

Senator Patrick J. Leahy
Questions for the Record for Karen Tandy

1. **You were involved in negotiations over the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") on behalf of the Justice Department. We reached agreement on a carefully balanced bill that granted the government new forfeiture powers in exchange for procedural reforms. The bill passed unanimously in both the House and Senate.**

I am concerned that DOJ is seeking to nibble away at CAFRA's procedural reforms through legislation (some of which was proposed for inclusion in the PATRIOT Act, but rejected by Congress) and through proposed amendments to the Supplemental Rules. I refer specifically to proposed Supplemental Rule G, which would create a special set of procedural rules for civil forfeiture cases. It appears that many of the provisions in proposed Supplemental Rule G are in conflict with either the letter or the spirit of the CAFRA reforms. Indeed, some of the provisions were specifically rejected by Congress during the CAFRA negotiations three years ago. (A) Please describe your role, if any, in developing proposed Supplemental Rule G. (B) Having struck a balanced deal only three years ago in CAFRA, do you think it is appropriate for the government to try to roll back the procedural reforms it agreed to while keeping the expanded powers it obtained?

I was involved with the original CAFRA legislation, a carefully crafted compromise, which I support. However, I have no personal knowledge of the proposed additions to the Supplemental Rules for Certain Admiralty and Maritime Claims, and have neither seen nor participated in the drafting of the proposal.

I believe government should support the rights of its citizens, while protecting them from criminal activity. If confirmed, I assure you that, as DEA Administrator, I would do nothing that would undercut the substantive and procedural protections contained in CAFRA.

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2. **Many of the proposed Rule G changes appear designed to give the government an unfair advantage over the claimant. For example, why should the government be permitted to challenge claimant's standing "at any time before trial" (section (7)(b)) while the claimant waives any jurisdictional challenge she fails to raise in her answer (section (5)(b))? How would you defend those two proposals, which apply strict waiver rules to claimants – who often appear *pro se* – but not to the government?**

Although I am not familiar with the details of Supplemental Rule G, I believe we must be vigilant in protecting the individual rights of all Americans while enforcing the law against criminals. I continue to support the CAFRA legislation.

3. **I am also concerned about DOJ's proposal to restrict who has standing to contest a civil forfeiture case. Proposed Rule G(5)(a)(i)(B) would discard what we agreed to in CAFRA (see 18 U.S.C. 983(d)(6)) and substitute a new, cramped definition of standing – one never embraced by Congress or the courts. Please explain what justifies these proposed changes to the law of standing.**

I am not familiar with the details of Supplemental Rule G. However, I believe we must be vigilant in protecting the individual rights of all Americans, while enforcing the law against criminals. I continue to support the CAFRA legislation.

4. **In 18 USC 983(f)(1)(A), CAFRA provides that a person with a possessory interest in the seized property may seek its release on hardship grounds. Yet, DOJ's proposed standing rule would exclude persons with a mere possessory interest in the property from contesting the forfeiture. I do not see how that can be reconciled with section 983(f). Is DOJ asking an appointed committee of jurists to overrule CAFRA in that respect?**

I am not familiar with the details of Supplemental Rule G. However, I believe we must be vigilant in protecting the individual rights of all Americans, while enforcing the law against criminals. I continue to support the CAFRA legislation.

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5. CAFRA also has an important attorney fee provision, codified at 28 U.S.C. 2465(b)(1), which states that if the claimant "substantially prevails," the United States shall be liable for "reasonable attorney fees and other litigation costs reasonably incurred by the claimant." DOJ has taken the position in litigation that "reasonable attorney fees" should be limited to the fees that would have been awarded under the Equal Access to Justice Act. Is that what you think we meant by "reasonable attorney fees"?

CAFRA makes the prevailing party in a civil forfeiture case eligible for "reasonable attorneys fees," but it did not define that term. In criminal forfeiture cases, the prevailing party is eligible for attorneys fees under the Equal Access to Justice Act. In the absence of any definition of "reasonable attorneys fees" in the civil statute, it makes sense to apply the analogous law and use the fee schedule in the Equal Access to Justice Act as the measure of the attorney fee award.

6. **What would you do as Administrator of the DEA to make sure that misconduct complaints are properly investigated by the DEA and that appropriate disciplinary action is taken in cases where misconduct is found?**

The DEA has rigorous and effective procedures in place to insure that misconduct complaints are fully investigated and that appropriate discipline is imposed where misconduct is found. I expect to maintain those procedures and enhance them whenever improvements are shown to be needed. I can assure you that I well understand that the DEA holds a public trust. If confirmed, I will make honoring that trust a top priority. I owe no less, not just to the citizens of our country, but to the thousands of men and women who serve the DEA and our nation with integrity, honor, and distinction.

