Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
April 14, 2005

Opening Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Executive Business Meeting
April 14, 2005

The Chairman and I have worked hard to try to forge a bipartisan compromise on legislation to compensate asbestos victims. I am pleased that our proposal is already receiving letters of support from unions, like the UAW, veterans groups and others. I ask to include some of those letters in the record.

As compared with the legislative proposal from the last Congress, our bipartisan proposal would include higher compensation awards for victims, no subrogation by insurers of victim awards, more front-end funding, medical screening for high risk workers, annual review for sunset of the trust if it is not paying claims, more transparency, and Senator Feinstein's expedited settlement process for victims dying within a year.

This is a difficult problem, one the Supreme Court has urged Congress to tackle, and one on which I have been working for more than four years. Other Senators on the Committee are reviewing the draft language. We may soon be ready to proceed and begin considering this matter before the Committee.

Today we should be able to make progress on other bipartisan legislative matters. Senator Feinstein has led us in a bipartisan effort to better protect unaccompanied children who come to this country. Her bill has previously been reported by this Committee. It was listed and held over on March 17. I hope and trust that all Senators are ready to proceed with S.119 today and that it will be favorably reported to the Senate.

The NOPEC bill, S.555, also has previously been considered and reported. It is another bipartisan effort led by Senators DeWine and Kohl that many of us have cosponsored. With gasoline prices at record highs and rising, it is long overdue for us to pass this bill and provide legal tools to the Justice Department and Federal Trade Commission to enforce U.S. antitrust laws against OPEC.

Earlier this week, the Senate acted to confirm Judge Paul Crotty, the 205th judicial nomination confirmation, by a vote of 95-0. We have also reported the nomination of Michael Seabright of Hawaii unanimously and we look forward to a hearing soon on the nomination of Brian Sandoval of Nevada. These nominations demonstrate, as we have more than 200 times over the last four years, how to make progress in filling judicial vacancies. This week, the Senate Democratic Leader and I wrote to the President offering our cooperation in identifying highly qualified, consensus nominees for the 28 judicial vacancies in connection with which the President has failed to send the Senate a nominee.

Finally, as we conclude Victims Week, I want to thank all Senators for supporting our efforts in the budget resolution to protect and preserve the Crime Victims Fund from the President's proposed rescission. That trust fund, which arises from criminal fines and penalties and not tax dollars, is one we created to provide stability for victims assistance and compensation programs. It should not be raided. Its commitment should be honored. The next step is the appropriations process, and I invite all Senators to join the request that Senator Crapo will soon be making, by letter, to the Appropriations Committee.

I will have a separate statement in connection with the Griffith nomination when we take that matter up for consideration.

Statement of Senator Patrick Leahy
On The Nomination of Thomas B. Griffith
To The United States Court Of Appeals for the D.C. Circuit
April 14, 2005

The Committee today is scheduled to debate and vote on the nomination of Thomas Griffith to the United States Court of Appeals for the D.C. Circuit. The D.C. Circuit is an especially important court in our nation=s judicial system for its broad caseload covering issues as varied as reviews of federal regulation on the environment, workplace safety, telecommunications, consumer protection, and other critical federal statutory and constitutional rights. The White House has rejected all Democratic urging to work together on consensus nominees for this court and refused to engage in consultation. That is too bad and totally unnecessary.

The nomination of Mr. Griffith to this court is one I cannot support. The Chairman gave him the opportunity to come forward at a hearing in March, at which time I noted that unlike the many anonymous Republican holds and pocket filibusters that kept scores of President Clinton's qualified judicial nominees from moving forward, the concerns about Mr. Griffith were no secret. He knows full well that I think he has not honored the rule of law by practicing law in Utah for five years without ever bothering to fulfill his obligation to become a member of the Utah Bar. He has by now obtained a Utah driver's license and pays Utah State taxes, but he is not a member of the Bar despite practicing law there since 2000. And according to his answers to my questions, he has taken no steps to abide by the law and become a member. He was also derelict in his duty toward the D.C. Bar, and less than forthcoming with us on questions related to his failure to pay his dues to that organization.

