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**Committee on Homeland Security, Subcommittee on Intelligence,
Information Sharing and Terrorism Risk Assessment
United States House of Representatives**

**Regarding a Hearing on:
“The Over-Classification and Pseudo-Classification of Government
Information: The Response of the Program Manager of the Information
Sharing Environment”**

April 26, 2007

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Chairman Thompson, Ranking Member King, Chairwoman Harman, and Members of the Subcommittee, I sincerely appreciate the opportunity to appear before you today to discuss state and local law enforcement’s involvement with standardizing procedures for sensitive but unclassified (SBU) information and related issues impacting local, state, and tribal law enforcement.

I have served with the New York State Police for more than 24 years, and I have over 30 years experience in law enforcement. Presently, I serve as the Deputy Superintendent in charge of Field Command. I oversee the Bureau of Criminal Investigation, the Uniform Force, the Office of Counter Terrorism, Intelligence, and the associated special details of these units. I also have the privilege to serve as the vice chair of the U.S. Department of Justice’s (DOJ) Global Justice Information Sharing Initiative (Global) Advisory Committee, the chair of the Criminal Intelligence Coordinating Council (CICC) and of the Global Intelligence Working Group (GIWG). In these capacities, I have been fortunate to actively participate in discussions relating to intelligence reform, and I have provided significant input to the federal government regarding information sharing and intelligence.

I expect that we would all agree that the current number of sensitive but unclassified (SBU) designations and the lack of consistent policies and procedures for unclassified information severely hinder law enforcement’s ability to rapidly share information with the officials that need it to protect our country, its citizens, and visitors. Much progress has been made recently in addressing the classification issue by way of Guideline 3, and much of the headway is due to the leadership and efforts of Ambassador Thomas E. McNamara of the Office of the Program Manager for the Information Sharing Environment (ISE) and the other relevant federal agencies. I am gratified that I have also had the opportunity to contribute to this effort.

For many years, law enforcement agencies throughout the country have been involved in the sharing of information with one another regarding investigations, crime reporting, trend analysis, and other types of information considered law enforcement sensitive. Oftentimes, these investigations involve public corruption, organized crime, narcotics, and weapons smuggling, and they frequently involve the use of undercover operations, confidential sources, and lawful covert electronic surveillance. State, local, and tribal law enforcement agencies do not have the ability to classify their material, and we must be assured that strict control is used when handling and distributing this type of data to ensure that the information and investigation are not compromised and that we do not sustain a loss of a life. Also, since September 11, 2001, law

enforcement agencies nationwide are more fully involved in the prevention, mitigation, and deterrence of terrorism, and consequently, they receive more information and intelligence from their federal counterparts.

Moreover, many law enforcement agencies generate their own information and intelligence (much of which is collected in a sensitive manner) that is passed to other law enforcement agencies for their possible action. Law enforcement agencies have also begun to share information with new stakeholders in the fight against terrorism. They now routinely share information with non-law enforcement government agencies and members of the private sector in order to assist in prevention efforts. This activity has altered the information sharing paradigm.

Another issue that exists within the current environment is the apparent “over-classification” of material. Over-classifying data results in information and intelligence not being sent to the law enforcement professionals on the front lines of the fight against terrorism in this country—the officers, troopers, and deputies in the field. It still appears to be a difficult process for the federal intelligence community to develop “tear-line” reports that can be passed to law enforcement so that the intelligence can be operationalized in an effective and proactive manner.

Up until a short time ago, there was a lack of a coherent, standardized process for marking and handling SBU data. Lack of consistency in markings led to confusion and frustration among local, state, tribal, and federal government officials and also a lack of confidence in knowing that the information that was shared was handled in an appropriate and secure manner. Recent studies by the Government Accountability Office, the Congressional Research Service, and other institutions have confirmed and highlighted the problems created by the various markings and the lack of common definitions for these designations. These studies revealed that there are over 120 different designations being used to mark unclassified information so that agencies can “protect” their information. These pseudo-classifications did not have any procedures in place outlining issues such as who can mark the material; the standards used to mark the material; who can receive the information; how the information should be shared, who it could be shared with, and how it should be stored; and what impact, if any, these markings have on the Freedom of Information Act.

As a result of several key federal terrorism-related information sharing authorities, such as the Intelligence Reform and Terrorism Prevention Act of 2004, Executive Order 13388, and the December 2005 Memorandum from the President regarding Guidelines and Requirements in Support of the Information Sharing Environment, specifically Guideline 3, much work has been undertaken to bring about intelligence reform in this country. Local, state, and tribal law enforcement have been and continue to be active and collaborative participants in this undertaking.

