

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
November 1, 2007

Opening Statement Of Chairman Patrick Leahy  
November 1, 2007

Yesterday, as Senators were considering the answers to their questions for Michael Mukasey, I announced a special markup for next Tuesday to consider that nomination. This is in addition to our already heavy workload of hearings, and our regular, weekly business meeting on Thursday next week. I apologize to the Members for imposing this additional burden during a very busy time for all Senators. I thank all Members for their cooperation.

My hope is that by scheduling the consideration for next Tuesday, Senators will have an opportunity to consider the recently received written responses from the nominee and will be prepared to debate the nomination and vote. The White House called after I announced the markup to thank the Committee for scheduling the matter as we did.

We had an important hearing yesterday and have limited time to focus on proposals to amend the Foreign Intelligence Surveillance Act (FISA) during the next several days. I commend the Senators who participated yesterday in what was a good hearing, and especially thank Senator Feinstein for sharing the responsibility for chairing. It is my hope that working together, we can be prepared to turn our attention to that matter next Thursday.

To do all this, we need to make progress on the agenda we have before us this week. We have other important executive nominations, a circuit court nomination, corruption legislation, cybercrime legislation, human rights legislation, and courts legislation, which Senators have been working on in a bipartisan way for a long time, on today's agenda. It is a full agenda. I hope we can make progress on it and clear the decks so that next week we can turn to the Mukasey nomination and the FISA legislation.

This morning the Committee has another opportunity to consider the bipartisan "Public Corruption Prosecution Improvements Act of 2007." Senator Cornyn and I introduced this bill to strengthen and clarify key aspects of federal criminal law and provide new tools to help law enforcement combat public corruption nationwide. I thank Senator Sessions for working with us and cosponsoring this legislation. I include in the record the letter of support from the Department of Justice and a letter of support from a number of public interest organizations including the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen, and U.S. PIRG.

We have circulated a substitute that incorporates some formatting changes suggested by the Department of Justice and a clarification inspired by Senator Specter - to make clear that accepting a token item like a baseball cap in compliance with Senate Rules is not a criminal violation. I also double checked to be sure that nothing in this bill makes campaign contributions into gratuities.

Congress took an important step in restoring Americans' faith in their elected officials earlier this year by passing long-awaited ethics and lobbying reforms. But rooting out the kinds of rampant public corruption we have seen in recent years requires us to go further, and to give law enforcement the resources it needs to effectively investigate and prosecute public corruption crimes. Congress must send a strong signal that it will not tolerate corruption and provide better tools for federal investigators and prosecutors to combat it. Our bill will do exactly that.

It gives investigators and prosecutors more time and resources to effectively enforce existing anti-corruption laws.

The bill extends the statute of limitations for the most serious public corruption offenses.

It would also provide significant and much-needed additional funding for public corruption enforcement.

The bill goes further by amending several key statutes to broaden their application in corruption and fraud contexts. This series of fixes will prevent corrupt public officials and their accomplices from evading or defeating prosecution. And it raises the statutory maximum penalties for several statutes dealing with official misconduct, including theft of government property and bribery.

If we are serious about addressing the kinds of egregious misconduct that we have recently witnessed in high-profile public corruption cases, Congress must enact meaningful legislation to give investigators and prosecutors the tools and resources they need to enforce our laws. I hope all Members will join Senator Cornyn, Senator Sessions, and me in supporting this bill so that the Committee can promptly report it to the Senate.

We also have an important cybercrime bill on the agenda that is sponsored by Senators Specter, Durbin, Grassley, Biden, Hatch, Schumer and me. This bill also has the endorsement of the Department of Justice. We have an amendment that has been circulated and has bipartisan support. I hope we can report that bill today.

I understand that there will be a request to hold over the Grassley-Schumer Sunshine in the Courtroom Act and a request to hold over the Durbin- Coburn- Feingold-Brownback bill to try to work something out with Senator Kyl. That bill grows out of a hearing Senator Durbin held earlier this year in the Human Rights Subcommittee. It would make forcing children to serve in a military role a crime and creates extraterritorial jurisdiction to combat it.

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Statement of Senator Patrick Leahy  
On Committee Consideration of the Public Corruption Prosecution  
Improvements Act of 2007  
November 1, 2007

Today, the Committee will consider the bi-partisan "Public Corruption Prosecution Improvements Act of 2007," a bill that Senator Cornyn and I introduced to strengthen and clarify key aspects of federal criminal law and provide new tools to help law enforcement attack public corruption nationwide. I thank Senator Sessions for working with us and joining as a co-sponsor.

