Testimony of

Mr. George J. Terwilliger III

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Mr. Chairman and Members of the Committee:

I was asked to assist your consideration of government organizational issues related to counter-terrorism. I thank you for the invitation, but let me say at the outset that I do not claim to have a lot of answers, nor even to know all the questions. Thus, I offer no advice to anyone. Rather, I am pleased to share some observations based on my experience that I hope will assist consideration of how to best defend the United States from terrorist attack. Biographical material concerning my background is attached for your reference.

Tomorrow is the 226th anniversary of one our fledgling nation's early intelligence successes. When Paul Revere rode through the Massachusetts countryside awakening the citizen army he was functioning as intelligence officer, analyst and disseminator of product. Observation of the British fleet, signaling the enemy's intentions from the tower of the North Church and a call to arms from horseback combined to provide and disseminate the intelligence that made the following day a success for the colonial forces fighting a war.

Today we are in a different kind of war, but a war nonetheless. This is not a metaphorical war. We are confronted with a new paradigm of warfare. It is one where we face a clandestine foe using tactics that include the use of common instrumentalities of our commerce as weapons against us. It is every inch a war to defend our country from fundamental threats to liberty.

In my view, knowledge is the most important weapon we have in the war against terrorists. We can and should tighten our borders, improve transportation security, increase immigration controls and take a host of other security measures. However, there is a danger of developing a 'Maginot Line mentality' that would mistake these tangible and visible improvements to security as a complete defense against the terrorist threat. We cannot remain a free society without also remaining vulnerable to those willing to subvert the rule of law and surrender their own lives in order to create mayhem and destruction. The only way to best such people is to know who they are, what they are planning and to stop them.

This gives us something in common with our colonial predecessors. It means that intelligence - information about who our foe is, how it operates and what its plans are - is essential to our victory. Today the objective is to acquire the information necessary to preempt further attacks. Large, clandestine outlaw organizations cannot be completely eliminated. But their capabilities to operate can be greatly diminished and even destroyed if we understand who they are and how they function. Intelligence also has value in helping those who must manage the consequences of attack anticipate what particular challenges they are most likely to face.

So, for me, the first question concerning how the government is organized to deal with terrorism today is how can we improve our counter-terrorism intelligence effort? I have a few observations.

First, we need to simply recognize and understand how important the intelligence effort is to success. If one accepts the premise that our counter-terrorism program requires detailed information about our foes, then it must be asked, who is in charge? Perhaps because perception of the current threat has emerged gradually and only become a matter of great urgency in recent

months, I think the answer to that question may be less clear than it ought to be.
Second, there are several policy issues that may inform a reasoned judgment about how the government would be best organized to fight terrorism today. Chief among these is the issue of defining clearly the nature of the current counter-terrorism mission here in the United States. Is this a law enforcement function? Not entirely. Is it a military function? Not necessarily. Is it a largely national security function? Arguably so.
I do not intend an academic discussion. These questions, and other related issues, have very practical implications. The need to defend ourselves from attack at home with knowledge of what is going on both here and abroad may diminish the traditional distinction between the counter-terrorism responsibilities of law enforcement agencies and those of the intelligence community. For example, is the FBI gathering information in criminal investigations or for other intelligence purposes? Can the CIA and other community agencies share classified terrorism information with federal law enforcement agencies?
Likewise, we might bear in mind that while making us safe from terrorist attack will take time, it is a mission that is more limited than the general federal law enforcement responsibility. Thus, one might question whether the broad powers and authorities necessary for counter-terrorism measures should be provided as general law enforcement authority. This could result in relatively extraordinary powers being applied to a wide range of investigative activities having nothing to do with terrorism. Conversely, the authority necessary to effectively combat terrorism may be withheld out of concern that we not expand law enforcement powers in general. In my view, despite some current modernizing that is necessary, the FBI and other federal law enforcement agencies have built well deserved reputations for excellence in making this nation more safe from crime. For all these reasons, I believe we should be cautious in fundamentally altering the role and authority of federal law enforcement agencies.
My third observation is that, given the foregoing considerations, it may be worth considering a new organizational approach to counter-terrorism, especially as to the intelligence function. This could be a new organization, or new unit or task force made up of a combination of parts of existing agencies. What to me renders this worth considering are three principal factors:
The counter-terrorism intelligence challenge today is a domestic-international hybrid which may obviate the utility of traditional distinctions between domestic and international terrorism;
Preempting further attacks and neutralizing terrorist capabilities are likely to necessitate intrusive investigative activities at home and unprecedented coordination of domestic and international intelligence functions.
The organizations and the people performing these tasks must have clear and unambiguous legal authority for their work.

