

**STATEMENT TO ACCOMPANY TESTIMONY
BEFORE THE JUDICIARY COMMITTEE,
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman, Members of the Committee, Ladies & Gentlemen: Thank you for the privilege of testifying before this committee. It is an honor for me, a former APSA Congressional Fellow, to return from whence I came – something seldom to admitted back home in Texas.

Today's topic, "National Security Leaks And The Law" is one I can address at several levels. Most of my military career was spent as an intelligence officer, including overseas assignments in the Army's equivalent of the FBI. As an Army Special Agent, I investigated the national security crimes enumerated by Title 18, US Code, including sabotage, subversion and espionage – all against the deadly serious backdrop of the Cold War. My military career ranged from entry as a draftee to retirement from active duty as a Colonel and Dean of the National War College. Out of uniform, I spent nearly a decade as an on-air military analyst for NBC News, MSBC and CNBC. My media involvement today is principally as a columnist for blogsites ranging from the Daily Caller to the Daily Beast but most recently for the Huffington Post. The author of five books, I am also a featured reviewer for the New York Journal of Books (NYJB).

Based on those experiences, this morning I can suggest to this committee that your misgivings about media bias are well-founded and fully shared by your constituents; that 'media ethics' is a term often indistinguishable from 'media self-interest,' usually in direct support of a pervasive left-wing narrative; and that such self-interests inevitably trump the interests of national security. In short: Media objectivity has been replaced by media advocacy, even at the expense of national security. Let me briefly cite three specific examples to support that assessment.

First, I was recently assigned by NYJB to review a new book by New York Times reporter David Sanger. Ironically entitled *Confront & Conceal* (NY: Crown Publishers, 2012), my evaluation as a reviewer is that Mr. Sanger's book conceals nothing and represents a new low in the profligate revelation and sale-for-profit of the most sensitive American military and diplomatic secrets. Sadly this vice is also habit-forming, since we have now become accustomed to the anarchy of Julian Assange and Wikileaks; and to

the repetitive, in-your-face defiance of every defense classification by Bob Woodward – both in his Washington Post columns and his books. But Mr. Sanger’s book, among other things, reveals that the Obama White House orchestrated a deliberate, integrated campaign of industrial espionage against Iranian nuclear facilities, including the use of the Stuxnet and Flame viruses.

The danger of those shocking revelations can hardly be over-stated. Not only is industrial sabotage against Iran clearly an act of war, just like a blockade or an aerial bombardment; but such headlines also expose the United States to retaliation from a country whose links to terror are well-established. As the President’s own cyber-czars have repeatedly warned us, the American economy and infrastructure are computer-dependent and therefore uniquely vulnerable to retaliatory cyber-strikes. One of the defining features of cyber-war is the absence of a return address on a worm, a virus or a well-orchestrated computer hack. Yet Mr. Sanger - systematically penetrating the Obama White House as effectively as any foreign agent - removed any conceivable doubt about Stuxnet, Flame or American intentions regarding Iran. I believe that Mr. Sanger’s actions cry out for a painstaking investigation. Did he violate the Espionage Act? If he did, those actions potentially place him, his superiors at the New York Times and his publishers at Crown Books in jeopardy of forfeiting their liberty and property. Far from advancing our rights as citizens - as a free press should - Mr. Sanger deliberately placed his country at significant risk for his own profit. He might just as well have knocked over a local bank and then claimed a journalistic interest in money supply – his own most of all.

Ever since the articles profiling Mr. Sanger’s book first appeared in the New York Times, the blogosphere has been alive with speculation dominated by one question. Was this expose timed deliberately by the NYT to enhance President Obama’s re-election chances? The Times has revealed only that multiple sources helped to produce its story. President Obama has publically stated that he finds it “offensive” that anyone would dare to suggest “that my White House would purposely release classified national security information.” So let me stress for the record that I do not know if those leaks were deliberate and, until it investigates for itself, neither does this committee. But the rather casual treatment of Top Secret-codeword information has been a constantly recurring theme among people with National Security Council experience. I am not naïve enough to think this problem has been limited to the Obama White House – or that Republican officials in previous administrations have been blameless. But Mr. Chairman, as an experienced field investigator, I would recommend unraveling the current failure chain in the most exacting fashion - while always asking Cicero’s classic question: Cui bono?

