

[As prepared for delivery]
OPENING STATEMENT
HON. JANE HARMAN, RANKING MEMBER
HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

HEARING ON THE ROLE AND RESPONSIBILITIES OF THE
MEDIA IN NATIONAL SECURITY
May 26, 2006

Good Morning, Mr. Chairman, and welcome to our witnesses.

I'm pleased we are having an open hearing. Many of us have been saying for years that we should do more of our business in public, and I appreciate the progress on that front.

This is a crucial debate, Mr. Chairman -- all the more reason we shouldn't accept a false choice ... that you are either *for* a free press, or you are *for* keeping American soldiers safe. I reject that false choice.

There's a lot of heat on the issue of leaks, and I hope our witnesses can shed some much needed light.

Let me offer a few initial points.

First, a free press is what keeps us secure. The First Amendment states that "Congress shall make no law . . . abridging the freedom . . . of the press." Our Framers did this for a reason. There are countries today where journalists are punished and imprisoned for reporting on their government. If anyone here wants to imprison journalists, I invite them to spend some time in China, Cuba or North Korea and see whether they feel safer.

This is not a new debate. In 1971, the New York Times received a top-secret history of the government's disastrous decision-making process that led to the Vietnam War. The Administration insisted that publication of the *Pentagon Papers* would harm national security and took the Times to court for violating the "Espionage Act." The Supreme Court, in a landmark case, held that a prior restraint on the press would erode the very liberty that the First Amendment was designed to protect.

I never want the press to stop shining a light on our government.

Second, if leaks are going to be decried, there can't be a double-standard. I've heard some suggest that the White House's leaking of classified information to discredit its Iraq war critics was "legal" because the President authorized it. That smacks of a statement Richard Nixon was fond of: That "when the President does it,

that means it is not illegal.” Leaking classified information to silence political critics is an abuse of power. Period.

Third, there is a suggestion today that we need additional laws to safeguard our secrets. But in 2002, the Ashcroft Justice Department studied this issue and concluded we do not need additional legal authorities. Indeed, Mr. Chairman, testimony we have received in this Committee confirms that no new law is required, and in fact, could lead us down a dangerous path.

But I am also deeply troubled by Attorney General Gonzales’ suggestion last week that journalists could be prosecuted for printing national security-related information. This is not a mere hypothetical. In a current case, the Department of Justice is taking the position that the oral receipt of information and the retransmission of that information constitutes a violation of the Espionage Act – a theory which, if true, would punish not just every reporter for the Los Angeles Times but every reader of the newspaper who discusses what they read with their neighbor.

What we need is a serious, clear-eyed view of this issue.

We ought to look at the problem of over-classification. The non-partisan National Security Archive, which submitted a statement for the record, reports that classification is on the rise. In 2004, the federal government made 15.6 million classification decisions, up from 8.7 million in 2001. In 2004, the government spent \$8 billion to classify information. Over-classification not only wastes precious resources that can be used to fight the enemy but it also reduces the American people’s confidence in their government.

We also ought to be concerned about any perceived crackdown on whistleblowers at a time when Congressional oversight of the Executive branch is anemic. The government must be able to act in secret where appropriate. And it is this Committee’s role to conduct oversight on behalf of the American people. But if we fail to conduct serious oversight, then we are inviting the problem.

Let me be clear: Leaks can get people killed or compromise the way we find terrorists. But how we deal with this problem also has serious consequences. If done wrong, we can kill our Constitution and compromise the values upon which our country is built. This is not a zero-sum game.

We’ve received several statements for the record, Mr. Chairman. They have been provided to the clerk, and I seek unanimous consent to include these statements in the record. I’ll also ask unanimous consent to hold the record open for three business days. The public rarely gets the opportunity to interact with this Committee and I believe it is appropriate in this case.

With that, I’ll once again thank you and welcome our witnesses.