

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 4, 2007

Opening Statement of Chairman Patrick Leahy
Senate Judiciary Committee
Executive Business Meeting
October 4, 2007

Providing a new direction and new leadership at the Department of Justice are important to me and to all of us, and to the country. We need to restore the Department of Justice to be worthy of its name and tradition. As Senator Whitehouse put it during our hearing earlier this week with Jack Goldsmith, the "time-honored practices and traditions" that had long guided the Department of Justice and protected it from political influence need to be restored.

Regrettably the White House has chosen not to clear the decks of ongoing concerns and not to produce the information and material they should have and could have about the ongoing scandals that have shaken the Department and led to the exodus of its former leadership. Those matters now encumber the Mukasey nomination and, as he knows, he will be asked about them. Fundamentally, as Senator Sessions, a former U.S. Attorney, also indicated this week, we need to ensure the independence of federal law enforcement from political pressure. Among the next attorney general's challenges will be to restore morale at the Department and the public's trust in the Department.

This morning The New York Times reports that the Department of Justice secretly endorsed combinations of the harshest interrogation tactics as legal -- after telling us and the world that torture is abhorrent. After leading us and the American people to believe that they had withdrawn the infamous Bybee memo, it appears that under Attorney General Gonzales they reversed themselves and reinstated a secret regime by, in essence, reinterpreting the law in secret. We on this Committee have been seeking that information without cooperation from the Administration for two years. I suspect that former Deputy Attorney General Comey will again prove to be right in his prediction that the Department of Justice will be "ashamed" when we learn more about all that they have done.

I look forward to meeting with former Judge Mukasey on October 16, if that date is convenient to him. I anticipate that following our meeting the Committee will commence the confirmation hearing on his nomination to be Attorney General of the United States. That could begin as soon as Wednesday, October 17. Before finalizing the date, I want to consult with Senator Specter, and I also want to see whether there are objections from other Senators on this Committee. I apologize to the hardworking Senators and their staffs who serve this Committee that this tentative schedule will necessitate their working intensely through another recess period of the Senate in order to be prepared to proceed our first week back in session.

Now to the matters at hand this morning: We need to complete our consideration of the Free Flow of Information Act. I hope that we will not be delayed and can also consider and report the bill that I have cosponsored with Senator Cornyn clarifying the scope of copyright protection for vessel hull designs. We have a bipartisan resolution establishing a day of remembrance for murder victims and a resolution recognizing hunters' commitment to safety. There are two U.S. Attorney nominations and another lifetime judicial nomination that we are also seeking to expedite today. I had hoped to have the nomination of Julie Myers of Homeland Security and Michael Sullivan of ATF on the agenda today but have been asked to list them at our next meeting in order to allow Senators to send written questions to these nominees.

Senator Specter, do you have an opening statement?

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Statement of Chairman Patrick Leahy
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Today, the Committee returns to complete its consideration of the bipartisan bill to establish a statutory privilege to safeguard the freedom of the press. I first gave notice that we would be considering the Free Flow of Information Act back on September 12. We were finally able to begin marking up that measure last Thursday. We did make some progress last week adopting amendments offered by Senator Specter, Senator Feinstein, Senator Brownback and Senator Kyl. I hope and trust that we can complete our consideration today and move forward on this important matter.

As I noted last week, we now have Senator Specter, Senator Schumer, Senator Lugar, Senator Dodd, Senator Graham and me all uniting to cosponsor a version of the Free Flow of Information Act that is fair, that is balanced and that is bipartisan. It would create as a matter of federal law a qualified privilege for journalists to protect the identity of their confidential sources, with certain exceptions. In so doing, we would be following the lead of 33 States and the District of Columbia, which have shield laws that protect journalists from disclosing their confidential sources, and many other States, including Vermont, which recognize a common law reporters' privilege.

Sadly, the press has become the first stop, rather than the stop of last resort, for our government and private litigants when it comes to seeking information. And, this trend can have a chilling effect on the press and the public's right to know.

When he testified before this Committee in favor of a federal shield law in 2005, William Safire told us that the essence of newsgathering is this: if you don't have sources you trust and who trust you, then you don't have a solid story - and the public suffers for it.

