

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
November 5, 2009

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Chairman, Senate Judiciary Committee
Opening Statement
Executive Business Meeting
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We have our work cut out for us today, this month and the rest of the year. The Senate has before it on its Executive Calendar 10 judicial nominees and eight executive nominees reported by this Committee. We continue to hold confirmation hearings every two weeks, with our most recent just yesterday for another four judicial nominees from the home states of Senators on this Committee, as well as for the intellectual property enforcement coordinator. In addition, we have six more nominees on our Committee agenda today, including the nominee from Tennessee to the Sixth Circuit supported by Senators Alexander and Corker.

If we are to extend the authorities that will otherwise sunset in the USA PATRIOT Act before the end of the year, the Senate needs to take up, consider and pass the USA PATRIOT Act Sunset Extension Act that was reported on October 8. I am talking with Senator Sessions and Senator Kyl about a time agreement to facilitate that. In addition, the Senate needs to enact the Satellite Television Modernization Act that is cosponsored by Senator Sessions, Senator Kohl, Senator Hatch and Senator Kyl, and which was reported on September 24. Perhaps the Senate can do that with a short time agreement.

This Committee has a full agenda today with nominees and legislative matters important to several members. I said when it was held over last week that I hoped we could complete action on the Personal Data Privacy and Security Act today. This measure is long overdue. While the Congress has waited to act on data privacy legislation, the dangers to our privacy, economic prosperity and national security posed by data breaches have not gone away. Reports of data security breaches and other cyber intrusions have become almost a daily occurrence. A recent survey by Unisys Security Index found that Americans are more concerned about identity theft than even the H1N1 virus, or meeting their financial obligations. According to the Privacy Rights Clearinghouse, more than 340 million records containing sensitive personal information have been involved in data breaches since 2005, the year we proposed this bill. It is time for us to act.

This loss of privacy is not just a grave concern for American consumers; it is also a serious threat to the economic security of American businesses. The President's recent report on Cyberspace Policy Review noted that industry estimates of losses from intellectual property to data theft in 2008 range as high as \$1 trillion. The FBI's latest annual report on Internet Crime found that

online crime hit a record high in 2008 -- a 33 percent increase over the previous year. This loss of data privacy is a serious and growing threat to the economic security of American businesses.

We have twice previously reported the bill with bipartisan support. I want to acknowledge Senator Hatch who is our lead Republican sponsor. With the cooperation of all members we can consider and report that measure and Senator Feinstein's bill this morning.

We also have the opportunity this morning to return to our consideration of the Free Flow of Information Act. When Attorney General Holder was before us at his confirmation hearing, I asked him to work with us on Federal media shield legislation to provide a qualified privilege to journalists to allow them to maintain confidentiality of their sources and the public's right to know, with reasonable exceptions to prevent terrorism and protect national security and personal safety. He and the administration are following through on that commitment. This is a matter on which we have been seeking to engage the administration all year.

I reported a media shield bill on behalf of this Committee for the first time in its history two years ago in 2007. I put the measure on our agenda for consideration in April of this year. In September, I thought we were finally headed toward consideration when Republican members chose to filibuster the bill. Senator Kyl suggested that we postpone until the discussions with the administration had yielded a new draft. In effect, that is what has happened. Senator Schumer and Senator Specter have circulated that new draft. We have a letter from the administration in support of that new draft which was signed by both the Attorney General and the Director of National Intelligence. I am making that letter a part of the record. Now we should return to the matter and conclude our consideration of it so that the process can move forward and the Senate may consider it.

I want to commend Senator Schumer for his persistence and perseverance on this matter. He refused to take no for an answer and has pressed ahead in discussion with the administration to get to a compromise that he and Senator Specter announced over the weekend. That language was shared with all members of the Committee by Monday evening. We have all had an opportunity to read and consider it. I also want to thank Senator Schumer for making progress on the definition of covered persons so that bloggers may also be protected. That is a key concern of mine in connection with this matter. The compromise language is not all that I would want, but it is better than it had been on this point. I am prepared to proceed to that measure at the earliest possible time.

Senator Sessions, I recognize you for your opening statement and response.

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