THE 9/11 COMMISSION REPORT: IDENTIFYING AND PREVENTING TERRORIST FINANCING

HEARING

BEFORE THE

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U.S. HOUSE OF REPRESENTATIVES

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THE 9/11 COMMISSION REPORT: IDENTIFYING AND PREVENTING TERRORIST FINANCING

Monday, August 23, 2004

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to call, at 10:05 a.m., in Room 2128, Rayburn House Office Building, Hon. Michael G. Oxley [chairman of the committee] Presiding.

Present: Representatives Bachus, Castle, King, Royce, Kelly, Paul, LaTourette, Biggert, Green, Shays, Fossella, Hart, Capito, Tiberi, Feeney, Hensarling, Garrett, Barrett, Frank, Kanjorski, Waters, Maloney, Watt, Hooley, Sherman, Meeks, Moore, Hinojosa, Israel, McCarthy, Matheson, Emanuel, Scott, and Bell.

The CHAIRMAN. The committee will come to order.

This hearing of the Committee on Financial Services will begin. Without objection, all members' opening statements will be made a part of the record, and the Chair recognizes himself for a brief opening statement.

Good morning to our witnesses and members. The Financial Services Committee meets today for an unusual August recess hearing to consider the findings and recommendations of the National Commission on Terrorist Attacks upon the United States. Evaluating and acting upon these recommendations is, in my view, a top priority for Congress to address this fall.

I want to welcome our old friend and colleague, Lee Hamilton, and thank you, Lee, for your service on the 9/11 Commission and taking this time to give your views today.

The 9/11 Commission, chaired by former New Jersey Governor Tom Kean and the aforementioned Mr. Hamilton, has performed a valuable service to our Nation by providing an exhaustive and compelling account of the terrorist threat that confronts us and by developing serious policy recommendations to help meet that threat.

As the House committee that took the lead after September 11 in crafting the antiterrorist finance provisions of the USA PATRIOT Act and overseeing the government's efforts to shut off al Qaeda's funding sources, we have a particular interest in the Commission's work related to those subjects. More broadly, as the third anniversary of the 9/11 attacks approaches and as intelligence reports suggest the possibility of another major attack, it is appropriate for this committee to take stock of how far we have come in dismantling and disrupting the terrorists' financial networks.

While our troops and some American citizens abroad have been subjected to terrorism, we have been terror-free on U.S. land since 9/11. That is both an accomplishment and a challenge.

It is important to note that the most recent report issued on the 9/11 Commission's website on Saturday actually gives predominantly positive reviews to both the PATRIOT Act and recent intelligence efforts. According to the report, "While definitive intelligence is lacking, these efforts have had a significant impact on al Qaeda's ability to raise and move funds, on the willingness of donors to give money indiscriminately, and on the international community's understanding and sensitivity to the issue. Moreover, the U.S. Government has used the intelligence revealed through financial information to understand terrorist networks, search them out, and disrupt their operations."

We at the Financial Services Committee are, of course, concerned about the recent heightened terror alert for the financial services sector. It serves as a stark reminder that this Nation's financial institutions and the international financial institutions are part of the front line in the war against terrorists. We have made significant progress by discovering and exposing al Qaeda's interest in these targets, thus making their operations more difficult.

In its final report, the Commission was complimentary of the PATRIOT Act and its effect on terrorist financing, recognizing the extraordinary cooperation that financial institutions have given to law enforcement. The government needs to reward and encourage those efforts by more effectively implementing these provisions of the PATRIOT Act, including section 314, to seek to create a two-way street for information sharing between the public and private sectors.

In this regard, I want to stress the importance of fully funding the Treasury's Financial Crimes Enforcement Network, FinCEN, so that it can carry out the critical responsibilities Congress gave it in the PATRIOT Act to identify terrorist money trails in real time and to provide law enforcement and the financial services industry with immediate feedback on suspicious financial activity.

The two major al Qaeda funding techniques emphasized in the 9/11 Commission Report are Islamic charities and informal value transfer systems such as hawala. Although no one is under any illusion that these avenues have been completely shut off to the terrorists, the government can boast of many recent successes in combating these forms of terrorist finance. Last month, for example, the Justice Department obtained money laundering indictments of five former leaders of the Holy Land Foundation, a Texas-based charity alleged to have funneled over $12 million to Hamas.

The government has also made extensive use of section 373 of the PATRIOT Act to shut down unlicensed money-transmitting businesses suspected of funding terrorism. In addition, the government has created a great deal of international consensus on how best to create and tighten standards for fighting terrorist financing at both the multilateral and bilateral levels.

While more needs to be done by key allies, the Organization for Economic Cooperation and Development, through the Financial Action Task Force, has created strong international standards which are being implemented across the world. As a result, since 9/11 the

number of financial intelligence units has nearly doubled and the amount of information crossing borders in the fight against terror has expanded significantly.

The International Monetary Fund and the World Bank are including these international standards in the infrastructure assessment process within the financial sector. The regional development banks are establishing special facilities to channel development assistance in this area as well. Bilaterally, the number of countries where enhanced information-sharing arrangements exists is growing. So we have come a very long way since 9/11. We are committed to winning the war against global terrorism, a task which will require time, patience, courage, and perseverance.

The Chair's time has expired. I am pleased to yield to the gentleman from Massachusetts, Mr. Frank.

[The prepared statement of Hon. Michael G. Oxley can be found on page 90 in the appendix.]

Mr. FRANK. Thank you, Mr. Chairman.

I appreciate the diligence with which Mr. Hamilton has made himself available. This is my second time hearing him in August, and he has been very helpful, because he is in an unusually good position as a former senior Member of the Congress to understand what it is that needs to be done to get these recommendations enacted.

I was particularly pleased to have that monograph done by the staff. I think we have, many of us, talked about our admiration for the work of the Commission, and we should be explicit that we were well-served in this country by the first-rate staff that you and your colleagues assembled and by the work they have done.

I cannot think of many cases where we have had a common, agreed-upon framework in which to debate issues. Obviously, there ought to be debate. We ought to be clear. People who think that there is no room for debate and that we simply enact things without debate are looking at the wrong country. This is a democracy, and that is of the essence.

But the Commission has really done two things. It has given us some very good, specific recommendations, but, in addition, it has provided, through a first-rate body of work, a framework in which to debate those. It is very helpful to have a debate going on on policy where we are not arguing about what happened, we are not arguing about the facts, and that is not something to be taken for granted. I very much appreciate that.

I also found a couple of things of particular interest in the report and one I do want to comment on and to thank Mr. Hamilton for stressing, and that is the civil liberties aspect. I was struck favorably by the Commission recommending that we create a new body in the government to protect against civil liberties abuses.

We have this dilemma, obviously. On September 11, our law enforcement model, the law enforcement model of a free society, was undermined. That is, the law enforcement model of a free society basically is the bad guys get a free shot. We do not stop you from doing things. The assumption is people are going to behave themselves. And we say, on the other hand, if you do something that is abusive to other people's rights, we are going to catch you and

punish you. It is called deterrence, and that is essentially the model of a free society.

Then, 19 murderous thugs killed themselves to kill other people and, obviously, deterrence does not work. So we then have to arm law enforcement with more intrusive powers, because we cannot wait. We have to intervene. But we want to do that in the best possible way. And I think the model—and we have talked about how to do this—the model that seems to me to get this done is to give them the ability to be intrusive, to go and catch people, to listen in on people, to spy on people—that is in the nature of it—but to recognize that in a human system, mistakes will be made. People will make mistakes.

And what we need to do then is to have really almost two parallel systems: a system of vigorous intrusive enforcement and a parallel system to try and minimize the errors, and because errors will inevitably happen, have an appeals mechanism, and this is I think particularly what is relevant in the financial area. We are giving the government the power—we have given the government the power—as the chairman mentioned, we have worked on this committee—the power to freeze assets. That is an important power for them to have. But equally important is for there to be mechanisms whereby people whose assets have been inappropriately or erroneously frozen to have a quick and effective method of appeal, and that sometimes gets left behind. That is our job. That is our job.

When some parts of the PATRIOT Act expire and we deal with them next year, it is obvious that we should enact these recommendations; and I am glad the Commission pointed this out. We want to give vigorous powers to law enforcement, but we want to accompany those powers with a set of procedures that give people who are wronged by the enforcement, we want them to have a prompt and ready way to fight back.

One of the things I noticed, for example, was in a couple of cases people's assets were frozen and they were forbidden to engage in any commercial transactions with anybody and then had to get waivers so they could hire lawyers to fight this. Well, that ought to be automatic. The notion that you can be frozen and then by the very act of freezing your assets which you plan to contest you cannot hire somebody to contest it, that just does not conform with our basic principles of freedom.

So I thank you for being both very rigorous in the kinds of enforcement we ought to have but in pointing out from your own experience that we are going to make some mistakes and we need to make sure that we do this.

Let me just say, finally, to people who worry about this, having good mechanisms for the alleviation of error is an important part of law enforcement. Because there will be people who will oppose giving law enforcement the powers because they are afraid of the mistakes that will get made, and having a system for correcting the mistakes then becomes not a dilution of the law enforcement powers but an essential element in the decision to grant them.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired.

After consultation with the ranking member, it was determined that we would allow all of the opening statements to be made a part of the record which, with unanimous consent, it is so ordered, so that we will have an adequate opportunity to hear from the distinguished gentleman from Indiana, as well as have an opportunity for questions.

The CHAIRMAN. With that, Mr. Hamilton, welcome to the committee. We appreciate your service to our country, your long service here in the Congress, as well as your vice chairmanship of the 9/11 Commission. You have done the Nation a favor and a service, and we are all grateful, and we are pleased to hear from you today.

STATEMENT OF THE HONORABLE LEE H. HAMILTON, VICE CHAIRMAN, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Mr. HAMILTON. Thank you very much, Chairman Oxley and Ranking Member Frank, distinguished members of the Financial Services Committee. It is an honor to be with you this morning.

Governor Kean, who led the 9/11 Commission with extraordinary distinction, is testifying this afternoon. I think he is on his way down now from New Jersey. He could not be here this morning.

I want to say a word of special thanks to all of you for being here in August. I know that is unprecedented, and we are very grateful to you. This committee has been involved in financial aspects of our country's war on terrorism for a long time. We are grateful to you for your leadership and for your prompt consideration of our recommendations.

Mr. Frank mentioned the staff report. I am submitting to you today a Commission staff report on terrorist financing. I would like to ask that that be made part of the record.

The CHAIRMAN. Without objection.

[The following information can be found on page 184 in the appendix.]

Mr. HAMILTON. While Commissioners have not been asked to review or approve this staff report—indeed, I first saw it only a few hours ago—we believe the work of the staff on terrorist finance issues will be helpful to your own consideration of these issues.

After the September 11 attacks, the highest-level U.S. Government officials publicly declared that the fight against al Qaeda financing was as critical as the fight against al Qaeda itself. It was presented as one of the keys to success in the fight against terrorism. If we choke off the terrorists' money, we limit their ability to conduct mass casualty attacks.

In reality, stopping the flow of funds to al Qaeda and affiliated terrorist groups has proved to be essentially impossible. At the same time, tracking al Qaeda financing is an effective way to locate terrorist operatives and supporters and to disrupt terrorist plots. Our government's strategy on terrorist financing, thus, has changed significantly from the early post-9/11 days. Choking off the money remains the most visible and important aspect, and it is an important aspect of our approach, but it is not our only or even most important goal. Making it harder for terrorists to get money is a necessary, but not sufficient, component of the overall strategy.

Following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public, but it is a critical part of the overall campaign against al Qaeda. Today, the United States Government recognizes—appropriately, in our view—that terrorist financing measures are simply one of many tools in the fight against al Qaeda.

The September 11 hijackers used U.S. and foreign financial institutions to hold, move, and retrieve their money. The hijackers deposited money into U.S. accounts primarily by wire transfers and deposits of cash or travelers checks brought from overseas. Additionally, several of them kept funds in foreign accounts which they accessed in the United States through ATM and credit card transactions. The hijackers received funds from facilitators in Germany and the United Arab Emirates or directly from Khalid Sheikh Mohammed, KSM, as they transited Pakistan before coming to the United States. The entire plot cost al Qaeda somewhere in the range of $400,000 to $500,000, of which approximately $300,000 passed through the hijackers' bank accounts in the United States.

While in the United States, the hijackers spent money primarily for flight training, travel, and living expenses. Extensive investigation has revealed no substantial source of domestic financial support. Neither the hijackers nor their financial facilitators were experts in the use of the international financial system. They created a paper trail linking them to each other and their facilitators. Still, they were adept enough to blend into the vast international financial system easily, without doing anything to reveal themselves as criminals, let alone terrorists bent on mass murder.

The money-laundering controls in place at the time were largely focused on drug trafficking and large-scale financial fraud. They could not have detected the hijackers' transactions. The controls were never intended to and could not detect or disrupt the routine transactions in which the hijackers engaged.

There is no evidence that any person with advanced knowledge of the impending terrorist attacks used that information to profit by trading securities. Although there has been consistent speculation that massive al Qaeda-related insider trading preceded the attacks, exhaustive investigation by Federal law enforcement and the securities industry has determined that unusual spikes in the trading of certain securities were based on factors unrelated to terrorism.

Al Qaeda and Osama bin Ladin obtained money from a variety of sources. Contrary to common belief, bin Laden did not have access to any significant amounts of personal wealth, particularly after his move from Sudan to Afghanistan. He did not personally fund al Qaeda, either through an inheritance or businesses he was said to have owned in Sudan. Al Qaeda's funds, approximately $30 million per year, came from the diversion of money from Islamic charities. Al Qaeda relied on well-placed financial facilitators who gathered money from both witting and unwitting donors, primarily in the Gulf region.

No persuasive evidence exists that al Qaeda relied on the drug trade as an important source of revenue, had any substantial involvement with conflict diamonds, or was financially sponsored by

any foreign government. The United States is not, and has not been, a substantial source of al Qaeda funding, although some funds raised in the United States may have found their way to al Qaeda and its affiliated groups.

Before 9/11, terrorist financing was not a priority for either domestic or foreign intelligence collection. Intelligence reporting on this issue was episodic, insufficient, and often inaccurate.

Although the National Security Council considered terrorist financing important in its campaign to disrupt al Qaeda, other agencies failed to participate to the NSC's satisfaction. There was little interagency strategic planning or coordination. Without an effective interagency mechanism, responsibility for the program was disbursed among a myriad of agencies, each working independently.

The FBI gathered intelligence on a significant number of organizations in the United States suspected of raising funds for al Qaeda or other terrorist groups. The FBI, however, did not develop an end game for its work. Agents continued to gather intelligence with little hope that they would be able to make a criminal case or otherwise disrupt the operations of these organizations.

The FBI could not turn these investigations into criminal cases because of insufficient international cooperation; a perceived inability to mingle criminal and intelligence investigations due to the wall between intelligence and law enforcement matters; sensitivities to overt investigations of Islamic charities and organizations; and the sheer difficulty of prosecuting most terrorist financing cases. Nonetheless, FBI street agents had gathered significant intelligence on specific groups.

On a national level, the FBI did not systematically gather and analyze the information its agents developed. It lacked a headquarters unit focusing on terrorist financing. Its overworked counterterrorism personnel lacked time and resources to focus specifically on financing. The FBI is an organization that therefore failed to understand the nature and extent of the jihadist fundraising problem within the United States or to develop a coherent strategy for confronting the problem. The FBI did not, and could not, fulfill its role to provide intelligence on domestic terrorist financing to government policymakers. The FBI did not contribute to national policy coordination.

The Department of Justice could not develop an effective program for prosecuting terrorist-financed cases. Its prosecutors had no systematic way to learn what evidence of prosecutable crimes could be found in the FBI's intelligence files, to which it did not have access.

The U.S. Intelligence Community largely failed to comprehend al Qaeda's methods of raising, moving, and storing money. It devoted relatively few resources to collecting the financial intelligence that policymakers were requesting or that would have informed the larger counterterrorism strategy.

The CIA took far too long to grasp basic financial information that was readily available, such as the knowledge that al Qaeda relied on fund-raising, not bin Laden's personal fortune. The CIA's inability to grasp the true source of bin Laden's funds frustrated policymakers, unable to integrate potential covert action or overt economic disruption into the counterterrorism effort.

The lack of specific intelligence about al Qaeda financing and intelligence deficiencies persisted through 9/11. The Office of Foreign Assets Control, the Treasury organization charged by law with searching out, designating, and freezing bin Laden access did not have access to much actionable intelligence.

Before 9/11, a number of significant legislative and regulatory initiatives designed to close vulnerabilities in the U.S. financial system failed to gain traction. They did not gain the attention of policymakers. Some of these, such as a move to control foreign banks with accounts in the United States, died as a result of banking industry pressure. Others, such as a move to regulate money remitters, were mired in bureaucratic inertia and a general antiregulatory environment.

It is common to say, the world has changed since 9/11. This conclusion is especially apt in describing U.S. counterterrorist efforts regarding financing. The U.S. Government focused for the first time on terrorist financing and devoted considerable energy and resources to the problem. As a result, we now have a far better understanding of the methods by which terrorist raise, move, and use money. We have employed this knowledge to our advantage.

With a new sense of urgency post 9/11, the intelligence community, including the FBI, created new entities to focus on and bring expertise to the question of terrorist fund-raising and the clandestine movement of money. The Intelligence Community uses money flows to identify and locate otherwise unknown associates of known terrorists and has integrated terrorist financing issues into the larger counterterrorism effort.

Equally important, many of the obstacles hampering investigations have been stripped away. The current Intelligence Community approach appropriately focuses on using financial transactions in close coordination with other types of intelligence to identify and track terrorist groups rather than to starve them of funding.

Still, understanding al Qaeda's money flows and providing actionable intelligence to policymakers presents ongoing challenges because of the speed, diversity, and complexity of the means and methods for raising and moving money; the commingling of terrorist money with legitimate funds; the many layers and transfers between donors and the ultimate recipients of the money; the existence of unwitting participants, including donors who give to generalized jihadist struggles rather than specifically to al Qaeda; and the U.S. Government's reliance on foreign government reporting for intelligence.

Bringing jihadist fund-raising prosecutions remains difficult in many cases. The inability to get records from other countries, the complexity of directly linking cash flows to terrorist operations or groups, and the difficulty of showing what domestic persons knew about illicit foreign acts or actors all combine to thwart investigations and prosecutions.

The domestic financial community and some international financial institutions have generally provided law enforcement and intelligence agencies with extraordinary cooperation. This cooperation includes providing information to support quickly developing investigations such as the search for terrorist suspects at times of emer-

gency. Much of this cooperation is voluntary and based on personal relationships.

It remains to be seen whether such cooperation will continue as the memory of 9/11 fades. Efforts to create financial profiles of terrorist cells and terrorist fund-raisers have proved unsuccessful, and the ability of financial institutions to detect terrorist financing remains limited.

Since the September 11 attacks and the defeat of the Taliban, al Qaeda's budget has decreased significantly. Although the trend line is clear, the U.S. Government still has not determined with any precision how much al Qaeda raises or from whom or how it spends its money. It appears that the al Qaeda attacks within Saudi Arabia in May and November, 2003, have reduced, some say drastically, al Qaeda's ability to raise funds from Saudi sources. There has been both an increase in Saudi enforcement and a more negative perception of al Qaeda by potential donors in the Gulf.

However, as al Qaeda's cash flows have decreased, so, too, have its expenses, generally owing to the defeat of the Taliban and the disbursement of al Qaeda. Despite our efforts, it appears that al Qaeda can still find money to fund terrorist operations. Al Qaeda now relies to an even greater extent on the physical movement of money and other informal methods of value transfer, which can pose significant challenges for those attempting to detect and disrupt money flows.

While specific, technical recommendations are beyond the scope of my remarks today, I stress four themes in relation to this committee's work:

First, continued enforcement of the Bank Secrecy Act rules for financial institutions, particularly in the area of suspicious activity reporting is necessary.

The suspicious activity reporting provisions currently in place provide our first defense in deterring and investigating the financing of terrorist entities and operations. Financial institutions are in the best position to understand and identify problematic transactions or accounts.

Although the transactions of the 9/11 hijackers were small and innocuous, apparently, or seemed to be, and could probably not be detected today, vigilance in this area is important. Vigilance assists in preventing open and notorious fund-raising. It forces terrorists and their sympathizers to raise and move money clandestinely, thereby raising the costs and the risks involved. The deterrent value in such activity is significant; and, while it cannot be measured in any meaningful way, it ought not to be discounted.

The USA PATRIOT Act expanded the list of financial institutions subject to bank secrecy regulation. We believe that this was a necessary step to ensure that other forms of moving and storing money, particularly less regulated areas such as wire emitters, are not abused by terrorist financiers and money launderers.

Second, investigators need the right tools to identify customers and trace financial transactions in fast-moving investigations.

The USA PATRIOT Act gave investigators a number of significant tools to assist in fast-moving terrorism investigations. Section 314(a) allows investigators to find accounts or transactions across the country. It has proved successful in tracking financial trans-

actions and could prove invaluable in tracking down the financial component of terrorist cells. Section 326 requires specific customer identification requirements for those opening accounts at financial institutions. We believe both of these provisions are extremely useful and properly balance customer privacy and the administrative burden on the one hand against investigative utility on the other.

Third, continuous examination of the financial system for vulnerabilities is necessary.

While we have spent significant resources examining the ways al Qaeda raised and moved money, we are under no illusion that the next attack will use similar methods. As the government has moved to close financial vulnerabilities and loopholes, al Qaeda adapts. We must continually examine our system for loopholes that al Qaeda can exploit and close them as they are uncovered. This will require constant efforts on the part of this committee, working with the financial industry, their regulators, and the law enforcement and intelligence community.

Finally, we need to be mindful of civil liberties in our efforts to shut down terrorist networks.

In light of the difficulties in prosecuting some terrorist fund-raising cases, the government has issued administrative blocking and freezing orders under the International Emergency Economic Powers Act, IEEPA, against U.S. Persons—individuals or entities—suspected of supporting foreign terrorist organizations. It may well be effective, and perhaps necessary, to disrupt fund-raising operations through an administrative blocking order when no other good options exist.

The use of IEEPA authorities against domestic organizations run by U.S. citizens, however, raises significant civil liberties concerns. IEEPA authorities allow the government to shut down an organization on the basis of classified evidence subject only to a deferential after-the-fact judicial review. The provision of the IEEPA that allows the blocking of assets during the pendency of an investigation also raises particular concern in that it can shut down a U.S. entity indefinitely without the more fully developed administrative record necessary for a permanent IEEPA designation.

Vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. The government has recognized that information about terrorist money helps us to understand the networks, search them out, and disrupt their operation. These intelligence and law enforcement efforts have worked. The death or capture of several important facilitators has decreased the amount of money available to al Qaeda and increased its costs and difficulties in moving money. Captures have produced a windfall of intelligence.

Raising the costs and risks of gathering and moving money are necessary to limit al Qaeda's ability to plan and mount significant mass casualty attacks. We should understand, however, that success in these efforts will not of itself immunize us from future terrorist attacks.

I would be pleased to respond to your questions.

The CHAIRMAN. Thank you, Mr. Hamilton. Again, we appreciate your participation at the committee hearing today.

[The prepared statement of Hon. Lee H. Hamilton can be found on page 108 in the appendix.]

The CHAIRMAN. Among the major themes of the Commission report was the need to better allocate intelligence resources and establishing clear lines of responsibility. While there was a little commentary in the report itself about the Treasury's anti-terrorist finance efforts, the committee, under the able leadership of Mrs. Kelly, has undertaken several hearings on that particular subject.

Two major threads have emerged during those hearings: one, that the Financial Crimes Enforcement Network, or FinCEN, has trouble improving the quality of its product because they cannot operate their own computers, and two, that the IRS has a lot of other good financial crimes investigators who do not work on tax enforcement issues.

Would it not make a lot of sense as we look at the larger picture to centralize these functions somewhere in government, perhaps with the Office of Terrorist Financing and Intelligence within Treasury? As we try to reach those goals, did the Commission at least consider that possibility and does that provide some kind of opportunity for reaching those two goals that were raised?

Mr. HAMILTON. Mr. Chairman, we are very careful about putting into a single agency the lead role and trying to broker the competing equities of various operating agencies. You have in place today the NSC's Policy Coordinating Committee on Terrorist Financing, and I think generally it has been successful in doing the policy coordination that is necessary.

Now, obviously, Treasury has an enormously important role to play in antiterrorism financing. But we are skeptical, I guess, or doubtful that concentrating authority is a good move.

