

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 11, 2008

Statement Of Senator Patrick Leahy (D-Vt.),

Chairman, Senate Judiciary Committee,

Executive Business Meeting

September 11, 2008

Today we mark the seventh anniversary of the September 11 attacks. For all of us, this day brings back somber memories. We remember those we lost and those whose heroism inspired us. When I think back to that day, I think of the Vermont National Guard patrolling the skies over New York, and of neighbors helping neighbors. I think of the police, firefighters, and emergency personnel who rushed into the burning towers in New York, who rushed to help at the Pentagon, and the brave passengers on United Flight 93 and the other hijacked planes. I will never forget how America came together and how the world stood with us in the wake of those terrible attacks.

I am reminded of what Americans can accomplish when we work together.

I hope the Committee can move forward today with a number of the items on our agenda. The bills that we consider today have been held over from our last business meeting, held just before the August recess. The bipartisan Fairness in Nursing Home Arbitration Act, the Fugitive Information Networked Database Act, the bipartisan Methamphetamine Production and Prevention Act, and the National Guard and Reservists Debt Relief Act have been on the Committee's agenda since July 17. I hope the Committee will report these bills today.

We also have the Enforcement of Intellectual Property Rights Act, which Senator Specter and I introduced with Senators Feinstein, Cornyn, Bayh and Voinovich in July. A number of organizations, including the Chamber of Commerce, the National Association of Manufacturers, the Coalition Against Counterfeiting and Piracy, and the International Trademark Association, have expressed their support of this legislation. I hope we can consider it without delay.

We also have the long-delayed bipartisan bill to extend the authority of the Supreme Court police. Only a Republican objection prevented the Senate from quickly passing this bill after it was introduced by Senator Specter and myself at the request of Chief Justice Roberts.

Also on our agenda is the bipartisan Equal Justice for United States Military Personnel Act, a bill from the House to authorize the Ronald Regan Centennial Commission, and a bipartisan bill to penalize those who assist persons entering the United States who have engaged in genocide or torture. Several members of this Committee are cosponsors of that bill.

I have added to today's agenda a nomination for a seat on the Sentencing Commission, and two nominees to fill vacancies at the Department of Justice, the nominees to be Assistant Attorneys General in the Office of Justice Programs and the National Security Division. Confirmation of these two nominees would bring the Senate even closer to completing its work in replacing the leadership of the Justice Department that was decimated last year in the wake of the scandals of the Gonzales-era.

Just a few short weeks remain in the 110th Congress. I hope we can work together to complete these matters pending before the Committee. What we accomplish when we work together benefits all Americans.

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Statement Of Senator Patrick Leahy (D-Vt.),

Chairman, Senate Judiciary Committee,

On S. 3325, The Intellectual Property Rights Enforcement Act

Executive Business Meeting

September 11, 2008

We turn to S. 3325, the Intellectual Property Rights Enforcement Act. We all know that IP makes up some of the most valuable, and most vulnerable, property we have. We need to do more to protect it from theft and abuse if we hope to continue being a world leader in innovation, and if we want to remain the wealthiest country on the planet. We must also confront the fact that IP theft is a significant source of funding for organized crime.

As always, the other sponsors of this bill - Senators Specter, Cornyn, Feinstein, Cardin, Whitehouse, Bayh, and Voinovich - have worked hard with me to refine it. In the last few weeks, we have heard from a broad variety of interests, and our staff has benefitted from intensive conversations with the Justice Department and the White House. The managers' amendment that Senator Specter and I circulated embodies a number of those changes, and I pause to note just one of them: we heard very recently a concern about the privacy interests of innocent third parties if, for example, law enforcement were to seize computer servers. To make doubly sure that such interests are protected, we have added mandatory, court-issued protective orders under any circumstances involving records to the protections already employed through the warrant process.

This bill has garnered enthusiastic support from hundreds of our country's businesses and creative enterprises.

Senator Grassley has two amendments, one to ensure a smooth transition from the current structure for coordinating government IP efforts ("NIPLECC") to our new structure, and one to add USDA to the agencies participating in that structure. I endorse both those amendments.

This legislation will provide the tools, resources, and structure needed for law enforcement at all levels to protect our intellectual property and to prosecute those who steal it, and I hope the Committee will report this bill without delay.

