

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 20, 2004

Opening Remarks of Senator Patrick Leahy
Ranking Democratic Member
Executive Business Meeting of the Senate Judiciary Committee
May 20, 2004

I am pleased that we will have our long-awaited hearing today with FBI Director Mueller. I regret that the Chairman's postponement of the start of this meeting will further delay that important hearing.

I have long urged the Chairman to hold oversight hearings with Attorney General Ashcroft. The cicadas are visible right now around the Washington area, after a 17-year interval. Sometimes it seems that we see the cicadas more frequently than the Attorney General appears before the Senate Judiciary Committee. Our committee, after all, is the oversight committee for the Department of Justice. It has been 15 months since the Attorney General's last, abbreviated appearance before the Committee, on March 4, 2003. He testified before the 9/11 Commission on April 13, he is back to his normal schedule of press conferences and public announcements. There is no apparent reason for the continued delay in scheduling his appearing to answer questions before this Committee. It is past time to hold our long overdue oversight hearings with him. If our military commanders in Iraq can find time to appear before the Senate, as they did yesterday, I would hope the Attorney General could clear a few days to appear before this Senate oversight Committee, and respond to the elected representatives of the American people.

DNA Bill Needs Action

It is also past time for us to mark up the Advancing Justice Through DNA Technology Act. Mr. Chairman, I cannot tell you how disappointed I am that our bill is not on today's agenda. I have been working on this bipartisan measure for five years with House and Senate Republicans and Democrats. We introduced the current Senate bill, S.1700 on October 1, 2003 - nearly eight months ago. The House passed its bill, H.R. 3214, by an overwhelming bipartisan majority last November - nearly seven months ago. In so doing, Chairman Sensenbrenner was working to fulfill the pledge he and we made when we announced this compromise after months of discussions last fall. Since then, we have made no discernible progress in the Senate, either in the Judiciary Committee or on the Senate floor, despite the fact that the bill clearly has majority support. The bill has 35 Senate sponsors, including 11 Members of this Committee: Senators Hatch, Biden, Specter, DeWine, Feinstein, Kennedy, Schumer, Durbin, Kohl and Edwards. I have been urging Senate action since the moment our discussions involving Senator Feinstein, Senator Biden, you, Mr. Chairman, and others yielded our compromise measure.

As you said last week, Mr. Chairman, this bill is a critical piece of legislation. It is the culmination of many, many years of work by Members of both Houses. It includes the Innocence Protection Act, which I first introduced in February 2000. It includes DNA backlog reduction provisions that Senator Biden has been working to pass since 2002. Senator DeWine, Senator Specter, Senator Feinstein, and you, Mr. Chairman, have all made major contributions to this bill. To get to this point, we all had to make compromises. Some of us had to make more compromises than others. I think you would agree that I went the extra mile in the negotiations.

We introduced the bill eight months ago. It now has been seven months since Chairman Sensenbrenner followed through on his commitment by obtaining House passage of our consensus bill.

Mr. Chairman, at the markup last week, I welcomed your promise to put our bill on the agenda this week and to work with me to move it to the floor.

I have been chairman of this committee and of other committees and I know the pressures that come with the job. Last year we took well-deserved bows to the cameras, to Kirk Bloodsworth, to the victims groups and to the many others who have toiled so hard to make this a reality. Now we have to deliver, and at this rate, we will not deliver. None of us want those promises we jointly made to become hollow. Mr. Chairman, I hope you agree, I believe that you do, and I again ask that this worthy and important project be completed.

Judicial Confirmations

I would like to make note of one additional development: Earlier this week, we were able to obtain a firm commitment from the White House that there would be no further judicial recess appointments for the remainder of this presidential term. That undertaking led immediately and directly to the Senate vitiating a cloture vote and proceeding to confirm the nomination of Marcia Cooke to the federal bench in Florida. Thus, despite the pessimism expressed by Chairman Hatch all last week, I continued working to conclude an arrangement between the White House and the Senate that would allow additional progress on judicial confirmations. Of course, we had already confirmed more judges so far this presidential term than were confirmed in President Reagan's entire first term when we confirmed the 173rd judge earlier this year. As I highlighted last week, with four confirmations earlier this year we were well ahead of the pace set by the Republican majority for confirmations in the 1996 session, the last year in which a President was seeking reelection.