Congress took an important step in restoring Americans' faith in their elected officials earlier this year by passing long-awaited ethics and lobbying reforms that will tighten restrictions on those of us who hold public office, as well as those who seek to lobby us on behalf of private industry. But rooting out the kinds of rampant public corruption we have seen in recent years requires us to go further and to give law enforcement the resources it needs to effectively investigate and prosecute public corruption crimes.

The most serious corruption cannot be prevented only by changing our own rules. Bribery and extortion, in all branches and at all levels of government, are committed by people bent on getting around the rules and banking that they will not get caught. These offenses are very difficult to detect and even harder to prove. Because they attack the core of our democracy, these offenses must be found out and punished. Congress must send a strong signal that it will not tolerate this corruption by providing better tools for federal investigators and prosecutors to combat it. This bill will do exactly that.

The bill gives investigators and prosecutors more time and resources to effectively enforce existing anti-corruption laws. The bill extends the statute of limitations from five to six years for the most serious public corruption offenses. Public corruption cases are among the most difficult and time-consuming cases to investigate and prosecute. Bank fraud, arson and passport fraud, among other offenses, all have ten-year statutes of limitations. Public corruption offenses cut to the heart of our democracy, and a more modest increase to the statute of limitations is a reasonable step to help our corruption investigators and prosecutors do their jobs.

The bill would also provide significant and much-needed additional funding for public corruption enforcement. Since 9/11, FBI resources have been shifted away from the pursuit of white collar crime to counterterrorism. FBI Director Mueller has said recently that public corruption is now among the FBI's top investigative priorities, but a September 2005 report by Department of Justice Inspector General found that, from 2000 to 2004, there was an overall reduction in public corruption matters handled by the FBI. More recently, a study by the research group Transactional Records Access Clearinghouse found that the prosecution of all kinds of white collar crimes is down 27 percent since 2000, and official corruption cases have dropped in the same period by 14 percent. The Wall Street Journal reported recently that the investigation of a federal elected official stalled for six months because the investigating U.S. Attorney's Office could not afford to replace the prosecutor who had previously handled the case.

We must reverse this trend and make sure that law enforcement has the tools and the funding it needs to address serious and corrosive crimes occurring right here at home. Efforts to combat terrorism and official corruption are not mutually-exclusive. A bribed customs official who allows a terrorist to smuggle a dirty bomb into our country, or a corrupt consular officer who illegally supplies U.S. entry visas to would-be terrorists, can cause grave harm to our national security.

This bill goes further by amending several key statutes to broaden their application in corruption and fraud contexts. This series of fixes will prevent corrupt public officials and their accomplices from evading or defeating prosecution based on existing legal ambiguities. For example, the bill includes a fix to the gratuities statute that makes clear that public officials may not accept anything of value, other than what is permitted by existing regulations, given to them because of their official position. Senator Cornyn and I have introduced a substitute amendment today which makes explicitly clear that anything permitted by House and Senate rules, including a small gift like a baseball cap, or a bona fide campaign contribution, is not covered by this statute.

The bill also appropriately expands the definition of what it means for a public official to perform an "official act" for the purposes of the bribery statute and closes several other gaps in current law.

Finally, the bill raises the statutory maximum penalties for several statutes dealing with official misconduct, including theft of government property and bribery. These increases reflect the serious and corrosive nature of these crimes, and would harmonize the punishment for these crimes with other similar statutes.

This bi-partisan bill is supported by the Department of Justice and by a wide array of public interest groups that have long advocated for vigorous enforcement of our fraud and public corruption laws, including the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen, and U.S. PIRG.

If we are serious about addressing the kinds of egregious misconduct that we have recently witnessed in high-profile public corruption cases, Congress must enact meaningful legislation to give investigators and prosecutors the tools and resources they need to enforce our laws. Passing the ethics and lobbying reform bill was a step in the right direction. But we must finish the job by strengthening the criminal law to enable federal investigators and prosecutors to bring those who undermine the public trust to justice. I hope the Committee will join Senator Cornyn and me in promptly reporting this bill to the full Senate.

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Statement of Senator Patrick Leahy,  
Chairman, Committee on the Judiciary,  
On Consideration Of  
The Identity Theft Enforcement and Restitution Act of 2007  
November 1, 2007

Today, the Committee will consider the Leahy-Specter Identity Theft Enforcement and Restitution Act of 2007. This bipartisan cyber crime bill will provide new tools to federal prosecutors to combat identity theft and other computer crimes.

