

**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"
June 6, 2006**

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.

#####

Statement of Charles Grassley Senator, United States

Committee on Senate Judiciary

June 6, 2006

Chairmen Specter, thank you for holding this important hearing today. As you know I am a firm believer in open government. When it comes to wrongdoing, corruption, fraud, and waste, sunshine really is the best disinfectant. I also believe that there are certain secrets the government needs to keep in order to safeguard national security. When wrongdoing is alleged in the national security arena, these two values can collide. Unfortunately, certain government officials can abuse the classification process to hide their wrongdoing from public scrutiny and turn the tables on those who would seek to expose politically embarrassing truths.

Jack Anderson specialized in exposing politically embarrassing truths. Sometimes that meant writing about things that some people wanted to hide from public scrutiny by claiming it was controlled national security information. Like journalists, members of Congress and our staff often receive information from whistleblowers trying to expose waste, fraud, or abuse in government. Sometimes the whistleblowers pay a heavy price for disclosing information that others in government are trying to hide. Being willing to pay that price and disclose the information anyway is an essential safety valve in any free society. The prospect that journalists who receive such information may also have to pay a price threatens to shut off that safety valve.

If there is information that would really harm national security in the Jack Anderson archives, then it deserves to be protected from public disclosure. If there is really evidence of a crime in those papers, then the FBI should have access to it. However, the FBI should be willing and able to demonstrate that it has a legitimate reason to access the documents. It needs something more than just an assertion that there may be classified materials in the files.

The Anderson family claimed that rather than demonstrating a real need for the documents, the FBI tried to access them by contacting Jack Anderson`s widow. They contacted her without her son (and attorney) present in order to get her signature on a consent form that she did not fully understand. When First Amendment sensitivities are involved, I don`t think that kind of shortcut is appropriate. Last month, I asked Director Mueller his views on this matter, and he declined to answer, saying he first needed to learn more about the facts and circumstances of Mrs. Anderson`s contacts with the FBI. Perhaps the Justice Department has a better explanation today than they have offered, so far. In any event, I look forward to hearing the testimony of all the witnesses today and hopefully learning more about what happened and whether Justice Department policies permit what the FBI did.