Working with Senator Daschle, Senator Frist, Judge Gonzales and the White House chief of staff Andy Card, we were able to reach an agreement on Tuesday. I want to commend our two leaders. I have been working with Senator Daschle for months, as well as with the White House, to find a way out of the impasse in judicial confirmations. Senator Frist and I have spoken at length about this, and he has been working on that, too. I was delighted to see the meeting that Senator Daschle, Senator Frist, and Mr. Card finally take place on Tuesday. Most importantly, I was pleased that the White House agreed to no more recess appointments of judges.

I think we've demonstrated our good faith. In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees to lifetime positions on the federal bench. And the Republicans, during the 23 months that they have been in charge of the Senate, have now confirmed another 74.

With this agreement, I think we should be in a position to confirm a number of additional nominees so that by the time the Senate adjourns for the July 4 recess we can have completed our work on judicial nominees and confirmed as many as 198. That will take work; that will take bipartisan cooperation. While some mischaracterize the nominees on the Senate Calendar as "noncontroversial," there are a number who will require debate and they will each require a roll call vote. I remind this Committee, for example, that it took the unusual step of reporting the nomination of Mr. Holmes without a recommendation. That nomination will require extensive debate. Working together we can work to schedule the needed debate and votes over the next several weeks. Without continuing cooperation, that will prove difficult.

By treating President Bush's nominees more fairly and openly than Republicans treated President Clinton's nominees, the Democratic Senate majority in 2001 and 2002 pointed the way. We have reversed the doubling of vacancies that we saw when Republicans obstructed consideration of President Clinton's nominees. We have achieved the lowest number and percentage of judicial vacancies since 1990. We have fewer judicial vacancies today than at the end of session in any of the six years in which a Republican Senate majority delayed and obstructed consideration of President Clinton's moderate nominees. If we work together we can make further progress and reduce today's vacancies by another two dozen before adjournment. We can achieve the lowest vacancies since the Reagan Presidency 20 years ago.

I am pleased that the Senate has received assurances from the White House that the President will not further abuse the recess appointment power by making recess appointments during the remainder of his presidential term. It was the White House's refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President's recess appointments to the federal courts that complicated our efforts to reach

an agreement regarding votes on judicial nominees over the past few months. That is demonstrated by the prompt vote and confirmation of Judge Cooke Tuesday afternoon. I was pleased to be able to help facilitate the end of that impasse.

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Statement of Senator Patrick Leahy
Executive Business Meeting of the Senate Judiciary Committee
On the "ENFORCE Act of 2003"
May 20, 2004

I would like to thank Senator Hatch, Senator Feinstein, and Senator Cornyn for sponsoring this legislation, and for being responsive to my suggestions for its improvement. It has been a productive year for intellectual property bills in the Committee, and I hope we can further that success by moving consensus IP legislation through the Senate. I know that the PIRATE, CREATE, and ART Acts are on the floor right now, and I am hopeful that they will soon be passed by unanimous consent.

I wish to draw particular attention to the final section of the ENFORCE Act, which directs the Attorney General to place more agents into units investigating computer hacking and intellectual property crimes. As technology becomes more integrated into society, it is important that law enforcement agencies have the resources to combat the threats that, unfortunately and inexorably, are linked with technological advancement. I hope the Justice Department will take note of this provision, and that the Attorney General will act with dispatch to direct more human resources to address this growing problem.

I thank again my colleagues for their efforts on this legislation.

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Statement of Senator Patrick Leahy
Committee on the Judiciary
On the Nomination of Jonathan Dudas for Director, Patent and
Trademark Office and Assistant Secretary of Commerce for Intellectual Property
May 20, 2004

The Patent and Trademark Office plays an enormously important role in the development of new technologies and the growth of our economy. It must encourage the development of new ideas by helping ensure that innovators will enjoy the fruits of their labor. At the same time, it must also encourage the deployment of those new ideas to the people who can use them. The Director of the PTO is a nonpartisan position that is focused on allowing this important office to do its work as effectively as possible. To do this, the next Director has to modernize the PTO's processes, to ensure that its employees are able to do their important and difficult work.

Mr. Jonathan Dudas has been nominated to lead the PTO through these challenging times. Mr. Dudas is a very impressive young man. He has had a successful career in private practice and on the staff of the House Judiciary Committee. In 2001, he joined Speaker Hastert's staff, and in 2002, he joined the PTO. For the last three and one half months, he has been the Acting Director of the PTO. I support this nomination, and I look forward to working with Mr. Dudas as the PTO addresses its current challenges.

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