

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Opening Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Committee On The Judiciary,

Executive Business Meeting

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We continue to have a full agenda that includes many matters that have been before the Committee for several weeks. Today, we can report three of the President's U.S. Attorney nominees for Vermont, Alabama and New York. These nominees are well known to those of us on the Committee. Two are former staff members of the Committee, and all three served as Assistant United States Attorneys.

Last week I added the bipartisan measure on judicial survivors, which was held over. It is supported by the Judicial Conference, and will allow judges an opportunity to opt into the Judicial Survivors' Annuities System and increase their contributions to enhance their survivors' benefits. Today I believe we are ready to proceed without further delay on that measure.

In addition, we have the Preserve Access to Generic Medicines Act, S.369, on the agenda. I commend Senator Kohl for his leadership and am working with him to make sure the legislation separates settlements that get generics to the market faster from those that artificially delay competition. We all share an interest in working out the details and finding the balance right.

We had a good exchange yesterday with Attorney General Holder on both state secrets and media shield legislation. I continue to want to make progress on those matters as quickly as possible. We have had them under consideration for several weeks and reported them both last in the Congress. I am glad to take the views of the administration into account and look forward to them working with us on our legislation.

The recent events unfolding in Iran this week are a powerful reminder of the vital role of a free press and the free flow of information in an open society. We have pending before the Committee bipartisan legislation to create a qualified privilege for journalists to protect their sources and the public's right to know. I support the Free Flow of Information Act, S.448, and I hope that the Committee will promptly report this bill for consideration by the Senate.

I commend Senators Specter and Schumer for their work on this issue. I thank the more than 60 news media and journalism organizations, including ABC News, the Associated Press, CNN, the

National Newspaper Association, the Society of Professional Journalists and the Vermont Press Association, that have worked so hard to get us to this point.

The House of Representatives passed a similar measure, H.R. 985, by voice vote on March 31. That bill has 50 sponsors from both sides of the aisle. Last Congress, this Committee favorably reported a similar measure, cosponsored by Senators Lugar, Dodd, Specter, Schumer, Graham and myself, by a strong, bipartisan 15 to 4 vote.

I am very pleased that President Obama has stated his support of Federal shield legislation. I was also pleased that, during his confirmation hearing and during yesterday's oversight hearing, Attorney General Eric Holder expressed his support for a carefully crafted Federal shield law.

The Obama administration is working with us and we are finally beginning to make good progress. I strongly urge all the parties to continue this work, so that we can enact a good shield bill this year. A free and vibrant press is essential to a free society. That is why I have worked hard to enact a meaningful Federal shield law. And, that is why I made sure that for the first time ever, the Senate Judiciary Committee reported a Federal shield bill during the last Congress. All of us - whether Republican, Democrat or Independent - have an interest in enacting a balanced and meaningful shield bill to ensure a free flow of information to the American people. Forty-nine States and the District of Columbia currently have codified or common law protections for confidential source information. But, even with these State law protections, the press remains the first stop, rather than the stop of last resort, for our Government and private litigants when it comes to seeking information.

Scores of reporters have been questioned by Federal prosecutors about their sources, notes and reports in recent years. This is a dangerous trend, that has had a chilling effect on the press and the public's right to know.

Enacting the Free Flow of Information Act - which carefully balances the need to protect confidential source information with the need to protect law enforcement and national security needs - would help to reverse this troubling trend and benefit all Americans. The bill creates a qualified privilege to protect journalists from being forced to reveal their confidential sources. The bill contains exceptions to the privilege for criminal conduct and national security. No one would quibble with the notion that there are circumstances when the Government can and should have the right to compel information to keep us safe. But, many newsworthy stories concerning national security issues - such as the exceptional reporting on the CIA secret prisons and warrantless wiretapping by the National Security Agency - were published with the help of confidential sources, to the great benefit of the public.

As a former prosecutor, I understand the importance of making sure that the Government can effectively investigate wrongdoing, combat terrorism and protect national security. That is why I have consulted closely with the Department of Justice, the Office of the Director for National Intelligence and other Government offices on this legislation.

The Federal shield legislation - as modified based on these discussions -- strikes the right balance among these important objectives. That is why the opposition to this carefully crafted bill is simply misplaced. Forty-nine states, the District of Columbia and several Federal courts have

recognized a reporters' privilege either by statute or common law for years. There is no evidence of a single circumstance where the privilege caused any harm to national security or to law enforcement.

After years of debate and countless cases of reporters being held in contempt, fined and even jailed simply for honoring their professional commitment not to publicly reveal their sources, the time has come to enact a balanced Federal shield law. I encourage all Members of the Committee to support this important bill.

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