Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Senate Judiciary Committee
Hearing On Cameras In The Courtroom
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As the son of a printer I come by my affection for the First Amendment honestly, and directly. As we hear the testimony from this distinguished panel on whether to allow the televising of federal court proceedings, I reflect upon my father, who instilled in me a profound respect for the freedom of speech which is at the foundation of our great democracy. I was lucky enough to grow up in Vermont, a place where the culture nourishes the love of liberty and press freedom. After all, Vermont held out in joining the Union until 1791, after the Bill of Rights was ratified and just a few years later, the citizens of Vermont vigorously supported Matthew Lyon in his fight against the Alien and Sedition Acts which was instrumental in the eventual overturning of the that act.

The freedoms guaranteed by the First Amendment are served not only by the press and speech, but also by ensuring that our citizens have access to the government. When I was a young man and a prosecutor, Vermont had a culture of open government in which we had the opportunity to speak with our elected officials and other leaders on a regular basis. While the values of transparency must always be balanced against security needs and the protection of personal privacy, the public will always have a right to know what their government is doing. I think we can all agree that our democracy works best when there is sunshine in government.

Yet, too often in recent years this balance has been skewed. Freedom and security are always in tension in our society, and especially so after the attacks of September 11. We all understand that protecting our national security requires that certain information be kept out of the public eye. But even before that terrible attack, we saw the Bush Administration drape a cloak of secrecy around all kinds of information. In 2001, President Bush signed a new Executive Order limiting the release of presidential records, despite the clearly stated intent of Congress that such records should become public 12 years after a president leaves office. Since this Administration took office, classification has greatly increased. More records are being classified and roped away from public and press access, at enormous cost to taxpayers, and fewer old records are being routinely declassified.

With the current Administration's dramatic shift towards secrecy, these have been tough times for the public's right to know. It is more important now than ever that we take steps not only to secure, but also to expand, access to government for all Americans. That is why I have

continually supported efforts to make all three branches of our federal government more transparent and accessible. Except for rare closed sessions, the proceedings of Congress and its Committees are open to the public and carried live on cable television and radio. Members and Committees also are using the Internet and Web sites to make their work available to their constituencies and the general public.

The work of Executive Branch agencies is subject to public scrutiny through the Freedom of Information Act, among other mechanisms. We must demand transparency from any government, but this Administration, with its penchant for secrecy, requires vigilant attention. This Administration's default position unfortunately has been secrecy and non-transparency, and at a great cost in accountability to the public and damage to the Freedom of Information Act, one of the cornerstones of our democracy. It establishes the right of Americans to know what their government is doing - or not doing. As President Johnson said in 1966, when he signed the Freedom of Information Act into law:

"This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits."

Sadly, the Administration has tried to undermine the Act and, in so doing, has done harm not only the Act itself, but to the democratic principles it serves. In 2001, Attorney General Ashcroft reversed his predecessor's policy on FOIA. Janet Reno told the government, "When in doubt, disclose." John Ashcroft flipped this policy on its head, sending the message that government agencies should err on the side on non-disclosure and promising that the Department of Justice would defend those decisions to withhold information in the courts. In nearly every piece of legislation that touches on FOIA, we can count on government agencies or powerful special interests to work overtime to tack on statutory exemptions from FOIA.

The Bush Administration has tried to control the flow of information through the news media. It tried to limit or in some cases even prevent the press from documenting the death and destruction and deadly delay in the shameful aftermath of Hurricane Katrina. It blocked the publication of respectful photos of coffins holding the remains of American soldiers killed in Iraq. The Administration broadcast ads featuring Armstrong Williams, a conservative commentator, supporting the No Child Left Behind Act, without disclosing that it paid for Williams' endorsement. The Government Accountability Office found that the government engaged in illegal propaganda. And just days ago, a high-level White House official was indicted for lying to federal prosecutors in the CIA leak investigation. This last episode, which remains under investigation, is an incredible example of the government seeking to manipulate press coverage of a highly sensitive issue -- namely, why this Nation went to war in Iraq.

A vital democracy cannot afford to be spoon-fed information by the government that belongs to the people themselves. More can and must be done to increase access to government, such as the work I am doing with Senator Cornyn to improve the implementation of FOIA. Certainly, more can be done in the Third Branch. Although most judicial proceedings are open to those who can travel to the courthouse and wait in line, emerging technology could invite the rest of the country into the courtroom. All 50 states have allowed some form of audio or video coverage of court proceedings, but the federal courts lag behind. I have cosponsored several bills to address this, including two bills currently pending, the Sunshine in the Courtroom Act of 2005 with Senator

Grassley, and the Televising Supreme Court Proceedings Act, with Senator Specter. These bills extend the tradition of openness to the Nation's federal courts and can help Americans be better informed about the important decisions that are made there and how they are made.

In 1994, the Judicial Conference concluded that the time was not ripe to permit cameras in the federal courts, and it rejected a recommendation of the Court Administration and Case Management Committee to authorize the photographing, recording, and broadcasting of civil proceedings in federal trial and appellate courts. Today, the time is ripe. The First Amendment is one of the magnificent bequests of earlier Americans to all the generations that follow. These rights are a fragile gift, needing nurturing and protection by each new generation. We should use the technology available to this generation to give even greater effect to the guarantees of that Amendment and the free and open government it facilitates. It is time to let the sunshine into our federal courts.

I thank all of the witnesses who have exercised their First Amendment rights by sharing their thoughts with us today. The federal courts serve as a bulwark for the protection of individual rights and liberties and the Supreme Court is often the final arbiter of Constitutional questions which have a profound effect on all Americans. Allowing the public greater access to the public proceedings of the federal courts will allow Americans to evaluate for themselves the quality of justice in this country, and deepen their understanding of the work that goes on in the courts.