I am pleased that Senator Specter, who has been a valuable partner in combating the growing problem of identity theft for many years, has joined me in introducing this important criminal bill. I also thank Senators Durbin, Grassley and Schumer for joining with us as cosponsors of this legislation.

I also commend and thank Senators Biden and Hatch for their important work in this area. I am pleased that several provisions that they have drafted to further strengthen this cyber crime legislation will be included in the bipartisan managers' amendment for this bill, and that they will also cosponsor this legislation.

Senator Specter and I have worked closely with the Department of Justice in crafting this criminal legislation and the Leahy-Specter Identity Theft Enforcement and Restitution Act has the strong support of the Department of Justice, the Secret Service and the federal prosecutors and investigators who are on the front lines in the battle against identity theft and other cyber crimes. The bill is also supported by a broad coalition of business, high tech and consumer groups, including Microsoft, Consumers Union, the Cyber Security Industry Alliance and AARP. I will also submit several support letters that I have received about this bill for the record.

The Identity Theft Enforcement and Restitution Act takes several important and long overdue steps to protect Americans from the growing and evolving threat of identity theft and other cyber crimes. First, to better protect American consumers, our bill provides the victims of identity theft with the ability to seek restitution in federal court for the loss of time and money spent restoring their credit and remedying the harms of identity theft, so that identity theft victims can be made whole.

Second, because identity theft schemes are much more sophisticated and cunning in today's digital era, our bill also expands the scope of the federal identity theft statutes so that the law keeps up with the ingenuity of today's identity thieves. Our bill adds three new crimes - passing counterfeit securities, mail theft, and tax fraud - to the list of predicate offenses for aggravated identity theft. And, in order to better deter this kind of criminal activity, our bill also significantly increases the criminal penalties for these crimes. To address the increasing number of computer hacking crimes that involve computers located within the same State, our bill also eliminates the jurisdictional requirement that a computer's information must be stolen through an interstate or foreign communication in order to federally prosecute this crime.

Our bill also addresses the growing problem of the malicious use of spyware to steal sensitive personal information, by eliminating the requirement that the loss resulting from the damage to a victim's computer must exceed \$5,000 in order to federally prosecute this offense. The bill -- as amended by the managers' package - also carefully balances this necessary change with the legitimate need to protect innocent actors from frivolous prosecutions, and clarifies that the elimination of the \$5,000 threshold applies only to criminal cases. In addition, our bill addresses the increasing number of cyber attacks on multiple computers, by making it a felony to employ spyware or keyloggers to damage ten or more computers, regardless of the aggregate amount of damage caused. By making this crime a felony, the bill ensures that the most egregious identity thieves will not escape with minimal punishment under federal cyber crime laws.

Lastly, our bill strengthens the protections for American businesses, which are more and more becoming the focus of identity thieves by adding two new causes of action under the cyber extortion statute -- threatening to obtain or release information from a protected computer and demanding money in relation to a protected computer -- so that this bad conduct can be federally prosecuted. In addition, because a business as well as an individual can be a prime target for identity theft, our bill closes several gaps in the federal identity theft and the aggravated identity theft statutes to ensure that identity thieves who target a small business or a corporation can be prosecuted under these laws. The managers' amendment for this bill also adds the remedy of civil and criminal forfeiture to the arsenal of tools to combat cyber crime. It also directs the United States Sentencing Commission to review its guidelines for identity theft and cyber crime offenses to reflect Congressional intent to better deter and combat these crimes.

The Identity Theft Enforcement and Restitution Act is a good, bipartisan measure to help combat the growing threat of identity theft and other cyber crimes to all Americans. This carefully balanced bill protects the privacy rights of American consumers, the interests of and business and the legitimate needs of law enforcement. Again, I thank the bipartisan coalition of Senators who have joined Senator Specter and me in supporting this important legislation, as

well as the many consumer and business groups that support this bill. I urge all Members of the Committee to join with us in supporting this important privacy legislation.

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Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
On Judicial and Executive Nominations  
Executive Business Meeting  
November 1, 2007

Today, our agenda includes the nomination of John Daniel Tinder for a lifetime appointment to the Court of Appeals for the Seventh Circuit. I acknowledge the support of Senators Lugar and Bayh, and want to thank Senator Durbin for chairing the hearing on this nomination.

His will be the sixth circuit court nomination the Committee is considering this year. If he is favorably reported and then confirmed by the Senate, we will have matched the total number of circuit court nominees confirmed for 2001. We will also have exceeded the totals achieved in all of 2004 when a Republican-led Senate was considering this President's circuit nominees; all of 1989; all of 1983, when a Republican-led Senate was considering President Reagan's nominees; all of 1993 when a Democratic-led Senate was considering President Clinton's nominees; and, of course, the entire 1996 session during which a Republican-led Senate did not confirm a single one of President Clinton's circuit nominees.

