

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
July 20, 2005

Statement of Senator Patrick Leahy,  
Ranking Member, Senate Judiciary Committee  
Hearing on "Reporters' Shield Legislation: Issues and Implications"  
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I am pleased the Committee is holding this hearing today on such an important matter. While a small number of cases have garnered significant national attention, the question of whether or not to enact some form of privilege for journalists has vexed us since *Branzburg v. Hayes* was decided by the Supreme Court in 1972. Since that time, 31 states and the District of Columbia have enacted statutes granting some form of privilege to journalists. Efforts have been made from time to time to codify a reporters' privilege in federal law, but these attempts failed, in part because supporters of the concept found it difficult to agree on how to define the scope of what it means to be a "journalist." With bloggers now participating fully in the 24-hour news cycle, we might face similar challenges in defining terms today.

I have long been a champion of a vibrant and independent press. My interest comes honestly and early as the son of a struggling Vermont printer from Montpelier. In my many years in the Senate, I have aspired to fulfill the ideals of my father, fighting for a free press and greater transparency in government. For example, I have long championed the Freedom of Information Act, which shines a light on the workings of government and has proven to be an invaluable tool for both reporters and ordinary citizens. Earlier this year, I introduced legislation with Senator Cornyn to improve implementation of that critical legislation. Open government goes hand in hand with freedom of the press and that is why I have advocated so strongly for it.

As a former county prosecutor, I also understand that our democracy is nothing without a healthy respect for the law. The issue before us today is especially important because it requires us to carefully weigh the public interest in First Amendment press protection and the public interest in solving crime. Indeed, recent high profile cases have shown just how thorny this issue can be.

This hearing was not called to address the Valerie Plame leak case in particular, but it is impossible to imagine that the investigation will not be discussed today. I have heard from several supporters of a privilege that they recognize that the facts of the Plame case are not particularly sympathetic to the cause because they involve an alleged national security leak from the highest level of government. I hope that our discussion also delves into the many different circumstances under which a privilege might be raised, both in civil and criminal cases.

I look forward to hearing from the witnesses' broad range of experience and expertise on all sides of the question. I also want to commend the members who have done the hard work of drafting legislation that attempts to address this problem and am eager to hear their statements.

We learned just about 9 o'clock this morning that Deputy Attorney General Comey cancelled his appearance before the Committee. I am disappointed by this. I looked forward to a meaningful exchange on the issues.

Thank you Mr. Chairman.