

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
March 4, 2004

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Senate Judiciary Committee  
Executive Business Meeting  
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Just three weeks ago Members of the Committee were briefed by the Sergeant at Arms on the preliminary indications of his 3-month investigation into the theft of computer files of Democratic offices by staff working for Republican Members of this Committee. Yesterday afternoon the Sergeant at Arms briefed Senator Hatch and me, again, and provided us with a copy of his report.

I commend Sergeant at Arms William Pickle and his staff for their diligent work. He has invested tremendous effort and professionalism into this investigation into this unprecedented case of partisan spying in the Senate. This investigation was prompted by Republican staff's infiltration of Democratic staff's computer files, the stealing of those files and then the dissemination of them to sympathetic activists and columnists. We know this inquiry was an arduous undertaking that required a great deal of skill and sensitivity and commitment, and Mr. Pickle and his staff deserve credit for meeting that challenge as well as they did without having the authority to compel testimony or to prosecute.

Today we hope to work together to begin the process of public accountability by making public the overall findings of the inquiry to date. Chairman Hatch and I want to consult with the other Members of the Committee to make available to them the information we have received and with them to make available to the public information about this matter without undercutting or compromising further investigation. Senator Hatch and I hope to make information available to the public by close of business today. To do that we will need the cooperation of all Members of the Committee. I also thank the press and the public for their patience with us today.

Establishing the basic facts was the essential first step in solving this crisis of confidence. Mr. Pickle and his investigators have invested three months to do that. Other steps are ahead of us. There are still outstanding questions that demand answers. We still do not know the full extent to which these confidential files were disbursed, and to whom. We do not know how the information obtained was used, and by whom, in or outside the Senate. We do not know who at the Department of Justice or the White House benefited from this wrongdoing and worked with staff of these Republican offices or their intermediaries. We do not know whether nominees are implicated. We cannot repair the damage that has been done until we know the answers to these questions.

I have commented little on this serious and far-reaching matter. Even while right-wing activists have been spreading lies and making absurd charges, I have tried to show restraint as this investigation got underway. I repeat 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. I have likewise commended Senator Graham and others who have acknowledged the wrongdoing by those Republican staff implicated in this matter.

By mid-February it became clear that not just dozens but thousands of computer files were involved, and that the secret surveillance of legitimate and indeed essential staff work took place from at least 2001 into 2003. 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 newspapers on the Republican right and were posted on a partisan advocacy group's website.

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 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. Over the last several days we have written to the White House and the Department of Justice inquiring what they knew about these matters. We do not have responsive answers to those inquiries.

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.

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 our staff's research and analysis, 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 Republican and Democratic Members of this Committee in our brief discussions over the last couple of weeks. It is reflected in the joint letter Senator Hatch and I sent to GAO and in the letter Senators Cornyn, Craig, Chambliss, Graham and Sessions sent to the Sergeant at Arms on November 22 as his investigation was beginning.

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. Prompt public dissemination of the basic findings of the Sergeant at Arms is a step in that direction.

It is time for the Committee to fulfill Senator Durbin's request of the past several weeks and to meet in closed session to discuss this matter and how we should proceed.

Accordingly, I move pursuant to Rule 26.5.b. to proceed to closed session as we will be discussing matters relating to matters of committee staff personnel and internal management and that discussion may "tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy" and will disclose information relating to the Sergeant at Arms' investigation, which may relate to the prosecution of a criminal offense and should be kept secret in the interests of effective law enforcement, and which may divulge matters required to be kept confidential under the rules of this Committee and the Senate.

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