One reason for that is the way we view antiterrorist or counterterrorism policy. We believe conducting counterterrorism policy requires that you integrate a lot of aspects or use a lot of tools of American policy and of American policymakers. You have to have the military, you have to have covert action, you have to have intelligence, you have to have Treasury, you have to have economic assistance and economic policy and public diplomacy and a lot of other things. So we are doubtful that this should be focused in the Treasury.

With regard to the IRS—and may I say that is especially true as al Qaeda has moved to these more informal means of moving money. With regard to the IRS, we believe the IRS is working effectively now in the FBI Joint Terrorism Task Forces, which is designed to bring together the experts to fight terrorism in a single, coordinated effort. We have not seen any evidence that the IRS is not fully participating in that.

Now, you also mentioned the Financial Crimes Enforcement Network. You folks know a lot more about that than I do. We did learn about some of their problems because it does not use its own systems to process secrecy data well, but getting into a remedy for that really was outside our mandate, and we did not address it.

The CHAIRMAN. Thank you.

One of the aspects of the Commission's findings which received particular attention is its observation, and it was an interesting quote, that the report says that "trying to starve the terrorists of

money is like trying to catch one kind of fish by draining the ocean." And, indeed, and you have mentioned in your opening statement that, because of that apparent change, I guess the issue is, is it an either/or kind of thing. In other words, I can understand from the aspect of intelligence that we follow the money, follow the money trail, as opposed to efforts at locating and freezing those assets. Should that be the general policy of the Federal Government, or should it be dealt with on a case-by-case basis, depending on the particular situation on the ground?

Mr. HAMILTON. I believe the latter is the way to approach it, Mr. Chairman. Freezing, of course, is a very, very important weapon in dealing with terrorist financing. And the existence of that power is a substantial—provides a substantial deterrent, we believe. Wealthy people, wealthy entities do not like the idea of having their assets frozen, and it makes them, we would hope, we believe, more reluctant to get involved in any kind of questionable financing that might help the terrorists.

Having said that, I think on a given case whether or not to use freezing has to be made on a case-by-case basis. You have to look at all of the equities involved. Many times I think freezing might be the right strategy, many times it would not be the right strategy, and the better thing to do is not to freeze the assets, keep the account open, and follow it, to learn more about the terrorist financing. I do not think you can generalize about that. What you do have to have is an effective interagency process that considers the competing equities and then make a decision.

The CHAIRMAN. Thank you. My time has expired.

The Chair now recognizes the gentlewoman from California, Ms. Waters.

Mr. FRANK. Mr. Chairman, if I could just explain, I was here a week ago when I had a chance to question Mr. Hamilton, and I thought with all of the members coming in, I would defer for a while.

Ms. WATERS. Thank you very much, Mr. Chairman and Ranking Member Frank. I would like to thank you, Mr. Chairman, and our Ranking Member for scheduling this important meeting.

Mr. Chairman, the 9/11 Commission's report and the staff monograph on terrorist financing are tremendously valuable resources to this committee as we consider the wide range of issues that necessarily are implicated when we evaluate how we can make it more costly and difficult for terrorists to engage in terrorism without either sacrificing civil liberties or unduly disrupting commerce. I would like to commend Chairman Kean, Vice Chairman Hamilton and the other members of the 9/11 Commission and the Commission staff for the care and attention that obviously went into these documents, and I thank all of them for their work. They have certainly performed an exceptional public service.

Mr. Chairman and members, I am going to take a line of questioning that may be a little bit uncomfortable, but I think it is absolutely necessary. First of all, I would like to note that, as it has been reported, the 9/11 Commission confirmed last month that it had found no evidence that the Government of Saudi Arabia funded the al Qaeda terrorist network and the 9/11 hijackers received funding from Saudi citizen Omar al-Bayoumi or Princess Haifa al-

Faisal, wife of ambassador to the United States Prince Bandar bin Sultan. I would like to ask, what went into that investigation that would lead you to that conclusion?

The reason I would like to ask that is there are so many reports. Time Magazine, for example, reported that the Saudis still appear to be protecting charities associated with the royal family which funnel money to the terrorists. Also, as you know, there has been a lot written lately about the relationship between President Bush and his father to the Saudis, not only their personal friendships, but their money relationships, relationships that include the Harkin Energy, Halliburton and the Carlyle Group; and, of course, a lot has been written about the $1 million that was funded to the Bush library by the Saudis.

Also, it is noted that in this cozy relationship that this administration has with the Saudis it goes so far as to identify that Robert Jordan, the ambassador that was appointed to Saudi Arabia, had no diplomatic experience, does not speak Arabic and cannot be considered a serious diplomat as it relates to representing our interests in a country where many of us have very, very serious concerns.

So I would like to know, how did the Commission reach the conclusion of finding no evidence that the Government of Saudi Arabia furnished al Qaeda or the network with any funds or that they are not still funding these charities? Did you have CIA information that helped you to document that? As a matter of fact, it appears that before 9/11, according to U.S. News, a 1996 CIA report found that a third of the 50 Saudi-backed charities it studied were tied to terrorist groups. Similarly, a 1998 report by the National Security Council had identified the Saudi Government as the epicenter of terrorist funding, becoming the single greatest force in spreading Islamic fundamentalism and funneling hundreds of millions of dollars to jihad groups and al Qaeda cells around the world.

Now I must admit that this information that I am reading to you now came from the Center for American Progress. I will not go on any further. I think you get the picture.

What I am trying to say to you is, if you have come to this conclusion that the Saudi Government had no—is not responsible for continuing to fund these charities where dollars ended up with some of the 9/11 hijackers, how did you come to this conclusion and what have you explored about this relationship of this administration to the Saudi Government? Obviously, it is very cozy. They have to escort members of bin Laden's family out of the country, the princess who was found to have been giving money to charities associated with 9/11 hijackers, all leads us to a conclusion that this cozy relationship has to be broken up, and I would just ask you to relate to this.

The CHAIRMAN. The gentlewoman's time has expired.

Mr. HAMILTON. Thank you very much, Congresswoman Waters.

The Saudi connection with al Qaeda is a very, very important matter to look at, and you really do have to make a distinction between the activities of the Saudi Government prior to the spring of 2003, when they were attacked themselves, and then again later, I think in November, in 2003, that time frame, pre-attacks in

Saudi Arabia and post-attacks in Saudi Arabia. Saudi Arabia is a key part of any international effort to fight terrorist financing.

You asked us how we reached the conclusion. The conclusion was that we found no evidence, as you have stated correctly, that the Saudi Government as an institution or as individual senior officials of the Saudi Government supported al Qaeda. Now we sent investigators to Saudi Arabia. We reviewed all kinds of information and documents with regard to that that are available in the intelligence community. We listened to many, many people who talked to us about these things. We followed every lead that we could. This is an ongoing investigation. I think it will continue. We are not going to have the final word on it.

We did find in this, the pre-attack period, pre-Saudi Arabia attack period, that there was a real failure to conduct oversight in the Saudi Government, there was a lack of awareness of the problem, and a lot of financing activity we think flourished. We think that Saudi cooperation was ambivalent and selective, and we were not entirely pleased with it.

Then along came those attacks and, in the spring of 2003 and after that period, we believe the performance of the Saudi Government improved quite a bit, and a number of the deficiencies were corrected.

The Saudi Government needs to continue its activities to strengthen their capabilities to stem the flow from Saudi sources to al Qaeda; and we have to work very, very closely with the Saudis in order to get that done. But we do not have any evidence that the government itself or senior officials of the government were involved in al Qaeda financing. And I think our diplomatic efforts there over a period of time have been helpful, but no one I think would say that we have resolved all of the problems with the Saudis. So we have to continue to send a message to the Saudi Government that the Saudis must do everything within their power, everything within their power to eliminate al Qaeda financing from Saudi sources.

The CHAIRMAN. The gentleman from Alabama.

Mr. BACHUS. I thank the Chairman. I would like to commend the Chairman and this committee for work which actually started in 1996 to target these terrorist organizations and their funding. I would like to note and welcome Vice Chairman Hamilton to the committee.

Vice Chairman, as I understand your testimony today, one of the things that has gotten a lot of attention is this distinction about whether you freeze assets or you track the transfer of those assets, and I think that what you are saying is that it ought to be a case-by-case basis. Am I correct in saying that?

Mr. HAMILTON. Yes, you are.

Mr. BACHUS. And in some cases we arrest the financier or the facilitator and in other cases we observe him and document his movements and try to find out who he is in contact with, both upstream and downstream.

Mr. HAMILTON. That is right. And what you have to keep in mind here always is that, in counterterrorism policy, there are a lot of things going on, and you cannot look at counterterrorism policy solely as a matter of financing. That is a very important part of it,

but it is only a small part. So you have to find out what all the intelligence is. You have to find out what the military is doing, you have to find out what the CIA is doing and a lot of other institutions, and that has to be balanced and integrated.

Mr. BACHUS. Are you aware that really the interagencies, the agencies are cooperating today, the FBI and the Treasury, what they are doing in these cases is they are sitting down and reviewing the evidence and trying to make on a case-by-case- basis decisions as to what hurts the terrorists the most?

Mr. HAMILTON. Yes. We are aware that the cooperation has picked up very substantially, that there are regular meetings going on, that there are a lot of very smart people in these agencies that are trying to do their best to correct some of these problems.

Our concern, of course, is that it be sustained, that it be continued and that it be institutionalized. You so often get the response, well, we have a good working relationship between official A and official B. That is very important, and without that relationship things are not going to work very well. But we have to look beyond the fact and understand that officials A and B are not always going to be there, so you want to institutionalize it.

Mr. BACHUS. You are aware that, by direction of the Congress, there was created an Office of Terrorism and Financial Intelligence in the Treasury Department?

Mr. HAMILTON. Yes.

Mr. BACHUS. And that they have been coordinating with the FBI and the CIA?

Mr. HAMILTON. Yes.

Mr. BACHUS. And they have been meeting and basically doing what you all proposed here?

Mr. HAMILTON. Yes, I agree with that. I think there are mechanisms, there are entities that have been created since 9/11 that have been useful and are operating much, much better than prior to 9/11.

Mr. BACHUS. I think if you take what you have recommended and you look at what the Office of Terrorism and Financial Intelligence is doing, I think you would be very satisfied that they are, in fact, doing what you have asked them to do, with one possible concern, and that is if it is an international situation that we are not always getting cooperation overseas.

Mr. HAMILTON. Well, if you look at—you know, we made, I think—I think the figure was 41 recommendations, and we really did not make a major recommendation with regard to terrorist financing.

Mr. BACHUS. Right, and I would like to commend you on that. Because I will tell you that, from all we know, the system is working incredibly well. We basically put most of these facilitators—we have identified 383 of them. We have put most of them either out of commission or they are on the run.

Mr. HAMILTON. There is no cause for complacency, however.

Mr. BACHUS. Oh, and I can tell you that there is not a day that does not go by when these agencies are not meeting and reviewing the situation and deciding on a case-by-case basis how can we best hurt al Qaeda or these other organizations, either we freeze the as-

sets or we track the assets, and that they are doing that, and I think you would be very satisfied.

I will ask you about this: The Financial Action Task Force, are you aware of their work? That is the cooperation between some—actually, it used to be 58 countries and now it is 94 countries, that we are actually going to each of those countries and saying, either combat terrorism or we will move against you to see that you do not do business with the United States, and I guess the Commercial Bank of Syria would be one example of some of our actions.

Mr. HAMILTON. You are right. That is a very important activity and one that will be a challenge to American diplomacy for many years to come.

One of our principal allies in the war on terrorism is Pakistan. Pakistan's laws with regard to tracking money and terrorist financing and money laundering are practically nonexistent. So a lot of things need to be done, and among other things that need to be done is we need to provide technical assistance to a lot of these countries.

Mr. BACHUS. In fact, we are actually doing that with 94 countries today. We have increased it from 58 to 94. We have problems with certain countries.

The CHAIRMAN. The gentleman's time has expired.

Mr. BACHUS. I would simply say I would like to submit for the record some of the things that the administration is doing in promoting stronger antiterrorism financial regimes with certain countries.

The CHAIRMAN. Without objection.

[The following information can be found on page 140 in the appendix.]

The CHAIRMAN. The Chair is going the try to recognize members in order of their appearance, and Mr. Frank is not here. I have Ms. Maloney as the next. The gentlewoman from New York.

Ms. MALONEY. Thank you. Thank you very much for your leadership, and I thank the Ranking Member and Chair for holding this important oversight hearing.

Mr. Vice Chair, in your 9/11 Commission report you noted that Congress has not demanded and the executive branch has not produced a focused U.S. strategy for combating terrorist funding, and that was on page 105. Unfortunately, this committee has seen at least some evidence that this is true. Even now, 3 years after 9/11, lines of jurisdiction remain unclear, and agencies do not, as you testified today, always coordinate their efforts.

To give one example, in a June hearing that we had of the oversight committee on major violations of money laundering by the Riggs Bank and UBS, the banking regulators pointed their fingers at each other when asked why significant portions of the new money-laundering provisions of the PATRIOT Act remained on the drawing board and had not been put into practice.

Also, earlier this year, the oversight subcommittee discussed with Deputy Secretary Bodman the fact that Treasury was omitted from an interagency memorandum of understanding between Homeland Security and the Justice Department concerning terrorist financing investigations, and Mr. Bodman argued that really Treasury did not need to be included and that Treasury "defers to

the FBI on enforcement matters, including tracking terrorist finances."

Finally, this committee has confided—I must say that this committee—and I would like to hear your assessment of this—has put our trust in the Treasury as the proper lead agency on these tracking matters. But if Treasury is going to defer to the FBI, maybe we are making our investment in the wrong place. Some have suggested that we should move FinCEN to the FBI since the FBI is the lead agency in investigations.

So I would like your comments on how we can better coordinate between the various agencies and really have responsibility placed firmly and accountability in certain areas so that the fingerpointing stops and a timetable of implementing the suggestions that have not been put in place.

I would also like to ask you about the comment on page 172 of the report that we still do not—that the United States Government still does not know the origins of the financing of the 9/11 terrorists. You further state that you believe it came from wire transfers or cash, and what are we doing to track wire transfers? You stated we are in some cases having difficulty with certain foreign countries that will not cooperate with us, particularly those that are on our high terrorist threat list, but we can certainly track wire transfers from those countries and from foreign banks, and what are we doing specifically to track and internalize and assess wire transfers?

But the larger issue that you pointed out of lack of coordination, responsibility to accurately follow through, what is your feelings on that? I must say I was delighted to see that the Senate has implemented one of your recommendations by coming forward with legislation for a Central Intelligence Agency and directorate with budgetary powers. How do you see us getting a hold on this financing so that we start having accountability, as opposed to pointing fingers?

Mr. HAMILTON. The coordination and integration of counterterrorism policy under our recommendations would be under the direction of a National Intelligence Director. Our basic analysis was that 9/11 occurred in part because we did not share information and that the intelligence agencies today, the intelligence community today, is organized very much on the basis of how you collect the intelligence, satellite, human intelligence and so forth, and that it really ought to be organized in this day and age more on a mission basis than on a collection basis.

But the key is to get sharing of information across both domestic and foreign means of collecting intelligence and that there must be somewhere in the government where you pool and analyze all of this intelligence and manage it and figure out how to deal with it.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Delaware, Governor Castle.

Mr. CASTLE. Thank you, Mr. Chairman.

Let me just start, Mr. Hamilton, by saying that I just think the report was really exceptional. I was on the Intelligence Committee. We issued a report which I thought was a pretty good report and I thought you did an extraordinary job. I think you and Tom Kean deserve a lot of credit.

I watched a couple of those early hearings. I was a little worried it was going to blow completely out of control. You did a wonderful job of pulling it together with a diverse crowd, shall we say.

Let me ask you one question that is not related to what we are discussing here. I don't know anything about the staff report that came out, I guess, on Saturday. You indicated you didn't know a lot about it either.

What is the story on the staff report? This is a pretty comprehensive report with footnotes and everything else. Why is there a staff report? Does it differ? By whose authority was it done?

Mr. HAMILTON. Our staff did an enormous amount of investigative work, and we drew from that obviously in putting together the final report here; but there was a lot more work done than appears in that volume, and so we decided that for the expert, we would put out a number of monoliths. I think we are going to put, maybe have put out, 12 or 13 of them and they really are very detailed. They do not carry the approval of the Commission.

In other words, this came out Friday night, I think was put on our Web site Friday night. I didn't see it frankly till early this morning.

I think it is totally consistent with my testimony. I think it is totally consistent with what we say in the report, but it is much more detailed.

Mr. CASTLE. And there will be more so these are sort of supplemental?

Mr. HAMILTON. It is a supplement, and it is really designed for the expert.

Mr. CASTLE. Thank you. I appreciate that.

Let me turn to the subject at hand. I noted in the report, from about page 385 on, a discussion about visitors and immigration. This has always concerned me. It seems to me that the one thing that could have stopped 9/11 is if we had had a visa visitors system in place that would have prevented people from being in this country. And there is some question about whether some of them would have been able to be here or not, but basically if you look at that for the next 10 pages, it talks about a biometric screening system and goes on in some detail in terms of visitors, et cetera.

Some of that is starting to happen now although it only applies to a very small percentage of people who come to the United States on immigration or in the area of visa. But it seems to me that that makes a lot of sense.

Was that a unanimous—obviously you did everything unanimously, but is there strong consensus about this?

It seems to me that this would pertain also to the subject matter of today's hearing which is the finances. Obviously, if you are here on some sort of visa or a passport or whatever it may be and it does have biometric identification, this could be shown or used in terms of opening up any kind of financial accounts or whatever. I think there is crossover in that area, and it should be done as rapidly as possible.

I would just like to get your comments on that.

Mr. HAMILTON. Terrorists travel. When you travel, you leave a trail. It is important for us to be able to follow that trail. And so we believe there has to be a modern border immigration system.

We think we have got a ways to go before we are there. We favor a biometric entry-exit system. We are no experts on biometrics; that is a complicated field in and of itself. But there isn't any doubt that we have to be able to determine that people are who they say they are when they come into the country. We believe this is the best way to do it.

The technology is evolving. We think that the official, whether that official is a Customs official or a border official, a State Department official issuing a visa or whoever it might be that has some responsibility for people who try to get into this country, we think they have to have access to files on visitors and immigrants so they can immediately access that file and see who this person is that wants to come into the country. That means they have to have a lot of intelligence, it has to be pooled, it has to be dispersed.

This is a complicated business when we have got all of these people coming into this country every day and millions, of course, over a period of time. And we have to be able to exchange information with other countries; intelligence from other countries, issuance of a passport by another country becomes enormously important to this country.

So all of this is terribly important, and I guess the key observation we make is that immigration and border security is a national security matter and it must be seen in that context. I don't think it has been until recently. It is very important.

The CHAIRMAN. The gentleman's time has expired.

Mr. CASTLE. I yield back.

The CHAIRMAN. The gentleman from Pennsylvania.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. Hamilton, I join my colleagues in congratulating you and the Governor in doing great work in your final report. I am not sure I understand why we are here today, though. Is there a specific recommendation of a lack of existing laws that needs to be changed to improve the situation?

The reason I ask that question is: I have been sitting on this committee for almost 20 years and watching the great war on drugs that has transpired for about 30 or 35 years. To the best of my recollection, drugs are moving in and out of the United States and money for drugs is moving in and out of the United States in gigantic proportions. Some people, I think, have estimated it from $100 billion to $140 billion a year. We have neither been able to close that movement by devices, or have not been extraordinarily successful.

When I look further at our borders, we have illegal immigration at gigantic proportions in the country.

I am just wondering: Is this an exercise to make the public feel better? When I say "this exercise," the fact that the Congress is now, each committee of the Congress scurrying back here to Washington to consider this report.

What can we do? What are you asking this committee to do? What are you asking the Congress to do in terms of financial closure of holes and leaks within our system?

Mr. HAMILTON. As I suggested, I don't think our recommendations are primarily aimed at the terrorist financing arena.

Having said that, it is important for the public to understand—I think this committee already understands it—the shift that is taking place in terrorist financing, how at one time we were going to starve all the terrorists or drain the swamp. While we don't reject that, there has been this remarkable shift that it is important for the American public and for this committee and for all of us to understand.

I guess what we are trying to say is that in fighting the war on terrorism, getting the right kind of financial information to the investigators at the right time is tremendously important.

Mr. KANJORSKI. What can we do to accomplish that? Do we need more laws or do we have efficient laws in place?

Mr. HAMILTON. I do not come before you with a request for a specific new law. We are saying that what you have on the books has been helpful, some of the provisions in the PATRIOT act. So I am not calling for new legislation.

Mr. KANJORSKI. I have watched your career my entire life and admired it. You are usually an optimistic man. Are you optimistic in terms of whether or not we can be more attentive to solving these problems that particularly became highlighted with 9/11? Is there something the American people can do? Is there something specifically this Congress could do? Or are we just relying on the various administration or executive branches of the government and intelligence forces?

Mr. HAMILTON. I have been quite pleased by the response to the 9/11 Commission report. It has resonated. We are right up there with Harry Potter in terms of public approval and buying of the book.

Mr. OXLEY. When does the movie come out?

Mr. HAMILTON. That is not our work alone. It is just the fact that the American people and, I think, the Congress are ready to look very, very hard because of a variety of factors on how we strengthen our counterterrorism efforts.

We recognize now that terrorism is the number one national security threat to the United States. So what is pleasing to me is that the Intelligence Committee, the Judiciary Committee, the Banking Committee—it used to be the Banking Committee—the Financial Services Committee are all asking themselves, what should we be doing about this? That is an enormously pleasing response.

We don't pretend that we have got everything exactly right in this report. It is a complicated business. But I have been enormously pleased that the President has responded quite positively and you now see a lot of refinements, if you would, or criticisms of this report coming out, all of which I think are directed towards strengthening counterterrorism efforts in the country.

Mr. KANJORSKI. Thank you.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from New York, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Congressman Hamilton, it is always great to have you back. Of course you have to be commended for the great job you did as vice chairman, but also for the tremendous amount of time you are putting in this month going from committee to committee. I would

think after all the years you spent in Congress you wouldn't be that anxious to come back, but we certainly benefit from your wisdom.

Mr. Hamilton, in your statement today and I believe also in the report, you mentioned the fact that there was no substantial source of domestic financial support for the 9/11 attacks. From your investigation, were you able to determine whether or not there is a threat today though, a real concern that there is domestic funding now for future attacks or whether or not the al Qaeda supporters in this country are able to raise money domestically?

Mr. HAMILTON. We have not found any evidence of that, that they are raising money from domestic sources.

Mr. KING. Also you mentioned in your statement, and we have seen evidence of it, that the financial services community has been cooperative as far as dealing with the Federal Government and providing information. There is a concern that some of us have that perhaps the Federal Government is not giving enough information back to the financial institutions which they could use to learn more or perhaps spot things they wouldn't be able to spot otherwise.

Do you think the government is implementing the PATRIOT Act sufficiently as far as giving data back to the financial community?

Mr. HAMILTON. We hear a lot about that feedback problem. We think it is a genuine one. You are right, of course. We agree that the financial institutions, domestic financial institutions, have been very cooperative. A lot of that, I believe, really works because of personal relationships that have developed between the government and the private sector, and it is a very important fact. But the lack of feedback from the government to the financial institutions, we heard a lot about that in our interviews with banking personnel. What does not seem to be present is a systematized, formalized way of getting that information flow working. It depends too much, I guess, on informal arrangements, not enough in a systematic way. There may be reasons for that.

I know they have tried very hard, for example, to develop a model of terrorist financing. That has not yet been developed because it is very, very hard to do; but that being said, I think steps are being taken to address the so-called feedback problem. We encourage that. We would like to see that institutionalized as well.

Mr. KING. Mr. Hamilton, if you could perhaps just clarify the record, you were asked before a multipart question, and in there there was a statement which I think has not been corrected where it was suggested that somehow the Bush administration was responsible for getting the Saudi royal family and members of their family out of the United States.

Wasn't it the finding of your commission that that was done by Richard Clarke and never went any higher than him, and that nobody at any high level of the administration was ever contacted on that issue?

Mr. HAMILTON. That is correct, Mr. King. A contact was made by the FBI to Richard Clarke about Saudi citizens leaving this country. We looked into that very, very carefully. This occurred within hours after the 9/11 attack. Mr. Clarke was very, very busy at that time in making decisions every hour. He asked the FBI if they had

investigated the backgrounds of these people. The FBI said they had. Mr. Clarke gave his approval to let these flights go ahead. So far as we are aware, the decision went no higher than Mr. Clarke.

