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MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
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**Statement of Rep. Henry A. Waxman, Ranking Minority Member
Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
Hearing on
“Overclassification and Pseudo-classification”**

March 2, 2005

Thank you, Mr. Chairman, for holding this hearing, and for your leadership in addressing the issue of government secrecy.

Incredibly, it seems necessary to state the obvious today — the government belongs to the people. The American people understand that some information must be kept secret to protect the public safety. But when the government systematically hides information from the public, government stops belonging to the people.

Unfortunately, there have been times in our nation’s history when this fundamental principle of openness has come under direct attack. The Watergate era of the Nixon Administration was one of those times. We are now living through another.

Over the last four years, the executive branch has engaged in a systematic effort to limit the application of the laws that promote open government and accountability. Key open government laws such as the Freedom of Information Act, the Presidential Records Act, and the Federal Advisory Committee Act have been narrowed and misconstrued. At the same time, the Administration has greatly expanded its authority to classify documents, to conduct secret investigations, and to curtail Congress’s access to information.

Last fall, I released a report entitled “Secrecy in the Bush Administration” that detailed many of these threats to the principle of open government. I ask unanimous consent that this report be made part of today’s hearing record.

Yesterday, I wrote a letter to Chairman Shays that described a new threat to openness in government: the Administration’s misuse of rapidly proliferating designations such as “sensitive but unclassified” and “for official use only” to block the release of important information. And I ask unanimous consent that this letter also be made part of today’s hearing record.

Many of these new designations have been created out of thin air by the Administration. They do not have a basis in federal statute. And there are no criteria to guide their application. It appears that virtually any federal employee can stamp a document "sensitive but unclassified," and there do not appear to be uniform procedures for removing these designations.

The examples we discovered are alarming. The executive branch has been using these novel designations to withhold information that's potentially embarrassing, not to advance national security.

Last year, I wrote a letter to Secretary Powell that revealed that the State Department's annual terrorism report was grossly inaccurate. This government report claimed that terrorist attacks reached an all-time low in 2003. In fact, exactly the opposite was true: significant attacks by terrorists actually reached an all-time high.

To his credit, Secretary Powell admitted that mistakes were made and required the issuance of a new report.

Several months later, the Inspector General prepared a report that examined what went wrong. The report was released to the public in one version. And another version – a "sensitive but unclassified" version – was sent to certain offices in Congress.

My staff compared the two versions. They were identical except for one difference: the "sensitive but unclassified" version reported that the CIA played a significant role in preparing the erroneous report. This information was redacted in the public version.

I have a message for the Administration: admitting that the CIA made a mistake is not a national security secret.

Another example involves the role that Under Secretary of State John Bolton played in preparing an infamous fact sheet that erroneously alleged that Iraq tried to import uranium from Niger. The State Department wrote me in September 2003 that Mr. Bolton "did not play a role in the creation of this document." But a "sensitive but unclassified" chronology – which has never been released to the public – shows that actually Mr. Bolton did direct the preparation of the fact sheet and received multiple copies of the draft.

Apparently, "sensitive but unclassified" is also a codeword for "embarrassing to senior official."

And here's an ironic example: the Department of Homeland Security used the "sensitive but unclassified" designation to withhold the identity of the ombudsman that the public is supposed to contact about airline security complaints.

I suggested to Chairman Shays that the Subcommittee should investigate the misuse of these designations, and I am glad to report that he has agreed. In fact, we are signing letters today seeking information from several agencies about the way they use these new designations.

With his support, I hope that we can impose some restraints on this new form of government secrecy.

There are other issues I hope we can examine today. One involves the process that was used to declassify important 9/11 Commission documents. Last month, we learned about long delays in the declassification and release of key documents that called into question statements made by Secretary of State Condoleezza Rice and other senior Administration officials. These embarrassing documents were not released until after the presidential elections and after Ms. Rice's confirmation. Today, I hope we can learn more about the delay in the release of these documents and whether politics played any role.

Another important topic is the case of Sibel Edmonds, who will testify on the third panel. Ms. Edmonds joined the FBI in 2001 as a linguist, but she was fired just a few months later for warning her superiors about potential espionage occurring within the Bureau. Last month, the Justice Department Inspector General released an unclassified report that vindicated Ms. Edmonds, finding that her core allegations were "clearly corroborated."

Yet the Justice Department has repeatedly sought to prevent inquiries into her case by citing secrecy concerns. Indeed, government lawyers even argued that her legal efforts to obtain redress should be thrown out of court to avoid the risk of disclosing sensitive information.

Mr. Chairman, let me close by thanking you for holding this hearing, for investigating the problematic "sensitive but unclassified designation," and for including Ms. Edmonds in the hearing. This hearing – and your actions – demonstrate that openness in government is not a partisan issue. The fact is, there is bipartisan concern in Congress that the pendulum is swinging too far toward secrecy.

I look forward to the testimony of today's witnesses.