

**OPENING STATEMENT OF
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CHAIRMAN, TERRORISM AND HOMELAND
SECURITY SUBCOMMITTEE
OF THE SENATE JUDICIARY COMMITTEE**

**HEARING: THE ESPIONAGE STATUTES: A LOOK
BACK AND A LOOK FORWARD**

WEDNESDAY, MAY 12, 2010

The subcommittee will come to order.

The current statutory framework with respect to the espionage statutes is a patchwork that traces its roots to the Espionage Act of 1917, which targeted classic espionage situations involving persons working on behalf of foreign nations. Constructed during the First World War, the current framework was formed at a time when intelligence and national security information existed primarily in some tangible form, such as blueprints, photographs, maps, and other documents. Our nation, however, has witnessed dramatic changes to nearly every facet of our lives over the last 100 years, including technological advances which have revolutionized our information gathering abilities as well as the mediums utilized to communicate such information.

Yet, the basic terms and structure of the espionage statutes have remained relatively unchanged in the nearly one hundred years since their inception. Moreover, the current statutory framework with respect to espionage was designed to address classic spy cases involving persons who intended to aid foreign governments. Issues have arisen in the investigation and defense of criminal cases, however, when the statutes have been applied to other groups such as private citizens seek to obtain and disclose classified information, or when government employees disclose classified information, for purposes other than to aid a foreign government.

Legal scholars and commentators have criticized the current statutory framework as confusing and unwieldy, and have asked questions such as what Congress intended when it enacted the statutes because the language that is contained in the statutes could be read differently than Congress may have intended. Indeed, over the years, some federal courts have read additional elements into these offenses to uphold their constitutionality. One federal court observed in 1988 that “carefully drawn legislation” was a “better long-term resolution” than judicial intervention, and in 2006, a federal court in the Eastern District of Virginia observed that the “time is ripe” for Congressional review of the espionage statutes.

The jurisdiction of this Subcommittee includes “oversight of espionage laws and their enforcement,” and this Subcommittee has not recently examined these issues. As a result, the purpose of this hearing is to take a look back at the espionage statutes, to examine how they have been used over the last 70 years, to examine what problems have developed, and to examine how the courts have dealt with these issues. The hearing is designed to educate us on these issues as well as to identify the policy and legal factors that the Congress should consider if it decides that changes might be appropriate.

The purpose of this hearing is not, however, to look at potential legislation such as media shield legislation or to focus on whether members of the press can be prosecuted. Those issues have been dealt with in other hearings and, moreover, legislation has already been considered by the full Judiciary Committee. Rather, this hearing is focused on the application of the espionage statutes to groups such as private persons and government employees, who may have motives and intent other than to aid foreign governments, as well as to classic spy cases.

We have a distinguished panel of witnesses to testify at today's hearing, who will be presenting a wide range of viewpoints. I look forward to hearing their testimony. I will now recognize Senator Kyl, the Ranking Member of our Subcommittee, for any remarks that he would care to make at this time.