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STATEMENT OF CHAIRMAN PATRICK LEAHY

ON EXECUTIVE NOMINATIONS

EXECUTIVE BUSINESS MEETING

SEPTEMBER 11, 2008

Today, we have on our agenda three of President Bush's nominations for high level positions in the executive branch, J. Patrick Rowan to be the Assistant Attorney General in charge of the National Security Division at the Department of Justice, Jeffrey Leigh Sedgwick, nominated to run the Department's Office of Justice Programs, and William B. Carr, Jr., nominated to be a member of the United States Sentencing Commission.

Earlier this week, we continued with the extensive time and attention we have devoted to rebuilding the Department of Justice by holding a hearing for yet another high-level executive nomination, Greg Garre, nominated by President Bush to be Solicitor General of the United States. This is the ninth hearing we have held to restock and restore the leadership of the Department of Justice in the last year alone.

When the President and Senate Republicans play to right-wing special interests with constant complaints about judicial nominations, they ignore the progress we continue to make even after the August recess during a Presidential election year. In fact, we did not receive Mr. Rowan's nomination until June 19, nearly a month later in the year than the latest of President Clinton's Justice Department nominees to be confirmed.

We have already confirmed 35 executive nominations so far this Congress, including the confirmations of 12 U.S. Attorneys, seven U.S. Marshals, and a new Attorney General, Deputy Attorney General, and Associate Attorney General.

Of course, the election-year gambits and grumblings on judicial nominations from the other side of the aisle ignore the fact that we have already confirmed as many of President Bush's judicial nominees -158 - during the slightly more than three years I have served as the Chairman of the Judiciary Committee than during the almost four and one-half years of Republican control. And we are poised to exceed that total if there is cooperation from the other side of the aisle, having held a hearing earlier this week for five more nominations for lifetime appointments to the Federal bench.

I have always said that we would treat this President's nominees more fairly than Republicans treated President Clinton's. And we have. Indeed, we have matched the confirmation record that Republicans achieved for a President from their own party. We have not pocket filibustered more than 60 of this President's nominees. We are not going to return 17 circuit court nominees without action to this President as the Republican-led Senate did to President Clinton. We have not doubled the judicial vacancies and forced them above 100 nationwide, nor have we doubled the number of circuit court vacancies. To the contrary, we have cut judicial vacancies by more than half, and reduced circuit court vacancies by more than two-thirds from a high point of 32, to a low of just nine throughout all 13 Federal circuits.

The 100 nominations we confirmed in only 17 months in 2001 and 2002, while working with a most uncooperative White House, reduced the vacancies by 45 percent by the end of 2002. With 40 additional confirmations last year, and another 18 this year, the Senate under Democratic leadership has now confirmed 158 lifetime appointments to the Federal bench nominated by President Bush. Nearly half of the judicial nominees the Senate has confirmed while I have chaired the Judiciary Committee have filled vacancies classified by the Administrative Office of the Courts as judicial emergencies. Eighteen of the 27 circuit court nominees confirmed while I have chaired the Committee filled judicial

emergency vacancies, including nine of the 10 circuit court nominees confirmed this Congress. This is another aspect of the problem created by Republicans that we have worked hard to improve. When President Bush took office, there were 28 judicial emergency vacancies. Those have been reduced by more than half.

In the two full years that preceded my returning as Chairman of the Judiciary Committee in 2007, with a Republican chairman and a Republican Senate majority working to confirm the judicial nominees of a Republican President, 54 nominations were confirmed. We have already reached 58 judicial confirmations for this Congress and we are poised to confirm more. Truth be told, President Bush's judicial nominees have been confirmed faster by the Democratic majority than by the previous Republican majority of the Senate.

It is ironic that the Senate's Republican minority is so focused on the number of judges, because the reduction in judicial vacancies is the one number that has improved during the Bush administration in an era of skyrocketing gas prices, unemployment, health care costs and deficits and plummeting consumer confidence and home values. In contrast to these numbers that have moved in the wrong direction, judicial vacancies have been reduced from 10 percent as we made the transition to the Bush administration to 5 percent today.

In fact, as the presidential elections in 2000 drew closer, and when the judicial vacancy rate stood at 7.2 percent, then-Judiciary Committee Chairman Orrin Hatch declared that "There is and has been no judicial vacancy crisis," and that 7.2 percent was a "rather low percentage of vacancies that shows the judiciary is not suffering from an overwhelming number of vacancies." As a result of Republican inaction, the vacancy rate continued to rise, reaching 10 percent when the Democrats took over the Senate majority in 2001.

