

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Ranking Member, Committee on the Judiciary
Executive Business Meeting
USA PATRIOT Act Reauthorization Bill Markup

Opening The PATRIOT Act
To More Sunshine And Accountability

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We are approaching the fourth anniversary of the horrific attacks of September 11, 2001. Nearly 3,000 lives were lost that morning, and our lives as Americans changed in an instant. In the aftermath of the attacks, Congress moved quickly - some have said too quickly -- to pass new antiterrorism legislation. The fires were still smoldering at Ground Zero when the USA PATRIOT Act became law on October 30, 2001, just six weeks after the attacks.

Many of us here contributed to the PATRIOT Act. We worked together in a spirit of bipartisan unity and resolve to craft a bill that we hoped would make us safer as a Nation. Freedom and security are always in tension in our society, and especially so in those somber weeks after the attacks, but we tried our best to strike the right balance.

I negotiated many of the provisions of the PATRIOT Act myself and am gratified to have been able to add several checks and balances that were not contained in the initial proposal. As I said at the time, however, this was not the final bill that I, or any of the sponsors, would have written if compromise had been unnecessary.

In the final negotiating session, former House Majority Leader Dick Armey and I insisted that we add "sunset" provisions for certain domestic surveillance powers that have some of the greatest potential to affect the civil liberties of the American people. These sunset provisions had positive results. The sunsets are the reason why this Committee and others have been re-examining the PATRIOT Act and considering modifications, with the experience of the past few years to guide us. They have prompted a healthy and constructive national dialogue about the proper limits of governmental power. And the sunsets explain why we were finally able to pry some information out of the Department of Justice, after many years of stonewalling.

Legitimate concerns and questions have been raised about various powers granted by the PATRIOT Act, not so much for how they have been used, but for how they could be used, and for

the cloak of the secrecy under which they operate. Many of us on the Committee have been working on ways to improve the law. I worked with Chairman Specter for months on draft legislation that became the basis for S.1389. Apparently, the Department of Justice objected to some of our language. I regret that our negotiations were cut short, but I understand that the Chairman was pressed to introduce a bill last week so that we could report legislation to the full Senate before the August recess.

The bill before us proposes some modest improvements in the law, while making the PATRIOT Act largely permanent. Given the benefits of the PATRIOT Act sunset mechanism, I had urged the Chairman to extend some of the expiring provisions for another four years rather than making them permanent. I am pleased that S.1389 does this with respect to three provisions, but I believe we should maintain the sunset on other provisions as well. I am also concerned that S. 1389 would repeal a sunset provision that Congress enacted just last year and that is not due to expire until the end of 2006.

One of my principle objectives as we have drafted this reauthorization bill is to introduce more sunshine into the PATRIOT Act. The Chairman's bill retains most of the new "sunshine" provisions that I had insisted upon including in our earlier draft, for which I commend him. I am particularly pleased that portions of the Domestic Surveillance Oversight Act, which I introduced with Senators Grassley and Specter in the last Congress, survived the final cut. In addition, section 3 requires the Department of Justice to report periodically on the use of PATRIOT's roving wiretap authority; section 5 requires reporting on the use of PATRIOT's good-faith emergency exception to the Stored Communications Act; section 6 requires detailed public reporting on the use of "sneak and peak" warrant authority; section 8 requires public reporting on the use of national security orders to obtain library, medical, and other sensitive records; and section 11 requires reporting on the use of certain emergency authorities.

I regret that in the final round of negotiations, important provisions of the bill were struck. The bill as introduced made modest improvements to the FISA pen register law, allowing the court to consider the facts in support of the government's application, instead of operating as a powerless rubberstamp. A bipartisan working group that included some of PATRIOT'S staunchest defenders supported a reform. But it was apparently too much for the Department to swallow. Another modest provision requiring notice to the court when intercepted communications are shared with the intelligence community was also removed from the bill. Why, I do not know, as the Department has expressed no concerns with a parallel provision relating to grand jury information, which we passed as part of the PATRIOT Act.

On a more positive note, the final package does include some important new civil liberties protections, including a presumptive seven-day time limit on sneak and peak search warrants -- something I advocated for in the original PATRIOT Act negotiations. The substitute amendment also addresses the concerns of librarians and other Americans who felt that the PATRIOT Act made it too easy for the government to access records containing sensitive and highly personal information.

Like the PATRIOT Act itself, this is not the bill that I, or anyone here, would have written if compromise were unnecessary. Americans can feel confident that through our bipartisan efforts,

we have moved the law in the right direction. It is my hope that the bipartisanship that allowed us to reach this point will carry over to the floor and speed this bill to final passage.