

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 12, 2004

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Senate Judiciary Committee  
Executive Business Meeting  
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This is the first business meeting of the Judiciary Committee since the theft of Democratic computer files by Republican staff of this Committee became known to us and the Sergeant at Arms investigation began. Just this week, Members of the Committee were briefed by the Sergeant at Arms on the preliminary indications of his three-month-old investigation.

I have commented little on this serious and far-reaching matter until now. Even while right-wing activists have been spreading lies and making absurd charges, I have tried to show restraint as this investigation got underway. But I say today that those who spied and stole internal, confidential drafts and memos of their Democratic counterparts bring dishonor to this Committee and to the Senate. Taking things that do not belong to you is wrong, and there is no excusing or whitewashing it.

I commend Chairman Hatch for acknowledging that this conduct was unacceptable, improper and unethical. He is the only Republican Senator who has apologized to the Senators on this side of the aisle for this wrongdoing, and I appreciate that. I know that these offenses deeply concern him.

We all must await the written report of the Sergeant at Arms, but this week it became clear that not just dozens but thousands of computer files are involved, and that the secret surveillance of legitimate and indeed essential staff work took place from at least 2001 into 2003. No one should be taken in by the dissembling and self-serving statements of those directly or indirectly involved. In my view, these actions are probably criminal and are likely to become the subject of criminal investigation.

It appears that those involved in this theft not only used what they found for their own partisan purposes, but also periodically passed along material to extreme, partisan, right-wing activists from outside organizations, and to hand-picked, Republican-leaning columnists and media organizations friendly to their "win"-at-all-costs crusade. The investigation itself was triggered last November when more than a dozen computer files were distributed to conservative-leaning newspapers and were posted on a partisan advocacy group's website.

It was in late November of last year that Senator Hatch publicly announced that, based on his own internal and still secret investigation, at least one current and one former member of his staff were implicated. He expressed concern and regret about their actions.

I have not agreed with everything our Chairman has done or said on this matter. I think his decision to conduct his own internal investigation and to refuse to share the results with those who have been victimized by this wrongdoing was ill-advised. I know that he now regrets not having granted my repeated requests for separate Judiciary Committee computer systems over the last six years.

But I want to give our Chairman credit where credit is due. As this investigation has proceeded, he has not sought to obstruct the Sergeant at Arms in this inquiry, and he has made clear that he has advised his staff to tell the truth. For this he has been criticized by many outside groups and activists whose causes he has ardently championed. These offenses strike at the very heart of the trust that is essential for the Senate to work. It is condemnable that anyone would demand the obstruction of an investigation into a matter as serious as this, and it is regrettable that they would fault a chairman of this Committee for refusing to cooperate with such demands.

Much remains to be learned about this breach. We still do not know who benefited from these thefts, how these computer files were used, and how and with whom they were shared inside or outside the Committee. We do not yet know who inside the Senate, the Department of Justice, or the White House saw the stolen documents or was apprised of the information they contained. We do not yet know for certain if judicial nominees who have passed through this Committee were coached for their hearings based on the stolen files or on information they contained.

What we do know is that all Members of this Committee thought their computer files were confidential. We do know that the confidentiality of our computer files was breached. This was wrongdoing by calculation and stealth, not by inadvertence or mistake. We know this was intentional, repeated, longstanding, systematic and malicious. We know this was carried on surreptitiously because those involved knew that what they were doing was wrong. They wanted to "win," whatever the cost.

All Members of the Senate rely on the confidential reports and advice of their staff. The Senate could not fully operate in this modern world without being able to rely on the work of our staff, which is now often prepared electronically, over computer systems under the control of the Sergeant at Arms. That expectation of privacy was clearly expressed by Senator Cornyn, Senator Craig, Senator Chambliss, Senator Graham and Senator Sessions in the letter they sent to the Sergeant at Arms on November 22, in which they spoke of their own expectation that the privacy of their own computer records would be respected and maintained during this investigation.

Establishing full public accountability is the first step toward restoring the basic trust that is necessary for the Senate to function and fulfill its constitutional responsibilities. But let us not wait until the end of this process to begin, together, to repair this breach of trust and to work toward resuming our work in the spirit of cooperation and mutual respect that is so necessary to the work of the Senate.

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