

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
March 1, 2007

Opening Statement of Chairman Patrick Leahy  
Senate Judiciary Committee  
Executive Business Meeting  
March 1, 2007

With the help of the Ranking Member, we intend to hold a follow-up hearing on the firing of so many U.S. Attorneys around the country for what appears more and more to be inappropriate reasons. This Committee has reported legislation to rein in the newly created and unlimited power of the Attorney General to make interim appointments, but Republican objections to the bill and to the bill being considered as an amendment have prevented Senate action. We are inviting to appear former U.S. Attorneys who were forced out and whose ousters was explained, incorrectly we believe, as resulting from poor performance of their duties. The report yesterday of the situation in New Mexico adds to what has already been admitted about the situation in Arkansas, southern California and Nevada. We need to get to the bottom of this and to the truth.

I begin today by thanking the Members for their participation in the hearing we held yesterday on the important matter of comprehensive immigration reform. With the commitment of the President and the hard work of Secretary Gutierrez, Secretary Chertoff and the White House, we can get this done this year.

Also earlier this week, Senator Durbin chaired a hearing on the loan forgiveness legislation on which he has been working for several years. We have the opportunity to report the John R. Justice Prosecutors and Defenders Incentive Act, S.442. I hope we will do so without further delay.

Last week during the Senate recess the Judiciary Committee held a hearing on President's Day in Philadelphia on community-based solutions to delinquency. That hearing was chaired by our ranking Republican Member, the senior Senator from Pennsylvania.

Our agenda has been known for some time. It includes the important data mining reporting legislation that has been carried over twice. This is legislation modeled on what the Senate has previously adopted. It provides for reporting by the Administration of the data mining programs and projects in which it has been engaged so that Congress may evaluate them.

I hope and expect that we can consider and report the matters carried over from our prior meetings. To do so we will start with the matters that were held over from our last meeting--the data mining reporting bill, the court security bill and the loan forgiveness bill.

I will then turn to the nominations listed for the first time, including a nomination to the Court of Appeals. When approved by the Committee, these four judicial nominations will add to the 10 others already reported this year. Of course, eight lifetime judicial appointments have been confirmed by the Senate.

I have also included additional legislation and resolutions on which I hope we can act promptly. I ask for and look forward to the cooperation of our Members in getting our work done.

Now I turn to our Ranking Member, Senator Specter, for any opening comment he may have.

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Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
On Judicial Nominations  
March 1, 2007

With several more nominations for lifetime appointments to the federal bench on the Committee's agenda today, we continue today as we have since the beginning of this Congress to make significant progress.

Last month we held our first confirmation hearing of the new Congress for several of the nominations before us today. Each of these nominations, John Preston Bailey for the Northern District of West Virginia, Otis D. Wright, II for the Central District of California, and George H. Wu for the Central District of California, come to us with the support of their home state Senators. I thank Senators Byrd, Rockefeller, Feinstein, and Boxer for their work in connection with these nominations.

We held that hearing for these three district court nominations, two of which are to fill judicial emergencies, on February 6. When a Republican chaired the Committee in 1999 and there was a Democratic President, the first hearing on a judicial nominee was not held until June 16. We could have postponed our February hearing because it was at the same time as a briefing on a National Intelligence Estimate about the deteriorating situation in Iraq. As I did after 9/11, and after the Senate buildings were shut down by the anthrax letters, however, I proceeded with the hearing.

I mention this because some on the other side of the aisle have tried to raise a scare since I, again, became Chairman of the Judiciary Committee. They rant as if the sky is falling and as if we would not proceed on any judicial nominations. On the contrary, we have proceeded promptly and efficiently.

This session of Congress, the Senate has already confirmed eight judicial nominations, including the nomination of Norman Randy Smith to the Court of Appeals for the Ninth Circuit. With Judge Smith's confirmation last month, we confirmed a nomination to one of the Nation's important circuit courts little more than a month after the Republicans agreed to a resolution allowing the Senate to organize. That is more than the total of President Clinton's nominations to

circuit court vacancies confirmed by the Republican-controlled Senate during the entire 1996 session.

The Committee has also reported two more district court nominations and two Sentencing Commission nominations, which are pending on the Senate's Executive Calendar. I have worked cooperatively with Members from both sides of the aisle on our Committee and in the Senate to move quickly to consider and report these judicial nominations so that we can fill vacancies and improve the administration of justice in our nation's federal courts.

I wish that the President were as diligent in trying to fill judicial vacancies with consensus nominees. I have long urged him to do so. We have heard for years that the Democrats are holding up judicial nominations even while the other side has chosen instead to pick political fights. The Administrative Office of the U.S. Courts lists 51 judicial vacancies, yet the President has sent us only 23 nominations for these vacancies. Twenty eight of these vacancies--more than half--have no nominee. Even more troubling, of the 24 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 17 of them. That means two-thirds of the judicial emergency vacancies are without a nominee.

I have urged the President to nominate men and women to the federal bench who reflect the diversity of America. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, is a reality and that justice is rendered fairly and impartially. Judicial decisions should reflect insight and experiences as varied as America's citizenry. A more representative judiciary helps ensure public confidence in the judiciary which strengthens the independence of our federal courts.

There is still much work to be done. In six years, President Bush has nominated only 18 African-American judges to the federal bench, compared to 53 African-American judges appointed by President Clinton in his first six years in office. He has yet to appoint an African-American judge from Mississippi even though that state has the highest percentage of African-American residents of any state.