As a representative of the New York State Intelligence Center (NYSIC)¹ and DOJ’s Global Initiative, I have participated in a number of efforts to implement the guidelines and requirements that will support the ISE. Recognizing the need to develop a process for standardizing the SBU process, the CICC and GIWG commissioned a task team in May 2006 to develop recommendations that would aid local, state, and tribal law enforcement agencies in fully participating in the nationwide information sharing environment. This work was done with

¹ Formerly known as the Upstate New York Regional Intelligence Center (UNYRIC)

the Federal Bureau of Investigation, the U.S. Department of Homeland Security, the Office of the Program Manager for the Information Sharing Environment, and other law enforcement entities. The recommendations made by that team were provided to an interagency SBU working group. Subsequently, I participated on the SBU Coordinating Committee (CC) that was established to continue the Guideline 3 implementation efforts begun by the interagency group.

As you know, the SBU CC recommendations are currently under review and awaiting ultimate Presidential approval. The CC recommends adoption of a new Controlled Unclassified Information (CUI) Regime that is designed to standardize SBU procedures for information in the ISE. The recommendations include requiring controls on the handling and dissemination of SBU information. By and large, I believe local, state, and tribal agencies will support the new CUI Framework because they want to be active participants in the ISE and are supportive of clear and easily understandable protocols for sharing sensitive information.

Local, state, and tribal agencies want to be able to receive terrorism, homeland security, and law enforcement information from the federal government and clearly understand, based on the markings on the data, how the data should be handled and stored and to whom the information can be released. The data should be disseminated as broadly as possible to those with a need to know, including non-law enforcement public safety partners, public health officials, and private sector entities. Conversely, local, state, and tribal entities are frequently the first to encounter terrorist threats and precursor criminal information, and the new CUI markings will assist with sharing that type of information both vertically and horizontally while respecting originator authority.

A number of critical issues must be addressed at the local, state, tribal and federal levels in order to facilitate a successful CUI Regime implementation, including training, policy and procedural changes, system modifications and enhancements, and funding to implement these recommendations.

Emphasis must be placed on the development and delivery of training to local, state, tribal, and federal personnel on the CUI Framework. Because of the possibility of wide distribution of sensitive information, it is imperative that training be given a priority so recipients have a clear understanding of marking and handling procedures. In order to maximize the effectiveness of the training and reach the appropriate recipients at the local, state, and tribal levels, I recommend that it be provided on a regional basis across the country to personnel in the designated statewide fusion centers. Focusing on fusion center officials in the initial delivery phase directly supports the national information sharing framework that calls for the incorporation into the ISE of a national network of state and major urban area fusion centers.

In support of the ISE, state and major urban area fusion centers will be contributing information to ongoing federal and national-level assessments of terrorist risks; completing statewide, regional, or site-specific and topical risk assessments; disseminating federally generated alerts, warnings, and notifications regarding time-sensitive threats, situational awareness reports, and analytical products; and supporting efforts to gather, process, analyze, and disseminate locally generated information such as suspicious incident reports. Over 40 states currently have operational fusion centers, and it is critically important that center personnel receive timely, relevant training to enable them to fully function in the national ISE.

Training will provide insight and an understanding of how the CUI handling and disseminating requirements affect business processes. This will cause agencies to execute policy and procedural changes and system modifications. There are potentially over 18,000 local, state, and tribal law enforcement agencies in our country that could be impacted by the implementation of the CUI Framework. I believe that the federal government—working collaboratively with local, state, and tribal authorities—should develop model policies and standards to aid in the transition to the Framework. Funding issues will be a major factor for local agencies, especially in regard to modifying/enhancing information technologies and applying encryption requirements to ensure proper transmission, storage, and destruction of controlled information.

It will be through these ongoing collaborative efforts regarding Guideline 3 that the ISE will take another step towards being the meaningful and cooperative sharing environment that it was intended to be. These actions will result in the maturation of information sharing among state, local, and tribal agencies; private entities; and their federal counterparts, which will in turn assist in our collective efforts to prevent another terrorist attack and reduce violent crime. Our goal should be to share as a rule and withhold by exception, according to rules and policies that protect the privacy and civil rights of all.

Being involved in the CUI Framework development process has been a rewarding and sometimes arduous experience. It is a process that I and the entire state, local, and tribal law enforcement community take very seriously. It is very encouraging to me that the Office of the Program Manager and other relevant partner federal agencies have made great strides in recognizing the value that local, state, and tribal officials bring to the table. We want to remain active, ongoing partners and participants with the federal government as we work towards a national information sharing environment.

Mr. Chairman, I thank you and your colleagues for giving me the opportunity to speak to you today, and I hope my comments have been of some use to you in your deliberations.

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