

Court declined to revisit the state secrets doctrine in the El-Masri case, there is ample cause for congressional action—both to protect legitimate secrets and ensure public confidence in the process for adjudicating such privilege claims.

The State Secrets Protection Act establishes a clear standard for application of the state secrets privilege and creates procedures for reviewing courts to follow in evaluating privilege claims. Specifically, the Kennedy-Specter State Secrets Protection Act:

Defines state secrets and codifies the standard for evaluating privilege claims: The bill defines “state secret” as “any information that, if disclosed publicly, would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States.” It requires Federal courts to decide cases after “consideration of the interests of justice and national security.”

Requires court examination of evidence subject to privilege claims: The legislation requires courts to evaluate the privilege by reviewing pertinent evidence in camera. By statutorily empowering courts to review the evidence, the bill will substantially mitigate the risk of future allegations that the Government committed “fraud upon the court,” as asserted by the Reynolds plaintiffs 50 years after the landmark decision.

Closes hearings on the privilege—except those involving mere legal questions: Under the legislation, hearings are presumptively held in camera but only ex parte if the court so orders.

Requires attorney security clearances: Under the bill, courts must limit participation in hearings to evaluate state secrets to attorneys with appropriate clearances. Moreover, it allows for appointment of guardians ad litem with clearances to represent parties who are absent from proceedings.

Permits the Government to produce a nonprivileged substitute: Consistent with the Classified Information Procedures Act, the bill allows for the use of nonprivileged substitutes, where possible. If the court orders the Government to provide a nonprivileged substitute and the Government declines to provide it, the court resolves fact questions involving the evidence at issue against the Government.

Protects evidence: The proposed bill incorporates the security procedures established in the Classified Information Procedures Act and permits the Chief Justice to create additional rules to safeguard state secrets evidence.

I commend the bill to all of my Senate colleagues.

#### HONORING MARTIN P. PAONE

Mr. FEINGOLD. Mr. President, today I wish to honor our distinguished Secretary of the Majority, Martin Paone, who announced recently his plans to leave the Senate after almost 30 years of exemplary service. During his career

in the Senate, Marty has helped to guide this body as it has addressed some of the most pressing issues, and faced some of the most difficult challenges, in our Nation’s history.

Marty began his career in the Congress, working in the House Post Office and the Senate Parking Office. From there, he quickly rose through the ranks to become an assistant in the Democratic cloakroom in 1979. After demonstrating his keen understanding of floor procedures, he became a member of the floor staff for the Democratic Policy Committee and later assistant secretary of the majority. In 1995, he was elected as secretary of the minority, and continued to serve in that role, and later as the secretary of the majority, for the Democratic caucus.

As we all know, the procedures of the Senate are complicated, and at times perplexing. Indeed, Americans watching us from home may wonder how we are able get our important legislative work done. Well, one of the principal reasons is that Republican and Democratic Senators alike have been able to rely on Marty’s counsel when it comes to questions about the rules of the Senate. Marty possesses a vast and detailed knowledge of the history and procedures of the Senate that is possibly second only to that of our distinguished President Pro Tempore, Senator ROBERT C. BYRD. And he has a well-deserved reputation as a straight shooter. Whenever I have approached Marty with a question during my time as a Senator, I have always been able to count on him for a straight answer—even when my position may have run counter to that of my leadership.

Throughout his tenure in the Senate, Marty has also served as a steady hand, helping this Chamber through changes in our country’s leadership and critical events in our Nation’s history. Marty’s career has been marked by five different Presidents, five Republican Senate leaders and four Democratic Senate leaders. Marty has also served during several key historic moments, from the end of the Cold War to the tragic events of September 11, 2001. It was after September 11 that Marty’s extensive experience and understanding became especially important as he helped guide this body during an extremely difficult and uncertain time. That service to the Senate, and to the country, was invaluable, and I will always remember it.

I wish Marty, his wife Ruby, and their three children, Alexander, Stephanie, and T.J., all the best as Marty begins this new chapter in his life. He will be greatly missed, but he leaves behind a lasting impact that will help guide this body for years to come.

#### OPEN GOVERNMENT ACT

Mr. LEAHY. Mr. President, as we start a new year—and the Senate starts a new session—the American people have a new law that honors and pro-

TECTS their right to know. I am pleased that during the waning hours of 2007, the President signed the Leahy-Cornyn Openness Promotes Effectiveness in our National Government Act, the “OPEN Government Act,” S. 2488, into law—enacting the first major reforms to the Freedom of Information Act, “FOIA” in more than a decade.

Today, our Government is more open and accountable to the American people than it was just a year ago. With the enactment of FOIA reform legislation, the Congress has demanded and won more openness and accountability regarding the activities of the executive branch. I call on the President to vigorously and faithfully execute the OPEN Government Act, and I hope that he will fully enforce this legislation.

Sadly, the early signs from the administration are troubling. Just this week, the administration signaled that it will move the much-needed funding for the Office of Government Information Services created under the OPEN Government Act from the National Archives and Records Administration to the Department of Justice. Such a move is not only contrary to the express intent of the Congress, but it is also contrary to the very purpose of this legislation—to ensure the timely and fair resolution of American’s FOIA requests. Given its abysmal record on FOIA compliance during the last 7 years, I hope that the administration will reconsider this unsound decision and enforce this law as the Congress intended.

In addition, for the first time ever under the new law implementing the recommendations of the 9/11 Commission, Federal agencies will be required to fully disclose to Congress their use of data mining technology to monitor the activities of ordinary American citizens. I am pleased that this law contains the reforms that I cosponsored last year to require data mining reporting and to strengthen the Privacy and Civil Liberties Oversight Board.

Surely all of these OPEN Government reforms are cause to celebrate. But there is much more work to be done.

During the second session of the 110th Congress, I intend to work hard to build upon these OPEN Government successes, so that we have a government that is more open and accountable to all Americans. As chairman of the Judiciary Committee, I have made oversight of the FOIA reforms contained in the OPEN Government Act one of my top priorities. I will also continue to work closely with Members on both sides of the aisle and in both Chambers to address the growing and troubling use of FOIA (b)(3) exemptions to withhold information from the American people.

As the son of a Vermont printer, I understand the great value of documenting and preserving our Nation’s rich history for future generations, so that our democracy remains open and