And out of the 875 seats on the federal judiciary, there are only five active Asian-Pacific American judges on the federal bench, less than 1 percent of all federal judges. President Bush has nominated only two Asian-Pacific American candidates.

Our nation has highly qualified individuals of diverse heritages who would unify our nation while adding to the diversity of our courts. I hope the President will send us more consensus nominees that reflect the rich diversity of our nation.

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Statement of Senator Patrick Leahy,  
Chairman, Senate Judiciary Committee  
On S. 378, Court Security Improvement Act of 2007  
Executive Business Meeting  
March 1, 2007

One bill on our agenda today, the Court Security Improvement Act of 2007, is legislation that should have been enacted after it passed the Senate last year. This is a bipartisan measure I introduced along with Senator Specter, the Majority Leader, Senator Durbin and other Members of this Committee. House Judiciary Chairman Conyers introduced an identical measure in the House also with bipartisan support. We hoped to send a signal with our bicameral, bipartisan introduction that we intended to move quickly finally to complete action on our work and increase legal protections for the Judiciary and their families. Despite our remarkable hearing with Supreme Court Justice Anthony Kennedy two weeks ago, this bill was held over before the recess. The Committee should complete our work and pass out this bill without delay.

Justice Kennedy's testimony regarding issues of judicial security and independence was a welcome reminder of the need to provide resources and protections crucial to the preservation of the independence of our federal Judiciary so that it can continue to serve as a bulwark protecting individual rights and liberty.

We received another much more terrible reminder two years ago when the mother and husband of Judge Joan Lefkow of Chicago were murdered in their home. Our efforts gained increased urgency after this tragedy. Judge Lefkow's courageous testimony in our hearing on judicial security in May 2005 is something none of us will forget. Regrettably, these reminders come all too often, as with the shooting last summer of a State judge in Nevada provided another terrible reminder of the vulnerable position of our Nation's state and federal judges. We cannot tolerate or excuse violence against judges, and no one should seek to minimize its corrosive damage to our system. That is why we should rise to the occasion without further delay or distraction and not only report, but pass and enact the Court Security Improvement Act.

As we discussed in our hearing, the independent Judiciary faces many and varied types of threats. I take all of these threats seriously, but none more than threats to judges' physical security, institutional security and independence by rhetorical attack by some affiliated with the political branches.

The kind of heated rhetoric we have seen lately to describe judges is not just misguided, it is irresponsible and dangerous. In the last few years, even as judges have come under physical attack, we have seen federal judges compared to the Ku Klux Klan, called "the focus of evil," and in one unbelievable instance referred to as a threat "more serious than a few bearded terrorists who fly into buildings." A prominent television evangelist even proclaimed the federal judiciary "the worst threat American has faced in 400 years - worse than Nazi Germany, Japan and the Civil War." Perhaps most regrettably, we have seen some in Congress threaten the mass impeachments of judges with whom they disagree and even suggest that violence against judges has been brought on by their own rulings.

Justice Sandra Day O'Connor has spoken out in recent years about the danger of this rhetoric. Like Justice O'Connor, Justice Kennedy urged us to find a more civil discourse about judges and their decisions. This high-pitched rhetoric should stop, not just for the sake of our judges, but also for the independence of the Judiciary. Judicial fairness and independence are essential if we are to maintain our freedoms. During the last few years it has been the courts that have acted to protect our liberties and our Constitution. We ought to be protecting them, physically and institutionally.

We can take a significant step by reporting the Court Security Improvement Act today. This bill responds to the needs expressed by the federal Judiciary for a greater voice in working with the United States Marshals Service to determine their security needs. It would enact new criminal penalties for the protections of judges, their families, and others performing official duties, expand resources available to state courts for their security, and provide additional protections for law enforcement officers. Included are provisions that have passed the Senate several times extending and expanding to family members the authority of the Judicial Conference to redact certain information from a federal judge's mandatory financial disclosure. This expired redaction authority was used in circumstances in which the release of the information could endanger the filer or the filer's family.

Our Nation's founders knew that without an independent Judiciary to protect individual rights from the political branches of government, those rights and privileges would not be preserved. The courts are the ultimate check and balance in our system of government in times of heated political rhetoric. We need to do our part to ensure that the dedicated women and men of our judiciary have the resources, security, and independence necessary to fulfill their crucial responsibilities. Our independent Judiciary is the envy of the world, and we must take care to protect it.

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Statement of Chairman Patrick Leahy

On S. 442, John R. Justice Prosecutors and Defenders Incentive Act of 2007

Senate Judiciary Committee

Executive Business Meeting

March 1, 2007

I am proud to join Senator Durbin and Senator Specter as a cosponsor of S. 442, the John R. Justice Prosecutors and Defenders Incentive Act of 2007.

As a former prosecutor, I know firsthand the importance of the work that prosecutors and public defenders do every day. I also recognize the financial sacrifices made by the men and women who do these jobs - particularly given the extraordinary loans with which many lawyers graduate from law school.

It is crucial that we continue to have competent, experienced lawyers serving as prosecutors and public defenders. Unfortunately, more and more of these offices around the country are having trouble recruiting and retaining the high caliber lawyers they need to keep the criminal justice system working properly.

This bill would help to make sure that lawyers can work as prosecutors and defenders. It would provide student loan repayment for attorneys who agree to remain employed for at least three years as state or local prosecutors, or as state, local, or federal public defenders.

This bill is strongly supported by the National District Attorneys Association, the National Legal Aid and Defender Association, and the American Bar Association, among others, and the Judiciary Committee has passed a similar provision in the past.

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