

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 11, 2004

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Executive Business Meeting
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A week ago today, this Committee met in two public sessions and also in two closed Executive Sessions to discuss the report by the Sergeant-at-Arms into the theft of confidential Democratic computer files by Republican staff from at least 2001 into 2003. Over the last several weeks and months Democratic Senators have shown great patience with the process. In addition, we have participated in six hearings for 16 judicial nominees already this year -- that is as many hearings as were held in all of 1996. We have helped to confirm two additional judicial nominees, bringing this President's total confirmations to more than President Reagan's entire first term. And just last week we joined in reporting another 16 presidential nominees, including a dozen judicial nominees.

Last week the Chairman on behalf of the Committee made the report of the Sergeant-at-Arms publicly available. In the weeks leading up to our last meetings and after those sessions, Senators have been consulting about the follow-up investigation that is now needed. Along with other Democratic Senators, I have reached across the aisle to urge all Senators to now join us in a request for a special counsel to conduct the investigation now necessary to complete action and assure accountability for this unprecedented partisan espionage within the Senate. Today, I come to urge Senators to join in that request for the appointment of a special counsel of the highest integrity and independence to follow up on this matter. It is my hope that we can move forward in a cooperative, bipartisan manner to accomplish that appropriate next step.

I was optimistic that we could move this process forward in a fair way when Senator Hatch repeatedly said, "I am mortified that this improper, unethical and simply unacceptable breach of confidential files occurred." I was optimistic when Senator Cornyn said at the February 12th meeting of this Committee that we "ought to seriously consider referring this matter as a Committee to the law enforcement authorities that have jurisdiction to investigate and to prosecute criminal matters." Over the last few weeks a number of Senators, Republicans and Democrats, have acknowledged that these matters, now documented in the report of the Senate Sergeant-at-Arms, warrant further consideration by law enforcement officers. I urge all Members of the Committee to join in our request for the appointment of special counsel.

With this in mind I have shared with the Chairman our letter to the Justice Department making such a referral and request. I said at our hearing yesterday that we are all glad to hear that the Attorney General had a successful surgery and that he is on the mend. Given his condition, ours is effectively a request to Deputy Attorney General Comey to appoint special counsel for this matter. He earlier assigned the investigation of the public disclosure of Valerie Plame's status as a CIA operative to Patrick Fitzgerald. Someone of the status and integrity of Mr. Fitzgerald or of a Mary Jo White, who has conducted important investigations during Democratic and Republican Administrations, is the type of person who needs to be appointed to handle this critical matter. Someone who is removed from politics is essential. As we outline in our letter to the Justice Department, many of us are concerned that it be special counsel and that the Attorney General recuse himself from the process for a number of reasons.

With respect to the Sergeant-at-Arms' report, I, again, thank him and his staff for operating in a nonpartisan way and in the best tradition of the Senate. The report shows - without question - that the secret surveillance and stealing of confidential computer files was calculated, systematic and sweeping in its scope. After reading the report, there is a lot more that we do know: We know that more than 4,000 computer files were stolen. We know that the stealing of Democratic computer files occurred over an extended period of time, from at least 2001 into 2003. We know that

numerous staff members of Republican Senators and Republican Senate leadership were aware of this activity. We know that what was done was improper, unethical and likely criminal.

However, after reading the report, there is still a lot that we do not know. We do not know how the computer files and the information contained therein were exploited. We do not know whether the stolen computer files or the information in them were shared with the Department of Justice directly or indirectly. We do not know whether they were shared with the White House directly or indirectly. We do not know whether they were shared with any of the nominees. We do not know what stolen files or information contained there in was shared with partisan advocacy groups on the right. Those are among the questions that a special counsel with the tools to conduct a criminal investigation and compel testimony and information may discern.

I hope Senators on this Committee who care about accountability and the rule of law, and those interested in repairing the damage by this unprecedented spying campaign will accept our invitation and join with us in requesting the prompt appointment of a special prosecutor to conduct the criminal investigation into the theft of our computer files that is still needed. Join with us to look past partisan politics and do the right thing. Let us get this matter into the hands of an experienced prosecutor to do the necessary investigation and take the concrete steps needed to restore the foundation of trust eroded in this Committee.

Before we discuss any of the additional judicial nominations listed on today's agenda, I also need to speak briefly about the President's abuse of the recess appointment power. I expressed concerns when this President appointed Judge Pickering to the Fifth Circuit Court of Appeals after the Committee rejected his nomination in 2002 and the Senate withheld consent to his nomination in 2003. I outlined my concerns when this President appointed William Pryor to the 11th Circuit Court of Appeals during a one week intra-session break after the Senate twice rejected action on that nomination following extended debate due to the serious concerns about Mr. Pryor's ethics and fairness.

When President Clinton used his recess appointment power for executive branch appointees, Republicans used secret holds to block judges and other nominees from being confirmed. Democrats have not acted in that way. Instead, we have made progress and acted to confirm both judicial and executive branch nominees. We may be able to make some progress on nominations this week because, as I understand it, we have an assurance from the White House that the President will make no judicial recess appointments during the upcoming recess. As to the future, it is my sense that Democratic Senators have been both responsible and direct in advising the Administration that additional progress on circuit court nominations will depend on this President not abusing the recess appointment power in the future. I hope the President will work with us and respect the role of the Senate in the appointments process.

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