

Statement of
The Honorable Chuck Grassley

United States Senator
Iowa
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Prepared Statement of Ranking Member Chuck Grassley
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Nominations
Mr. Chairman,

Given the floor consideration of Goodwin Liu, I have only brief remarks to make this morning. I would just note the rapid pace by which we have been moving judicial nominees this month, in committee and on the floor. I hope that we will not continue to hear complaints about a systematic delay and partisan obstruction of judicial nominees. I have been working to move consensus nominees; but we will not engage in a pro forma process or rubberstamp nominees.

Sunshine in Litigation Act

Mr. Chairman. I wanted to say a few words about Senator Kohl's bill on protective orders.

In the past, I've had a number of concerns with this legislation. While I continue to have concerns, I'm pleased that Senator Kohl has been receptive to addressing some of my issues. For example, one of my concerns has been that this bill would harm the ability of parties in litigation to legitimately protect personal information from disclosure to the public.

I've been concerned that individuals may have personal and sensitive information that they'd rather not disclose to the public, because they feel that the disclosure of such information could be an unwarranted invasion of privacy and a source of personal embarrassment.

Specifically, I was concerned that the standard contained in the bill for sealing discovery documents or settlement agreements was so high that persons who have personal or medical information that they'd like to keep confidential wouldn't be able to seal the record in their lawsuits.

I was also concerned that the standard in the bill would require disclosure of personal financial and employment information, as well as social security numbers, phone numbers, and other information that an individual may not want out in the public, and which wasn't necessary to disclose.

So I'm pleased that Senator Kohl worked with me to include language that would help protect this kind of personal information.

I also raised concerns about the bill possibly requiring disclosure of national security and classified information in the event some of this came up in litigation. I'm pleased that Senator Kohl included language that states that nothing shall be construed to require or authorize the disclosure of classified information.

I appreciate Senator Kohl working with me and addressing some of my concerns.

Environmental Crimes Enforcement Act

Mr. Chairman, I will support the reporting of S. 350 out of the Committee today. Some members are concerned about the mandatory restitution provision of the bill. I will discuss that in a moment. I will begin with discussing the bill's directives to the Sentencing Commission to increase the Sentencing Guidelines associated with violations of the Clean Water Act.

These directives, however well intentioned, are doomed to be ineffective. This is because of the Supreme Court's decision in *United States v. Booker*, which made the Sentencing Guidelines voluntary rather than mandatory.

Obviously, some members of the committee believe that federal judges are currently too lenient in their sentencing for violations of the Clean Water Act. The fact is that federal judges are excessively lenient in a range of white collar crimes, including various kinds of fraud and child pornography.

When the committee held a hearing on fraud in January, I raised the problem of leniency in sentencing and stated that fraud would not be adequately deterred so long as *Booker* remained the law.

At that hearing, a number of my colleagues agreed with me that white collar criminals should receive prison sentences as a result of their convictions. Chairman Leahy stressed the importance of putting people who commit fraud in jail. Senator Klobuchar asked if there was "a renewed focus on prison time as a punishment in the health care fraud area."

If members want violators of the Clean Water Act not to view their sentences as a cost of doing business, directing the Sentencing Commission to increase the penalties contained in the Sentencing Guidelines is likely to make little difference. After *Booker*, the judges cannot be made to follow the Guidelines. Many of them will not do so. Judges who give lenient sentences now will continue to do so after any changes to the voluntary guidelines.

The Supreme Court's rulings on the Guidelines are so extreme at this point that federal trial judges who presume that guideline sentences are reasonable now commit reversible error. That reflects the low esteem in which the Supreme Court holds the Sentencing Commission and the Sentencing Guidelines. It is completely acceptable for a federal district judge to sentence in accord with the laws of France. However, it is reversible error for that judge to presume that the sentence produced by the federal Sentencing Guidelines was reasonable.

This is why I am convinced that amending the Sentencing Guidelines at this point is of little value. If sentences for white collar criminals are going to be effectively raised, another approach will need to be pursued. Mandatory minimum sentences are clearly constitutional. I am open to other ideas, such as Judge Sessions' approach. I know that Judge Sessions is a friend of the Chairman. But we should recognize that in a post-Booker world, if we really want to increase penalties for crimes, asking the Sentencing Commission to adjust the Sentencing Guidelines is akin to rearranging the deckchairs on the Titanic.