Mr. Griffith has so far foregone 10 opportunities to take the Utah bar exam while applying for and maintaining his position as General Counsel at Brigham Young University. This conscious and continuous disregard of basic legal obligations is not consistent with the respect for law we should demand of lifetime appointments to the federal courts. Neither has Mr. Griffith yet satisfactorily explained why he obstinately refuses to take the Utah Bar. He has hidden behind a curtain of shifting explanations, thrown up smokescreens of letters from personal friends and political allies, and refused to acknowledge what we all know to be true: Mr. Griffith should have taken the bar.

This is not Mr. Griffith's first or only bar problem. He was suspended for failing to pay his D.C. Bar dues and then misled this Committee on the facts of that suspension as well as other late payments. Contrary to his testimony, it seems that the only year Mr. Griffith actually paid his D.C. Bar dues on time was in 1995. He confessed his original suspension and his other late payments in a letter to the Committee he sent before his misleading testimony last year. Two suspensions from the practice of law in two years, three late or non-existent payments in four years, and an attempt to mischaracterize this embarrassing record from the Committee are hardly the same as the innocent-sounding "oversight" Mr. Griffith sought to present.

What may be more disturbing than Mr. Griffith's failure to pay his D.C. dues, is his lack of concern about the implications of having practiced law in D.C. without proper licensure. When I asked him if he had notified his clients or law firm from the period he was suspended, he brushed me off, telling me that his membership in good standing was reinstated once he paid his dues. Of course, that ignored my real question about the ramifications of having been suspended for two separate periods totaling more than two years. Clients and partners should be notified and courts should be contacted.

The Department of Justice apparently agrees that suspension for failure to pay bar dues is a serious matter. Recent newspaper reports say that the Department's Office of Professional Responsibility takes such a matter seriously enough to have opened an investigation into the case of a longtime career attorney there who, like Mr. Griffith, was suspended from the D.C. Bar because he did not pay his dues. Unlike in Mr. Griffith's case, the Department is concerned enough about such a suspension that they are filing notices with the courts in every case this attorney worked on during the period of his suspension, notifying them that he was not authorized to practice at the time. Practicing law without a license is a serious matter.

The facts surrounding Mr. Griffith's nonexistent membership in the Utah Bar are even more troubling. He began his service as Assistant to the President and General Counsel of BYU in 2000. At that time he was not a member of the Utah bar, he was suspended from membership in the Bar of the District of Columbia, and he was an inactive member of the North Carolina Bar. But, as is clear from Mr. Griffith's own testimony, for the last five years, as part of his responsibilities as BYU General Counsel he has been practicing law in Utah.

So, what made Mr. Griffith think he could practice law without being a member of the Utah Bar? Mr. Griffith testified that, "it was my understanding that in Utah in-house counsel need not be licensed in Utah, provided that when legal advice is given, it is done so in close association with active members of the Utah Bar." It was an interesting answer considering there is no such "general counsel" exception in Utah and there never has been. He could not point to any Utah statute or Utah Supreme Court Pronouncement allowing this behavior because it does not exist as a matter of law. Moreover, his predecessor at BYU and the general counsels of the other universities in Utah are all members of the Utah bar.

Mr. Griffith has never been able to identify who it was at the Utah Bar who he claims advised him that he did not need to join the Bar. The practical matter of joining the bar is a clear and logical conclusion, not just to me as I sit here today but it was also clear to the General Counsel for the Utah Bar and it was clear to a second-year law student. We have all told Mr. Griffith to take the bar and he has ignored all of us.

The General Counsel of the Utah Bar put it in writing. Katherine Fox, wrote to Mr. Griffith on May 14, 2003, telling him she was "surprised" he thought there was a general counsel exception, and explained that there was no way under his circumstances to waive into the Utah Bar without taking the bar exam. In plain, simple-to-understand words, Ms. Fox instructed Mr. Griffith to take the bar examination at the earliest opportunity. This response from a career lawyer in the Utah Bar made before political pressure was ratcheted up to defend a Republican nominee, seemed pretty straightforward to me.

