Statement

Daniel J. Dell'Orto

Ten Years After the 2001 Authorization for Use of Military Force: Current Status of Legal Authorities, Detention, and Prosecution in the War on Terror

July 26, 2011

Thank you, Mr. Chairman and members of the Committee for your invitation to appear before the Committee today. It is an honor to once again appear before this Committee, this time in my individual capacity. I commend the Chairman and the Committee for addressing the issues that are the subject of this hearing. I also am honored to appear with Judge Mukasey and with Steve Engel, with whom I had the privilege of working during my time in Government and both of whom I hold in the highest regard.

As some of you may recall, as a civilian attorney I served as the Principal Deputy General Counsel of the Department of Defense from June 2000 through March 2009, not long after I completed a twenty-seven and one-half year career as an Active Duty Army Officer. I was in the Pentagon on 9/11 and thereafter participated in the formulation of the legal positions that the Department adopted in the aftermath of 9/11, including those relating to the interpretation of the Authorization for the Use of Military Force, the legal basis for the conduct of operations against Al Qaeda, the basis for detention of captured enemy combatants, the decision to establish the detention facility at Guantanamo, and the implementation of President Bush's Military Order of November 13, 2001 to create the Military Commissions.

The Authorization for the Use of Military Force of September 18, 2011 has served the Nation well. Nevertheless, at the ten-year mark it is appropriate to consider whether it should be amended. From the beginning of our fight against Al Qaeda, well before 9/11, it has been apparent that we are at war against a non-traditional enemy. The non-traditional nature of our foe has required

resourcefulness by every entity of our national security structure, from the rifleman on the ground in Afghanistan all the way up the chain of command to the President in his role as Commander in Chief. As the enemy has changed its tactics and the locations of the planning for and conduct of its attacks, the rifleman and his commanders at all levels have had to be nimble and adaptable in the face of the many challenges that this non-traditional foe has thrown at us. To the extent that the Authorization for the Use of Military Force falls short of providing the President and his subordinate commanders with the full range of authority he and they need to bring the fight to this changeable foe, then it should be modified to do so.

As one who advised and aided senior civilian and uniformed leaders at the Department of Defense as they wrestled with the decisions related to detention of enemy combatants, the establishment of the detention facility at Guantanamo, and the structure of Military Commissions, I remain firmly supportive of those initial decisions and remain convinced that those decisions were correct at the time they were made. There is absolutely every reason to continue to move important detainees to Guantanamo for detention and intelligence gathering. And I remain firmly convinced that Military Commissions should be the preferred forum for the adjudication of the war crimes committed by those who have been waging war unlawfully against our Nation and its citizens.

I am prepared to respond to your questions. Thank you.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 112th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: Daniel J. Dell'Orto

Capacity in which appearing: (check one)

X Individual

___Representative

If appearing in a representative capacity, name of the company, association or other entity being represented:_____

FISCAL YEAR 2011

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2010

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2009

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

Federal agencies with which federal contracts are held:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

Aggregate dollar value of federal contracts held:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

Federal agencies with which federal grants are held:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.

Aggregate dollar value of federal grants held:

Current fiscal year (2011):_____;
Fiscal year 2010:_____;
Fiscal year 2009:_____.