We found no evidence that any flight of Saudi nationals departed airspace before it was reopened. That was one of the charges. We found no involvement of U.S. officials at the political level—I do not include Mr. Clarke being at the political level—in the decision-making. We believe that the FBI screening was satisfactory.

We subsequently, after the fact and with a much larger list, ran the names against our lists and found—and made extensive interviews, and so the independent check of our database found no links between terrorism and the Saudis who departed the country.

This too is an ongoing investigation. We give you what we were able to find or not able to find and those were the conclusions.

Mr. KING. There was no evidence of any impropriety whatsoever.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman.

Mr. Hamilton, I think your commission needs to be commended for so many different things, one of which is to point out the powerful tool that, following the money it provides in knowing what the terrorists are up to.

My concern is that your comments might be misinterpreted to argue for a fatalistic reduction in our effort to turn off the money to the terrorists. We were not able to stop them from getting the roughly $30 million they needed for what they did, but the other way to look at that glass and say it is half full is to say, we did stop them from getting $60 million or $100 million or $200 million a year which they would have put to even more diabolical use.

My first question relates to the fact that it is my understanding that your commission's term of office expired this weekend. I can't think of a better investment of U.S. taxpayer dollars than what your commission has done. Yet you have left a lot of unanswered questions, as naturally you would. You have identified them. You have said additional work should be done.

It strikes me that much as you might like to relax, your commission are the best people to do it. Perhaps you could explain to this committee how important it is that we keep the Commission in business, and perhaps you would inspire all of my colleagues to cosponsor legislation to do just that.

Mr. HAMILTON. The Commission, of course, is a statutory body created by you in the Congress and by the President. You are right, it went out of business this weekend. All of the Commissioners believe that the recommendations we have made are worthwhile and should be considered, and each of them is committed to trying to help advance the case for the recommendations. All of the Commissioners have said that they will not involve themselves in partisan politics with regard to the terrorism issue, and we will do our level best to try to meet that commitment. We have, because of pending business, if you would, and unanswered questions, decided to stay in business on a private basis. We have raised money for that purpose, not from the government but from private sources.

I am not quite up to date on all of that, but we are going to be opening an office here very shortly. Chairman Kean and one or two

of the other commissioners have been more involved in it than I. We will continue to function.

There are a lot of inquiries that still come into the Commission. There are questions that we have not answered. We are deeply committed to trying to see implementation of some of our reforms. We need help in doing that. We have got to have staff, we have got to have people to write testimony and do research.

Of course, the e-mails continue to come. My office just receives e-mails every day, requests for testimony and speaking and all the rest of it. We can't possibly meet all those demands and we do need some help.

Mr. SHERMAN. One approach is that you continue, but morph into a foundation. Another approach is that we continue you as a government-funded commission with all of the official imprimatur, liberating you from the time that it would take to raise funds one donor at a time, one schmooze at a time.

Which is the better approach to serve this Nation and to begin to answer the many questions that still remain unanswered?

Mr. HAMILTON. We leave that judgment to you and to your colleagues, Mr. Sherman. We are not going to try to do that. We have moved ahead on a private basis.

Mr. SHERMAN. I think it may be obvious to my colleagues that your time is best spent doing the work of the Commission rather than doing the work of forming and funding some new foundation, but let me move on to one more question.

Your commission explodes the false impression that Osama bin Laden had access to a personal fortune of tens of millions or hundreds of millions of dollars. Yet he is one of the many sons of one of the richest families in the world. He did at one point inherit tens of millions of dollars or interests in family businesses worth tens of millions of dollars.

Do we have any idea who controls this money or who took it away from his control, and who then should disgorge that money so that we can provide compensation not only to the victims of 9/11, but also to the victims in East Africa for whom there is no other source of compensation?

The CHAIRMAN. The gentleman's time has expired. The gentleman may respond.

Mr. HAMILTON. We think with regard to Osama bin Laden's assets, most of them were spent during the period he was in Sudan before he moved to Afghanistan. He was supporting at that point quite a large organization. We think a number of his assets were frozen by the Saudis. We found no evidence that the 9/11 attack itself was financed with his personal funding.

Mr. SHERMAN. I would hope the Saudi Government would disgorge whatever assets it has frozen.

The CHAIRMAN. The gentleman from California, Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman. I thank Vice Chairman Hamilton.

Lee, I wanted you to know that I very much appreciated your leadership as Chair of the House International Relations Committee, but I also appreciated your judgment and I wanted to ask you today a couple of questions.

One, as you continue your efforts, I think we need to create a new structure whereby each safety and soundness regulator would have a designated group that works hand in hand with a newly created Office of Terrorism and Financial Intelligence in the Treasury Department.

My view is that Congress needs to strongly consider Treasury as the agency to house and run our government's centralized financial intelligence unit. I say that because I think we should put the PCC basically in charge of integration and cooperation between these agencies. But I think if we look at the fact that today money moves across borders faster than people, faster than weapons, with a click of a mouse. You have got tens of millions of dollars that can be sent anywhere in the world, and it is Treasury that has an institutional and historical relationship with the foreign central banks and the ministries of finance responsible for instituting antiterror finance laws in countries around the world; and I think it is Treasury that can apply pressure on nations through the seats that it has on multilateral institutions. If we look at the World Bank or the IMF, if you elevate Treasury's role in this, you have got an enormous amount of leverage there.

I throw that out for the future and for your thoughts here today in terms of how we could elevate Treasury's muscle in this.

The other thing I wanted to ask you about, we had a hearing out at LAX prior to the 9/11 Commission hearing there where we looked at these 19 hijackers, we looked at the visas. The committee went through, one by one—this is a subcommittee of the International Relations Committee—and we saw how most of these could have been caught, should have been caught, because there were obvious mistakes made where they weren't even filled out in most cases.

I would like to go to your thoughts requiring a biometric identification of all visas and passports. Lee, if there had been due diligence at the time of those 19, most would have not gotten into the country, if there had really been close work, if Visa Express hadn't basically waved them into the country. But it seems to me that this concept that you have of this biometric identification system that would be on all passports and visas worldwide potentially for people who would come into the United States would allow us to get at this question of the national security component, now, of people visiting and leaving the country and would allow our intelligence authorities to actually know who is here.

I wanted to hear your thoughts about how we would implement such a system.

Mr. HAMILTON. The 9/11 Commission report, of course, is general. It deals with broad concepts and does not get into great detail on the implementation. There is a lot of arguments today on what kind of biometrics you would have. We really don't try to make judgments about that. We are not experts in that field. But we think the concept is a very important one for the very reason that you said.

It is just agonizing to look at these visas and passports that these hijackers had and to see how they slipped in. 19 out of 19. Actually 19 out of 20. We stopped one of them coming into the country. But they worked the system very, very well.

You said, well, if there had been due diligence. It is easy to say that in hindsight, of course. At the time none of us anticipated anything quite like this. The importance of it, we believe, is paramount in order to have an effective system of guarding our own borders.

Your earlier point about elevating the work of the Treasury, I am open, would be, and I think the Commission would be open to suggestions about that. You now have this policy coordinating committee in the NSC, which we think has done a pretty good job of coordination; and how it would fit in with all of that, I don't quite know what your thoughts would be there.

Treasury plays a tremendously important part in counterterrorism policy in tracing the flow of these funds. They are a major actor without any doubt.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Kansas, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Thank you, Congressman Hamilton, for appearing before our committee this morning. As a member of the bipartisan 9/11 Commission Caucus, you and Governor Kean and members of the Commission, I think, have set a powerful example of what can be accomplished when we set aside partisan politics and work together for the good of our country. I thank you for that, Mr. Hamilton.

As you know, the Commission staff report examines in great detail the difficulties that United States authorities have had in tracking and freezing al Qaeda's finances. While financial support for al Qaeda has dropped significantly since September 11, according to the staff report, al Qaeda continues to fund terrorist operations with relative ease primarily because al Qaeda's attacks are relatively inexpensive to conduct.

Additionally, the staff report notes that many in the intelligence community believe that new jihadist groups are forming and are in the process of creating a loose network of terrorist organizations that will exist independent of al Qaeda. The 9/11 Commission report reached a conclusion very similar and said that if al Qaeda is replaced by smaller, decentralized terrorist groups, the premise behind the government's efforts that terrorists need a financial support network may become outdated.

Many of us on this committee and in the House supported the Financial Antiterrorism Act of 2001 which is now part of the PATRIOT act. As you note in your testimony, the PATRIOT act has given law enforcement a number of new tools to assist in terrorism investigations. I want to ask you a couple of questions as a former Member of Congress and someone who is very familiar obviously with the conclusions of your 9/11 Commission report.

Number one, what should Congress be doing right now and in the future to focus our attention as much on emerging non-al Qaeda terrorist threats as we are trying to freeze assets of al Qaeda? And, number two, I saw in the news this morning and on television reports that Senator Roberts of Kansas, the chairman of the Intelligence Committee in the Senate, was discussing his proposed legislation that would address some of the recommendations of the 9/11 Commission.

I wondered, Mr. Hamilton, can you share with us the details of Senator Roberts' proposal? Thank you, sir.

Mr. HAMILTON. Mr. Moore, I am not able to share with you the details of Senator Roberts' proposal. I have seen only the press accounts this morning. I had a very brief conversation with Senator Roberts on Friday. I know he is sending me his bill that the Republicans on the Intelligence Committee in the Senate have agreed upon.

His, of course, is a very important voice here, so we will want to look at that very, very carefully. But it would be quite premature for me to make any judgment with regard to that plan. Obviously it will be given very serious consideration.

Your first question is about what can Congress can do with regard to non-al Qaeda assets. It is a good observation because we believe that what has happened to al Qaeda is that, as you say, it has become very decentralized and a lot of other groups, a lot of new leaders are emerging, all of whom have a certain admiration for Osama bin Laden. They look to him as an inspiration, but do not take operational guidance from him.

We think—I will be talking about this a little more in the International Relations Committee—we think that the nature of the threat is changing as we move along here. So Congress has to be alert to this and also alert to how other groups might be financing their efforts. We don't have any information with respect to that. We were not asked to look into it and did not.

Mr. MOORE. Thank you very much.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from New York, Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman. I wanted to discuss one sentence from the Commission report which I see received a little more attention in the monograph that you released. The sentence is, "We have seen no persuasive evidence that al Qaeda funded itself by trading in African conflict diamonds."

As you well know, this is an issue over which many people have struggled, so I am hoping for a little bit more light to be shed on the process, how the Commission came to the decision to include that sentence. I think it may be useful to the members here as they consider that issue.

The Commission was, of course, I think right to look at the information from the FBI and the CIA. In the Commission's review, it also had available to it information from a number of sources which came to different conclusions, including the U.N. and U.S.-sanctioned special court of Sierra Leone, a four-star Air Force general who is currently the deputy commander of the U.S. European Command, and the work of a respected journalist who has spent a great deal of time in the western Africa area and has written extensively on the topic.

Additionally, there have been rather new developments on this, owing to the capture of al Qaeda operative Ahmed Ghailani in Pakistan. Ghailani spent several years in western Africa and is known to have interacted with Liberian President Charles Taylor. In a recent Boston Globe article about capture, U.S. intelligence officials said, and I quote, "Charles Taylor was in the back pocket of al Qaeda. He was helping them launder money through the diamond mines." this is from an article this month in the Boston Globe.

Approaching the issue as someone who is just really trying to get to the bottom of an apparent schism of information here, I hope you can enlighten the committee as to what sources of information were considered and how you analyzed them. For example, to what extent did you consult with the Defense Intelligence Department? It seems that only the FBI and CIA sources are quoted in the report as footnotes.

I also understand that the chief investigator for the special court of Sierra Leone met with the Commission staff in June and offered two additional informants who had firsthand information about the activities in 1999 and 2000 in West Africa of Ghailani, of Fazul Abdullah Mohammed, another al Qaeda operative who is currently on the FBI's most-wanted terrorist list for his involvement in the 1998 embassy bombings, and of Mohammed Atef, a top-ranking al Qaeda commander. But the Commission chose not to contact these sources, from what I gather.

I wonder if you would talk for a minute about the Commission's process regarding blood diamonds and why they chose to interview only certain people and not others. Perhaps there is more information available now.

Mr. HAMILTON. Mrs. Kelly, this too is an ongoing investigation and I don't know that we have the final word on it. The distinction I would want to draw is between al Qaeda and maybe some specific al Qaeda operatives.

There is some evidence that specific al Qaeda operators may have dabbled in or maybe just expressed an interest in precious stones at some point. But what we are not able to do is to take that evidence and extrapolate from it and conclude that al Qaeda funded itself in that manner. We are aware of the reports that you referred to. I think we are aware of all of them. I would need to double-check that, but I think we are aware of all of them.

None of them came as a surprise to me. We have looked at NGO reports. We have looked at a number of journalist reports. We have looked at investigators who work for the United Nations. A number of them have alleged that conflict diamonds were used. We do not believe on the basis of the evidence that we have now that those claims can be substantiated. But obviously you have to maintain an open mind here, as I think the Commission tried to do.

We evaluated the sources of information for these various public reports. We checked the FBI records. We checked the CIA records. They came to the conclusion, as you suggest in your question, that there was no credible evidence——

Mrs. KELLY. I am sorry, Mr. Hamilton, to interrupt here but I have a very short period of time, and I simply wanted to know why there were certain people chosen for you to interview and others seemed to have been left out, such as these two gentlemen that were offered to you by the special courts of Sierra Leone.

Mr. HAMILTON. I will simply have to check that. I think we have checked either all of them directly or indirectly. But one of the things we were careful about is not to accept the word of anybody. We always looked for corroboration and we didn't find it in these cases.

The CHAIRMAN. The gentlewoman's time has expired.

Mr. HAMILTON. If you have evidence that al Qaeda—not al Qaeda-associated people, but if you have evidence that al Qaeda itself was funded by conflict diamonds, we are certainly open to that.

The CHAIRMAN. The gentleman from New York, Mr. Israel.

Mr. ISRAEL. Thank you, Mr. Chairman.

Chairman Hamilton, thank you so much for joining us. If I may, let me extend personal warm wishes to Secretary Libutti who will be appearing in our next panel whose family hails from Huntington, New York, which I represent. It is my hometown. The wedding ring that I wear was purchased at Libutti Jewelers. I want him to know that not only do I support my local economy, but I support the Libutti family economy and will continue to do that.

Mr. Chairman, I would like to ask you about Saudi Arabia. The Saudis recently began running rather significant television and radio ads in 19 U.S. media markets specifically citing the Commission's report as somehow bestowing on the Saudis a kind of Good Housekeeping Seal of Approval, noting that the report has said of the Saudis that they have been a loyal ally to the United States.

What the report actually says, as you know, is that the Saudis have been a problematic ally in combating Islamic extremism, and somehow the word "problematic" was dropped from that Saudi media campaign.

I was wondering if you could comment on what the Commission has learned about the extent of Saudi financial involvement in al Qaeda and what you think we need to be doing in order to ensure the complete, consistent assistance of the Saudis in cracking down on the financing of terrorist organizations or charitable organizations that finance terrorist organizations.

Mr. HAMILTON. Mr. Israel, we did not find evidence of the involvement of the Saudi Government as an institution in the plot. We did not find any evidence that the Saudi Government was involved in financing terrorism as a whole. The word "problematic" was used in the report because in the period following 9/11, we think that the Saudi cooperation was episodic and not very helpful in our efforts. We think that changed rather dramatically in the year 2003 after the attacks in their country.

So since 9/11 and especially since, I guess I should say, May of 2003, there has been strong Saudi cooperation on the terrorist financing issue.

Mr. ISRAEL. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman yields back.

The gentleman from Texas, Mr. Paul.

Mr. PAUL. Thank you, Mr. Chairman.

Welcome, Mr. Hamilton. I have two questions. One deals with the fourth amendment and the other one deals with the practicality of monitoring all the financial transactions of every American.

Earlier it was said that you are an optimist, and I think that I would confirm that, that you are. Your acknowledgment that the government needs more tools to monitor what is going on in this country, you also acknowledge the fact that if we are not careful, there could be abuses, civil liberties could be violated and these powers could be misused. I think that, as one that is a bit more skeptical, I recognize the fact that governments tend in that direc-

tion. They tend too often to abuse their powers this was a big issue at the time of the Constitutional Convention, and the Constitution was written to curtail the powers of government, not to authorize the government to do so much.

The fourth amendment is rather clear, the right of the people to be secure in their places, in their homes, in their persons and their papers and their effects, and that none of these should be violated unless there is probable cause and a search warrant. This country more or less gave up on that in the early 1970s with the Bank Secrecy Act and we expanded on that power, of course, with the PATRIOT Act.

Evidently the whole country, especially just about everybody in Washington, concedes that a notion which was strongly rejected at the time of the founding of this country and that is the sacrifice of liberty is necessary in order to provide security. There still are a few Americans that cling to that notion that we don't have to sacrifice liberty for security.

So my question regarding the fourth amendment is, since it is not followed technically anymore, should this be revised? Is the fourth amendment outdated?

I will go ahead and ask my second question. That has to do with the practicality of what we do. In many ways, it seems very impractical. The year before 9/11, we had 12 million suspicious activity reports issued. There was a lot of information in there. It was hard to digest. It looks like we are moving in the direction of not only do we look at the banking records, we are going to look at everything from car dealers down to coin dealers all other financial transactions.

I wanted to quote very briefly a statement from John Yoder, who was the director of asset forfeiture for Ronald Reagan, in reference to this issue. He says, "It costs more to enforce and regulate them than the benefits that are received. You're getting so much data on people who are absolutely legitimate and who are doing nothing wrong. There's just too much paperwork out there. It really is not a targeted effort. You have investigators running around chasing innocent people trying to find something that they're doing wrong rather than targeting real criminals."

This makes me think about a report that just came out this week, because there is going to be an audit released in the near future of the moneys that were controlled by the Coalition Provisional Authority. During that period when they were in charge of the moneys of Iraq, they collected $8.8 billion, and they don't know where it went. The audit—it doesn't reveal where our responsibilities were to monitor this.

The report is going to say that they don't know much about where it went. The odds of some of that money ending up in the hands of the enemy are pretty good.

So I think we are way off target. We are targeting innocent Americans. At the same time, we don't even manage our affairs over in Iraq where so much money has been misplaced. 9/11 actually was an excuse to expand the PATRIOT Act. That legislation had been floating around here for years.

So I am discouraged that so many people are so complacent and so willing to give up their privacy because they say, well, it is going

to help us, it is going to make us more secure. It wasn't 9/11 that prompted so much of this financial privacy invasion that allowed us to pass it, it was just the atmosphere that did this.

I don't see where it is very practical to do this. It cost somewhere close to $11 to $12 billion a year to fill out these financial transaction reports, and we are talking about a lot more and the businessmen and the banks are going to be fearful and intimidated. And what is it going to do to the criminals? Do you think they are a bunch of dumb clucks out there? All they have to do is get into an honest business, which they do. They probably won't even have their financial transaction reports issued.

It is going to be the good guys that are going to be penalized.

I just, unfortunately, have to disagree with the mood. I know you have some sympathies for civil liberties and concerns, so I would like you to comment.

The CHAIRMAN. The gentleman's time has expired. The gentleman may respond briefly.

Mr. HAMILTON. There isn't any doubt, in fighting the war on terrorism, you enormously expand the power of government in all sorts of ways and you make government much more intrusive into the lives of people. I don't see how anyone can deny that.

We have had all kinds of laws put on the books since 9/11. We will have more. They all—maybe not all, but many of them have a liberty or civil liberties aspect to them. We think, most of us think, that that is necessary because of the reason you suggested, to increase the security of our people.

Just look at what has happened on the Hill up here. The number of measures you have put into place to protect the Congress have just been extraordinary. It is happening everywhere across America today. I don't think that is going to change with the concern that we have about terrorism, but we do have to sensitize ourselves to the case that you make for civil liberties.

What we recommend is a board and a board that is created across the executive branch to look at civil liberties. There is no such board today. You have inspectors general in various departments, but you really do need to be sensitive to the civil liberties and you must put into practice the principle of review. That is the key.

The CHAIRMAN. The gentlelady from New York, Ms. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman. Again, thank you, Mr. Hamilton. I have been watching on TV and this is, I think, the third time that I have actually sat with you on these issues. Two things that we haven't really touched upon too much and that, basically, is going back to your report where you are saying the world institutions, banking institutions, haven't been working closely enough for the transparency that we need to know on following these terrorists.

I guess the second part, on just listening to all the questions we have been going through here, when we talk about immigration and talking about how are we going to be able to track the backgrounds of those that want to come into this country, I know right now to get a passport, you have to go to one of our embassies. As far as I know from our office, working with other embassies across the world, they do an extensive background check. But again when

they come here into this country and set up—I am thinking here of students that come into this country—they do set up banking accounts, they do set up sometimes a charge account if they are going to be here for a couple of years of study.

I don't know whether that part of the question would go to the next panel, which would be the Treasury. Is the Treasury and those entities working with the banks on trying to teach them what to look for on the transparency of withdrawing money?

I just think about my own charge account, and because I travel so much, let's face it, we are all over the country, a charge goes here and a charge goes there. Obviously, my charge account credit card follows me, and if all of a sudden I am making a purchase that doesn't fit into my character, a red flag goes up. Are we doing that, the same, with these visitors that come into this country and are the banks working with the Treasury Department as far as trying to track that down?

All I can think of is our staffs certainly in other countries, embassies, they don't have the staff to do all these background checks. So is our CIA then working with the embassies to do the background checks of everybody that wants to come into this country legally? We are not even touching upon those that come in illegally.

Mr. HAMILTON. You have raised a number of questions. Let me try to address the question of the multilateral institutions, if I may.

We think they have done a pretty good job of setting standards, in engaging on this question of terrorist financing, but that is only the first step; and what we don't see evidence of is the implementation and the enforcement. We think it has been fairly spotty. So a lot of work still needs to be done with the various international institutions to improve their activity with regard to terrorist financing.

The United States has exercised, I think, leadership in trying to develop strong standards in a short period of time, but it is not just a matter of developing the standards. You have got to implement them and enforce them, and that is where the work needs to be done.

Mrs. MCCARTHY. As a follow-up question to that, with the international community, what are their reasonings on not working or fulfilling some of the things that we have implemented? Would it be, as Mr. Paul has said, they didn't want to intrude on their citizens? Or is it a matter of just changing the attitude as the world has changed since September 11?

Mr. HAMILTON. I think sometimes we don't appreciate how far advanced our banking financial system is and how sophisticated it is today as compared to many nations around the world. We are asking them to do an awful lot of things very quickly. They just don't have the internal mechanisms to do it. So it takes an extensive amount of activity on our part.

They also are operating against very substantial domestic political forces which don't want us to do these things because they look upon it as an intrusion into their practices, I suppose. So this is a very, very long-term effort for the United States Government.

Mrs. MCCARTHY. Thank you.

The CHAIRMAN. The gentlelady's time has expired.

The gentleman from Ohio, Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Chairman. Mr. Hamilton, it is good for see you again. I want to begin with observations that were made by Mr. Frank and then also Mr. Paul and with, I think, Mr. Kanjorski's question if I can.

When Mr. Frank made his opening remarks, he talked a little bit about the necessity of how the paradigm of law enforcement has changed. We used to wait for you to commit a crime, we go out and catch the bad guy. Now, sadly, we have had to consider legislation that has in it snooping, spying, intrusion. And Mr. Paul talked about the fourth amendment and the need—and not only is Mr. Frank sensitive to the civil liberties issue, Mr. Paul certainly is, and I know you are as well, not only based upon your work with the Commission, but also based upon your long and distinguished career here.

I also made some notes when you were talking and that is that the financial transactions that the terrorists used prior to September 11, you found no evidence of fraud. There were no fraudulent transactions that would somehow ring alarm bills in the system already in place. You then indicated they did, in fact, leave a paper trail.

The next note that I made is that we did not understand prior to September 11 the routes that the terrorists would use to move and get money to different places and then use it.

And then the last note that I made is that you are under no illusion to believe that they will use the same techniques that you have discovered during the course of your investigation, which leads me then to Mr. Kanjorski.

What has always troubled me is that if you go back to the first World Trade Center bombing, after we learned that lesson, we made it extremely difficult to drive a car bomb into the parking garage of buildings, and we are doing that all around Washington D.C. So on September 11 they determined that they were going to use airplanes.

With all of the changes at the FAA and other places and air marshals, we are making it very difficult to use airplanes as weapons. So I think it is reasonable to expect that the next event will not use car bombs and/or airplanes. That leads me to Mr. Kanjorski.

Mr. Kanjorski said, then what are we doing here, I guess, if we are under no illusion that what you have discovered or how they used money prior to September 11 will be the way that they will do it again.