The Democratic led Senate has reversed that course. We have cut circuit court vacancies by more than two-thirds, from a high of 32, and the judicial vacancy rate stands at just 5 percent.

The Judiciary Committee and the Senate have continued to make progress filling judicial vacancies even while having to devote extensive time and attention to rebuilding the Department of Justice. At the beginning of this Congress, the Judiciary Committee began its oversight efforts. Over the next nine months, our efforts revealed a Department of Justice gone awry. The leadership crisis came more and more into view as Senator Specter and I led a bipartisan group of concerned Senators to consider the United States Attorney firing scandal, a confrontation over the legality of the administration's warrantless wiretapping program, the untoward political influence of the White House at the Department of Justice, and the secret legal memos excusing all manner of excess and subverting the rule of law.

What our efforts exposed was a crisis of leadership that took a heavy toll on the tradition of independence that has long guided the Justice Department and provided it with safe harbor from political interference. It shook the confidence of the American people. Through bipartisan efforts among those from both sides of the aisle who care about federal law enforcement and the Department of Justice, we joined together to press for accountability. That resulted in a change in leadership at the Department, with the resignations of the Attorney General and many high-ranking Department officials.

The two reports we have received so far from the Department's Inspector General and Office of Professional Responsibility have confirmed what our oversight efforts in this Congress have uncovered about the politicization of hiring practices at the Department. These investigations confirm our findings and our fears that the same senior Department officials involved with the firing of United States Attorneys were injecting improper political motives into the process of hiring attorneys for career positions throughout the Department, from career prosecutors, to immigration judges, to young attorneys through the Department's prestigious honors program. I suspect the further reports we expect from the Inspector General will continue to shed light on the extent to which the Bush administration has allowed politics to affect - and infect - the Department's priorities, from law enforcement to the operation of the crucial Civil Rights Division.

As we mark the seventh anniversary of the September 11 attacks, this day brings back not only somber memories, but also memories of what we can accomplish when we stand together, as we did that day. I hope that as we consider Mr. Rowan's nomination, which we have worked hard to expedite, we can work together to try to return to the right track and ensure that the rule of law is restored as the guiding light for the work of the Department. Mr. Rowan, who currently serves as acting head of the National Security Division, has an opportunity now and if confirmed to play a significant role in that restoration.

Mr. Sedgwick will also have an important role to play in the few months remaining in this administration. The Office of Justice Programs, which he has been nominated to run, plays a vital role in developing the nation's capacity to prevent and control crime, largely by compensation, and victims' assistance. For the first time in administering grant programs in such areas as drug control, juvenile justice, victims' years, crime - including violent crime -- has been on the rise, particularly in rural areas and smaller cities. Many of us think it is in part the consequence of this Administration's failure to provide financial assistance to our state and local law enforcement partners. Despite our repeated warnings, the Bush administration has systematically tried to dismantle Federal support for local and state law enforcement through our successful Community-Oriented Policing Services (COPS) program, Byrne grants and others. Indeed, under President Bush, billions have been cut from our state and local law enforcement efforts while we continue writing blank checks for law enforcement efforts in Iraq. I look forward to hearing from Mr. Sedgwick what he will do to reverse this trend and what he proposes for preventing crime in the rural areas and smaller cities where it has been on the rise.

The nonpartisan nature of the Sentencing Commission is preserved by making sure its membership is balanced and includes experienced Commissioners who stick to the merits and command the respect of both Congress and the Judiciary. I am glad that we finally have the President's nomination of Mr. Carr, the recommendation of the Ranking Republican Member of the Judiciary Committee. I look forward to working with him on the Sentencing Commission in the years to come.

It is vital that we ensure that we have a functioning, independent Justice Department, and that this sad era in the history of the Department is not repeated. We have seen what happens when the rule of law is subverted in favor of a President's agenda and the partisan desires of political operatives. It is a disaster for the American people. Both the President and the nation are best served by a Justice Department that provides sound advice and takes responsible action, without regard for political considerations -- not one that develops legalistic loopholes and ideological litmus tests to serve the ends of a particular administration.

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