A smaller organization dedicated to counter-terrorism intelligence may be both more nimble in, and more accountable for, the use of more powerful investigative authority that also crosses traditional legal, policy and agency jurisdictional lines. This may not be any answer at all, but we should not let the way we have been organized to date dictate what we do going forward without consideration of alternatives.
My fourth point is that, regardless of the organizational structure used, we must improve the quality and quantity of information made available to those upon whose work our security depends. We cannot allow their work to be hindered by systemic inadequacies. For example, putting terminals from multiple information systems in one room and calling it an "intelligence center" is no substitute for true systems integration. Our nation is in the forefront of information

technology and our intelligence agencies should have state of the art information systems. If government procurement procedures are an impediment to keeping these vital functions on the cutting edge of this rapidly changing technology, then the way government acquires, maintains and updates this technology needs to change.

My fifth and final observation is that further organizational changes in government to address the terrorist threat must account for the necessary involvement of many federal agencies, state and local governments and the private sector as both contributors and consumers of counter-terrorism intelligence. Federal agencies of limited jurisdiction, such as Immigration, Customs, BATF and others make extremely important contributions to counter-terrorism, including by collection of valuable intelligence in the ordinary course and by executing specific tasks in furtherance of intelligence objectives. Each performs part of a critical intelligence function that must be, in my judgment, not just coordinated, but directed.

The same premise is true as to state and local governments, including their law enforcement components. While federal direction is not called for, coordination in counter-terrorism is. Time and again state and local authorities, which have the most frequent and routine encounters with the general population, discover information that, when placed into a bigger picture, may be critical to counter-terrorism objectives.

The private sector's potential to contribute should not be overlooked. Experience has shown that the terrorist organizations and their support networks make considerable use of private sector services, educational and employment opportunities. Business can be a great help, but the effort needs federal leadership and assistance.

Are we doing a better job of all of this today then before September 11? While I have no access to non-public information, I am sure that we are doing better, much better. I would not be surprised to learn at some point in the future that our government and our allies have succeeded in stopping one or more significant terrorist episodes in the last several months. The recent capture of a key terrorist leader is a reminder that there are many people whose names we will probably never know, and whose faces we will never see, going in harm's way in distant places so that we and our families may sleep in safety and security. If something more can be done here, we owe it to them to do it.

Thank you.

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George Terwilliger is a partner in the Washington, D.C. office of White & Case LLP, an international law firm. Mr. Terwilliger primarily represents institutional clients in dealings with the United States government. These include government investigations and enforcement proceedings, as well as trial and appellate litigation. He is a veteran litigator with over fifty jury trials and many appearances and arguments in appellate cases.

During fifteen years of public service, Mr. Terwilliger was the Deputy Attorney General of the United States (1991-92), the second ranking official in the Department of Justice. He also served as United States Attorney in Vermont (1986-91) and as Assistant United States Attorney in Washington, D.C. and Vermont (1978-86).

In private practice, Mr. Terwilliger has represented many international and other large companies facing government inquiries and in other public policy matters. He has also represented prominent individuals, including public officials and media personalities. He was a leader on the

legal team that represented President Bush and Vice President Cheney in the Florida recount of the 2000 Presidential election.