The question that I have, and I know that I have sort of gone roundabout to get there, I think that this committee did do some good work with Title III and the PATRIOT Act. I think you have acknowledged that and others have also acknowledged that. Your monograph talks about the fact that that is indeed the case. But as legislators, as members of the Financial Services Committee—and I know again to Mr. Kanjorski you have said you are not here to advocate a specific piece of legislation, but I guess the question would be based upon what you have seen, the effectiveness of Title III and how agencies are now talking to each other, Mr. Bachus' observation that we now have 94 countries involved in talking to each other about financial institutions. Do you think that we have

the legislative framework in place for the agencies, if ever-diligent, to find sort of the next financial scheme that these folks might use?

I was talking to Ms. Hart. The thing that really shocks me is that this thing only cost $300,000 to $500,000 to pull off. I think that is shocking. Do you think we are there or do you think we have work yet to do?

Mr. HAMILTON. I don't know if I am really qualified to answer that. This gets into very technical areas. We have been pleased with section 314(a) and section 326 of the PATRIOT Act. We think those are useful tools. Whether or not additional tools may be necessary, I am probably not the one to ask.

What has impressed me is that these terrorists that attacked us on 9/11 are very entrepreneurial and they are very good at finding the gaps in our system both in immigration and border security, but also in other areas.

You indicated the next event may be entirely different from the last one. I think there is a lot of merit to that. One of the pieces of advice we continually received was not to fight the last war, always to use our imaginations with regard to possibilities.

All I can say in response to your good observations is, we do have to be alert to different kinds of attacks, tactics and targets that the terrorists might have. Whether or not you need specific new powers in financial regulation is really beyond my competence.

Mr. LATOURETTE. Thank you very much. I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

The gentleman from Utah, Mr. Matheson.

Mr. MATHESON. Thank you, Mr. Chairman.

Thank you, Mr. Hamilton, for your service. I am not asking you for a specific legislative proposal as you had in your previous discussions with some of the other questions, but you used to be a Member of Congress and I know you know the pace of this institution and you know how long it takes to get some things done. And the committee functions are not just legislating, it is also oversight and considering issues.

The 9/11 report, of course, covers a whole range of issues and a lot of different committees with a lot of jurisdictions. Relative to the Financial Services Committee, do you have a suggestion for what priorities the Financial Services Committee ought to be looking at relative to the 9/11 Commission report for the balance of the 108th Congress, and with not many legislative days left, what we should be also looking at as we commence with the 109th Congress next year?

Mr. HAMILTON. I don't think I can be very helpful to you on the specifics. We make a report at a point in time, and time keeps moving. So what this committee, I think, has to do is simply monitor these things very carefully. You know the financial system, you are the experts on it. I am not.

You have to decide where the loopholes may be, and you have to work closely with the intelligence people, the law enforcement people with respect to that. And so the only advice I can give you is very general.

The country looks to you to be the experts on the financial system, and they look to you—we look to you as one of the bodies that must come up with answers to a continually shifting scene.

So it takes careful oversight. It takes careful review view of the laws, it takes careful review of the visit track particulars that we have heard, that we understand. But beyond that it takes consideration of what they might do in the future, and that takes real expertise and it takes constant monitoring, and that is one of the reasons we say in the report that there is no support for robust congressional oversight.

Mr. MATHESON. It seems to me that in other parts of the Commission report, which are applicable to other committees in the jurisdiction, there are significant changes, whether it is the new national director of intelligence or whatnot. In terms of the Financial Services Committee jurisdiction, I am not reading the significant recommended changes in our current laws in the report. Is that a fair statement?

Mr. HAMILTON. That is correct.

Mr. MATHESON. Thank you.

I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

The gentlelady from Illinois, Mrs. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman.

Again, Vice Chairman Hamilton, I would like to thank you for your service and the fine work that both you and the entire Commission and the staff did on the report and the monograph.

I would like to turn now to international efforts and how we work with other countries to follow the money to terrorists and stem the flow of money to those terrorists. And obviously any international regime for combating terrorist finance is only as strong as its weakest link; and not unlike drug cartels or organized crime, terrorists will naturally find those links where anti-money-laundering standards are lax and then enforcement is minimal.

As part of its work, did the Commission seek to identify where those vulnerabilities in the global terrorist system exist and, if so, what did you find?

Mr. HAMILTON. We did not undertake a country-by-country analysis of the vulnerabilities of various financial systems. The State Department already has a report that comes out under the title, the International Narcotics Crime Report, and it makes an assessment that we think has been very good.

Now, there are some governments that are kind of in a top tier, and the focus diplomatically has to be on those governments. That means we have to travel to those countries a lot. We have to work with their people very carefully.

We have mentioned several times here the importance of technical assistance, see what needs to be done in these countries. It is not—it is not a situation where you have to send—you have to deal with 150 countries. You can prioritize these countries and know which ones are the key ones.

The Saudis have come up here any number of times this morning. Everyone knows they are a key country, and we have got to deal with them; and there are probably several others that are in the top tier. And one of the things, incidentally, we found is, we

don't have enough people who are technically qualified here, real experts, to do the work that needs to be done here at home in our own shop, but also provide technical assistance across the country—across the world.

So I would hope that one of the things that will happen is that we will begin to train more of these experts.

Mrs. BIGGERT. Okay.

Mr. HAMILTON. And clearly the State Department has to put in its diplomatic message as it deals in bilateral relations with country after country, the importance of terrorist financing. That has to be a part of our regular message to countries.

Mrs. BIGGERT. If we could go back then to your exchange with Chairman Oxley and Chairman Bachus about making a decision to freeze or follow the money on a case-by-case basis, I think—first of all, I think you have said that Congress doesn't need to make changes to current law for those decisions. But I am concerned that while case-by-case decisions may work well in the U.S., and the U.S. Government, they could present some very large challenges in our work with other countries, particularly those who might be viewed as the weakest links in the international regime for combating terrorist financing.

Could you comment on that or give us some guidance on that?

Mr. HAMILTON. Well, I am not sure I can be very helpful there except to say that in dealing with each of these countries, you have to begin where they are and their own financial systems. And in some cases, the recommendation we make for our own country, that you just referred to about balancing these interests, may not apply to other countries. So I think it has to be done country by country, not only case by case.

Mrs. BIGGERT. All right. Thank you, thank you very much.

I yield back.

The CHAIRMAN. The gentlelady yields back.

The gentleman from Illinois, Mr. Emanuel.

Mr. EMANUEL. Thank you, Mr. Chairman.

Thank you, Mr. Hamilton, for your work over the last 2 years.

Two questions, one on the issue of freezing the assets and/or following the money. If you can shed some light on whether organizations like Hamas and Hezbollalh were freezing assets that may be a more—more accurate, more correct, a better tool in a financial sense than an al Qaeda, which is more of an elusive organization where you want to follow the money, and not get into this either/or strategy—then, as you use the term, be more "opportunistic." different terrorist organizations are going to require different skills sets and different tactics.

In Illinois, just the other day, on a Hamas organization, we used the freezing of financial assets as a very successful legal tool, as well as a fighting-terrorism tool.

I think that you have—if you think of it from outer circles going in, Hamas and Hezbollah, with state sponsors like Syria and Iran, freezing assets is the right tactic, the right tool. Al Qaeda and some of its spin-offs and imitators are more elusive. Actually following the money will give you a way to literally unmask the organization and track it worldwide.

If you could shed some light on that.

Mr. HAMILTON. I think it makes sense to me. The equities shift depending on the type of organization you are targeting. Hezbollah, as we all know, is supposed to be the most sophisticated terrorist organization in the world.

Mr. EMANUEL. Uh-huh.

Mr. HAMILTON. The necessity of following the money may be less in that case than it would in al Qaeda, which is very diffuse and dispersed. So your point is well taken. I wouldn't want to generalize and put it into stone or into granite, but I think the equities may very well shift in a case like Hezbollah.

Mr. EMANUEL. Second question, and that will be the end, Mr. Chairman.

Over at Treasury, for those who follow financing for terrorism, we have 25 individuals. Given that you said it is an organization that is always probing weaknesses in our financial system—I mean, I don't know if the number is 50, I don't know if the number is 40; you would think more than 25 would be necessary compared to some of the other functions over at Treasury that are staffed at a higher level.

Second, if you like, at the IRS for following and its tools—only two-tenths of 1 percent is used for following terrorism. Yet we have an operation, I think it is $25 million out of $10 billion—yet we have an operation over there investigating individuals in America who make $15- to $30,000, in the earned income tax credit unit, and they are literally going over everybody's returns. Yet we have two-tenths of 1 percent of the U.S. Budget dedicated to fighting—to looking into terrorism.

I would imagine—and they are as Machiavellian as we say they are, that 25 people over at the Treasury Department and some—a little more assets of the IRS redirected—rather than investigating Americans, can be used to investigating how terrorists are using and not paying their taxes and doing some interesting things as it relates to using the Tax Code from a financing perspective.

Mr. HAMILTON. I didn't know those figures.

I simply would say——

Mr. EMANUEL. Neither did I until this morning.

Mr. HAMILTON. This is an enormously important, urgent business. I have already commented on the lack of experts that we have and the necessity to train more. Treasury and IRS will have to comment on the specifics about that.

I just—this is an urgent matter, and I would think there would be very few higher priorities for our government now, or for Treasury or for the IRS.

Mr. EMANUEL. Thank you.

The CHAIRMAN. The gentleman yields back.

The gentleman from Connecticut, Mr. Shays.

Mr. SHAYS. Thank you, Mr. Chairman for holding this hearing.

Congressman Hamilton, your Commission has done a superb job; I have said it at other hearings, I will say it again. I will say it every time I have an opportunity. You had almost a sacred mission, and I think you treated it that way.

It is clear to me, when I read your report, when you say your Commission reports vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. I am

left with the view that if there was any successes at all in this effort, it was more in tracking the financial aspects.

As much as we need to do more, it was—you are pretty convinced that we have been somewhat vigorous in this effort. And I want to know if that is, in fact, your view.

Mr. HAMILTON. Yes, it certainly is. I think we have greatly improved our ability to do this. We are getting better at it all the time. I think everybody would say we have still got a ways to go.

Mr. SHAYS. When Mrs. Kelly was asking her questions—I know she had more questions to ask—one of the points, the Commission argues for more congressional oversight of terrorist efforts, to fight terror financing. And then her question would have been, had she had more time, if the Policy Coordinating Council is under the NSC, whose staff cannot testify to Congress, don't we have less oversight ability, not more?

And I am interested to having you sort out that seeming contradiction.

Mr. HAMILTON. There has been an ongoing argument with regard to the NSC and whether or not it should testify, for many years. I think the question is well taken. It does limit the ability of the Congress to effectively have robust oversight. If it is carried out by the NSC, you can't get at them except under their terms.

Mr. SHAYS. Now, I have applauded and want to continue to applaud the efforts to point out that blame is fairly universal. The previous administration, the President with his 8 years, the present administration with its 8 months before September 11th, Congress and its oversight and the intelligence community. Your Commission was pretty strong at being critical of all, particularly the intelligence community, but you never really named names, neither those who had done well or those who had done badly.

But as it relates to Mr. Clarke, it came up. I just want to be clear—Mr. Clarke was absolutely outspoken before he released his book and while he was on his book tour, that it was the Bush administration's fault, not the Clinton administration's fault.

I just want you to sort that out. Was he accurate in his criticism that it was just the Bush administration or more the Bush administration?

Mr. HAMILTON. Mr. Shays, I am not going to get into the situation of evaluating Mr. Clarke and his criticism. Much of his criticism relates to things we were not investigating. We were not investigating the Iraqi war.

Mr. SHAYS. Well, let me ask this. We will just put Mr. Clarke out.

Your report was fairly clear, was it not, that both administrations had opportunities and they should have seized on those opportunities. Your report, it seemed to me, was fairly consistent that it was not—you were not criticizing or singling out either administration; is that correct?

Mr. HAMILTON. Absolutely. We leaned over backwards not to play the blame game. Our fundamental conclusion here was that the difficulties were systemic, not individual. And we just think it is a dead-end game to try to pinpoint one or two people there.

In the end, all of us lacked imagination. All of the government lacked capabilities. All of the government lacked management

skills to deal with counterterrorism, and that is not a fault of any one person, or it is not even the fault of any one agency. It is just—it runs across the board.

Mr. SHAYS. Thank you. Thank you again for your good work.

The CHAIRMAN. The gentleman yields back.

Mr. HAMILTON. I understand you are having a hearing this afternoon with Governor Kean?

Mr. SHAYS. Yes, we are.

Mr. HAMILTON. I am very pleased you are doing that. Thank you.

Mr. SHAYS. Thank you.

The CHAIRMAN. The gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you very much, Mr. Chairman.

I certainly want to join the chorus of those who are congratulating you on a job well done, you and the entire Commission, Mr. Hamilton.

I have a series of questions on the money trail, but just before getting to that, could you share with us your level of certainty as to the likelihood of our country receiving another terrorist attack to the level of 9/11?

Mr. HAMILTON. We interviewed thousands of people, every expert you can think of, and not a single one of them said there would be no more attacks.

You look at two things. You look at intent, and you look at capability by the enemy; they have them both. They hate us, this group, this radical Islamic group. The intent is clear. You read the fatwahs of Bin Laden, they are very, very clear, kill as many Americans as possible. They have the capabilities.

So we would be very foolish indeed to conclude that another attack is unlikely.

Mr. SCOTT. Now, so far, we have been able to freeze roughly $200 million in terrorist assets. It would be interesting to note—going forward we can learn something, where we have got to go if we could get some information on the status of those funds. Where did they come from? Were they all from Islamic sources, or were they from other sources? Maybe European sources?

Could you just quickly give us a status on what we have learned from the funds that we have already intercepted?

Mr. HAMILTON. Mr. Scott, I think that really has to be directed to Treasury. I cannot give you the details of that.

Mr. SCOTT. All right.

Now, you mention in your report that the source of the funding pretty much—you were pretty strong in saying it is not domestic, it is coming from elsewhere. Basically you mention charities. I am interested in another main—that is called hawalas. This is an ancient, trust-based group, very informal, but moves very quietly within the Middle East and Asia. What have we learned about the hawalas?

Mr. HAMILTON. Well, we have learned they are just almost impossible to trace. Because of its informalities, it doesn't go into the regular system at all. It is one of the things that makes tracing terrorist money so exceedingly difficult. That is a technique you are talking about.

Charities were a source, the informal transfer of money based on very traditional patterns is—makes it exceedingly tough, because it is outside the system, and there is no paper trail for us.

Mr. SCOTT. Now——

Mr. HAMILTON. That is one of the things that makes this target so difficult to get at.

Mr. SCOTT. That means, then, that so much of what we have got to do to plug this hole is going to come from getting help from other countries?

Mr. HAMILTON. No question about it.

Mr. SCOTT. I am very much concerned about four particular countries: Germany, France, portions of Russia, the former Soviet Union, and Saudi Arabia, of course.

It just seems to me that they are—we skirt around it, but it seems to me that there is something more there than just they don't have the kind of banking system that we have or there is something technical there.

Is there a political, philosophical, diplomatic situation there that is allowing a more laissez faire attitude toward these terrorists financing? If that is the case, what do you recommend we do to plug the gaps of those four countries particularly? Because I think they are at the top of the apex.

Mr. HAMILTON. Well, each of the countries presents a very different case. Germany and France, of course, have very sophisticated financial systems.

I think—I think I would comment principally about Saudi Arabia. Our relationship with Saudi Arabia over a period of many years has been a very shallow relationship. We have said, okay, you give us oil at an affordable price; we will help you protect the royal family. And that is really the relationship. We have not had until recently what you would call candor and depth. It has been very shallow.

I have sat in on many, many meetings, probably hundreds of meetings, with U.S. officials and Saudi officials. And one of the things that has impressed me over the decades is that the relationship, for all of its importance, a very, very important relationship, didn't really have much depth to it. We were happy if we got the oil, which we desperately need; and they were happy, and the family was protected, which they desperately need.

So now you are in a situation where you need a lot more depth to it and that is developing now because of these financial flows and a lot of other matters. But it is very late in developing.

Mr. SCOTT. Thank you.

The CHAIRMAN. The gentleman from Texas, Mr. Hensarling.

Mr. HENSARLING. Thank you, Mr. Chairman.

Mr. Hamilton, let me add, too, my voice of congratulations for your service to the country in this work product that I know will be very important to Congress.

I want to start out, I think, plowing a little bit of old ground here, but maybe coming at this in a slightly different fashion. You said of the major policy recommendations that the 9/11 Commission has made, not one of them really deals with the financing of terrorism. So if there is not a specific recommendation for where

policy recommendations or where Congress could go from here, can you tell us where we don't have to go?

In other words, since 9/11, where has Congress gotten it right? Where has the administration gotten it right? Where do we not need to focus? Where do we achieve substantial success?

Mr. HAMILTON. Well, I think you have gotten it right in some aspects of the PATRIOT Act. By far the biggest is the breaking down of the wall of separation between intelligence on the one hand and law enforcement on the other hand.

I think you have gotten it right in section 314(a). I think you have gotten it right in section 326 to give additional tools, if you would, to the investigators in looking at terrorist financing. So I think you are correct, a lot of good things have been done.

Beyond specific statutory provisions, there isn't any doubt the whole government is energized to try to share more information than it was prior to 9/11.

If you asked me the biggest area that needs to be developed, probably the hardest as well, is the international area, and just what we were talking about with Mr. Scott. Because this—this is not something totally under our control. This is something we have to persuade other countries of, that it is in their national interest to do it. Not in our national interest, in their national interest. Otherwise they won't do it.

So I think this is an area that is terribly important because the flow of money to terrorists is largely money that comes from outside our boundaries. And that does mean we need their cooperation, and it means they have to have not only the political will, which is in question sometimes, but also the mechanisms to do it.

Mr. HENSARLING. In your testimony you talk about the extraordinary cooperation that has been received from the domestic financial services industry in helping trace terrorist funding. Under the PATRIOT Act, a whole new group of financial services players are now having to file these suspicious activity reports.

I think Congressman Paul alluded to a measurement, I didn't have it in my fingertips, that 12 million reports were generated the year prior to 9/11. Now, that is a lot of reports. In my congressional district, the Fifth Congressional District of Texas, I have met a number of independent and community bankers who tell me, Congressman, we want to do our part to fight the war on terror, but can you look us in the eyes and tell us that somebody is actually reading and using all of these reports that we generate? Because it is a big, big burden on our banks.

So, from your perspective, are we reading and using these reports?

Mr. HAMILTON. Well, I don't think I can answer that. I just don't know. It is kind of endemic, isn't it? The solution to so many of our problems from a governmental standpoint is to require more information; in almost every bill that is passed by the Congress, you require somebody to report somewhere. So you do overload the circuits here.

The other day when I was testifying, Jack Marsh, who is a former Secretary of the Army, told me—well, he testified that every day the United States Government produces 650 million bytes of

data. And the question is how you sort through all of that. And does anybody read these reports? I don't know.

I used to think maybe the 9/11 report wouldn't be read, but it is being read. That is a good point. I mean, it is a valid point. Is it really—I mean, how do you assess this data? What kind of mechanisms there are?

And we did not do that. That is, I would guess, part of the oversight of your committee. How is it used? That is a question really for the fellows coming after me here.

The CHAIRMAN. The gentleman's time is about to expire.

Mr. HENSARLING. In that case, the gentleman will yield back.

The CHAIRMAN. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Thank you, Mr. Hamilton, for being here today. I had the pleasure of being with you in the Judiciary Committee on Friday. I would have to say, when I left home Friday morning to fly to Washington, I felt that I had a much, much clearer understanding of why I was coming to a hearing in the Judiciary Committee on privacy and civil liberties, because there were specific proposals that the 9/11 Commission had made that we were going to delve into, and we did delve into those pretty rigorously in our subcommittee, joint subcommittee hearings.

I am not quite as confident that I understand the rationale for today's hearing, because in looking through the suggestions report, I didn't see anything that specifically we were being suggested to act upon that had financial services implications. Notwithstanding that fact, I am here, and I have been listening, either in the room or in the back room, since I got here; and I still haven't heard any specific things that this committee needs to do.

You mentioned four things, generally, at the end of your testimony, and I thought maybe we might get to some suggestions there. About as close as we got was your suggestion that we need to make sure that we have tools to trace funds in fast-moving investigations.

Are there any specific things that you think we should be considering in that context that are not already on the books? That would be one question I would have.

And then second in the committee's report, or maybe it was just the Democratic committee's staff report, there is a reference on the last page to the NSC staff report that thought that one possible solution to some weaknesses in the intelligence community was to create an all-source terrorist financing intelligence analysis center. I assume that is what Mr. Royce was talking about when he asked you questions earlier today from the other side.

The report goes on to report that Richard Clarke, the National Counterterrorism Coordinator, had pushed for the funding of such a center at Treasury, but neither the Treasury nor the CIA was willing to commit the resources to such an all-source terrorist financing intelligence center.

So I guess the second question would be, does the 9/11 Commission recommend something in that area consistent with what coincidentally was originally suggested and pushed by Richard Clarke and now seems to be being suggested and pushed by Mr. Royce or

a couple of other people who have asked questions here earlier today?

Those are the two questions I had:

Are there specific things that we need to do that we haven't already done to provide tools to trace funds and fast-moving investigations, one of your four suggestions.

And, number 2, does the 9/11 Commission suggest we do something to create an all-source terrorist financing intelligence analysis center similar to the one that Richard Clarke has been pushing for?

Mr. HAMILTON. We certainly support an all-source terrorist analysis center. We don't confine that to terrorist financing. We think that in order to put together effective counterterrorism efforts you have to integrate all aspects of counterterrorism. So we wouldn't recommend, I think, a specific center just dealing with financing.

That is exactly the problem we are contending against. That is stovepiping; we think that is an inadequate, insufficient perspective on the problem of terrorism.

We do think it is terribly important to have a center where you take all of the domestic and all of the foreign sources together and not only look at, analyze the data that you have with regard to terrorism, but also do some planning operationally so that you can put together an effective program.

If I may, this problem of planning operationally is important and may be a little hard to grasp. I don't know. But the illustration we use all the time is of the two muscular hijackers out in San Diego. We had bits and pieces of information about them; the FBI knew a little bit about them. The CIA knew a little bit about them, but nobody put it together and managed it, and planned—took charge of it.

George Tenet was asked on more than one occasion—not with regard to them, but with regard to Moussaoui in Minneapolis—if he knew about it. He said he did, and he asked his people to work with the FBI about it. And then, in response to one of our questions, This was the FBI's case. And that illustrated for us the problem, in a sense, that nobody really put it all together, said, I am responsible for this, and said, I am going to manage it.

So the center has to have the ability to look at all aspects of counterterrorism, not just financing, and put together the case and an operational plan to deal against it.

Now, let me also say, I have heard the comment several times here that I am not asking you to do anything because I haven't proposed any specific legislation. I have not proposed any specific legislation, but I hope it is not your view of responsibility that legislation is the only business of the United States Congress. It is not.

The business of legislation is part of your business, but the business of oversight is also part of it. And we are specifically asking you to tighten up oversight in a lot of different areas. And I understand that oversight is not as attractive for a Member of Congress as the business of drafting legislation, but if you want my personal view, it is just as important.

I am deeply concerned that the Congress today is not as robust and aggressive as it ought to be on oversight. And that is not a

comment on this Congress. It goes back to when I served in the Congress as well.

We are asking you to look at the tools. Do you have the tools and the financial—in the financial community today to deal effectively with these possible terrorist financings? You are the experts on this, not me. You are the experts on the financial system. You have to answer that question. That comes about through oversight.

We are asking you to find the vulnerabilities in the financial system today. We are not experts on that in the 9/11 Commission. You are the experts on that. That is what we are asking you to do.

You have got to look at these things very hard. We are asking you to take a look at the question of civil liberties in financial institutions here. We don't have specific recommendations with regard to how you resolve civil liberties with respect to the flow of financial movements—the flow of financial movements in the economy.

So I think my message here is that dealing with terrorist financing is not just a question of legislation—although that is very important. It is a question of robust oversight as well.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from West Virginia, Mrs. Capito.

Mrs. CAPITO. Thank you, Mr. Chairman.

And thank you, Vice Chairman.

I have a question sort of a little more general nature. I happened to be in a bank, a community bank in West Virginia. I represent West Virginia. The bank officer was asking me the very same questions about the forms. Who is reading these and how important are these? I sort of took a different tack with her. I said, I guess that is in the 326 requirements of the PATRIOT Act that you emphasize are so important.

But I said, I think it is important for us to recognize across the country, even in the rural areas, that this war on terror has to be fought not only in the big financial centers where we are tracking down transactions, but everyone has to be enlisted and be part of the solution of tracking down the terrorists.