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7. **My state has experienced an extraordinary increase in the incidence of heroin abuse, and of heroin-related crime. Heroin use has doubled over the last five years, and the average age of a heroin user in Vermont dropped from 27 to 17 during the 1990s. There were 53 overdose deaths in Vermont in 2002, many from heroin, and 47 in 2001. A number of my constituents have lost family members and friends who succumbed to addiction to heroin or other drugs, and I repeatedly hear from my constituents how heroin abuse is damaging the state and their lives. Law enforcement agencies in Vermont are performing valiantly in battling this wave, but they cannot do it alone. I know that the New England High Intensity Drug Trafficking Area (HIDTA) has provided invaluable assistance to the Vermont State Police in its efforts to prevent drugs from coming across the Canadian border and addressing the heroin problem within the state.**

(A) Do you support increasing funding for HIDTAs, and for the New England HIDTA in particular, to combat this growing problem?

I fully support funding of all High Intensity Drug Trafficking Area (HIDTA) elements, including the New England HIDTA, within the parameters of the President's Budget. The HIDTA concept is a proven law enforcement tool, and an important ally to the DEA's Burlington, Vermont Resident Office (BRO) which operates in the New England Field Division.

(B) In addition to the problem of domestic heroin abuse, Vermont and other states along the Canadian border have seen an increase in trafficking. Recently, smugglers attempted to drop 250 pounds of marijuana in Vermont from a helicopter that had crossed into U.S. territory. What assistance can the DEA provide to improve our efforts to prevent cross-border trafficking?

It is my understanding that there is a HIDTA Task Force group in the BRO, which is responsible for and participates in operations conducted at the United States/Canadian border. This arrangement allows DEA agents to be pre-positioned and ready to deploy in an effort to respond to the interdiction and seizure of illicit controlled substances that arise from border operations. Additionally, DEA agents are capable of furthering those seizures by conducting appropriate follow-up investigations to fully identify, prosecute and dismantle the drug trafficking organizations (DTOs) involved.

If confirmed as Administrator, I can assure you that DEA will also continue its extremely close working relationship with the Royal Canadian Mounted Police (RCMP) with whom it has conducted numerous joint investigations coordinated through DEA's Ottawa Country Office.

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8. I continue to be concerned about the DEA's actions in states that have chosen to legalize marijuana for medicinal purposes. This is an issue I spoke to Asa Hutchinson about on numerous occasions, including at his confirmation hearing. It has been my view that although the Supreme Court has stated clearly that the Federal government has the right to enforce the Federal prohibition on marijuana in these states, it would be a wise exercise of discretion and resources for the DEA to focus its attention elsewhere. The apparent decision of the DEA and the Justice Department not to follow this advice has led to serious conflict between the Federal government and state and local governments, particularly in California. In San Jose, for example, Police Chief William Lansdowne pulled his officers from a joint task force with the DEA because he believed resources that should have been used to fight methamphetamine were being diverted to police medical marijuana users. In addition to San Jose, other California cities have directed their police to discontinue cooperating with the DEA, in whole or in part.

(A) As head of the DEA, how will you take the opposition of local law enforcement into account as you decide where to focus DEA resources?

I have been advised that, despite the marijuana legalization issue in the State of California, DEA continues to enjoy an excellent and productive working relationship with the Bureau of Narcotics Enforcement (BNE) and the majority of the local law enforcement agencies in California. If confirmed as DEA Administrator, I would be mindful of the need to maintain effective, cooperative working relationships with our state and local counterparts, and strive to continue to work closely with them in all types of investigations, including those involving marijuana.

(B) Where will cracking down on medical marijuana fall on the DEA's priority list if you are confirmed?

Marijuana is the most abused drug in the United States. More young people are now in treatment for marijuana dependency than for alcohol or for all other illegal drugs combined.¹ Marijuana use also presents a danger to others beyond the users themselves. A roadside study of reckless drivers who were not impaired by alcohol showed that 45% tested positive for marijuana.² As a Schedule I Controlled Substance under the Controlled Substance Act, marijuana has no currently accepted medical use in treatment in the United States, and

¹ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Treatment Episode Data Set*, 2000.

² Dan Brookoff, et al., *New England Journal of Medicine*, 331:518-522, 1994.

cannot be used outside of FDA approved, DEA-registered research. Thus, there is no basis under federal law to distinguish "medical" marijuana traffickers from marijuana traffickers in general. If confirmed as Administrator, I would insure that DEA is committed to enforcing the federal drug laws of our nation regardless of the drug in question or the location of the violation.