

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Hearing On "Examining Department Of Justice's Investigation of Journalists Who Publish Classified Information:
Lessons From The Jack Anderson Case"

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Today the Committee considers the important question of how to strike the proper balance between secrecy and openness in matters that touch on national security. This is an issue of paramount concern that has vexed our nation since its founding and continues to challenge us since the world changed on September 11, 2001. I commend the Chairman for holding this important hearing.

I have long been a champion of open government and a vibrant and independent press. My commitment to preserving public debate developed honestly and early as the son of a Vermont printer from Montpelier. In my years in the Senate, I have aspired to fulfill the ideals of my father, fighting for a free press and greater transparency in government. 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. Last year, I introduced legislation with Senator Cornyn to improve implementation of that critical legislation.

I also understand that the collective security of our nation is critical to sustaining our democracy, and there will always be a need to classify some information in the interest of national security. In some instances, the unauthorized release of classified information can compromise our intelligence-gathering capabilities, impede our efforts to thwart terrorism, and even jeopardize lives.

Many observers in and outside of government have also believed, often with good reason, that government too frequently is inclined to stamp too much information with the secrecy stamp, in order to limit accountability and prevent embarrassment. Congress has often struggled to find the proper balance between open public debate and secrecy when it comes to classified information. Shortly after entering into World War I, Congress passed the Espionage Act of 1917, which made it a crime for a person to convey information with the intent to interfere with the operations of our armed forces, or to help the enemies of the United States. However, Congress resisted efforts by the Wilson Administration to criminalize all leaks of government information -- essentially rejecting the notion of an Official Secrets Act.

After World War II and the publication of information about the Government's code-breaking capabilities in the Chicago Tribune, Congress extended the Espionage Act to criminalize the disclosure of communications intelligence. But once again, Congress resisted calls to enact legislation that would prohibit the publication of all classified information.

More recently -- in 2000 -- Congress did include a provision criminalizing leaks of classified material in an intelligence authorization bill. But President Clinton vetoed that legislation because it was overly broad and could chill the legitimate activities of current and former government officials.

Like most Americans, I appreciate the need to protect national defense information. But when it enacted the espionage laws in 1917, Congress clearly understood that giving the Government the authority to prosecute the press simply for publishing newsworthy government secrets would substantially chill First Amendment-protected speech -- and Congress chose not to do that.

For 90 years, there have been no prosecutions of the press under our existing federal espionage laws. Despite this long history, Attorney General Gonzales claimed during a recent interview with ABC News that the Justice Department could do just that. And according to the Washington Times, reporters for the Washington Post and New York Times are being investigated by the Justice Department for publishing stories about the CIA=s secret prisons in Eastern Europe and the NSA=s warrantless surveillance program.

Reasonable people can -- and do -- disagree about the legality and wisdom of such programs. But there can be no question that these award-winning reports contained newsworthy information for Americans, about questionable activities of their government. I am deeply troubled by the Attorney General's remarks and the specter of Government intimidation of the press if the espionage laws are used in ways not intended by Congress.

I am also troubled by the FBI=s request to search the files of journalist Jack Anderson shortly after his death -- reportedly to recover classified documents leaked decades ago. I fail to see what possible national security interest is served by the FBI rummaging through Mr. Anderson=s files many years after he published articles about these matters.

I am pleased that Mr. Anderson=s son, Kevin, is here with us today. I look forward to hearing his views on his father's distinguished career in journalism and the FBI=s contacts with the Anderson family. We also have a distinguished panel of legal scholars and media experts with a broad range of experience and expertise on this issue.

I look forward to a meaningful exchange.