Then, when I was reading your report, you have a sentence on page 383 where it says, "If al Qaeda is replaced by smaller, decentralized terrorist groups, the premise behind the government's efforts that terrorists need a financial support network may become outdated."

And after reading that statement, it sort of backs up what I am saying, that everybody, no matter where you live in the United States, no matter what kind of financial institution you are attached with—you need to be part of the solution rather than saying it is going to be done in New York, Chicago, Miami, and the more natural places.

I was wondering if you had a more generalized perspective, how we can help our constituents in these kinds of areas who feel a little bit removed from some of the solutions—how important their role really is to seeking the solutions and to find the terrorist route.

Then I think, well, the terrorists when they entered the air transportation system, they didn't enter in Boston. I believe they entered in Maine and other areas where—they were considered to

be maybe easier or maybe less likely to be heavily screened. For whatever reason, it was obviously very successful.

So did you have any comments on that?

Mr. HAMILTON. I think your observation is very good. In other words, one of the functions you have to play if you pass a piece of legislation is to explain to people why it is necessary. Apparently, you were trying to do that. I commend that. It seems to me that is exactly right. There isn't any doubt in fighting terrorism we have to ask a lot of people to do a lot of things.

The first line of defense against terrorism in many respects is the general public. The most obvious example is of course is, if you sit down on an airplane and somebody lights a shoe to their match—or a match to their shoe, excuse me—you are going to react to that. You are the first line of defense. Likewise, the banker or the financial institution has to recognize that they do have a burden in fighting terrorism.

Now—maybe that burden is excessive. I really can't make that judgment. I don't know because I don't know exactly what they have to do. But there is no doubt that we are putting an extra burden on them. And all the Americans have to accept the fact that there are burdens placed on them by reason of terrorism.

My own observation, by and large, is they want to be very much helpful and cooperative. If it is explained to them—they are prepared to do it.

Mrs. CAPITO. Thank you. I have no further questions.

I yield back.

Mr. FOSSELLA. [Presiding.] Thank you very much. The gentlelady yields back.

The gentlelady from Oregon—Ms. Hooley.

Ms. HOOLEY. Thank you, Mr. Chair.

Mr. Hamilton, thank you so much for all the work you have put in—and sitting and listening for so long today and answering questions. I have just a couple of quick questions.

Did the Commission find any financial link between the terrorists that hit us on September 11th and Saddam's regime in Iraq?

More broadly—did you discover any financial link between the group of al Qaeda and Iraq?

Mr. HAMILTON. What we found is, there is no cooperative operational relationship. Were there contacts? Yes. Were there ties? Depends on how you define the word "ties." yes. But there was no cooperative relationship, and we do not believe that Hussein was involved in planning or implementing 9/11.

Ms. HOOLEY. One of the things we have heard talked about today with lots of different people is—I mean, I know—I think this committee has done some good things about money laundering and freezing assets.

As they use more and more a system outside the regular banking community, as they use—as they go outside the total system, are we going to be behind the 8-ball if we put our emphasis on freezing funds or following the money? Is it still important to do that as we look at how did they use—how did they use their own system outside of financial institutions?

Mr. HAMILTON. We certainly have to understand their own system better. Freezing is going to be an important tool in dealing

with terrorism. As we have suggested, it has to be applied with consideration of some of the other equities involved.

But we will have to try to understand better—and our foreign friends and allies can help us here—the systems that these people use in financing their operations.

Ms. HOOLEY. One quick last question, a little outside the financial community, but since you are here right now: The FBI and immigration don't have systems of fingerprinting that mesh. I mean, they have separate systems. How important is that going to be to make sure that the FBI and immigration have the same kind of fingerprinting systems in the future?

Mr. HAMILTON. You are going to have to have integrated systems so these various agencies can talk to one another, share data with one another. If you can't do that, you are not going to be able to put together an effective counterterrorism unit.

Ms. HOOLEY. Thank you. I yield back.

Mr. FOSSELLA. Thank you. The gentlelady yields back.

The gentleman from New Jersey, Mr. Garrett.

Mr. GARRETT OF NEW JERSEY. Thank you, Mr. Hamilton. And I also thank our Chair for holding this hearing this morning and now this afternoon. I come away, so far, from this hearing with a couple of thoughts on it, taking notes down as I went along.

One, initially when you talk about these terrorists are entrepreneurial in nature, and smart, keen, and able to look into different areas, you opened up your comments with regard to the book and how well it is selling.

I am not sure how many average Americans are actually buying and reading through that entire book, but I am sure that you will agree that the terrorists, whoever they may be and wherever they are, are buying that and will be getting the supplemental reports and following up on that just to, as you say, find the gaps.

If we are learning anything from all of this as far as where the gaps are, I suppose that the terrorists are also learning to that extent as well.

I take your clarification, I guess, if you will, about not calling for any new legislation. I appreciate that. I think this committee has taken that charge, as far as oversight with regard to other agencies. I know Mrs. Kelly has held hearings, that I have sat in on, on some other agencies a little outside this area, where they may have been overextending their authority. So I commend the members of the subcommittee for having taken that step.

I have also taken from your comments, repeatedly stated, no substantial domestic source of funding. And from that, a comment from my colleague from the other side of the aisle, who is no longer here now, but through his long tenure here with regard to the war on drugs. And perhaps what his comment was, what we have done over those 30 years may have played—some element as far as deterrent effect, as far as the ingress, and effect as far as the materials and also the dollars.

One of my questions to you, though, is where the burden should be placed, and maybe from your past experience, here to address the issue of the political will that is necessary to address one of these. And also the pragmatic approach as well, as far as following

the chain of money; we have had a number of hearings already on this topic.

The burden seems to be placed right now on the so-called law-abiding system as far as our chain is concerned. We have already heard about the Bank Secrecy Act and the Suspicious Activity Reports. So there is already a burden placed on our financial institutions.

There is already a burden being placed on an individual as far as being up in the $10,000 range. We have questioned others on that. I don't know if you have a specific recommendation as far as that threshold. You can comment on that if you would like.

But also I will tell you this little story in 30 seconds. Recently, I went to my local bank where I have been known for some 40-odd years, where I grew up, to open a new account and my banker told me she had to get proof of my identification, who I was, even though she knew who I was for all those years. And I gave her my driver's license, which some people say is easy to counterfeit in New Jersey.

Whereas if you had somebody come into the country tomorrow, legal or otherwise, they are able to go into the same institution with a matricular consular card, not produced by the State of New Jersey or any other a State office or any other Federal office, but produced by a foreign country without any proof as to where that person is coming from or the legality of that person being in the United States. This administration says that is a proper and adequate source of identification. I would appreciate your comment on that.

Finally, I would be curious as to your thoughts on the impact of this on other aspects of law enforcement as we go forward. You made the comment that there is a degree of inertia in past aspects of law enforcement, that once they were set up years ago, they continue to go down that same road.

Obviously, we have 30 years of drug enforcement as far as a focus of law enforcement. Local law enforcement has their own charges.

Will we see the same systemic placement be created here as we are directing all of our attentions and energies in this one area—not that I am saying we should be doing so—and will it have any impact, negative or otherwise, on other areas of law enforcement, be they Federal or local?

Thank you.

Mr. HAMILTON. Well, I worry about this question of degrading capabilities with respect to the FBI. This is outside our mandate. But the Director of the FBI said continually, I am shifting the focus of the FBI from law enforcement to prevention of terrorism. We all applaud that. But what does the bank robber think about that?

I mean, what happens on drugs? If you go to talk to Federal judges today, they will tell you that their dockets are overloaded with drug cases. What does it mean if the FBI moves away from drug enforcement laws?

I think these are things that have to be worked out. Director Mueller's response to that, I think, is, turning a lot of these responsibilities over to the DEA, that they will develop the capabilities. I hope he is right there.

But you do have to be aware when you focus on terrorism, and you tell all these agencies and departments that this is your number one priority—the question you raise, I think, is a very, very good one—what happens then in terms of the other responsibilities that department has?

We can't answer that right now, but we know what the political signal is now, and that is to put your resources into fighting terrorism. We have to look at the consequences of that down the road.

You asked about where does the burden lie here. It lies, as I am afraid you correctly point out, with the American citizen. How do you get the information you need, however, without asking the American, the law-abiding American citizen? I don't know how you get it. If you want to get information with regard to financial flows and everybody agrees that you need that information in order to fight terrorism, you have got to ask somebody. And the only people that really know it are the people in the financial institutions. And so you do put a burden on them.

Now, I don't know how you avoid that burden. My guess is they are prepared to accept that burden to some degree. And your job is to make sure that burden is not an excessive burden, however you may define excessive. Do they, in fact, collect information that is valuable to the government, or is it just paperwork?

The other point I want to make in response to your question is the importance of secure identification. This gets into some pretty tight, ticklish areas. We have been talking about civil liberties here. This is a civil liberty area. But, again, from the standpoint of fighting terrorism, you have to have secure identification of people. And that is why we recommend that there be Federal standards with regard to driver's licenses and passports and the like.

All of the hijackers except one had American identification papers, 18 out of 19 of them. And what that meant is that some of these identification papers were issued pretty sloppily.

Now, we have got to correct that, and secure identification. I don't know how you work through this question of civil liberties, the national identification card and all the rest of it. We have to work through that. But I don't have any doubt at all that if you are going to effectively fight terrorism, you have got to have secure identification.

The CHAIRMAN. [Presiding.] The gentleman's time has expired.

The gentleman from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Mr. Chairman.

I also wish to thank you, Vice Chairman Lee Hamilton, for your outstanding leadership and great efforts to protect our great Nation by strengthening antiterrorism efforts that are being made here in our country, and especially by this committee.

Your testimony is both very informative and very disturbing. It is very disturbing because it seems to me that the terrorists who entered the United States came from Canada with doctored passports Canada accepted as valid and valid visas issued by the United States. The terrorists funded the 9/11 attack using the mainstream financial system.

What is even more disturbing is that Treasury's attempts to stop terrorist financing by freezing assets in mainstream financial systems have failed to stem the tide.

I know that the Financial Action Task Force, currently composed of 33 member countries, has been meeting frequently since 9/11 to address terrorist financing. The task force recently issued its 2003 and 2004 report essentially determining that the countries it reviewed are taking appropriate measures to address terrorist financing and making necessary changes to their regulatory systems in order to better prevent, detect and eliminate terrorist financing with certain modifications needed.

My question, Vice Chairman Hamilton, is that prior to 9/11, which of our U.S. Consulates required biometric information like a fingerprint of visa applicants?

Mr. HAMILTON. I am not the one to answer that.

Mr. HINOJOSA. You mentioned that.

Mr. HAMILTON. I am not aware that they sought fingerprints from anyone, but I don't want to make that as a blanket rule.

Mr. HINOJOSA. You mentioned in your testimony that they had sent you a copy of the 9/11 Commission staff monograph, and that you hadn't had an opportunity to read it yet. But I wish to read something from that report, from that staff report, that says, "with the exception of our consulates in Mexico, biometric information, like a fingerprint, was not routinely collected from visa applicants before 9/11."

Mr. HAMILTON. Yes.

Mr. HINOJOSA. The reason I bring this up is because the gentleman just before me spoke about his concern about visas and identification cards that will be used by individuals who are unbanked, and that is something that is very important, not only to me, but to many who have congressional districts like mine.

I know that he asked you specific questions, and you answered them very well, in that we want to be careful that the information is legitimate and they are not falsified documents and so forth; but I think that we are concerned about all the countries that sent people into our United States, particularly those who came in through Canada and those who can come in through Mexico. So those are concerns that I have been discussing with bankers in my district over that last two weeks.

The rural areas that I represent, 80 percent of my congressional district, have many community, rural community bankers who are asking themselves and asking us as Members of Congress: "Are we expected to expend as much money and meet the same regulatory requirements as the national banks like Chase and Wells Fargo and all those real big banks are doing in response to all of this, being that they have so much more human resources?"

The truth of the matter is, I didn't know how to answer that. What recommendations would you make to small, rural, community bankers as they try to carry their weight on this matter that you are discussing with us?

Mr. HAMILTON. I think it is very important that the banker know their customers and be able to identify their customers. There is no substitute for that. In that sense, they are the first line of defense. So it calls for an exercise of diligence and care on the part of the banker to make sure that he or she knows with whom they deal.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Florida, Mr. Feeney.

Mr. FEENEY. Thank you, Mr. Chairman.

Again, Mr. Hamilton, we got to visit Friday as part of the Subcommittee on the Judiciary. I was able to commend the Commission for a great job on the report. I wasn't able to serve with you because—like other members have said what an honor and privilege it has been to serve with you. But I have been impressed with your stamina just over the last several days; it is pretty extraordinary.

I note—you were talking about this in response to the gentleman from Texas, Mr. Hensarling. I note in Plato's dialogues he suggests that the best person to hire to protect your property is an accomplished thief. Unfortunately, we don't have the benefit of the wisdom of terrorists that have switched sides and decided to have an epiphany and support freedom and civilization. But what we can do is, hopefully, think outside the box.

One of the things you have been able to do in your report about the financial institutions is that we have been successful in some respects, but the terrorists are very much adaptive, they are very flexible. The most fungible asset they have, I would suggest, is probably the resources. It only took them $4- or $500,000 according to your report to accomplish the 9/11 attack. It is a lot harder to find 19 people to commit suicide, as they did, especially finding people able to fly planes, able to mix in our language and culture. And finding the plane itself, getting a hold of it, a bomb or a chemical weapon is very difficult. But replacing $4- or $500,000 is a fairly easy task.

But having said that, it seems to me we can learn from some of the ways that other underground entities have operated to launder and move money, for example, the Mafia. These are things that the FBI has had a great deal of expertise in over the years. You know, underground organizations have moved into more legitimate enterprises, they have moved into less risky enterprises. Things like intellectual property theft are a relatively risk free, although illegal, way to raise money.

Can you comment on what we have learned as we try to track resources both nationally and internationally in the hands of the terrorists? And along with that, can you tell us how we ought to draw the balance, if you have thought about it to any great degree?

There are plenty of legitimate Christian and Jewish charities out there. We have some illegitimate Muslim charities who have been helping fund terrorism. How do we encourage giving in charitable opportunities, but also crack down on this new threat?

Mr. HAMILTON. I think the latter problem that you discussed is a major challenge for American foreign policy. It is easy for us to sit in this country and say, well, Saudis, you have to crack down on these charities, but you have to remember that those charities also may do a lot of humanitarian work. And they are going to resent, and the people are going to resent, the United States telling them how to run their charities.

So you get into a real tension here between our desire to crack down on charities and the fact that they may be giving money to the terrorists, on the one hand, and the anti-American feelings that

exist in many places around the world today. We can exacerbate that greatly by demanding change in these charities.

How do you deal with that? Well, I don't think there is any silver bullet here. You deal with it through a very extensive dialogue with a particular government. Now, we have done that with the Saudis, for example, on a couple of their charities. We have made quite a bit of progress, it seems to me. One of them has been closed and changes have been made in the manner in which the Saudis oversee their charities at the upper levels of the Saudi Government.

So the only answer to the question, I think, is one of dialogue and education, I guess, diplomacy with the countries involved.

Mr. FEENEY. Real quickly on this question, we have had a lot of discussion today, do you freeze assets or do you allow the assets to flow, follow the money and capture a greater organization. Under the organizational chart that the 9/11 Commission proposed, who makes the call?

Mr. HAMILTON. Well, who would make the call would be eventually the policymakers, the President, and the National Security Council. But they would be making the call on the basis of recommendations from the national intelligence director and the national intelligence center. You would set up a national intelligence center that deals with counterterrorism, and that is the center that would bring together all of the information from all of the sources into one place; in other words, you would get a genuine sharing of information. But beyond an intelligence function, it has an operational planning function, like the military has and the J-2, J-3 concept, so that the national counterterrorism center not only would have the intelligence, but it would plan the operation. It would not make policy, it would not execute policy, but it would plan.

And that, incidentally, is a part of our recommendations. It seems to be harder to grasp, I think it was harder to grasp by the Commission itself, but we tend to look at these things in terms of just intelligence. It is much more than intelligence. It is bringing together the information and planning operationally how to deal with the problem that the intelligence presents to you. And then that, of course, goes up to the national intelligence director, and he reports it to the President.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from New York, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman, and thank you, Mr. Hamilton. I want to join the chorus of voices who have lauded you and Chairman Kean for what you have done. You have really kind of restored some hope to the American public that we can sometimes put politics aside and party aside in coming together to really help the American people. It is kind of the same feeling that we had initially after 9/11 where we felt we were coming together, we were together as a Congress. What you have done on the Commission is to continue on along that basis, showing that you can come together, and I think that you and the Commission have set an example that we need to follow also here in Congress.

That being said, I want to also thank the families of the victims of 9/11, because if it was not for them and them sticking to it and

insisting that this Commission be formed, you may not be before us today. So I want to say a special thank you. I think the American people owe a great debt of gratitude to the families. They have lost so much, yet they still have stood up for so long so that you are sitting here and we are now addressing some of the issues that we probably should have been addressing all along, and it would not have happened without them, and the American people owe them a great debt of gratitude.

Let me ask this question. You know oftentimes when we talk, I talk about diversity. The reason why we talk about diversity and various issues is because we get different ideas and different opinions from different people, whether an individual happens to be of different ethnic backgrounds, et cetera.

Did the Commission at all look at our intelligence agencies and even some of our diplomatic corps, et cetera, along the avenue of diversity, whether or not because of ideas we had enough Arab Americans and Muslims and others that were involved in it, in helping us come up to determine or predict even an outcome of what terrorists there may be; and further and specifically, in looking at the whole, keeping in context the financial services, the whole compliant system that Muslims generally work with when they are talking about banking—we talked about hiding—making sure we understand their whole financial system so that we can be helpful in that regard in trying to figure out the best way to stop this kind of money laundering, et cetera, to fight against terrorism?

Mr. HAMILTON. Thank you for your comments about the families. That is exactly on the mark. They have been enormously important to us and helpful to us in the course of our investigation. They gave us at one point about 150 questions, I think. We tried to answer all of them. We could not answer all of them; we did the best we could. But they have been exceedingly supportive and many of them are very, very knowledgeable about these public policy issues. So we have been pleased to have their support and they are marvelous people individually, and we have come to know many of them quite well.

The second point on diversity, I am pleased you raised it. We put very great emphasis on the necessity of the intelligence community becoming more diverse. It is an absolute necessity. There is tremendous emphasis today on human intelligence. You cannot possibly penetrate an al Qaeda cell with a guy like me. It cannot be done. I do not care how fluent an Arab speaker I would be—and I am not—you cannot penetrate it. These are very small cells. They are often tied by family relationships. They are a very closely knit group, and penetrating those groups is the toughest intelligence target that we have. It cannot be done by a gentleman from Indiana who went to Indiana schools and all the rest. It has to be done with someone of that culture.

So creating that diversity now becomes a national security priority. We hear all the time about the languages that need to be spoken and, incidentally, you are talking about 20 or more of them, many languages that we have to master. And beyond mastery of the language is mastery of the culture itself. You mentioned this. You have to understand the culture better than we do; not just the financial culture, but many other aspects of their culture. People

have to begin to see this as an important part of our Intelligence Community, and if the CIA or other Intelligence Communities want to do a more effective job in human intelligence, or if they want to do a more effective job just in providing accurate information to the policymakers, they are going to have to become more diverse. And they are going to have to hire people with great linguistic skills; and I mean when we are talking about linguistic skills, we are not just speaking about somebody who speaks the language. They have to speak it like a native speaker if you are going to penetrate these groups. It is very important.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. Of course I add my voice to the others in congratulating you, Mr. Hamilton, for your work. I apologize for coming in late. Like Mr. Feeney, I have been jumping back and forth between simultaneous hearings on the recommendations.

I know the Commission has not recommended specific legislation. Would members such as yourself be willing to comment in writing on specific legislation that we put together going forward on this subject? Is that something that you would be willing to do?

Mr. HAMILTON. I have to be a little careful about this. The Commission may or may not meet in the future. I think we probably will have some meetings on it, but it really depends on how we evolve from this point on, and I am afraid I am not able to give you a specific answer as to the Commission commenting on a specific piece of legislation.

Mr. GREEN. Perhaps individual members?

Mr. HAMILTON. I think individual members might, but here we have to be careful and say, okay, it is an individual opinion and it is not a Commission opinion.

Mr. GREEN. Your points were well taken on the need for Members to vigorously utilize our oversight function. On the other hand, this is obviously an area in which it is difficult for us as Members to know all of the details and all of the facts in this rapidly evolving challenge that we face. Obviously, oftentimes the crucial data is classified, it is difficult for us to translate, and I think the whole subject matter is a difficult one for us, because I am not sure how we define progress in this area. Is progress the lack of a terrorist attack? Is progress so much time having passed between the disruption publicly of a threat? Obviously it is difficult for us, as it was difficult for you, and I think it is going to pose some real challenges for Members exercising the oversight function as we go forward in the years ahead. In fact, I think you point out quite eloquently, in both your testimony and in the report, the danger of allowing us to be lulled into that thinking, that progress is the absence of a very public, specific terrorist incident. Perhaps that is the problem that we suffered from in the past.

So your points are well taken on oversight. Unfortunately, I think there are some limitations, and with those limitations and with that void, I think that is why so many Members are asking you and others about specific legislative recommendations. It is almost human nature. We want to be involved and active and doing

something, and obviously legislation presents a vehicle that we can devote our energy to.

Mr. HAMILTON. Well, on the question of oversight, I think you do not want to sell yourself short. You are the American policymakers, you are the politicians, you are the people who are closest to the American people. You know what the big policy issues are, and you must not let any agency intimidate you or snow you. I really firmly believe that every legislator has to respect the constitutional obligation and that means you are a part of a separate, but equal, branch of government, and that means you must assert that right continually.

I like your point about metrics. Don Rumsfeld, Secretary Rumsfeld had the best comments on that. You probably remember his famous memorandum. How can we tell whether we are winning or losing? We do not have a good set of metrics. He is absolutely right about that. It is very, very hard to develop in this effort.

Mr. GREEN. Finally, and quickly, there was a sentence in your report that really struck me, and I do not think it gets enough attention. The sentence says very clearly and specifically, we are safer than we were 4 years ago, but we are not safe. I think with this Commission, or this hearing process, and the Commission itself, we rightly focus on our shortcomings and what we need to do. I do not think we talk enough about progress that has been made. I like that aspect of the report, because I think it is something that the American people need to hear, that we are safer than we were 4 years ago for a number of reasons. So I think that is something important for the American people to hear.

The CHAIRMAN. The gentleman's time has expired.

Mr. HAMILTON. We very much agree with that.

The CHAIRMAN. The gentleman from Texas, Mr. Bell.

Mr. BELL. Thank you very much, Mr. Chairman. Mr. Hamilton, thank you for your service and your testimony here today. The good news is that I am asking questions, so that means you are very close to being finished. The bad news is that I have a couple of questions too.

The first is really touching upon something that Mr. Feeney raised and you really did not have an adequate opportunity to respond to, and it really goes back to a statement you made earlier about the need not to fight the last war, and I think that really goes to the core of what our strategy has to be in this war on terrorism. But my question is, how do you keep from fighting the last war?

You know, based on your service here in the House, that we operate in an incredibly reactive environment, and I am just curious that if you are talking about the financing of terrorist activity or any other aspect of this war on terrorism, if the terrorists are as clever and resourceful as you indicate that they are—that the Commission indicates that they are, and one really only has to read the first few pages of the report to see just how resourceful they can be—it almost seems like it is a scene from that old cartoon where there is a water leak and the character is trying to plug the water leak and then the water starts shooting out from a different source and pretty soon you are running around.

So we can respond to what we already know, but my question is, based on what you have seen and heard, how do you stay above or ahead of the curve in this war on terrorism, and how do you keep from just fighting the last war?

Mr. HAMILTON. I think you have to consult the nonconventional thinker. You have to go outside the box. You know, congressional committees get in the habit of having the same witnesses all the time, and that is understandable, because you deal largely with policy questions and you want the policymakers there. But it is important for Members of Congress, as it is important for executive branch people, to put their feet up on the desk, look out the window, and think unusual thoughts, and use their imaginations.

One of the pieces of advice we had given to us regularly was, talk to some of the novelists. Talk to a Tom Clancy and a lot of other writers that you all could identify that I cannot, who think—who use their imagination. And you have to do that. That is my only advice on it, because you have to expand your own sources of information to figure out what some of these people are thinking about.

Mr. BELL. Can you institutionalize that to any degree, in your opinion?

