

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 19, 2005

Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Hearing on "Reporters' Shield Legislation: An Additional Investigation of Issues and
Implications"
October 19, 2005

I am pleased the Committee is holding a second hearing on this important matter. Members of the Committee were surprised and disappointed when the Deputy Attorney General cancelled his appearance on the morning of the July 20 hearing. Senator Feinstein and I sent a letter to the Chairman asking for this opportunity to hear from the Administration. We appreciate his agreement to schedule a follow-up hearing, but I was very disappointed to learn Monday that the starting time of this morning's hearing was moved back, creating a number of scheduling conflicts for me. Nonetheless, I want to acknowledge the serious effort the Chairman is making to address this issue. I appreciate that and I hope that we can continue to work together and with other members of the Senate to develop legislation.

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 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.

The witnesses at today's hearing represent a wide range of views. We will hear from a U.S. Attorney and two former Federal prosecutors who are skeptical of providing a privilege for reporters. We will also hear from representatives of the news media, who rely on sources to investigate and publish or broadcast the news. The free flow of information is a cornerstone of our democracy, and our independent press is the envy of the world. I look forward to learning from the witnesses' broad range of experience and expertise, and expect that we will have a healthy debate.