

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 1, 2009

Opening Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Executive Business Meeting  
October 1, 2009

This morning we have the opportunity to make progress. Last week we demonstrated that we can do that when we reported five presidential nominations and the Satellite Television Modernization Act. That bipartisan bill was reported without objection just nine days after its introduction. That is a measure of what we can do when we work together. The statutory licenses underlying satellite television viewing are expiring this year and this Committee recognized its responsibility to act, and we did.

Likewise, the matter we take up today has a short deadline and expiring provisions. These are provisions of the USA Patriot Act that the FBI Director and the Assistant Attorney General for National Security told this Committee are important tools. This is a matter with which we have been concerned all year. In March, I sent Attorney General Holder a letter requesting the administration's views on these expiring provisions. When I recently received a response from the Justice Department urging us to extend the expiring authorities, I immediately scheduled a hearing. I joined with Senator Kaufman and Senator Cardin, and nine days ago we introduced the USA PATRIOT Act Sunset Extension Act of 2009.

Our bill draws from the efforts Senator Specter and I have made over the years, and those of Senator Feingold and Senator Durbin. I was pleased that Senator Feinstein's initial reaction to the bill was so favorable, and I have worked with her and her staff on both this Committee and the Select Committee on Intelligence, which she chairs, to accommodate her concerns. Today Senator Feinstein and I have circulated a substitute that incorporates those modifications and I welcome her cosponsorship of this important bill.

Our bill updates checks and balances by increasing judicial review of the use of Government powers that capture information on U.S. citizens. It also augments congressional oversight. In the recent Justice Department letter to me, the administration noted that Congress may "propose modifications to provide additional protection for the privacy of law abiding Americans" and that is what we have done. I agree with President Obama that checks and balances, and accountability, are important.

The recent letter from the Justice Department also noted that: "The oversight provided since 2001 and the specific oversight provisions that added to the statute in 2006 have helped to ensure

the authority is being used as intended." I agree. In addition, at our recent oversight hearing of the FBI, Director Mueller acknowledged the value of oversight and stated his support for "periodic outside review" of their utilization of these authorities. We were reminded just last week at our hearing about these matters how effective the audits by Inspector General Fine have been. Our bill contains provisions building on those successes.

Security and liberty are both essential in our free society. Benjamin Franklin wrote: "Those who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety." I have been mindful of this since the devastating attacks of September 11, and each time we have considered the USA PATRIOT Act. The American people of today and those of tomorrow - our children and grandchildren -- depend on us to do our best to ensure both security and the preservation of our essential liberties.

The bill we consider today, cosponsored from the outset by Senators Cardin and Kaufman and which today I hope has growing support, will extend the authorization of the three expiring Patriot Act provisions. We also provide for increased Government accountability requiring audits and reviews of how these vast authorities are being used.

In addition, we propose that, given their extensive use, abuse and intrusiveness, we include a sunset for National Security Letters (NSLs). Senator Specter and I introduced a bill in 2006 to impose a sunset on NSLs. This sunset provision, combined with a comprehensive audit by the Inspector General, will help to hold the FBI accountable in its use of this authority. This bill would also impose more judicial oversight on the issuance of NSLs.

I have long been concerned with issuance and oversight of NSLs. National Security Letters are, in effect, a form of administrative subpoena. They do not require approval by a court, grand jury, or prosecutor. They are issued in secret, with recipients silenced, under penalty of law. Yet NSLs allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale, data-mining operations. We now know that the NSL authority was significantly misused. In 2008, the Department of Justice Inspector General issued a report on the FBI's use of NSLs revealing serious over-collection of information and abuse of the NSL authority.

This bill recommends improved standards for 215 orders and the higher standard I have long supported for library records. It also establishes more meaningful judicial review of section 215 orders. It repeals a provision added to the law in 2006 stating that a conclusive presumption in favor of the Government shall apply. The prior restraints on meaningful judicial review were unfair, unjustified, and unwise.

This bill will strengthen court oversight by requiring court oversight of minimization procedures when information concerning a U.S. person is acquired, retained, or disseminated. This is another common sense modification to the law and was crafted in consultation with Senators Feingold and Durbin.

Over the last few weeks, as we have been heading toward this day, the FBI has made a number of arrests in Springfield, Illinois; Dallas, Texas; and in Colorado and New York. All of us are mindful that the threats to Americans' safety are real and continuing. Our bill will provide the tools that are being used to protect us while increasing the protections of our vital constitutional rights, as well.

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Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
On Judicial And Executive Nominations  
October 1, 2009

The Committee should be able to report the four judicial nominations on our agenda, which were held last week at the request of the Republicans, without further delay. Each of these outstanding nominees for lifetime appointments to the Federal bench - Joseph A. Greenaway for the Third Circuit, Roberto A. Lange for the District of South Dakota, Irene Cornelia Berger for the Southern District of West Virginia, and Charlene Edwards Honeywell for the Middle District of Florida - was rated unanimously well qualified by the American Bar Association's Standing Committee on the Federal Judiciary, the Committee's highest rating. Each of these nominations should receive prompt consideration not only in the Committee but in the full Senate.

At the conclusion of the hearing to consider these nominations, Senator Sessions, the Committee's Ranking Member, said, "It's a great honor that you've been given to be nominated and I expect things should go forward in a timely manner. I don't believe that any of you need to be held up based on what I know at this time. So, we'd like to see you get your vote as soon as reasonably possible." I was surprised, then, when the Committee's vote on these nominations was delayed last week.

I hope that these nominations are not stalled for months and months like the nominations of Judge Hamilton and Judge Davis, which have been pending on the Executive Calendar for nearly four months. We have confirmed only one circuit nomination and one district court nomination this year. By this time in President Bush's first term, six nominations were confirmed.

The Senate must restore its tradition of regularly considering qualified, noncontroversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents. We should treat President Obama's nominees the same way we treated the nominees of President Bush.

Republican delays and inaction prevent us from making progress in addressing the alarming spike in judicial vacancies. Current and future vacancies on the Federal bench now total 120. We should not have a vacancy crisis in this country because of partisan politics. I hope that the other side of the aisle will work with the Democrats to ensure that justice is not delayed, or denied, to any American because of over burdened courts.

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