Mr. HAMILTON. I doubt it. It really takes individual initiative. You cannot very well establish, I do not believe, an office of imagination over here. That would not sell too well, I do not think.

Mr. BELL. There would be a lot of people willing to serve, though.

Mr. HAMILTON. You do need people and you need to consult with people who do not express always the conventional wisdom, and that is an important thing to keep in mind.

Mr. BELL. Also, going back to something you talked about earlier about the cooperation that has existed between financial institutions and law enforcement and your concern that perhaps as the memory of 9/11 fades, that cooperation could subside, and you talked about the need for some institutionalization there.

How would you go about institutionalizing that cooperation?

Mr. HAMILTON. Well, those who are familiar with the financial institutions, the private sector people could probably give you a better answer than I can. But there really does have to be—and maybe they already exist, I do not know—mechanisms whereby a dialogue can take place between the bankers, if you will, the financial institution people, and the policymakers. That is, it is very important that that dialogue take place and there has to be a mechanism for it to occur. It may be the mechanisms are already in place and they need to have an expanded agenda.

Dialogue is the answer to your question. There has to be dialogue, and you have to have a place where that dialogue can take place.

We had a question a moment ago about the bankers in West Virginia. They are outside the dialogue. That is why they are asking those questions. And that means no matter what exists today, it is not working completely, because they do not understand what the—why it is they are gathering this information. And so I think you have to look at it with that perspective.

Mr. BELL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. The clean-up hitter, the gentleman from Staten Island, Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman.

Mr. Hamilton, thank you very much. I would echo the words of my colleagues to say that I appreciate your service as well, and underscore the reality that you mentioned earlier, and others, about the families who suffered; regrettably and tragically, many of those were from the area I represent in Staten Island and Brooklyn; 200 of my neighbors on Staten Island alone were killed. Their memory has become the foundation for what we are doing here and, fortunately, it seems like people are working together to achieve that goal of protecting us once and for all.

Let me just say I am pleased in terms of some successes that you mentioned of the PATRIOT Act, and as one of the successes, because it appears that it has become sort of a whipping boy, there is a monster behind every tree out in the political arena. As you mentioned earlier, it seems to have its successes in forcing agencies to cooperate with each other, at a minimum, and obtain and apprehend those would-be terrorists. So thanks for adding that.

In terms of outside the box, the reality is these are not Boy Scouts or Girl Scouts. A lot of them are just animals that want to see the destruction of the U.S. I would point to what I think is one of the greatest police departments in the world, the New York City Police Department. One of the reasons why they are so successful, I believe, especially the detectives, is that they are not afraid to get on the ground and work and find out the nuts and the bolts and the nitty-gritty. They do not have their feet up on the desk.

So that is one way in which I hope the Federal agencies can better utilize those local law enforcement officers like the New York City Police Department and detectives. They do, to a degree, do not get me wrong, but I think it could always be better.

You have answered a lot of questions, and some I wanted to ask have been asked, so I will not repeat them. But let me just ask one quick one regarding the Department of Treasury, specifically the TFI office, your testimony about all agencies and sharing a goal to work together. Do you think that that office should maintain a group of financial experts to oversee compliance? And to what degree does it make sense for the Department, if at all, to have criminal enforcement capability? Thanks again.

Mr. HAMILTON. Thank you for mentioning the tragedy that these families encountered. That was continually impressed upon the commissioners, and we cannot be cognizant of that too often. And those in your area, New York, New Jersey, certainly suffered the most, because that is where the heaviest casualties were.

Secondly, I think that the emphasis you put on local and State is likewise very important, because these people are the frontline officials. There are 18,000 first responders, or approximately that number, and you cannot imagine an effective war on terrorism without their participation. And one of the huge problems here is how you get information from up here to down there—if you say up is here in Washington—the flow of information downward, without compromising sources. That is a big-time problem in all of this. But it is one we must solve, and it is one that local and State officials complain an awful lot about. They do not feel like they are

in the loop with regard to information. And we direct some of our comments to that in the report.

With regard to the Treasury having criminal enforcement powers, I really do not feel qualified to answer that. I just do not know that much about it. My general sense is the prosecutors have to do that in the Department of Justice, but I would be no expert there.

Mr. FOSSELLA. Fair enough. Thank you very much, Mr. Hamilton.

The CHAIRMAN. The committee is pleased to have you here. We put you through a long, difficult—well, I do not know how difficult it was, but it was a long process. You have been on the other side of this for a long time, so now you can appreciate it from both sides of the dais. But I know I speak for all of the Members on the committee to say how deeply we appreciate your appearance here today and your expertise. Your expertise precedes you before the 9/11 Commission with your great work in the Congress and, clearly, you have done yeoman's work, as well as the other commissioners.

With that, you are dismissed. I know you have some other work this afternoon. Thank you very much.

Mr. HAMILTON. Thank you very much.

The CHAIRMAN. The Chair notes that some members may have additional questions for the witness which they may want to submit in writing. Without objection, the hearing record will remain open for 30 days to submit written questions to the witnesses and to place the response in the record.

We now invite our second panel to appear.

Gentlemen, welcome to the Committee on Financial Services. Let me introduce the panel. The honorable Stuart A. Levey, Under Secretary for the Office of Terrorism and Financial Intelligence, Department of the Treasury, and an Ohio native; the Honorable Frank Libutti, Under Secretary for Information Analysis and Infrastructure Protection, the Department of Homeland Security. We already know where you are from, from our friend from Long Island. And the next witness is Mr. Barry Sabin, Chief of the Counterterrorism Section, Department of Justice.

Gentlemen, thank you all for your patience as we worked our way through the vice chairman of the 9/11 Commission. I notice you were all here, and hopefully it was a worthwhile experience for you as well as for the members of the committee.

The CHAIRMAN. We will begin with you, Mr. Levey.

STATEMENT OF HON. STUART A. LEVEY, UNDER SECRETARY FOR THE OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE, DEPARTMENT OF THE TREASURY

Mr. LEVY. Thank you, Mr. Chairman, members of the committee, thank you for inviting me here today to testify about our efforts to combat terrorist financing and the 9/11 Commission report. This is my first opportunity to testify in my new position as Under Secretary for the new Office of Terrorism and Financial Intelligence.

There is little need to underscore the importance of our campaign against terrorist financing, especially before this audience. Both in the PATRIOT Act and in other ways, this committee has demonstrated its commitment to fighting the financial war on terror. The committee would certainly agree, as I do, with the 9/11 Com-

mission's primary recommendation that "vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts."

It is an honor for me to testify alongside Under Secretary Libutti and Barry Sabin today. I just left the Justice Department a few weeks ago, where I had the privilege of working directly with Mr. Sabin and Mr. Breinholt and his team, both in the criminal division and at the FBI. They are real pros, and I am pleased to be able to continue working with them on this issue.

Those of us who work on this issue are also indebted to the 9/11 Commission and its staff, including specifically John Roth whom some of you know. Both in its main report and in the staff monograph, the Commission's fine work will certainly help us improve our overall efforts to combat terrorist financing.

I would like to highlight three issues in my oral statement. First, I think it is important to underscore that our terrorist financing campaign is just one part of the overall mission to fight terrorism. Put another way, the goal is not so much to stop the money as it is to stop the killing. That seems obvious, but it actually has real implications for the tactics we choose to use in particular situations. Our goal must always be to choose the action that will do the most to cripple terrorist organizations.

For example, in a certain case, the best action may be to publicly designate a financier to freeze terrorist-related assets and also shut down a conduit for further financing. In another case, the best strategy may be to observe the financier or money flow covertly to identify the next link in the chain rather than to cut the money off.

In pursuing that goal, we need to draw on a full range of weapons in our arsenal from agencies all around the government, from intelligence activities to diplomatic pressure, from administrative action to criminal prosecutions. As the Commission recognized, the interagency team that focuses on terrorist financing is all committed to that principle, and the team work is excellent. But even with the best teamwork, we have a difficult challenge. Terrorist groups like al Qaeda are savvy and are evolving in response to our actions, so we must continue to improve and adjust as well.

Second, I would like to say a few words about recent changes at Treasury that should enhance our contribution to that team. Since the September 11 attacks, Treasury has worked diligently to combat terrorist financing and otherwise safeguard the integrity of our financial system and international financial systems generally. However, Treasury's structure did not match its mission to combat terrorist financing as a distinct priority. President Bush and Secretary Snow therefore created the new Office of Terrorism and Financial Intelligence to bring all of the Department's assets to bear more effectively to fight terrorist financing and financial crime.

TFI has two major components. The first, the Office of Intelligence and Analysis, reflects our recognition that the war on terror remains a war of information. Treasury's Office of Intelligence Analysis will integrate, for the first time, all of the Department's financial information and intelligence streams and ensure that the information is properly utilized to support the campaign against terrorist financing, as well as other aspects of Treasury's mission.

TFI also includes the Office of Terrorist Financing and Financial Crimes, which is the policy and enforcement apparatus for the Department on these issues. Led by Assistant Secretary Juan Zarate, this office will, among many other things, integrate the important functions of OFAC and FinCEN with other components of the Department, work with IRS-CI and other law enforcement on emerging domestic and international criminal issues, and represent the United States at international bodies dedicated to fighting terrorist financing and financial crime such as the FATF that we have heard discussed today.

Third, I would like to focus on the differences between money laundering and terrorist financing.

The main reason why tracking terrorist finances must remain a central part of the overall counterterrorism mission is that money trails generally do not lie. As a result, they can help us identify, locate, and arrest terrorists. One key question is whether the systems we have implemented to ensure financial transparency, most of which were aimed at money laundering, are sufficient to ensure that we are able to "vigorously track terrorist financing" as the Commission recommended.

Terrorist financing and money laundering are not the same, and by applying the same methods and tools to both problems we may inhibit our ability to succeed. With money laundering, investigators essentially look through a telescope to try to detect the movement of large amounts of tainted money trying to move through our financial system. With terrorist financing, investigators essentially need a microscope to detect and track the clandestine movement of relatively small amounts of money, money that is often "clean" money, but that is intended for an evil purpose.

This difference has policy implications for all of us. At Treasury, we have begun to study how we can devise tools or systems aimed more particularly at terrorist financing. Among other things, we need to work with the private sector on this, and this is something we have heard discussed already today. The financial industry has shown tremendous resolve since 9/11 and is eager to cooperate with us on this issue, but we need to help them help us. For example, we can build on the information sharing relationships that FinCEN has already developed under section 314 of the PATRIOT Act, and I was pleased to hear Chairman Hamilton endorse that function. I look forward to working together with this committee on these issues and to answering your questions. Thank you.

[The prepared statement of Hon. Stuart A. Levey can be found on page 115 in the appendix.]

The CHAIRMAN. Mr. Libutti.

STATEMENT OF HON. FRANK LIBUTTI, UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. LIBUTTI. Good afternoon, Chairman Oxley, Congressman Frank, distinguished members of the committee. I was about to say, although I do not see the gentleman here, my special greetings to Congressman Israel; my family appreciates your support, sir.

Today I will provide an overview of the Information Analysis and Infrastructure Protection Directorate—we call it IAIP—describe

initiatives that the Department has taken to protect the financial services critical infrastructure in general, and to discuss some of the specific actions taken after the recent elevation of the threat level for the financial services sector in New York City, northern New Jersey, and Washington, D.C.

IAIP leads the Nation's efforts to protect our critical infrastructure from attack or disruption. The IAIP directorate was created to analyze and integrate terrorist threat information and to map that threat against vulnerabilities, both physical and cyber, to protect our critical infrastructure and key assets.

Recognizing the potentially devastating effects of disruption of services or catastrophic failures in the banking and financial sectors, IAIP works on a daily basis to assess threats and vulnerabilities, mitigate risk, develop protective measures, and communicate with the sector.

The banking and finance sector not only represents both physical and cyber vulnerabilities, but is also critically interconnected with every other critical sector within our Nation. IAIP has focused on monitoring and assessing threats and vulnerabilities to all sectors, including the banking and financial sector. Sharing this information with the private sector is a vital component of IAIP's mission.

DHS, the Department of Homeland Security, also acts as a coordinator with other government entities. In the financial field, IAIP partners with the U.S. Treasury to share information with government entities and the private sector through the Financial Services Sector Coordinating Council, the Finance and Banking Information Infrastructure Committee, and the Financial Services Information Sharing and Analysis Center, what we call FS-ISAC. The FS-ISAC provides a mechanism for gathering and analyzing and appropriately sanitizing and disseminating information to and from infrastructure sectors and the Federal Government. Every 2 weeks, the FS-ISAC conducts threat intelligence conference calls at the unclassed level for members with IAIP providing input. These calls cover physical and cyber threats, vulnerabilities, incidents that have occurred during the previous 2 weeks, and suggestions and guidance on future courses of action. The Financial Services ISAC, as with all ISACs, is capable of organizing crisis conference calls within an hour of notification of a crisis.

In addition, the Department of Homeland Security has established close working relationships with the appropriately cleared senior members of the ISAC to exchange classified information as appropriate.

IAIP receives and evaluates current threat and incident information, including suspicious activity reports submitted directly by the industry or through the ISAC, and provides timely feedback on those issues. As recent events have exemplified, during times of elevated threat, IAIP intensifies its efforts to coordinate and reach out to the private sector the entities described above and other government agencies.

I would be remiss, given this committee's leadership in the fight against terrorist finances and financial crime, if I did not take a moment to highlight for you the other important role of homeland security relative to the financial service industry; that is, our role in the investigation of a wide variety of financial crimes. I know

this committee is uniquely positioned to appreciate the depth of financial investigative expertise and jurisdiction now housed within the Department of Homeland Security. The investigative functions and personnel of the former U.S. Customs Service, now housed within immigration and Customs enforcement, includes some of the most experienced financial investigators in the U.S. Government. In addition, the Department of Homeland Security is also home to the U.S. Secret Service, which has, as one of its primary missions, the investigation of counterfeiting, credit card fraud, and cybercrime. Together, they represent a vast and impressive array of expertise critical to protecting our Nation's financial systems.

The latest series of events against a U.S. financial institution was spurred by ongoing concerns over al Qaeda's interests in targeting U.S. critical infrastructure as well as recent intelligence, information of detailed reconnaissance against several U.S. financial institutions. Based on the multiple reporting streams and the information contained in these reports, the intelligence community concluded that the information warranted a change in the alert status. The level and specificity of information found was alarming, prompting DHS to raise the threat level to orange for the financial service sector in New York, northern New Jersey and Washington, D.C. on Sunday, August 1. This was the first time the level had been changed for an individual sector in a geographic-specific area.

In response to the heightened threat level, IAIP acted on several fronts to address the threat. Conference calls were arranged between DHS, financial sector leaders, State homeland security personnel, including homeland security advisors, and local law enforcement. In addition, senior DHS leadership personally met with CEOs and security directors from the financial sector to better inform them of the evolving conditions and provide guidance. Subsequent to providing immediate alerts to the financial sector regarding the threat, IAIP continued to work with the industry to ensure that all targeted financial institutions were individually briefed. IAIP coordinated with Federal, State, and local law enforcement entities to ensure that the appropriate information was exchanged between the government and the private sector. We also pooled affected financial sectors to determine what additional protective measures were implemented by the private sector itself during this heightened period.

IAIP personnel were also immediately deployed to facilities in Washington, D.C., New York City, and northern New Jersey. Teams of IAIP personnel conducted site-assist visits, what we call SAVs, in collaboration with local law enforcement officials and asset owners and operators to facilitate the identification of vulnerabilities and to discuss protective measures.

In addition to these SAVs, IAIP personnel have been working with individual facilities and local law enforcement entities to implement buffer zones around selected banking and finance sites. Buffer zones are community-based efforts focused on rapidly reducing vulnerabilities outside the fence of selected critical infrastructure and key resources. To support these efforts, IAIP provides assistance to local law enforcement officials to develop and implement buffer zones, to share best practices, and lessons learned.

IAIP has taken many actions to secure the financial services sector with our friends in State, local, and the folks sitting with me here today. Our job, however, is not done. We will continue to monitor the evolving threat condition and communicate those threats with the private sector and our partners within State and Federal agencies. Together with the Department of Treasury, we have laid the foundation for a true partnership with the public and private sectors. Based on this foundation, we will continue to dedicate ourselves to making a difference in protecting our Nation.

Thank you for the opportunity to testify before you today, Mr. Chairman. I would be pleased to answer any questions at this time.

The CHAIRMAN. Thank you, Mr. Libutti.

[The prepared statement of Hon. Frank Libutti can be found on page 126 in the appendix.]

The CHAIRMAN. Mr. Sabin.

STATEMENT OF BARRY SABIN, CHIEF OF THE COUNTERTERRORISM SECTION, DEPARTMENT OF JUSTICE

Mr. SABIN. Chairman Oxley, Congressman Frank, members of the committee, I am honored to appear before this committee today. I am also pleased to share the microphone today with Mr. Libutti and Mr. Levey, a dedicated and principled former colleague of mine.

Working together, the various components involved in the United States' efforts to combat terrorism and its funding have made significant progress and scored key strategic victories, while continuing to respect constitutionally guaranteed civil liberties. We are sobered and ennobled by the unique opportunity that history has presented to us to seek justice, both in our words and in our actions.

To be clear, we will be aggressive, as Congress and the American people rightly expect that of us. Our concerted efforts and reliance on the rule of law have led to the disruption or demise of terrorist cells in locations across the Nation. We continue to dismantle the terrorist financial networks, including those that prey on charities through, in part, an application of standard white-collar investigative techniques.

Much of our success is due to the wide array of legislative tools made available to us by this committee and the Congress, for which we are grateful.

Today, I would like to survey, first, some of what we have done since 9/11 in the area of terrorist financing and criminal enforcement; second, some of the trends that we foresee; and lastly, how this work relates to the Treasury Department and the Department of Homeland Security, and the oversight responsibilities of this committee. My goal is to cite some examples and highlight some trends, and I do not intend this description to be a comprehensive review of all that has been done in this area by the Justice Department.

The watershed legislative development of terrorist financing enforcement occurred in 1996 when Congress passed the Antiterrorism and Effective Death Penalty Act. This statute created the section 2339B offense, and the concept of "designated foreign terrorist organizations" or FTOs.

With the assistance of a Hamas leader, an organization known as Holy Land Foundation for Relief and Development, became Hamas's U.S. beachhead and source of support. A few weeks ago, the Holy Land Foundation and its officers were indicted by a grand jury in Dallas for, among other crimes, conspiring to provide material support to Hamas for over the last decade.

Another accused U.S.-based terrorist financier, Sami Al-Arian, along with his co-conspirators, allegedly used his University of South Florida office and several nonprofit entities he established to support the Palestinian Islamic Jihad.

Since 9/11, we have relied on section 2339B to charge persons who sought to donate themselves to violent jihad causes around the world.

We prosecuted and obtained guilty pleas from several men living in Lackawanna, New York, who had attended a terrorist training camp in Afghanistan. In New York City we recently obtained the guilty plea and military cooperation of al Qaeda associate and military procurer Mohammed Junaid Babar.

Recently in Northern Virginia, our prosecutors convicted several persons of training in the United States to engage in violent jihad activities abroad. Earlier, we obtained in that district the guilty plea of al Qaeda operative Iyman Fares.

Clearly, our ability to address this conduct through criminal prosecutions would not have been possible had Congress not provided us with a powerful tool like the material support statutes, including Section 810 of the USA PATRIOT Act. These maximum penalties, combined with terrorist enforcement of the U.S. sentencing guidelines, allow us to exert significant leverage over terrorist supporters to gain their cooperation.

The very process of "material support" investigations often results in the identification of other targets and future prosecutions. For example, following a Charlotte, North Carolina Hezbollah prosecution, prosecutors in Detroit have built on these successes to charge other Hezbollah-connected individuals linked to cigarette smuggling and tax evasion racketeering conspiracy.

The Holy Land Foundation case in Dallas was assisted by an FBI raid on September 7, 2001 of a related company known as INFOCOM. Last month, the brothers that ran INFOCOM were convicted by a jury in Dallas of illegally shipping computer parts to State sponsors of terrorism.

The Northern Virginia jihad case was assisted by Chicago prosecutors assigned to the Benevolence International Foundation investigation.

Simply stated, aggressive law enforcement begets more enforcement and further disruption of terrorist support mechanisms. Prosecutions generate more leads and intelligence. Let me underscore the point because I think it is a critical one. Increased penalties yield cooperation by criminal defendants, which yields information, which enables the government to more successfully prevent terrorist incidents and attack terrorist funding.

No matter how effective our criminal statutes are in theory, using them depends on the development of facts. Since 9/11 and with the vital assistance provided by Congress with the USA PATRIOT Act, criminal investigators and prosecutors now have access

to the full body of information developed by the U.S. Intelligence Community, including intelligence gathered through investigative activities authorized by the Foreign Intelligence Surveillance Act. In addition to the Holy Land Foundation and Sami Al-Arian cases, an example would include the Chicago indictment of three Hamas operatives announced by the Attorney General this past Friday. We believe that sections 218 and 504 of the USA PATRIOT Act, which has been vital to bringing these prosecutions, represent a key congressional contribution to our counterterrorism efforts and we are gratified that this view is shared by the National Terrorism Commission in its report.

Intergovernmental coordination, however, is not enough. Many of our prosecutions have been aided by cooperation that stretches across international boundaries. For example, the conviction of Abdulrahman Alamoudi in Alexandria, Virginia, originated with information provided to us by British law enforcement, which questioned Alamoudi at Heathrow Airport about a briefcase containing $340,000.

Abu Hamza al-Masri and Baber Ahmed, who have been charged with terrorist support offenses, are currently in British custody awaiting extradition to the United States.

Our enforcement record has benefited from Director Mueller's decision immediately after September 11 to create a specialized unit of financial investigators to focus on the problem of international terrorism, now known as the Terrorist Financing Operation Section.

Relying on changes to the crime of operating an unlawful money transmitting business, codified at Title XVIII United States Code, section 1960, made useful by the USA PATRIOT Act, we have brought charges in jurisdictions such as New Jersey and Brooklyn and obtained convictions in Massachusetts and Virginia. This crime will remain a valuable part of our counterterrorism strategy, and we support pending legislation in H.R. 3016 that would make section 1960 a RICO predicate.

The private sector, particularly the financial services industry, has been responsive to the USA PATRIOT Act section 314(a) requesting information on certain potential customers. We hope to continue working with the Treasury to improve the utility of Bank Secrecy Act reports, including suspicious activity reports to law enforcement, and to provide the financial services sector with additional feedback on the utility of such data.

The Department recognizes that the terrorist threats we are facing today and in the foreseeable future, cannot be addressed by any single department, bureau, or agency. That is why we need to acknowledge and further develop our strong partnerships, both informally and formally, with the Departments of the Treasury and Homeland Security.

I thank this committee for its continued leadership and support. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Sabin.

[The prepared statement of Barry Sabin can be found on page 131 in the appendix.]

The CHAIRMAN. Mr. Sabin, let me begin with you because you raised some very interesting points, and I think that too many

times the successes that we have had as a result of the PATRIOT Act go either unreported or, even worse, ignored by virtually everybody. Yet, when we see articles that appeared today, all negative, it is almost as if the writers, the journalists are looking for negative information to put out there about the work that all of you are doing, positive work that too many times is underreported or not reported at all. It seems like when you have legitimate criticism—nobody is perfect—but that that seems to get the headlines. Once again, we found that today in virtually every major newspaper. It is just unfortunate.

So I want to salute all of you for the work that you do to make us safer. Mr. Sabin, your chronicling of some of those successes, I think, needs to be told more and more so the public does get a balanced view of the efforts that are being made in this country.

You mentioned section 21 and section 504 of the PATRIOT Act which has facilitated information sharing. That obviously is going to sunset next year. I happen to think that was an unwise decision on the part of the Congress to put a sunset provision in.

But what would be the implications of the failure to reenact the PATRIOT Act in your estimation?

Mr. SABIN. Echoing Vice Chairman Hamilton's comments this morning, sections 218 and 504 of the PATRIOT Act are, on a day-to-day basis, the essential tools that allow criminal law enforcement and intelligence folks that are looking at these problems to discuss and share information. The proverbial wall that people have referred to was brought down by those particular sections of the USA PATRIOT Act. To allow it to sunset I believe would be setting us back to a stage where—and the monograph that was issued over the weekend agrees—you would have those kinds of dysfunctions and lack of communication and coordination.

So in terms of section 218 and 504, on a day-to-day basis, it is invaluable for criminal investigators to be talking to intelligence investigators, for prosecutors to be talking to those folks in order to share information and use all of the tools that Congress has provided us in order to address the particular threat or the particular disruption activity.

