Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 21, 2004

Statement of Senator Patrick Leahy,
Ranking Democratic Member, Senate Judiciary Committee

-ADVANCING JUSTICE THROUGH DNA TECHNOLOGY ACT (S.1700)
September 21, 2004

Like last Tuesday, Members of the Committee, including a number of cosponsors of the Advancing Justice through DNA Technology Act of 2003, S.1700, have more scheduling conflicts than usual this morning. There is a meeting of the Intelligence Committee on the President's recent nomination to head the CIA. There is a mark-up of legislation to implement the 9-11 Commission recommendations in the Government Affairs Committee. The Appropriations Committee is holding important hearings on the 9-11 Commission recommendations and markups on bills for government departments for budgets that go into effect on October 1. This is why I am so disappointed that the Committee has delayed action on this important measure until the last couple of weeks of this Congress without any real prospects for floor debate.

I want to the thank Senators Biden and Feingold for coming last Tuesday, despite having very busy schedules. Tuesdays are not this Committee's business meeting days, but they made a special effort to be here, and I appreciate it. I must also correct the impression left in the record and note that a number of Democrats on the Committee attended the September 9 markup, including Senators Biden, Feinstein, Feingold, Schumer, and Durbin. I think the Chairman may have misspoke when he stated a week ago today that very few Democrats were present at the September 9th meeting because almost all were present at one time or another to make and maintain our quorum.

I have been urging Committee attention to this important justice matter all year and have sought to expedite the markup. As it is, it has been listed on the Committee's agenda only since June and then carried over and carried over again and again without much progress for the last several months. We were finally able to vote on one amendment the week before last.

Kirk Bloodsworth is here again with his wife Brenda. Kirk and members of his family have been at each of the past four scheduled markups, traveling in from the Eastern Shore of Maryland time and again because it is so important to them to get this bill reported out of Committee and passed. As you all know, Kirk was the first person convicted and sentenced to death to be exonerated by DNA evidence. He served nine years in prison -- two on death row -- for a crime he did not commit. After fighting for years to have the crime scene evidence run through the State DNA database, Kirk finally persuaded the State to act. Well, they got a hit and identified the

person who committed the heinous crime for which Kirk had been convicted. That person confessed and is serving a life sentence now. Far from an "anecdote," this is tragically the reality, the reality for the Bloodsworths and for too many others.

I am very sorry to say that Debbie Smith could not be here today. Like Kirk Bloodsworth, a part of this bill is named in honor of Debbie Smith. Debbie was here two weeks ago with her husband. She visited members of Congress to advocate for the swift passage of this bill, and she attended our last markup on September 9. When the markup ended after three hours of debate, taking a vote on only one single amendment, Debbie's frustration was evident. I share her frustration with the Committee's slow progress. She said that senators were mincing words, while rape kits sit in warehouses untested. Debbie waited six years for the evidence in her case to be tested. She deserves better than to wait week after week, month after month, year after year, for this Committee to report this bill.

Turning to the bill, I want to address two arguments that were made in the September 9 mark up.

First, it was argued that there is no need for the post-conviction remedy that our bill would establish, because judges can already order DNA testing if they feel like it. Senator Kyl pointed to Kirk Bloodsworth's case as a case in point. It is true that Kirk was able to get DNA testing of the evidence in his case, but only because the prosecutor agreed to do it, and Kirk's attorney paid for it out of his own pocket. Maryland, which wrongly convicted Kirk, now has a statute along the lines that our bill proposes.

Kirk is here today because he knows better than anyone in this room that we do need this bill. Without a statutory procedure in place, getting a post-conviction DNA test is still an uphill battle.

Second, it was argued that the bill was remiss for failing to set an arbitrary time limit for prisoners to seek tests. Our bill establishes a number of procedural requirements that a prisoner must satisfy before he can obtain testing. There is no arbitrary time limit for good reason.

In the first nine months of this year, another 10 prisoners were exonerated by DNA testing, including one in Senator Cornyn's home State. These men served an average of 13 ½ years in prison before they were freed. Three were imprisoned for more than 20 years. Imagine saying to these men, "Sorry, time's up! You should have proved your innocence sooner. Even if you were wrongfully convicted, you have to spend the rest of your life in prison because the time for testing has run."

I was a prosecutor for many years. I understand the need for finality in criminal cases. But there can be no time limit on innocence.

In closing I commend the Chairman for working with us on the important measures included in the Advancing Justice through DNA Technology Act. As he recently observed, we often cooperate and do things in concert across the aisle. This important bill is a good example. I urge the Committee to report it favorably today.

-S. 2742 Supreme Court Legislation
September 21, 2004

I am pleased to be an original cosponsor of S. 2742, which is a short but important piece of legislation that Senator Hatch and I have cosponsored at the request of the Supreme Court. This legislation would renew their authority to provide security for their justices when they leave the Supreme Court. Recent reports of Justice Souter's mugging highlight the importance of off-campus security for Justices. If no congressional action is taken, the authority of Supreme Court police to protect its Justices off of court grounds will expire at the end of this year.

Another provision in this legislation allows the Supreme Court to accept gifts "pertaining to the history of the Supreme Court of the United States or its justices." The Administrative Office of the Courts currently has statutory authority to accept gifts on behalf of the judiciary. This provision would grant the Supreme Court its own authority to accept gifts but it would narrow the types of gifts that can received to historical items. I think this provision strikes the proper balance.

Finally, this legislation also would provide an additional venue for the prosecution of offenses that occur on the Supreme Court grounds. Currently, the DC Superior Court is the only place of proper venue despite the uniquely federal interest at stake. This legislation would allow suit to be brought in United States District Court in the District of Columbia.

I encourage my colleagues to work together for immediate passage of this uncontroversial legislation.

-Copyright Royalty and Distribution Reform Act of 2004
September 21, 2004

I have long supported reform of the copyright royalty arbitration procedures. At our hearing on this topic on May 15, 2002, I noted that there was widespread dissatisfaction with the current CARP procedures. In particular, many small webcasters could not afford to take part in CARP proceedings, even though their livelihoods would depend on the outcome. In addition, I have been concerned that the current procedures are often hindered by unreasonable delays, and the outcomes subject to manipulation.

The current bill responds to these concerns. This bill replaces arbitrators, who serve for only one CARP procedure and are paid by the parties, with full-time administrative judges. As a result, the massive financial burden of taking part in a CARP procedure is alleviated. In addition, all parties can rest assured that there will be continuity and stability in the resolution of these proceedings. At the same time, this bill preserves the traditional role of the Register of Copyrights. This bill also resolves long-standing disputes over the availability of discovery. Because discovery is available where it is needed, the copyright royalty judges will have the information necessary to render a correct determination, but the costs of discovery will be kept to a minimum.

I look forward to working with my colleagues as this bill moves to the floor.