I have also included on today's agenda the nomination of Julie L. Myers to be an Assistant Secretary of Homeland Security. This Committee held a hearing on her nomination last year. No Senator requested another hearing and all Senators have been given the opportunity to follow up with further written questions and meetings. This is a nomination on which we share jurisdiction with the Homeland Security and Government Affairs Committee.

Our agenda also includes the nomination of Michael J. Sullivan to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. The Committee held a hearing on his nomination last month, and I thank Senator Kennedy for chairing that hearing.

Just last week, Senator Whitehouse chaired a confirmation hearing for another senior executive branch nominee, the nomination of Ronald Jay Tenpas to be Assistant Attorney General in the Environment and Natural Resources Division at the Department. This is a very important part of the Justice Department and I thank Senator Whitehouse for his leadership in connection with environmental protection.

With the important work that lies ahead for this Committee, I have asked Senators who are members of the Judiciary Committee to attend a special markup next Tuesday to consider the nomination of Michael Mukasey to be Attorney General of the United States. Of course, we still await nominations for the Deputy Attorney General, the Associate Attorney General, a number of Assistant Attorney General positions and, importantly, 21 U.S. Attorney positions around the country -- over one-fifth of all U.S. Attorney positions.

The same is true of many judicial vacancies. Twenty-five of them - more than half - have no nominee. Of the 15 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, more than half. Of the 14 circuit court vacancies, six - nearly half - are without a nominee. If the President were to work with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could make even more progress.

We have helped cut the circuit vacancies from a high water mark of 32 in the early days of this Administration, to as low as 13 this year. Contrast that with the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees that resulted in increasing circuit vacancies during the Clinton years, from 17 when he was inaugurated to 26 when he left office. During those years, the Republican-led Senate engaged in strenuous and successful efforts under the radar to keep circuit judgeships vacant in anticipation of a Republican President. More

than 60 percent of current circuit court judges were appointed by Republican Presidents, with the current President having appointed more than 30 percent of the active circuit judges already.

I would rather see us work together in the selection of nominees so that we can confirm judges rather than fight about them.

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Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
On the Nomination of Julie L. Myers  
Executive Business Meeting  
November 1, 2007

I hope we can report Julie Myers' nomination to the full Senate. Her nomination was held over last week, and the Committee has retained jurisdiction until November 2. But before the Committee acts on the nomination, I will take a moment to express my hopefulness that if Ms. Myers' is confirmed, she will work hard to address some serious concerns that I have about Immigration and Customs Enforcement's (ICE) conduct in the enforcement of immigration law.

I have been concerned about media reports and recent litigation that has highlighted the inadequate standards at detention facilities run by ICE. These facilities house both asylum seekers and children and families, along with other detainees. A settlement in August, which came about as the result of litigation on behalf of a number of children housed at the Hutto facility in Texas, has forced some positive changes. Conditions at the Texas facility were found to be below minimum standards, where children were reportedly separated from their parents as a disciplinary measure, and required services were severely lacking. I am pleased this settlement agreement was reached, and I am hopeful that Ms. Myers will make it a priority to work toward ensuring that those in ICE's custody are treated with dignity and respect so that future litigation can be avoided. I am also hopeful that Ms. Myers will look for alternatives to incarceration for families and children who the Department of Homeland Security determines warrant detention. The incarceration of children is something that should be avoided if at all possible.

I am also concerned about reports of detainees dying in custody from lack of adequate medical care. The New York Times reported on June 26, 2007 that since 2004, 62 people in ICE's custody had died, some as the result of inadequate medical care. It is hard to imagine why any person in the custody of the United States should die for lack of medical services or as the result of any other preventable situation. With growing rates of detention as a result of the Administration's stepped up immigration enforcement, these issues will persist. I hope Ms. Myers will devote appropriate energy and resources to ensuring that all those in custody are treated consistent with American values. The treatment of asylum seekers and others in United States custody sends a powerful message to the world, and I urge Ms. Myers to make sure that message is a positive one.

Just last month, the Committee on Homeland Security and Governmental Affairs approved this nomination. I expect that we will approve Ms. Myers' nomination today. I look forward to continuing to work with her and her agency, and helping to improve their enforcement and detention operations to ensure that the United States Government honors its humanitarian responsibilities.

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