There are other provisions in the PATRIOT Act, echoing Mr. Hamilton's remarks this morning. I believe section 314 is vital for working with obtaining information from the financial community, the financial sector. Section 326, involving "know your customer," has proved to be very beneficial. USA PATRIOT Act, section 373, which relates to the change that this Congress made in the intent relating to the unlawful money transmitting license transactions under section 1960, has been invaluable to us.

So all of those provisions of the PATRIOT Act, but most especially 218 and 504, that allows us to communicate and share information are invaluable.

The CHAIRMAN. We thank you particularly for mentioning Title III, which is the contribution that the Financial Services Committee made. Clearly, if you look at it from a broad perspective, they really enmesh and work quite well together, and you folks are the ones that carry it out.

Mr. Libutti, do you have any comments in regard to the PATRIOT Act?

Mr. LIBUTTI. I fully support the comments of my friend to the left, sir. I think it is the only way to go in terms of keeping the wall down and making progress.

The CHAIRMAN. Mr. Levey.

Mr. LEVEY. I totally agree, sir.

The CHAIRMAN. The Commission report deals with extensive bottlenecks and discusses methods to remedy that situation. I am concerned about a particular issue regarding FinCEN, and I mentioned it to our first witness, Mr. Hamilton, regarding the inability of FinCEN to use their own computers and to effectively do their jobs.

Wouldn't FinCEN be better able to ensure data quality and be responsible for failures if it had its own computers and was responsible for its own data? Also, now that Treasury has an Under Secretary for Enforcement, does it make sense to you to have nontax financial crime investigators at IRS, or do you think they should be shifted to the terrorism and financial intelligence office?

Mr. LEVEY. Well, let me—there are obviously two separate questions. Let me take the second one first in terms of the shifting of IRS criminal investigators to the Office of Counterterrorism and Financial Intelligence. I have heard that suggestion. I know that Chairwoman Kelly has also made that suggestion. Obviously, this is something that we need to think about, but my first reaction is that I have talked with Commissioner Everson already. He has pledged to me and to the Department that he is going to be as supportive as possible of the mission of the new office and work with us on all of the initiatives that we have, and we will have to just work together with him to see how that develops and see if more drastic changes are necessary. I am not sure that they are, and I do not know that our needs are limited to criminal investigators either. It may be that we need some of the other expertise from the IRS on the noncriminal auditing side that they obviously have as well.

With respect to the question you asked about FinCEN, I think I agree with the premise of the question, which is that FinCEN needs to move ahead in terms of developing its technology to be more responsive to law enforcement and to the private sector, and under the leadership of Director Fox, I think they are headed in that direction. The key point here is their BSAdirect initiative, which is moving forward and we anticipate will be done by October of 2005. That will free up FinCEN to do more sophisticated analysis of financial data that comes in, and improve access on behalf of law enforcement to that data.

The problem I think underlying the question is the fact that right now the information is being provided to us generally through paper reporting and then the data is being entered by the IRS at the Detroit computing center. I think that that is something we need to take a look at because I cannot imagine that when we look down the road 5 years from now, that we will still be in that situation. That seems to be a situation we need to correct and move towards an e-filing system in some way that is not overly burdensome on the private sector but which provides FinCEN with better ability to manipulate the data.

The CHAIRMAN. Thank you.

The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Levey, I have had to go in and out, but I gather there was some conversation—I just heard some—about taking some IRS personnel cell investigators and maybe some others and have them also be doing terrorism work; is that correct?

Mr. LEVEY. Well, the IRS already supports——

Mr. FRANK. Right. But there was some suggestion about having them do more?

Mr. LEVEY. Well, there were suggestions in the first panel about whether the IRS—questioning whether the IRS's commitment in terms of resources to terrorism——

Mr. FRANK.—is enough. Well, I would like to say very clearly, if we are going to increase IRS resources to you, it should only come if we have increased IRS resources. If there is an area in this government which I do not think is being done to excess, it is enforcement of the Tax Code at this point. I think we went too far in weakening enforcement, and the notion that we would further weaken it would trouble me.

So I would be glad to vote for some more money. I know we are all supposed to be opposed to government in general, but then we are all for it in the specific. So I would like to say, I hope people would resist cheering if we further cut the IRS. Yes, I would like to see some more resources, obviously whatever you need, but not at the expense of existing enforcement of the Tax Code, and I hope that that would be the Department's position, and I would hope that they would not feel pressured to do that.

Let me ask Mr. Sabin, in your testimony, Mr. Hamilton said on behalf of the Commission, they were not recommending any legislative changes in the area that came under your jurisdiction. And as I read the testimony, there was one area where you—I do not think this is our jurisdiction, but it is in this area, you talked about the "lone wolf" international terrorists.

Would you like to see the law changed so that individuals who are acting in international terrorism—and it says non-United States persons, so this is a noncitizen; is that correct?

Mr. SABIN. Yes.

Mr. FRANK. And right now you have to prove that they are connected to some organization, so even if they are otherwise doing something they should not be doing in this area. That did not seem to me to be terribly controversial, and I note that, although I know it is not our jurisdiction.

Let me say, by the way, on the subject of legislation and sunsetting, sunsetting is something that does not mean you think it is a bad idea. In fact, in other contexts people think sunsetting is a good thing in general. I do favor extension of the provisions we talked about, but I also favor sunsetting them, for two reasons. First of all, you do not know for sure how they are going to work out. Secondly, you do have this problem, which is these are important powers but they can be abused, and I think the sunset is one of the best ways we have to make sure that the powers are used appropriately and not inappropriately. I think having people know that if there are controversies generated about whether or not they are used appropriately, that that is important.

Let me just ask in that regard on the question of the freezing of assets in particular—and I would ask both Mr. Levey and Mr. Sabin—the Commission, and in the monograph, and in Mr. Hamilton's testimony, they gave examples of people whose assets were frozen, and that included a freeze on any commercial transactions so that until they get a waiver, until they get waivers, they could not even engage counsel to defend themselves.

Shouldn't that sort of a waiver be automatic? After all, we are not talking about anybody who has been found in any neutral court to have been guilty of something. Shouldn't there be some kind of a presumption that you would be allowed to defend yourself against the accusation, especially since, as I understand it, the freeze stays in effect. We are not talking about lifting the freeze, we are talking about being able to combat the freeze.

Is there any reason why they should not be automatic so that people will have the resources to defend themselves?

Mr. SABIN. You are getting into the area of the general civil liberties question and the balancing that needs to be addressed. In terms of the sixth amendment right to counsel, we are committed to preserving that and protecting that.

Mr. FRANK. That is in the criminal context. I guess I am not as clear as I should be on the freezing of assets. When I went to law school, we were not freezing assets that much. Who knew? What is your right to counsel in the case of the freezing of your assets?

Mr. SABIN. You do. If you make an appropriate license request to the Office of Foreign Asset Control through the Treasury Department, Mr. Levey's shop, they can grant that for——

Mr. FRANK. Grant what? They grant you the right to do it. You do not get free counsel. So it is not the right to counsel, but it is right to pay a lawyer. There is that criminal/civil distinction. You do not have the automatic right.

Mr. FRANK. Shouldn't that be automatic? Let me ask you, Mr. Levey, would you turn someone down just to be able to hire a lawyer to defend—to object to the freeze?

Mr. LEVEY. It is my understanding that we have not turned anyone down; that that is routinely granted.

Mr. FRANK. Why even require it? What, have you got nothing else to do but sit around and stamp "yes"? Why not just say that narrowly defined for the purpose of challenging the legitimacy of the order, there is that automatic waiver? I just don't think it serves a purpose to say that we would ever—it is hard to think of a circumstance in which you would turn it down. It is a right to counsel.

Mr. LEVEY. It is not a question of whether we would ever turn it down. It is a question of once we have frozen the assets, we want to monitor what happens and make sure that the money is only used for that purpose.

Mr. FRANK. That is not inconsistent with saying that to the extent that it is for the purposes of defense, you could do it. It would still be subject to the monitoring. That is one of the changes that would make me feel a little better, and I think it is generally a good idea not to have even a theoretical blockage of that sort.

Mr. LEVEY. Although it is a theoretical power, we have not exercised it.

Mr. FRANK. You haven't exercised it and you shouldn't exercise it, so why have it?

Thank you, Madam Chair.

Mrs. KELLY. [Presiding] Thank you. Mr. Bachus.

Mr. BACHUS. Thank you. Thank you, Madam Chairman. The first thing I would like to say, if you look at Mr. Hamilton's testimony, you come over to the seventh page, which are his conclusions. I want to commend all three of you gentlemen because his conclusion is that intelligence and law enforcement efforts have worked. That is what his conclusion of the report is, that what you have been doing has worked. I think we all when we say that, everybody says we have got to continue to be diligent. I think we all realize that. I don't think there are any disagreements there. If you read his testimony, if you read the monograph, if you read the 9/11 Commission, it tells you bottom line, we have been very effective at degrading al Qaeda.

For that reason, I want to introduce for the record and ask unanimous consent to introduce for the record about three pages of quotes from the 9/11 Commission testimony, their report and also their monograph detailing excellent U.S. Government successes in the counterterrorism financial field. I would like to introduce that without objection.

Mrs. KELLY. Without objection, so ordered.

[The following information can be found on page 140 in the appendix.]

Mr. BACHUS. I would also, and I don't know that anyone has said this to date, but this committee has performed 12 full committee and subcommittee hearings on 9/11. What we have found, number one, is that our U.S. financial services industry has provided law enforcement and intelligence agencies with extraordinary cooperation. That is exactly what the 9/11 Commission said. They said our domestic financial institutions have given extraordinary support to our efforts to get information. What they also say is that what we have done—in fact, Mr. Hamilton said he could offer no need for additional legislation.

With that, I would like to address some questions to the Treasury Department, if I could. Mr. Levey, the 9/11 Commission, they asked you to do certain things and I think they are validating what you have done. That is my idea, because they say three things. One, that you should focus on the full range of tools to bring to bear on the threat of terrorist financing. Isn't that what the government and Treasury is doing today?

Mr. LEVEY. That is certainly what we are trying to do, sir. That is exactly right. We are working together with agencies around the government to determine what in each circumstance is the appropriate tool to be exercised. I think the 9/11 Commission—I appreciate very much their recognition that we have improved our strategies and are now on the right track in that respect.

Mr. BACHUS. They characterize your efforts as being very successful. I don't know that I have read that anywhere.

Second, Mr. Hamilton today in their report stresses that you should push the international community through the financial action task force and other mechanisms. Isn't that exactly what Treasury has been doing?

Mr. LEVEY. Indeed they have. It is easy for me to give Treasury credit since almost all of this work occurred before I got there, so I don't feel that it is immodest in any way. They have done an excellent job with respect to pushing for international cooperation through the FATF. There is more work to be done, particularly in the implementation side, as Chairman Hamilton said, but this has been, I think, one of the areas that we can take the most pride in.

Mr. BACHUS. As far as those successes, in fact, they recognize those successes, but also the CRS report to Congress on the 9/11 Commission recommendation actually goes into about two pages of successes where you have been able to enlist numerous countries and their compliance has increased dramatically. And you have also established standards through the financial action task force, through the IMF, through the World Bank.

Mr. LEVEY. That is all true. I would like to, if I could just say that that is in some respects an accomplishment of the Treasury Department but that is also something that the State Department and the Justice Department play an important role in, and they deserve a lot of the credit there.

Mr. BACHUS. The TFI office, is that the mechanism you plan to use to deal with the issues——

Mrs. KELLY. The gentleman's time has expired. If you have a question, please finish and then we will have a short answer.

Mr. BACHUS. Thank you.

Mrs. KELLY. Do you have a question? If you want to finish your question, please do and then we can have a short answer.

Mr. BACHUS. The TFI office, is that the mechanism that you plan to use to deal with these issues over the long term?

Mr. LEVEY. Yes, indeed. This is an attempt to set the Treasury Department up for what is going to be a long-term fight and we will be now structured to take that on.

Mr. BACHUS. I think as you said in your testimony, we have all said, the fact we have been successful today does not mean we don't need to redouble our efforts in the future, because there is a lot in this report that says it is going to be a tough job. One of them is that they don't need that much money. So we may be dealing with small amounts of money and how do we stop that without sacrificing our own constitutional rights and our own freedom of movement.

Mrs. KELLY. The gentleman's time has expired. Mr. Israel.

Mr. ISRAEL. Thank you, Madam Chair. I have two questions, one for Mr. Levey, and one for my friend Mr. Libutti.

Mr. Libutti, many of us are very deeply concerned with cyber vulnerabilities of financial institutions and many of us on this committee have made several visits to the New York Stock Exchange, for example, as I did. On one of my trips, I had a rather substantive meeting about the issue of cyber vulnerability at the stock exchange and the broad array of technologies and systems that they use to protect against.

My question is what level of consultation and cooperation do you have with institutions like the New York Stock Exchange and other critical financial institutions?

And my second question to you, sir, is, my understanding, and it may be a misinformed understanding, is that many of these sys-

tems and technologies are proprietary, so you have different financial institutions protecting their data with systems and technologies that they are not particularly willing to share with their competitors. How do you kind of integrate that? What do you do to move the whole process forward so that these technologies and protected systems aren't becoming too cumbersome and conflicting but move the entire financial community forward?

Mr. LIBUTTI. Sir, I appreciate the question. I would respond first by telling you that basic leadership 101, a spirit of cooperation and trust, has to be developed out of my front office, as it has been long before I got there, by Secretary Ridge. That is, a reachout on a continuing basis with the leadership in the private sector including cyber.

In terms of our relationship and ongoing interface with the New York Stock Exchange and the leadership of other financial institutions in New York, my assessment of that has been terrific and it has been highlighted by the terrific interaction over the last 2 or 3 weeks.

You asked a question also about, or alluded to the notion that we need to be pretty sensitive to and look at ways that we deal with private industry and perhaps even those who compete within the private industry. There is a program called a PCII which is an opportunity in plain English that protects those industries from sharing critical vulnerabilities with us that we hold, in again plain English, close to the chest. It is in the law and we probably, I would say, surprisingly haven't received a great deal of input across the private sector. Perhaps they are testing the system. Perhaps they are wondering how indeed we will administer it. But the handful of requests, that is, information that has come to us that is sensitive and vulnerable, we are working on. I have been in the organization now a little over a year and I am surprised we haven't gotten more folks coming forward sharing that information. Does that answer your question?

Mr. ISRAEL. It does. Thank you, Mr. Libutti.

Mr. Levey, when this committee marked up the antimoney laundering legislation that was later rolled into the PATRIOT Act, I had offered an amendment that was accepted by the Chairman and by the committee that would have included the use of charitable organizations, not-for-profit organizations, and nongovernmental organizations in a study of issues specifically related to the financing of terrorist groups, and the means terrorist groups use to transfer funds around the world and in the United States.

In fact, Vice Chairman Hamilton in answer to my question before, said that we don't see any evidence that the Saudi Government has actively financed terror, but it is indisputable that charitable organizations throughout the Middle East have been financing terrorist organizations and activities. While that amendment was accepted by the committee, it was not included in the final legislation.

Do you believe that the Treasury Department ought to be formally studying the use of charitable organizations in the financing of terror? Would that be useful, do you believe?

Mr. LEVEY. I think that obviously the problem of terrorist financing through charities is one that is clear and I think maybe even

more clear by the 9/11 Commission report because it makes—it tells us that the majority of the money raised for al Qaeda came through organizations like this. I think it is fair to say that there is an awful lot of study going on, so I am hesitant to take on a formal burden even though I think there is a lot of study already going on about how different charities are being used and have been used in the past to fund terrorist activities.

Mr. ISRAEL. Is the Treasury Department to your knowledge actively studying the role of charitable organizations and money laundering through charitable organizations with respect to terror?

Mr. LEVEY. I believe there is a fair amount of work going on in that respect and that the IRS is doing work to update the types of information that they are getting from organizations before they get tax-exempt status and that sort of thing. I am not sure I am familiar with all the details but I know that there is a significant amount of work going on.

Mr. ISRAEL. My time is running out, but if you would be kind enough to look into that and respond with more detail, I would appreciate it.

Mr. LEVEY. I would be happy to.

Mr. ISRAEL. Thank you, sir. Thank you, Madam Chair.

Mrs. KELLY. Thank you, Mr. Israel.

It is now my turn to ask questions so I am going to ask a question about whether or not you expect Saudi Arabia to actually establish a FIU anytime soon. I have in my hand a press release from the Royal Embassy of Saudi Arabia. The reason I am asking a question here is that they are very fond about talking about their decision to establish a FIU but they still don't have one almost 2 years later. A press release but no action. I am concerned that this is another case of Saudi backsliding.

This also leads to a broader issue that we have to consider, and that is the whole issue of international cooperation. The 9/11 Commission staff monograph indicates that antiterrorist financing efforts had little success without help from our foreign counterparts. The Independent Task Force on Terrorist Financing recently put forth a proposal aimed at improving these efforts. Among its recommendations were that Congress establish a Treasury-led certification regime on terrorist financing that would report annually to Congress the efforts of countries to combat terror funding and would have the ability to impose sanctions on countries that failed to perform up to standard.

In light of the areas where we find either episodic assistance or no assistance whatsoever, do you think this is a proposal that Congress ought to be considering? I think the proposal rightly emphasizes the central role of Treasury in this effort. I would like your comments, Mr. Levey.

Mr. LEVEY. I guess you have a couple of questions there. Let me start on the certification regime that is suggested there with Treasury having the authority to designate countries. I think that that is something that has a lot of complications associated with it that we would have to proceed cautiously on. I think, just listening to Vice Chairman Hamilton this morning, we have a situation like Pakistan where perhaps on this issue they are not doing everything that we would like them to do in terms of their financial regime,

but obviously with respect to terrorism generally, they are an absolutely essential partner. These sorts of certification regimes have difficulties and the PATRIOT Act already gives the Secretary of the Treasury at least some authority in this respect under section 311 to not only designate certain countries and jurisdictions as primary money laundering concerns, but what is particularly effective there is simply the threatened use of 311 sanctions being a very effective tool to get people to move.

With respect to the Saudi Arabia question, I would have to say I agree with what I think your sentiment is, which is that this is an instance in which there was an indication that they would be moving to do something we want them to do but it hasn't happened yet. Obviously as you know very well, there are lots of areas on which they have made significant progress, progress that is very valuable to us, and I think Chairman Hamilton alluded to that, but there are also situations where they need to move further and we need to continue to push them. The FIU situation is one of them. Another is that while they have announced a regime to monitor charities in the kingdom, it doesn't cover certain organizations that we have long thought to have terrorist financing concerns.

Mrs. KELLY. Thank you. The committee is familiar with the ability of FINTRAC, the Canadian Financial Intelligence Unit, and AUSTRAC, the Australian FIU, to receive international wire transfer data electronically. Wouldn't this be helpful for our FIU and Treasury, the FinCEN, to be able to have that authority, and what can you tell me about that?

Mr. LEVEY. I do think—this is something that I know Bill Fox is looking at very carefully. It does frankly appear to me to be something that would be useful. I am a little hesitant to jump in without knowing the details. It does seem to me there may be a scaleability problem in terms of what something Canada and Australia are able to do; whether we, given the volume that we would have to deal with, would be able to just implement the same thing. But it is certainly in concept an idea that I think we should be pursuing.

Mrs. KELLY. If you need more money to get the job done electronically, I think we must address that here in Congress and we need to do it rapidly.

I want to go to another question. The 9/11 Commission's monograph reveals in detail how the hijackers received money from wire transfers, cash, travelers checks that were carried in credit or debit cards for overseas bank accounts. We know that credit cards, debit cards, ATM cards, store value cards, can be used to access foreign banks and conduct transactions. How do we address this issue?

Mr. LEVEY. You point out a very difficult problem. This is, I think, part of the problem, that we are also dealing with very small amounts of money. The amounts of money that were going to these hijackers are in the hundreds or perhaps thousands and not the volume of money that our current antimoney laundering regime is designed to detect. What we need to do, frankly, is work with the private sector, who has been very cooperative with us, to figure out ways where we can share information with them to help them better detect terrorist financing.

I point out one possibility there is through the Bank Secrecy Act advisory group where Bill Fox already has this organization set up by the Congress which has FACA exemption that is specifically designed, I think, to encourage just that kind of frank discussion between the government and the private sector about how best to share the information that is needed in this context.

Mrs. KELLY. Do either of the other witnesses have a response to that comment, to that question?

Thank you. My time is up. Ms. McCarthy.

Mrs. MCCARTHY. Thank you. Again I thank you for sitting through this with us.

Let me say something about the PATRIOT Act. I voted for it. One of the things that I happened to agree with on the sunset part of it is according to the 9/11 Commission, 9/11 happened because there were failures on every single level, including Congress, because we didn't have the oversight. And so I also think that by having a sunset, it makes us, all of us in every one of our committees, have the oversight to see what is right, what is wrong, and how can we improve it. I think that the majority of Members feel that way.

Explaining that to your constituent back home, that is another thing. Which brings us up to the point of where the small rural banks are not getting information that our larger corporation banks are getting. If we follow patterns, those that are coming in here to do harm to us, if I was them, I certainly wouldn't go to a large bank. I would go to some local little bank that wouldn't be noticed that much. We have a lot of work.

I guess that follows up with my other question which a couple of members already alluded to. The lone person out there, the one guy that is trying to do harm to us, and again just following the small amounts of money that are taken out and tracking on that, hopefully you will reach out to those rural banks, the smaller banks. They might be able to think outside the box. Because all of us—I am sitting here thinking we are giving away, because it is going to be on C-SPAN, everything that we are doing. Sometimes I wonder. I believe in open government, but sometimes do we give them too much information on what we are doing, which is the way we live and we don't want to give that up. But, gosh, sometimes I sit here and think all the information you are giving us, you are also giving to the world. Don't think they are not listening, thinking how are we going to outfox them. With that, I will open it up to any responses.

Mr. LEVEY. I thought only my mother was watching, but maybe not.

Mrs. MCCARTHY. You would be surprised. I thought the same thing, that people weren't watching. But even when we are giving speeches at 11 and 12 o'clock at night on the floor, we get e-mails. You are on prime time somewhere in this country.

Mr. LEVEY. Let me just say that you have highlighted a difficult problem. One thing that we are trying to grapple with, that this is not something where we needed to be 3 years ago but we are making great improvements. One thing that is being done, I think, to give the kind of feedback that banks are looking for in terms of suspicious activity reports they are filing is that FinCEN is putting

together their SAR activity review. They basically do a detailed and sophisticated analysis of the SARs that are filed. This is one that just came out this month. It is excellent. Not only is it I think substantively very good, but it invites the private sector to come back and say, actually it wasn't helpful in this respect or you need to do more of this and more of that. And that is just the kind of cooperative relationship with the private sector we are trying to build. I know that that is really the centerpiece of what General Libutti is trying to build. I think we have a ways to go in this respect, but this is something that both the Department of Homeland Security and we are trying to do systematically.

Mr. LIBUTTI. My response to your fine question is really in two parts. One, education. Education needs to be applied against large institutions and small ones as well. There is no luxury in the little guy—while very important in that community, doesn't need to know how to deal with challenges and vulnerabilities to that system. I think education that starts with senior leadership in the organization or from the bottom up asking for help is absolutely paramount. I think that covers it. Education and accepting the fact that the scope of attack or vulnerability isn't simply going to be on the largest facilities.

Mrs. MCCARTHY. Could I follow up with one quick question? When I think about college students and getting false ID, that is the easiest thing to do in this country. Ask any college kid. Actually, ask any high school kid. If we can't stop high school kids from getting false IDs, how are we going to stop—we give false IDs where it is a positive-negative ID.

We have already done testing through the ATF on trying to obtain illegal guns out there. So how are we going to address this issue with so many people coming in here where it is easy? I can go to my flea market and get a whole new identity. How do you stop something like that?

Mr. LEVEY. First of all, I hope the statute of limitations has run on my high school, obtaining a false ID. But you are right, it is a very easy situation. But I think Congressman Hamilton pointed out one thing we should be doing, which is starting to look at national standards for identification. This is a bit outside my lane in my current job, but I know there is an ongoing effort within the executive branch both before and in response to the 9/11 Commission report.

Mr. SABIN. With respect to the questions, first on tradecraft of al Qaeda and other terrorist groups, they are monitoring us. They are—as evidenced in the terrorist training manual that was recovered in searches, they are reviewing what we are doing and trying to change, and we are trying to stay two steps ahead of that.