Second, I can also speak from personal experience as a book reviewer about the dubious ethics routinely employed by the NYT to advance its own agenda. Basically, the Times exploits its dominant position in the news industry to promote the views of its own authors and its own agendas. Mr. Sanger's front-page articles, for example, were closely coordinated with his book's publication date – the better to insure it “flew off the shelves” and increased sales. But so too were those all-important first reviews from the few writers allowed prior access to the book. We at the NYJB were not among them, even though we offered to sign a pre-release non-disclosure agreement, a common publishing practice. But the NYT does not trust anything it cannot control, a position it strengthens still further by publishing its own book reviews. Naturally, that position also allows it the luxury of chastising its political enemies, particularly when the issues involve national security. Last year, for example, I signed a non-disclosure agreement with his publisher to review the book by former Secretary of Defense Donald Rumsfeld, *Known And Unknown*. Exactly as agreed, my review appeared at midnight on the book's publication date – but it was not the first. Days earlier, the NYT also reviewed the Rumsfeld book and, not surprisingly, trashed it. But their dirty little secret: the NYT had somehow obtained a “bootleg copy” of the book from an unscrupulous source - probably paying for the privilege. As most insiders in the publishing community know all too well, the NYT will go to any lengths to insure that their worldview is trumpeted exclusively from the housetops. But those publishers also fear being excluded from the Blue Ribbon of publishing - **New York Times Best-Seller** – so they won't tell you. I just did of course but let me also add the observation that purloining information - either classified or protected by copyright is precisely what the NYT does, as well or even better than my KGB colleagues during the Cold War.

Third, I have personally experienced what it feels like when the NYT deliberately distorts national security information, even to the point of plagiarism. On April 20, 2008, the NYT published an inflammatory expose: “Behind Analysts, Pentagon's Hidden Hand” by David Barstow. The Times' article charged that over 70 retired officers, including me, had misused our positions while serving as military analysts with the broadcast and cable TV networks. The article went on at considerable length (7500 words) to suggest that: we had been seduced by privileged access to closed-door Pentagon briefings; that some of the military analysts had allowed their ties to defense contractors to influence what they later said on TV (there were even hints of possible kickbacks); but above all, that the military analysts had conveyed to their TV audiences a view of the wars in Afghanistan and Iraq secretly shaped by Pentagon propaganda.

Mr. Chairman, I shall not long detain the committee by repeating information already in your possession, but let me briefly summarize what happened next:

- The NYT article prompted angry denunciations from 40 House Democrats as well as Senators Carl Levin, Hillary Clinton and Barack Obama;
- In response, investigations were promptly launched by the General Accounting Office, the Federal Communications Commission as well as the Pentagon IG; and finally
- After more than three years, four separate Federal investigations, and the expenditure of at least \$2.3M, we were fully exonerated by the DOD IG. That agency found no evidence that any Federal law, regulation or instruction had been violated, despite the charges leveled by the NYT.

Equally revealing: The NYT finally published a grudging “clarification” – but on Christmas Day, deeply buried in an interior section. As the Wall Street Journal commented acidly several days later, the original NYT story, “all fit tidily into the narrative that the war was a conspiracy run by a Dick Cheney-Don Rumsfeld shadow government. Michigan Senator Carl Levin and then-Presidential candidates Barack Obama and Hillary Clinton called for federal investigations. Well, those investigations have now shown that the liars weren't at the Pentagon.”