Bill Safire is exactly right. We simply have no idea how many newsworthy stories have gone unwritten and unreported out of fear that a reporter would be forced to reveal a source, or face jail time. We also do not know how many potential whistleblowers, or other confidential sources, have chosen to remain silent, out of fear that a journalist could be compelled to disclose their identity. Just recently, investigative journalism and confidential sources have helped uncover significant government failures in Iraq and in New Orleans, as well as government neglect at the Walter Reed Medical Center.

Still, as a former prosecutor, I also understand the importance of making sure that the government can effectively investigate criminal wrongdoing, combat terrorism and preserve national security. The consensus federal shield legislation before the Committee today strikes the proper balance among these important objectives. This bill addresses the legitimate need for law enforcement to obtain information from reporters to prevent a crime or a national security threat. In addition, by providing a qualified and not an absolute privilege to withhold the identity of confidential sources, the bill also advances other important law enforcement objectives, such as encouraging whistleblowers to disclose fraud, waste and abuse that might otherwise go unreported.

The belated opposition to this carefully crafted bill by the Department of Justice and Office of the Director of National Intelligence is simply misplaced. Although 49 states and several federal courts have recognized a reporters' privilege either by statute or common law for years, the Department of Justice and the ODNI have not cited a single circumstance where the privilege caused any harm to national security or to law enforcement. In fact, the legitimate concerns about the need to effectively combat crime and protect national security have been adequately addressed in the bill and by amendments to this bill offered several Senators Feinstein, Brownback and Kyl. I have received two excellent letters from the Newspaper Association of America rebutting the unfounded concerns raised by the Justice Department and the ODNI, and I will submit these letters for the record. I have also received a letter of support for this bill from the Vermont and New England Press Associations which I will also submit for the record.

The Free Flow of Information Act is strongly supported by more than 50 news media and journalism organizations, including the National Newspaper Association, the Coalition of Journalists for an Open Government, the Magazine

Publishers of America and the National Press Club. The call for action extends to editorial pages across the country, including the Washington Post, Arizona Republic, Salt Lake Tribune, San Francisco Chronicle and New York Times.

I believe that the consensus the Free Flow of Information Act takes important steps to ensure a free and vibrant press, so that Americans are informed about matters that affect their lives. The time for needless delay of this legislation has passed. I urge all Members to favorably report this bill today, so that it can be considered by the full Senate.

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Statement of Chairman Patrick Leahy
Committee on the Judiciary
On S. 1640, the Vessel Hull Design Protection Act Amendments of 2007
Executive Business Meeting
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Today the Committee considers S. 1640, the Vessel Hull Design Protection Act Amendments of 2007. This is a small but important piece of legislation, and I thank my cosponsors -- Senator Cornyn, Senator Kohl, and Senator Whitehouse -- for all their hard work. Last year, this bill was passed by the Judiciary Committee and by the full Senate, but unfortunately the House held it hostage to an unrelated bill at the end of the session. I don't want that to happen again this year.

In 1998, Congress passed the Vessel Hull Design Protection Act to recognize the significant time, effort, and innovation that figure into ship design. Recent courtroom experience has made it clear that in order to be effective, this law needs to be clarified and refined. Our bill does exactly this, and no more, by clarifying the definition of "hull" and "deck." This ensures that the intellectual property rights of vessel hull designers will be protected.

I look forward to this bill becoming law.

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Statement of Chairman Patrick Leahy
On U.S. Attorney Nominations
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Today, the Committee considers the nominations of Thomas P. O'Brien to be the United States Attorney for the Central District of California and Edward Meacham Yarbrough to be the United States Attorney for the Middle District of Tennessee. When we report those favorably we will have reported six U.S. Attorney nominations to the Senate. We have only one other pending before the Committee and on that one we are consulting with elected representatives from the area before deciding how best to proceed.

Even with six of the seven nominations reported, there are 23 districts around the country without Senate-confirmed and presidentially-appointed United States Attorneys. This is part of the damage done to our federal law enforcement across the country by the purge of U.S. Attorneys by the political operatives in this Administration. One-quarter of the United States Attorneys offices around the country do not have a United States Attorney. This is part of what the next Attorney General and the next Administration will have to repair.

I had hoped when the Senate voted overwhelmingly to pass S.214, the "Preserving United States Attorney Independence Act of 2007," by a vote of 97-0, it would send a clear message to the Administration to nominate Senate-confirmable U.S. Attorneys and begin to restore an important check on the partisan influence in federal law enforcement. Regrettably, the Administration has ignored that message.

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