry to say that my prediction has borne fruit. Sadly, that fruit is bitter for those forced to pay ever higher prices to go about their daily lives. This past Monday, the average price for regular gasoline reached \$1.81 per gallon. We have all heard the story that the Saudi Ambassador promised the President to decrease prices before this November's election in order to help the U.S. economy. But I am of the belief that our economy, our farmers, and our families need relief now. They also need good policy - not an election year backroom deal - and in the absence of White House leadership, Congress should provide law enforcement the tools needed to

fight anticompetitive practices.

Although it is important that we take immediate actions to bring gas prices down, we also need to do more to increase fuel efficiency in cars and trucks. Like so many other issues, the Bush Administration has put special interests above the public interest in blocking every attempt to improve fuel efficiency. If we are going to reduce our dependence on foreign oil, we have to push auto manufacturers to do more to get cars to go further on each gallon of gas.

If OPEC were simply a foreign business engaged in this type of behavior, it would already be subject to American antitrust law. It is wrong to let them off the hook just because their anticompetitive practices come with the seal of approval of its member nations. I urge my colleagues to support this bill and to say "No" to OPEC.

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