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Mr. Chairman, that same WSJ article referred to the book I wrote - *Warheads: Cable News and the Fog of War*, published in 2006 by the US Naval Institute Press –18 months prior to the NYT article. From that article’s publication until this morning, I have never mentioned the name of its author, David Barstow, recipient of the 2009 Pulitzer Prize. However, I have complained, publicly that Mr. Barstow neglected to mention even the existence of *Warheads* in the course of his lengthy article. He thereby concealed how my book provided him with a framework that he repeatedly acknowledged to me during at least 3-4 hours of telephone interviews in early 2008. (I have separately provided the committee’s general counsel with Mr. Barstow’s private telephone and cell phone numbers as verification.) Our conversations even began with references to specific pages and chapters in *Warheads*.

Yet Mr. Barstow ultimately failed to mention *Warheads* – or even its existence - because to have done so would have fatally undercut what the WSJ later described as “myth-making.” I have made these same points in articles that have appeared from newspapers (*San Antonio Express News*) to well-respected blogsites like Real Clear Politics. When Mr. Barstow was awarded the Pulitzer, I also complained directly to the Dean of the Columbia School of Journalism, which administers the Pulitzer awards committee. Finally, I also contacted the New York Times public editor and publisher: All to no avail.

Based on these experiences, I can recommend three specific actions to this committee, especially if you are serious about pursuing today’s topic, which extends far beyond simple media bias.

First, it is essential that the Congress take the lead in investigating Mr. Sanger and his White House sources. Who leaked the information, who else was involved and who conspired to publish that information to a global audience? (which certainly included that hostile foreign power known as the Islamic Republic of Iran) Were the motivations of those in this failure chain political, economic or ideological? Finally, has Title 18 actually been violated and are criminal charges warranted? I suggest that this determination is one that Congress cannot delegate elsewhere –certainly not to the independent counsels appointed by an Attorney General already found in contempt of Congress.

Second it is vital that such an investigation also be undertaken to test the Espionage Act. Is this act, passed during World War I, still adequate to protect American secrets in the 21st century – amidst the information revolution? Even before this revolution began, leaking has been a bipartisan sport, practiced so widely as to erase the law’s previously bright lines. Its provisions clearly apply to anyone employed by our government or holding a government-issued security clearance. But in the brave new world of open-source information, what are the obligations of journalists or even those without security clearances? While espionage is a criminal offense in most countries, some argue that we should not criminalize investigative reporting, that some degree of latitude is essential to protect whistleblowers and the usually undefined privilege of the public’s right to know. Bottom line: The Congress and this committee must find a new trial balance between freedom and responsibility because the old one has obviously collapsed.

Third, the Congress clearly owes the Warheads an apology for the actions taken in its name and at the direct instigation of some Members still holding office. Not only are some of my brothers authentic heroes but all are distinguished veterans who did nothing to deserve the ignominy heaped upon them by the New York Times – much less potential indictments. Most Americans live in mortal fear of an IRS audit. What would they say to four Federal investigations being inflicted on the Warheads – each financed by significant outlays from the public treasury?

My conclusion does not take the form of a specific recommendation to this committee, since there can now be little doubt about media bias. Our citizens simply take that bias for granted, considering the New York Times to be one of its more extreme examples. So what do we do about it? Last year, I reviewed a fascinating book, *The Deal From Hell*, by James O’Shea, former editor of the Chicago Tribune and the Los Angeles Times. (NY: Perseus Books, 2011) Mr. O’Shea makes the sensible point that our media outlets – great and small – depend on popular support, just like any other business. As voters, we freely make choices at the polls. Why then as information consumers should we not feel free to boycott newspapers when we find their actions egregious? Or even to apply those same judgments to companies who use them to send their commercial messages? Such power to reward or penalize rests solely in the hands of our citizens: but they need leadership and encouragement.

In conclusion, Mr. Chairman, I leave you with a quote from one of my favorite newspaper characters, that all-wise, practical philosopher named Pogo, who famously said, “We have met the enemy and he is us.” Never more so than here and now!