It is unfortunate that Mr. Griffith and his supporters have defied logic and reason by turning Ms. Fox's letter upside down in an attempt to characterize it as something other than it is. Her recommendation that he "closely associate" himself with a Utah lawyer until he takes the bar and becomes a member of the bar was not offered as an indefinite safe harbor that permits him to violate Utah law. He would have us believe that Ms. Fox's letter is not an admonition to him to follow the rules, but an invitation to flout them for as long as it suits him. This is the kind of reinterpretation in one's own interest that characterizes judicial activism of the worst sort when employed by a judge.

There are more reasons for serious concern about Mr. Griffith's fitness to be a member of the D.C. Circuit Court. His judgment is brought into serious question by his views on Title IX of our civil rights laws. This charter of fundamental fairness has been the engine for overcoming discrimination against women in education and the growth of women's athletics. I urge all Senators to think about our daughters and granddaughters, the pride they felt when the U.S. women's soccer team began winning gold medals and World Cups, the joy they see in young women with the opportunity to play basketball and ski and compete and grow.

With the recent reinterpretation of Title IX being imposed by administrative fiat in ways that will no doubt be challenged through the courts we may now see why the Bush Administration sees the appointment of Mr. Griffith to the D.C. Circuit Court as a priority. His narrow views on Title IX were unveiled during his efforts as a member of the Bush Administration Secretary of Education's Commission on Opportunity in Athletics, to constrict the impact of Title IX. Does anyone doubt that he would argue that the Bush Administration's revision through regulations should be upheld?

The United States Supreme Court recently decided that whistleblowers are protected in the Title IX context. That was a close, 5-4 decision, in which Justice O'Connor wrote for the majority. These recent legal developments regarding Title IX serve to remind us how important each of these lifetime appointments to the federal courts is. In light of the record on this nomination, I am not prepared to take a chance on it and will vote against.

Statement of Senator Patrick Leahy
On The Nominations of Robert Conrad and James Dever
To be U.S. District Court Judges
April 14, 2005

The two District Court nominees on the agenda today, Robert Conrad and James Dever, are nominees that I vote for today with some reluctance. They were first nominated in 2002 to these same vacancies, but their home-state Senator John Edwards had serious questions about them. A home-state Senator's views on a federal court nominee has a long history of importance in the Senate. The Constitution says we should give the President advice on judicial appointments, and the views of home-state Senators have been very important. Candidly, I wish the White House had heeded Senator Edwards' advice and reconsidered these nominations.

After reading some of Mr. Conrad's more inflammatory writings, I do not wonder at Senator Edwards' objections. In particular, I am concerned about what some of the things he has written say about his ability to be a fair judge, and to give all who come before him a fair hearing. Listen to what he wrote about Sister Helen Prejean, one of the bravest and most caring people I have ever met. He calls her book, "Dead Man Walking," "liberal drivel," and shows nothing but contempt for her compassionate work with condemned prisoners. The rhetoric he uses is heated, and his bias for the death penalty is clear. Will any defendant in a capital case who comes before a Judge Conrad feel that they will get a fair hearing from him? Will he feel that a Judge Conrad can put aside personal prejudices and preconceptions? I hope so.

Another example is the not-too-subtly titled article, "Planned Parenthood, A Radical, Pro-Abortion Fringe Group." Mr. Conrad's view of the well-respected family planning organization is that it is a "most radical legal advocate of unfettered abortion on demand," and argues they do nothing to reduce teen pregnancy. The Planned Parenthood organization that I know, both in Vermont and nationally, works hard to reduce crisis pregnancies and to preserve families' rights to plan their own futures. His statements make me wonder whether any person going before a Judge Conrad in a case involving reproductive rights, or indeed any issue related to personal privacy, will feel their arguments have been fairly heard. Will he be able to follow the law as written? Again, for the sake of future litigants and the independence of our judiciary, I hope so.

