

Opening Statement of Chairman Pete Hoekstra

“Roles and Responsibilities of the Media with Respect to Unauthorized Disclosures of Classified Information”

House Permanent Select Committee on Intelligence

May 26, 2006

Good morning and welcome. Welcome to our four witnesses testifying before the Committee this morning: two representatives from the media and two legal scholars, who will provide their views about the media's roles and responsibilities with respect to the reporting and publication of classified information. I will introduce the witnesses in more detail before they testify.

Today's hearing is the latest in series held by this Committee on the subject of unauthorized disclosures of classified information or leaks. In the first hearing, we heard testimony from members of the Intelligence Community about how leaks have done as much damage, if not more so, to our national security than that caused by foreign espionage. Of particular importance to this Committee are those leaks that affect our intelligence capabilities. Recent disclosures have seriously damaged real intelligence collection and analysis capabilities, placed sensitive assets at risk, and harmed key relationships with foreign intelligence partners.

Our second hearing examined whether the Department of Justice and the Federal Bureau of Investigation have been able to take effective action to investigate and prosecute illegal disclosures of classified information under existing criminal laws. We learned that there are many significant obstacles to these investigations, and I became concerned that the Department of Justice has not acted aggressively in previous cases to pursue such disclosures, for a variety of reasons.

Today's hearing is to provide a forum for witnesses outside the government to discuss their perspectives on the issue – with respect to both the role of the media in disseminating information in the public interest, and the responsibilities and legal framework attendant to disseminating sensitive national security information, particularly in a time of war. There are a number of competing considerations at work here and for the very fact that we are a country at war, we must carefully and thoroughly consider them all.

As some of our witnesses will testify today, the news media serve a substantial public interest in disseminating information on matters of public concern. There is no question we must remain vigilant to protect the First Amendment right to publish and broadcast free from prior government restraint. Also, unquestionably, there are significant issues with respect to public disclosure of information in the intelligence community. As one example, I have worked aggressively to stimulate the declassification, public disclosure, and discussion of documents captured from Iraq. This initiative is a good demonstration of how and why matters that are of legitimate interest

to the general public should be brought to public light – but only when disclosure is done in accordance with the law and consistent with our own national security.

It is equally apparent, however, that the press is not above the law, including laws regarding unauthorized disclosure and use of classified information. These laws exist not to stifle dissent, but to protect incontrovertible national security interests. In fact, an Executive Order specifically prohibits classifying information to conceal violations of law, control the release of embarrassing information, or simply to prevent or delay its public release.

Some people have compared unauthorized disclosures of classified information to “victimless” crimes, where the only witnesses to the crime are the person who made the illegal disclosure and a reporter, each of whom has self-interested reasons for keeping the identity of the leaker secret. However, I believe there is a victim, and it is our national security.

In the Pentagon Papers case, Justice Stewart noted that “undoubtedly, Congress has the power to enact specific and appropriate criminal laws to protect government property and preserve government secrets.” Justice White echoed the same theme with even greater force in his opinion in the same case, observing that although the First Amendment prohibits prior restraints, newspapers “must face the consequences if they publish.”

While I am not yet willing to go so far as to advocate the criminal prosecution of those who publish classified information implied as a potential remedy by Justice White, I am concerned that there may be a lack of understanding by the media of the law and, moreover, the very real detrimental effect that their actions can and do have on national security.

Reporters who knowingly receive classified information are essentially “receiving stolen property.” However, just last week, the Executive Editor of the Washington Post said that he believed few sources providing classified information were breaking the law; he instead described the problem as merely one in which “employers may object to their divulging the information.” This is an argument that on its face, disregards black letter law.

As our ranking member stated publicly on Monday, the fight against the enemy is an intelligence war. Publishing classified information is like giving the enemy our playbook. Some have estimated that leaks of classified information have caused billions of dollars of damage to America’s defensive intelligence programs. So the people that pay the price are not only the men and women who defend our nation, but the American taxpayers, as well.

I am concerned that some journalists apparently believe they should have the right to determine which national security information is or is not “fit to declassify.” I simply don’t believe they could have a proper understanding of the relevant facts and consequences that such

decisions to disclose require. It is far too easy for self-appointed arbiters to presume that information should be disclosed when they bear no responsibility for national security for the potentially grave costs, potentially including loss of life, for an irresponsible disclosure.

Just as the First Amendment provides certain protections for journalists, Article II of the Constitution assigns certain responsibilities to the President and the President only. The authority and responsibility to determine what information to protect in the national interest is given to the President; it is not for private individuals to decide to disclose information in their own self interest.

Commentators have attempted to minimize the significance of some of these damaging disclosures by saying, in effect, that “everyone does it.” Our previous closed hearings have demonstrated fully that this is precisely the problem – and not an excuse – because it reduces our most sensitive national security information to the level of common currency for “inside the Beltway” gamesmanship.

Let me be crystal clear – this hearing is not about stifling criticism, or political debate, or about facilitating anything to be covered up – it is about properly protecting national security information that courts have clearly recognized it is appropriate to protect under the Constitution and laws of the United States.

I look forward to today’s discussion and to the perspectives of all sides on these important issues. Again, I thank the witnesses for

joining us today. I now recognize the distinguished Ranking Member, Ms. Harman, for her opening statement.