

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND (for himself, Mr. LOTT, Mr. CHAMBLISS, Mr. STEVENS, Mr. COCHRAN, Mr. BURNS, Mr. HATCH, Mr. SANTORUM, Mr. CORNYN, Mr. DOMENICI, Mr. BENNETT, and Mr. ALEXANDER):

S. 3774. A bill to amend title 18, United States Code, to prohibit the unauthorized disclosure of classified information to the Committee on the Judiciary.

Mr. BOND. Mr. President, I rise to talk about a related area of security. The Defense appropriations bill is extremely important, but I believe that there is another matter we should be considering. I appreciate the courtesy of the managers of the bill for allowing me to present this.

This is legislation that was passed by the Intelligence Committees in 2000. It had been adopted by unanimous vote, but it was vetoed at the time. This bill very simply provides, for the first time, a simple, clear statement of penalties for Government employees and contractors with access to classified information, who have signed agreements to keep it classified, who knowingly and willfully leak America's most important secrets. Over the past few years, we have seen unauthorized disclosures of classified information at an alarming rate. Each one of the leaks gravely increases the threat to our national security and makes it easier for our enemies to achieve their murderous and destructive plans. Each leak is a window of opportunity for terrorists to discover our sources and methods. Each violation of trust guarantees chaos and violence in the world.

Time and time again, we have witnessed leaks that told our enemies not only that we were watching them and listening to them but how and whom we are cooperating with and how we are getting the information. These leaks have threatened to erode the trust and confidence of the American people and the members of the intelligence community, as well as our allies, built upon years of work. What if during World War II, Americans had seen a leak of the Enigma Program that allowed us to decipher enemy communications and if major media outlets had joined in blowing our most sensitive secret?

Over the past year, there has arisen an apparent absence of fear of punishment in regard to arbitrary divulging of classified information. These are individuals who took solemn vows to protect our Nation. In taking a vow to protect classified information, one should acknowledge that being privy to it establishes a solemn trust. I and all of my colleagues are under obligations as Senators. And as a member of the Intelligence Committee, I have a higher standard to protect classified information. Having that access is a privilege and a trust. There are a number of stinging examples of how these leaks have compromised security. I will not call attention to them because the people who are benefiting from knowing the leaks don't need to know more about it. But a litany of intelligence officials over the past year have told me how much it hurts their efforts.

The former Director of the CIA, Porter Goss, stated in open session that there has been “very severe” damage to our national security. He repeated “very severe.” I asked the same question to current CIA Director Michael Hayden in his open confirmation hearing about the leaks and he said: We have applied the Darwinian theory to terrorists. Unfortunately, we are only catching the dumb ones because the smart ones who watch the media understand what we are doing and will escape. And many others have repeated that refrain. That was before the leakage of our ability to track terrorist financing efforts occurred in papers.

As I have traveled throughout the world and talked with cooperating overseas officials, they have asked me why they should continue to work with us when we can’t keep secrets. Our intelligence chiefs abroad tell me that sources now think twice before speaking with U.S. officers. They fear their information leaking. They said: How can I give you this information if it might be leaked?

What they are really worried about is that leaking their information will identify them and put themselves and their families at risk. This is something which we cannot tolerate if we are to get the intelligence we need.

This is language which has been passed before. It is very simple. It just applies to former or retired officers or employees of the United States or any person who has authorized access and who has agreed to keep it confidential.

First, let me be clear about a couple of things this legislation does not do. It only affects Government employees and contractors who have signed a nondisclosure agreement. It doesn’t affect the media, businesses, or private citizens.

Second, it only regards information properly and appropriately classified, not frivolously or inappropriately classified. If there is an overclassification, then I think the courts would easily throw out the prosecution. It doesn’t cover the new categories of information developed since 9/11, like sensitive but unclassified or unclassified for official use only. It limits the subject of prosecution to those knowingly and willfully disclosing to someone they know is not authorized to receive it. It is not a “gotcha” tool; it is for deliberate leakers.

Well, a Federal judge has pointed out that there is no one piece of legislation that brings together all of our outdated and disparate provisions on the law. The judge has stated that “the merits of the law are committed to Congress. If it is not sensible, it ought to be changed.” This is why we are doing this.

Some of my colleagues said it is an insult that you have to pass a bill to protect classified information. One said:

“If they have taken an oath, they don’t need the threat of law hanging over them to maintain that oath.”

My answer to that one is, where have you been over the past year? I am sorry to inform you that some people need laws to hold them in check. More important, they need prosecution under those laws. There is nothing like an orange jumpsuit on a deliberate leaker to discourage others from going down that path.

I have heard that some say Attorney General Ashcroft recommended that the executive branch not pursue leaks legislation. That is true, but not because it wasn't needed. He said that the onus is on the executive branch to take care to instill a sense of loyalty in its employees to track down leakers and to prevent leakers. He was right. He also said that leaks legislation had value.

I am more than happy to work with my colleagues. I believe it is appropriate to have this debate at a time when Osama bin Laden and al-Zawahiri are warning the United States of future terrorist attacks. It is important to provide protection so that our men and women in the field in places of active hostility, such as Iraq and Afghanistan, can be protected by intelligence that is not compromised.

I ask unanimous consent to have printed in the RECORD a letter dated 31 July from the Association for Intelligence Officers, a group of 4,500 current and former intelligence military and homeland security officers supporting passage of this legislation.

**ASSOCIATION FOR INTELLIGENCE
OFFICERS,**

McLean, VA, July 31, 2006.

Hon. Christopher Bond,

Senate Select Committee on Intelligence,

U.S. Senate.

DEAR SENATOR BOND: On behalf of the Association for Intelligence Officers, a 31-year organization of over 4,500 current and former intelligence, military and homeland security officers, I write in support of your intention to introduce a bill concerning prohibition of the disclosure of classified information by individuals who sign secrecy agreements. We concur that such unauthorized actions have damaged national security.

We note that as early as the 2001 fiscal year, the Congress included such provisions in the Intelligence Authorization Act, but the legislation did not prevail over presidential veto. Since that time, no substantive remedy has appeared.

We understand that the proposed legislation will apply only to government employees and civilian contractors who promised to uphold the secrecy contracts they signed. It will not cover others, such as journalists, nor others not working for the federal government or contractors. It would prohibit only knowing and willful disclosure, so that innocent, inadvertent, or accidental disclosures would not be covered.

We believe there has been an increasing cascade of damaging disclosures of classified information such that a crisis now exists. With no serious punishments nor enforcement of penalties, we lack any meaningful impediment to this growing willful harm to the national interest. As a result, the leaks grow—essentially sabotaging our own intelligence and military operations and causing the deaths of our troops and intelligence operatives. Our allies, understandably, are losing trust that we can engage in mutual operations and hesitate to share crucial intelligence and battlefield information with us.

What leakers think is a harmless bit of back channel policymaking has repercussions down the line that constitute treason and should be treated as such.

We enthusiastically support your efforts. We are ready to provide assistance in whatever manner would prove helpful. Very respectfully,

S. EUGENE POTEAT,

President, AFIO.