Testimony of

# Suzanne E. Spaulding

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Chairman Specter, Senator Leahy, and members of the committee, thank you for inviting me to participate in today's hearing on the USA PATRIOT Act and the legal framework for combating international terrorism.

Let me begin by emphasizing that I have spent over twenty years working on efforts to combat terrorism, starting in 1984 when I had the privilege to serve as Senior Counsel to then Committee member and now Committee Chairman, Senator Arlen Specter, who, as many of you know, in 1986 introduced and guided to enactment the first law to provide extraterritorial jurisdiction over terrorist attacks against Americans abroad.

Over the succeeding two decades, in my work at the Central Intelligence Agency, at both Senate and House intelligence oversight committees, and as Executive Director of two different commissions on terrorism and weapons of mass destruction, I have seen how the terrorist threat changed from one aptly characterized in the mid-80s by Brian Jenkins remark that "terrorists want a lot of people watching, not a lot of people dead," to one that is now better described by former DCI Jim Woolsey's observation that "the terrorists of today don't want a seat at the table, they want to destroy the table and everyone sitting at it."

There is no question that today we face a determined set of adversaries bent on destroying American lives and our way of life. The counterterrorism imperative is to deny the terrorists both of these objectives. Evaluating how well the USA PATRIOT Act, as enacted and as implemented, satisfies this counterterrorism imperative is the fundamental task for this committee, for the Congress as a whole, and for the American public.

Distinguishing between domestic intelligence operations and criminal law enforcement investigations

One of my greatest concerns about the USA PATRIOT Act and other changes in the law over the last several years is the migration of intrusive criminal investigative powers into the careful legal framework we had established for domestic intelligence collection, which is largely governed by the Foreign Intelligence Surveillance Act (FISA), and a reverse migration of the kind of secrecy and non-disclosure that characterizes intelligence operations into the criminal context of Title 18. Tearing down the wall that hampered the sharing of information between intelligence and law enforcement was essential and I supported it. Nevertheless, there are significant differences in the way that information is collected by intelligence operations as opposed to criminal law enforcement investigations, differences that require particularly careful oversight of any new powers granted in the intelligence context.

Intelligence operations, by necessity, are often wide-ranging rather than specifically focused--creating a greater likelihood that they will include information about ordinary, law-abiding citizens; they are conducted in secret, which means abuses and mistakes may never be uncovered; and they lack safeguards against abuse that are present in the criminal context where inappropriate behavior by the government could jeopardize a prosecution. These differences between intelligence and law enforcement help explain this nation's long-standing discomfort with the idea of a domestic intelligence agency.

Because the safeguards against overreaching or abuse are weaker in intelligence operations than they are in criminal investigations, powers granted for intelligence investigations should be no broader or more inclusive than is absolutely necessary to meet the national security imperative and should be accompanied by rigorous oversight by Congress and, where appropriate, the courts.

Unfortunately, this essential caution was often ignored in the FISA amendments contained in the PATRIOT Act. The authority actually became broader as it moved into the intelligence context and oversight was not accordingly enhanced.

Changes to FISA were often justified on the grounds that this authority is already available in the criminal context and "if it's good enough for use against drug dealers, we certainly should be able to use it against international terrorists." But in the FISA amendments in sections 214 and 215 of the PATRIOT Act, for example, we moved from the criminal requirement that information demanded by the government is "relevant to a criminal investigation" to requiring only that information is "relevant to an investigation to protect against international terrorism." Consider this term. It does not say "an investigation into international terrorism activities"--which would at least mean there was some specific international terrorism activity being investigated. Instead, it says "an investigation to protect against international terrorism." Imagine if the FBI was engaged in an investigation to protect against bank robbery. What does that mean? Just how broad is that scope? Who's records could not be demanded under such a broad standard?

Conclusion

We often say that democracy is our strength. A key source of that strength stems from the unique relationship between the government and the governed, one based on transparency and trust. Intelligence collection imperatives challenge those democratic foundations and demand rigorous oversight.

These hearings, and your willingness to carefully consider whether provisions adopted in haste at a time of great fear should be renewed or modified, will contribute significantly to restoring the necessary public confidence that the government is protecting both American lives and America's way of life. Thank you for your work and for this opportunity to be here today.