I have similar concerns about Judge Dever. I see why Senator Edwards wanted better consultation on these district court nominees. Judge Dever's only two Supreme Court briefs argued against state legislative redistricting action designed to comply with the Voting Rights Act of 1965. When I asked Judge Dever to give me some assurance that he would be impartial when called upon to hear a redistricting case, he could only state that he believed he would be fair.

Much of Judge Dever's experience is in the area of representing Republican clients. While employed at a law firm, he provided legal services to several Republican campaigns and has been listed on the Republican National Lawyers Association webpage as an affiliated lawyer. I would like to believe that Judge Dever was nominated based on his own merits, and that his personal relationships will not affect his ability to rule impartially if he is confirmed. I have concerns.

I take seriously the views and support of the current North Carolina Senators. I hope that their support of these nominees is justified and that these nominees will serve in accordance with their oath to treat all who come before them fairly.

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Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
"Unaccompanied Alien Child Protection Act of 2005"
Executive Business Meeting
April 7, 2005

I am a cosponsor of S. 119, the Unaccompanied Alien Child Protection Act of 2005. Senator Feinstein introduced a bill with the same title in the 107th Congress, which I also cosponsored, and was able to get important parts of it included in the Homeland Security Act. She introduced another version in the 108th Congress, which included additional important provisions to improve conditions for children who arrive on our shores alone. That version passed the Senate last October but the House did not act on it. I hope that this will be the year we enact this good bill.

The Committee heard testimony in the 107th Congress from an unaccompanied minor who had fled to the United States on foot from Honduras. He described his terrible experiences while in then-INS custody, including being housed in the same cell as juvenile delinquents. He also testified that other children simply waived their immigration claims because they could not tolerate their treatment while in custody. Regardless of one's views on immigration, no one should support treating children this way.

Experts estimate that about 5,000 alien minors are found in the United States every year without a parent or guardian. Passing this bill will mean that fewer of them will be kept in detention facilities, and that they will instead be housed in shelters, foster care, or with other relatives. It will also establish minimum standards of care for those alien children who are still detained.

This bill should have the unanimous support of this Committee and the Senate as a whole, as well as the House of Representatives. If and when we do enact it, I hope that the Department of Homeland Security will implement it in a way that gives the maximum possible protection to the vulnerable children who are its focus.

Statement of Senator Patrick Leahy
Ranking Democrat, Senate Judiciary Committee
On Committee Markup of the NOPEC Bill
April 14, 2005

We should quickly report this NOPEC bill to the full Senate. We have done so before, but this time I hope that it will actually become law. The production quotas set by OPEC continue to take a debilitating toll on our economy, our families, and our farmers. Unless this bill becomes law, consumers across the nation will continue to suffer. The White House refuses to work on righting this wrong, so Congress must provide law enforcement with the tools necessary to fight OPEC's anticompetitive practices.

This week, the average price for regular gasoline reached $2.29 per gallon. And last Friday, the Department of Energy predicted that consumers may be paying $2.50 per gallon by Labor Day. It is past time to act on several fronts. In addition to my support of the NOPEC bill, I am working to give the Commodities Futures Trading Commission new powers. The Agriculture Committee is taking up legislation this year to reauthorize the Commission, and I believe we will be successful in adding anti-fraud, anti-market-manipulation, and energy futures oversight powers to the CFTC. There have been significant swings in the energy futures market recently, and this allows for the possibility of manipulation - the CFTC should have the authority it needs. I also think the CFTC needs a stronger oversight role in over-the-counter foreign exchange and option contacts.

The artificial pricing scheme enforced by OPEC affects all of us. The hardworking farmers of Vermont exemplify this crisis: Increasing energy costs can add thousands of dollars to the costs of operating a 100-head dairy operation in the Northeast. And while that fact is hitting home, quite literally for me, these soaring prices affect American industries in every state. Moreover, summer is coming, and many families are going to find that OPEC has put an expensive crimp in their plans. Some are likely to stay home - others will pay more to drive or to fly so that they can visit their families or take their well-deserved vacations.

I repeat myself when I say this, but it grows ever more true: Americans deserve better, and it is time for Congress to act.