The bill will be ineffective in other ways. The mandatory restitution provisions will not accomplish very much. Although it may have been spurred by the BP oil spill, this bill will have no effect on BP. The Constitution prohibits increasing criminal penalties retroactively. And each year, only about 20 Clean Water Act criminal convictions are obtained. Only about 16 do not include restitution. The average amount of restitution ordered is about \$6000. I am confident that in any serious Clean Water Act case, judges would order restitution. So I believe this bill will have little, if any, real world effect.

Finally, I note for my colleagues who vote to report this bill, that it contains a mandatory minimum sentence. It takes away judicial discretion by ordering that restitution be imposed. The mandate is for a monetary sentence, not imprisonment, but it is a mandatory sentence. Any member who votes for this bill is obviously free to consider any proposal for a mandatory minimum sentence on a case by case basis. But any member who votes for this bill will not be able to make the argument that they are philosophically opposed to all mandatory minimum sentences.

Fighting Fraud to Protect Taxpayers

Mr. Chairman, I'd like to say a few quick words regarding the Fighting Fraud to Protect Taxpayers Act. This bill continues our long running cooperation working to combat fraud and abuse of taxpayer dollars. I appreciate working with you on this important bipartisan legislation.

Previously, we worked on the Fraud Enforcement and Recovery Act which was among the first bills signed into law by President Obama in 2009. This bill follows-up on the successes that legislation has had in helping the Department of Justice recover billions of taxpayer dollars.

Protecting taxpayer dollars is a critical responsibility entrusted to every member of Congress and it's one I take very seriously. That's why this bill comes at such an essential time as our nation continues to recover both economically and from natural disasters, such as the tornadoes that devastated the south.

The Fighting Fraud to Protect Taxpayers Act expands law enforcement's ability to investigate fraud, including those criminals who perpetuate mortgage, foreclosure, financial and health care fraud which has victimized thousands of innocent Americans. This legislation includes a number of provisions that will help law enforcement and the Department of Justice investigate and prosecute fraud. For example, the bill expands the authority of the Secret Service to proactively investigate and apprehend criminals who commit fraud by taking that which is not theirs.

The Fighting Fraud to Protect Taxpayers Act modifies an existing provision that allocates a small portion of funds collected by the government in the form of fines and penalties and redirect those funds toward investigating, prosecuting and litigating fraud cases.

During fiscal 2010, the Department of Justice recovered well over \$6 billion through fines and penalties. Based upon current recoveries, the modifications made in this legislation will provide approximately \$15 million a year to be reinvested in anti-fraud efforts. Because this money will come from existing fines and penalties, it will provide these resources at little or no expense to taxpayers. By reinvesting these funds to combat fraud, it should enable the federal government to uncover even more wrongdoing.

The bill also seeks to add transparency and accountability at the Department of Justice. It requires the Attorney General to submit an annual report to Congress about how these funds are spent. Right now, current law allows the department to spend these funds with little or no transparency or accountability. By requiring annual reports, Congress will be able to ensure these funds are put to good use.

Another provision requires the Attorney General to provide the details regarding settlements reached by the department under the False Claims Act. Over the years, I've heard concerns that some settlements are reached for pennies on the dollar and that they are now simply the cost of doing business for large corporations. This provision will give Congress the details of these settlements and will ensure that these corporations aren't simply settling fraud cases without being held accountable.

Finally, this bill includes necessary enhancements to allow law enforcement to target criminals engaged in illegally trafficking computer passwords, it strengthens the identity theft statute and makes it a crime to unlawfully use legitimate corporate names and logos in order to steal your identity, and also makes an important enhancement to our anti-money laundering laws by including tax evasion as a predicate offense.

This bill aggressively attacks fraud and more importantly protects taxpayer dollars. These issues transcend partisan politics, and I urge my colleagues to join this important bi-partisan legislation.

Thank you Mr. Chairman.