With respect to the rural bank or the large bank that needs that feedback from the government, one thing the Justice Department did was post-9/11 set up the antiterrorism advisory councils, so you have the Joint Terrorism Task Forces that are operational components with FBI and an assortment of investigatory agents looking at action-oriented operational concerns. The antiterrorism advisory councils headed up by the U.S. attorney in each district with a litany of different agencies to share information, to undertake training and education and to assist in evaluating critical infrastructure

has, a component of that, the financial services sector. So small and large banks in that community are part of those, what we call ATACs, that can share information, obtain feedback, use the guidance that Treasury posts on its Web site to disseminate and therefore be more informed and therefore understand what its government is doing and how it is using the data that is being provided through suspicious activity reports.

Mrs. MCCARTHY. Thank you.

Mrs. KELLY. Thanks, Ms. McCarthy. Mrs. Biggert.

Mrs. BIGGERT. Thank you, Madam Chairman. My first question is for Mr. Sabin. In the report, the 9/11 Commission states that the government should expect less from trying to dry up terrorist money and more from following the money for intelligence as a tool to hunt terrorists, understand their networks and disrupt their operations. And we have been talking about that a lot today, but my basic question, though, is who in the U.S. Government decides either to freeze or to follow the money?

Mr. SABIN. Through the PCC that was referred to, the policy coordinating committee, earlier today. You have on a case-by-case basis the weighing of the equities, on what stage should you designate, on what stage should you go operational and at what time should you charge or do search warrants or pursue specific investigatory avenues. So that balancing act and those weighing of equities occurs on each of the different investigations or cases. If it ripens into an actual criminal prosecution, so be it, but the idea is prevention rather than actual prosecution. So in certain instances, there will be a designation without a criminal prosecution. In others, vice versa. So those are where that communication that was so lauded and applauded in the Commission report and in the monograph is being actually undertaken by government officials.

Mrs. BIGGERT. Is there any danger or is that a change in policy that we have been dealing with our international partners? Are we sending a different signal when we are kind of going in between the two or changing that? Are they going to be concerned about us changing the track? It seems that we were doing the freezing of assets and suddenly we are moving to something else. Is that a problem with anyone internationally?

Mr. SABIN. Others may speak to that more directly, but it is going to be important to have a clear message and for those connections and relationships to be both formal and informal so that people understand what we are doing and why we are doing it, to articulate that through the appropriate intelligence channels or cop-to-cop channels or prosecutorial channels or the military channels or the diplomatic channels, so that people understand what we are doing and what is our end game. That was one of the key things that was addressed in the report, was have an end game, have a strategic view of where you want to go from where you are presently, and how you can seek to accomplish that with all the government agencies contributing to that process.

Mr. LEVEY. Can I just make one comment?

Mrs. BIGGERT. Yes.

Mr. LEVEY. Which is that I totally agree with everything Mr. Sabin said. I don't think that there is any danger of confusion out there. The message is we are going to use all of our tools and use

them all as they are most effective. But I want to make one comment, which is that it is not an either/or. I think Congressman Hamilton pointed this out, at least at one point. It can often be a both/and, where that is the best approach, where we can both designate and prosecute as we have done in Holy Land, that is even more effective. And we will continue to do that when we have the chance to.

Mrs. BIGGERT. Then continuing on that line, Mr. Levey, we have got a high level of cooperation from other nations in really tracing the terror finance, once the funds leave the U.S. financial system or before they enter it. Then the process gets much more difficult. Can you talk a little bit about the sort of tools that would make that easier for us?

Mr. LEVEY. One of the things—I think what you are referring to is that we need to make sure that in order to track the money, that we are also able to track it abroad. We certainly have——

Mrs. BIGGERT. Either before it gets here or before it leaves the country.

Mr. LEVEY. Right. We do have lots of mechanisms for doing that. We have lots of people in the government working on that issue in particular. One of the things I can comment on is that we are building relationships through our financial intelligence units around the country, around the world I should say, where FinCEN is our representative here in the United States, but then there are financial intelligence units in other countries around the world to try to exchange that sort of information as quickly as possible, because we have to be—we have to be quick if we are going to be effective.

The CHAIRMAN. [Presiding] The gentlewoman's time has expired. The gentlelady from California.

Ms. WATERS. Thank you very much, Mr. Chairman. I would like to thank our witnesses. My head is just swimming from all of this interagency cooperation that we have and I am very pleased that people are cooperating so well. But I think that we all agree that thus far we are only able to identify relatively small amounts of money that is supporting terrorism, and even with the new laws under the PATRIOT Act where we can indict those who are substantial supporters, it is still very limited.

Some questions were raised here today that have not really been dealt with. I and others continue to raise questions about the charitable organizations and the Saudi government's relationship to them, and I for one believe that we are not able to penetrate just how big that is because the Saudis are our friends for a lot of reasons, close to this administration, and we have oil interests and other kinds of things. And I think that this cozy relationship is not allowing us to deal with the Saudis in the way that we should be. We will eventually get to it but it is going to be late in the game.

Secondly, Congresswoman Kelly asked about the blood diamonds. She asked about Liberia and Charles Taylor which I am led to believe is a source of funding. We have not talked about tanzanite, tanzanite that is mined mostly in Africa that supposedly has been supporting Osama bin Laden for a long time. We say nothing about the drugs and the poppy fields in Afghanistan. You guys can tell us how great friends we are with Pakistan all you want. That bor-

der between Pakistan and Afghanistan, everything goes on. That is where all the dope dealing and the black market smuggling and crossing of the borders with the Taliban and al Qaeda and everybody else is. God bless Mr. Musharraf. I think he throws us a bone from time to time, but I am not convinced that there is any great effort to deal with terrorists. Are the madrassas still going on? The schools are still there. Are they still being funded by the Saudis? Yes, they are. That is where all the fundamentalism and the hatred is taught.

Here I guess I am appreciative for the efforts that you make, but nobody is talking about the substantial terrorist funding that come from those sources that we have alluded to. And, in addition to that, where does the money come from to purchase the surface-to-air missiles, the grenade launchers, the AK-47s, the A-16s? Let's talk real money and let's talk real support for terrorism, and let's talk about why it is difficult to get at those sources. Until we face up to it, the interagency task force will be chasing each other for a long time. Anybody can respond.

Mr. SABIN. I will start. With respect to alternative remittance systems and the ability to fund through areas that would include drugs or weapons or infant formula, we are reviewing—there are GAO studies that confirm that, about the government efforts to review and address, including FBI investigations in that regard. We have brought cases that relate to—in both undercover and other types of criminal prosecutions relating to, for example, in Colombia, the FARC and the AUC, both foreign terrorist designated organizations.

Ms. WATERS. If I could interrupt you for just one moment. Just tell me about the poppy fields that are flourishing in Afghanistan and the fact that we have Karzai in Kabul and we kind of watch him to make sure they don't kill him, but the Taliban and the warlords and everybody else are in control and we just turn a blind eye because we can't go in there and disrupt the cultivation, the growing of these poppy fields, because we are relying on that money to support that economy and we don't want to make enemies over there. Let's just talk about that money.

Mr. SABIN. I am going to stay in my lane in terms of the Justice Department. But in terms of the 9/11 Commission report, what it found was that there was not drug trafficking funding for Osama bin Laden or al Qaeda, that it was linked to the Taliban but not to bin Laden.

With respect to Saudi charities, we are following the leads—I am a career prosecutor. We look at the facts, we look at the law and we try and achieve justice and we follow the leads where it takes us. In terms of after the May 2003 Riyadh bombings, the cooperation that has been provided to the FBI and to others that are seeking to look at those different charitable organizations have been most meaningful, as stated by Mr. Hamilton this morning.

In terms of the conflict diamonds issue that you brought up, that is a matter that was referred to the Justice Department, it is under investigation and I would refer and echo Mr. Hamilton's comments about the fact that to date nothing has been demonstrably linked between that and actual criminal charges being able to be brought, but we are currently investigating and pursuing those leads.

The CHAIRMAN. The gentlelady's time has expired. The gentlelady from Oregon, Ms. Hooley.

Ms. HOOLEY. Thank you, Mr. Chair. I want to thank all of you for being here today and all of the hard work we know you do every single day. I would like to quickly rehash the recent case of the Riggs Bank and their business dealings and possible money laundering and terrorist financing. Based on Senate banking testimony, FinCEN was not made aware of any bank secrecy problems by Riggs until 6 years after the OCC first noticed such problems. If FinCEN was not made aware of these problems until 2003, 6 years after they were first noticed, I would like to know when exactly were other terrorist financing investigators and the Justice Department and Homeland Security notified so they could quickly investigate Riggs' situation and its impact on our national and homeland security and, frankly, were they ever notified?

The second question is as the Riggs case points out, the lack of sharing of information even within the Treasury, not to mention with other Cabinet agencies, what can we do to fix this?

Third, how much progress has the Department of Treasury and its regulatory agencies made incorporating current generation information technology to identify suspicious individuals, companies, and financial transactions and connect the dots in its antimoney laundering enforcement activities? And the last question is, we have talked a lot about the PATRIOT Act, that parts of it were sunsetting. We are going to be looking at reauthorization for that. What changes do you think we need to make?

Mr. LEVEY. Let me try——

Ms. HOOLEY. You can start anywhere you want on any of those questions.

Mr. LEVEY. How about I will take the easy ones and leave the hard ones for my colleagues. Actually none of those are easy, because the Riggs situation is a very serious problem. I don't want to make light of that at all. What we saw at Riggs, I think everyone agreed, was a—I think they used the word themselves—a failure of oversight. What we don't know is whether what we saw at Riggs is just a chip of ice or whether it is the tip of an iceberg, because we don't have the information within FinCEN and main Treasury to know what our banking regulators are finding out there.

So in response to that, what we are doing to try to correct that, this was something that the Secretary and the Deputy Secretary already announced, is that we are negotiating arrangements with the banking regulators to make sure we get the information into FinCEN on Bank Secrecy Act compliance that they are finding out in the field, and we are learning about all significant violations of the Bank Secrecy Act reporting requirements. FinCEN has set up its own unit to deal with this issue exclusively. We need to get that information to determine whether we have a widespread problem out there. I think there is a certain amount of confidence that Riggs was an outlier, but we certainly can't guarantee that until we get that information in, and we are going to do that.

With respect to the part of your question about using sophisticated technology to deal with—to identify suspicious transactions. Actually I think the monograph does a good job of explaining what

we do at the Treasury Department on this issue. The private sector has a very sophisticated ability to recognize anomalies in transactions of its customers and they generally do a good job of detecting suspicious transactions in that context. But to be clear, that context is designed to detect money laundering transactions. This is what I tried to allude to at the beginning of my testimony, and which the monograph also points out. That system, while it is effective for the purposes it has been designed for, is not the answer to the question about detecting terrorist financing.

I will let Barry respond to the other questions.

Mr. SABIN. With respect to Riggs, that is a short answer. It is pending investigation. I can't comment further. With respect to proposed legislation, I do have some suggestions building upon some of the questions that were asked of Mr. Hamilton this morning. I would ask this committee and the Congress to pursue legislation presently identified as H.R. 4942 which would add a section 2339 D to the material support statutes that I talked about in my opening remarks, that would enable military-style training-camp activity, training abroad in terrorist training camps, to be clearly a Federal criminal offense. Right now we use it within the meaning of material support under 2339 B, to get technical.

Ms. HOOLEY. That is way technical.

Mr. SABIN. But it is extremely important. To take it into a larger perspective, what the cases that have been brought, we have discussed about here today, you see in the charity cases, in the fundraising cases relating to Palestinian Islamic jihad, Hamas, Hezbollah, all emanating from the 2339 B relating to the foreign terrorist organizations.

With respect to the al Qaeda aspects, it is more the providing of personnel or the links to the actual training camps that would be much easier for us to prove and charge in terms of a clear congressional intent under 2339 D.

I would also recommend H.R. 3016, which has some technical and jurisdictional corrections as presently proposed, as well as increased penalties under the International Emergency Economic Powers Act. And also the additional provisions that I mentioned in my opening remarks.

The CHAIRMAN. The gentlelady's time has expired.

Ms. HOOLEY. I can't follow up real quick?

The CHAIRMAN. Real quick.

Ms. HOOLEY. It has been 7 years since we discovered the Riggs' noncompliance and it is post-9/11. I am a little troubled about hearing that you have to negotiate with regulators to get your information.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas.

Mr. PAUL. Thank you, Mr. Chairman. Earlier I spoke about the fourth amendment and privacy issues, but I am afraid that is a moot point these days and I won't bring that up and I won't ask you about that because it seems like we have sort of conceded it, that privacy for the average American citizen is no longer of much concern. But I am concerned about the practicalities. It sounds like the more laws we have on the books, the more criminals you are

going to catch, and it has been just working great. I am not convinced of that.

I have taken some advice from a John Yoder who was the director of the Asset Forfeiture Office under Reagan. He was describing the atmosphere before 9/11. Of course this is what brings this all about, the 9/11 report. In reference to that, he says, "We already had so much information that we weren't really focusing on the right stuff. What good does it do to gather more paperwork when you are already so awash in paperwork that you are not paying attention to your own currently existing intelligence-gathering system."

I think that is unfortunately what we are facing. The terrorists used $500,000 and I don't believe anybody proved that they even broke our financial laws. So all this activity is directed at law-abiding American citizens and hopefully we pick up a criminal here and there. On a daily basis, the American U.S. financial system transfers $1.7 trillion. So we are looking for a needle in the haystack. Yet all we do is we add more and more bureaucracy, more cost. It is costing $12 billion a year for our banks and our companies to fill out these reports. It just seems that we give up our liberties too casually and that even with the Bank Secrecy Act of 1970, we were filling out 12 million currency transaction reports every year and it didn't help us. So what we are going to do is we are going to ask for a lot more of these reports to be sent in.

Also, you have mentioned that, oh, yes, but we are having success, we are finding criminals, we are doing this. But one thing we never addressed and that we always assume is that those individuals may well have been caught by following the rules, following the laws, following the fourth amendment and getting an honest-to-goodness legitimate search warrant. You are assuming that none of these people could possibly have been caught unless we throw the fourth amendment out. That, I think, doesn't necessarily follow.

My question for the three of you has to do with the national ID card. Because in the post-9/11 atmosphere, the ease with which the PATRIOT Act was passed, legislation which had been proposed for years just got stuck in and sailed right through, this post-9/11 atmosphere now has set the stage for the national ID card. So there are a lot of people concerned about it. But once again since security or the pretense at gaining security is far superior to the burning desire for liberty, I think the national ID card is on the agenda and I think the report certainly has indicated that. So I would like to know what you think about the national ID card and how necessary is the national ID card for you to pursue your responsibilities?

Mr. SABIN. I will start. With respect to the fourth amendment, both in word and in deed, we are respectful and sensitive to using it appropriately, making sure that we execute rule 41 criminal search warrants, going to a United States district court judge and making sure that we have probable cause in order to obtain limited amounts of material that are appropriate in order to pursue that particular investigation. Whether that is through a search warrant or through electronic interceptions, we make sure that we satisfy the appropriate legal standard and don't abuse that authority or

circumvent in any way, shape or form the strictures in the fourth amendment to the Constitution.

In terms of information overload, your point about the volume of information that is provided to the Federal Government, it is a lot. We need to make sure that we establish both in terms of short-term and long-term mechanisms, as was discussed this morning, the ability to exploit and use that information appropriately, by getting the experts both within the government and outside the government to educate us about how to use that information and how to make it most meaningful to us in an action format, whether that is providing guidance to the intelligence or law enforcement folks, to make sure that it is not just paperwork stacking up but it is materials that can be used and used effectively and timely.

In terms of the thorny privacy issues and the national identification card, I don't believe the Justice Department has a specific position. I will stay in lane as opposed to reaching out and advocating one position or another. I can tell you that we are seeking to understand who the individuals are and using our tools that Congress has provided us to understand the movement of moneys, the movement of individuals, the travel that occurs, and understand where they have traversed either in terms of the persons or their materials.

The CHAIRMAN. The gentleman's time has expired. The gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you. I would briefly comment to the gentleman from Texas that there are concerns between security and privacy but they don't rise quite to the high level as security versus liberty. That is to say, it is possible that in this war against terrorism, things like my donations to various causes the President disagrees with might become public, but my right to make those—my preference is to keep those private, but my right to make them is not at stake. The privacy interest is there.

Addressing our witnesses, we have seen a great report come out of the 9/11 Commission. They, however, in answering questions, raise as many additional questions as they answer. They provide some recommendations with some specificity. There are other recommendations that need to be fleshed out. Gentlemen, can you think of a reason why we wouldn't give them another year or two to give us another volume and to continue their good work? Anyone want to answer that one?

Mr. LEVEY. Just speaking for—I really don't have a position on that. I think that is a decision for you.

Mr. SHERMAN. You are here to represent the administration. Anything we do would have to be signed by the administration. We get statements all the time of what the President's senior advisers would advise him to do. You are the President's senior advisers. Tell me now, do we shut them down or do we get a volume two?

Mr. LIBUTTI. I think it is premature to——

Mr. SHERMAN. They are dead. Is it premature to treat the patient? We are reviving the recently deceased here.

Mr. LIBUTTI. Sir, with all due respect, I am going to treat the patient and I am going to be respectful.

Mr. SHERMAN. Let me go on to another question.

Mr. LIBUTTI. Sir, if I may, please. I think that very soon there will be a package forwarded to the Hill leadership to be reviewed. I think the results of that review will indicate whether it is smart or not to ask members of the 9/11 Commission to come forward and continue to support the review of that which is most important relative to national security. As I said, I say this with all due respect, sir, it is premature for me to make that comment now. I think it is smart to consider it as an option.

Mr. SHERMAN. I would hope that this would be bipartisan. I know that the administration didn't support the creation of the Commission. It would certainly do a lot for this country if the administration would support its continued existence or revitalization.

We had a huge controversy in this Congress about a particular provision of the PATRIOT Act dealing with access to library records. Of course, had we removed that element of the PATRIOT Act, you could still use grand juries. You could still use search warrants. There are plenty of other ways to get library information. Can you tell me, how many times was the PATRIOT Act provision dealing with library and bookstore records actually used in the last year and how many of those times would it have been impossible to go through the additional work of using our more general information-gathering law enforcement provisions?

Mr. SABIN. I believe sometime—a year ago, the number was declassified and promulgated as zero. Section 215 had not been used with respect to libraries. Libraries is not mentioned by name in the PATRIOT Act and grand jury subpoenas had previously been used in a number of instances. But that is a number that had been publicly disseminated.

Mr. SHERMAN. As you can see from my interchange with the gentleman from Texas, I am willing to give you folks tools even when it causes me some concerns on the privacy issues. But if we give you a tool and it is not terribly necessary and it causes incredible consternation and a feeling of a lack of privacy, perhaps that is a tool that we should consider suspending and give you some other tools that maybe you would use more often.

Moving on, we have got—in trying to deal with sexual predators on the Internet, we have local law enforcement people go on line and pretend to be confused, vulnerable adolescents. Now that we have destroyed the Taliban sanctuaries, a lot of what al Qaeda and others are doing is on the Internet. Do we have the capacity to have people go on line, set up Web sites that look like they are jihadist, or answer and communicate on Web sites that are jihadist? Do we have the people who have the perfect knowledge of Arabic, the understanding of the Koran and how it is being interpreted, the ability to speak the rhetoric of extremism? Do we have the people to go on line, just as we have local police officials that do an excellent job of imitating the vulnerable adolescent and are able to trick the predators? Because it occurs to me that just as we are worried about sexual predators, these terrorists are the major nonsexual predators that we have.

The CHAIRMAN. The gentleman's time has expired. The panel may respond.

Mr. SABIN. My understanding is that yes, the FBI has identified that issue, is acting upon the issue. Indeed a recent case in Connecticut, Babar Ahmed, related to the understanding of the use of the Internet for violent jihad activities to recruit and fund activities over in Bosnia and Chechnya.

The CHAIRMAN. The gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Levey, I was struck by your analysis that differentiated between terrorism financing and money laundering.

Over the years, we have come up with fairly good systems for setting some protocols for what would identify money laundering activities. You indicated that terrorism financing, instead of looking for large transfers, is like using a microscope to look for small transfers.

I think the concern that raises is, there are some privacy and individual rights issues that come into play—much more front and center in that kind of microscopic look than if you are looking more globally at larger transactions where the—getting to the identification of a particular individual is triggered only by big transactions.

Yet, neither you nor Mr. Libutti made any reference in your testimony to the part of the 9/11 Commission's recommendations dealing with individual liberties and privacy. Mr. Sabin gave me about one sentence of it—and his was a passing glance—let me be politically correct.

So I am wondering whether you could discuss just for a little bit some of the unique problems of privacy and individual liberties that are current in this setup.

Mr. Libutti, if you could follow up, you indicated in response to somebody's question, one of the last two or three questioners, that there is some legislative package about to come forward from the administration that will deal with the most important national security issues, again failing to acknowledge that that will have any of the recommendations that the 9/11 Commission has made about the establishment of a commission that would oversee individual liberties and privacy. So I am wondering whether any of those parts of the recommendation are likely to be in that, based on the discussions that you all have had up to this point.

Let me go to Mr. Levey and then Mr. Libutti, and since you mentioned—I will let you off the hook. I won't even——

Mr. SABIN. I will engage. That is okay.

Mr. WATT.—ask you to address it. At least you gave it lip service.

And I want to ask another question. I just want them to deal with those two issues.

Mr. LEVEY. Well, you have raised a serious issue, and I feel like I should have gotten off the hook too, because in my testimony, I also pointed out that with respect to the problems posed by looking for the small transactions that involve terrorist financing, that we need to be sensitive to the privacy.

Mr. WATT. That must have been in your written testimony.

Mr. LEVEY. It was.

Mr. WATT. I don't think you mentioned it in your oral testimony.

Mr. LEVEY. I will learn for next time.

But this is a serious issue, and it actually gets a little bit to the comments that Mr. Paul was talking about earlier, when we are

talking about looking for essentially, you know, small transactions, clean money. And we have to figure out how we are going to—how we are going to put in a system that we can have a chance of detecting it. There are privacy concerns that are raised, and I think the monograph goes through some of those; it discusses them.

I think that this is an issue that we need to study, and we need to work with the private sector that also, of course, has the interests of their customers in mind. We have to work together with them to come up with a solution. It is not going to be easy. We have to, perhaps, get together with them and give them a little bit of a description of what the needle they are looking for looks like. And we have to do that in a way that doesn't sully the reputations of people whose interests shouldn't be sullied, et cetera.

The CHAIRMAN. The gentleman's time has expired.

Mr. WATT. May I have Mr. Libutti's response?

The CHAIRMAN. I am sorry. Mr. Libutti may respond.

Mr. LIBUTTI. Thank you, Mr. Chairman, sir.

First, on the privacy piece, the Department of Homeland Security has designated a privacy officer and has a privacy officer in place. And I fully support all comments and actions relative to the Fourth Amendment. We need to do that. We need to be smart enough to balance security and privacy, and I am with you 100 percent, sir. I did that for 35 years in the United States Marine Corps and am very proud of it.

The other business that I alluded to earlier, and if I used the word or expression "legislative package," or that I misspoke, what I was saying—we all heard the President talk about the 9/11 Commission, what his intent was, and what I was suggesting, and don't have specific information about, is that I am sure that the folks and staff over at the White House, in concert with other members and the other agency led by our boss, will have specific actions that they would like people to consider.

And that is the point I was trying to make, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Mr. Chairman.

Before asking my questions, I would ask, Mr. Chairman, for unanimous consent to submit for the record this document showing the security features of the current matricular consular card. This document is part of the integral program for the improvement of the consular services on March 6, 2002. The Mexican Ministry of Foreign Affairs informed us that they have started issuing a new, higher security consular identification card called Matricula Consular, Alta Seguridad, or MCAS is the acronym. They began issuing the card in 2002.

The CHAIRMAN. Without objection.

[The following information can be found on page 182 in the appendix.]

Mr. HINOJOSA. Thank you.

Mr. Libutti, it is my understanding that the majority, if not all, of the financial institutions for which Homeland Security raised the threat level to Orange on Sunday, August 1st, already considered themselves as prepared as possible for potential terrorist threats and likely were unable to take additional precautions. It is also my

understanding that New York City and Washington D.C., have been at threat level Orange since 9/11.

I assumed this meant that all the businesses and other persons and entities located in these two cities should also consider themselves at the Orange threat level. So why did Homeland Security and the administration make what appears to be a nonannouncement? The financial institutions could not take any additional precautions.

Can you answer that?

Mr. LIBUTTI. Sir, you made a comment relative to additional precautions not being taken, if I understood you correctly.

Mr. HINOJOSA. Well, they said that they were as prepared as they could be.

Mr. LIBUTTI. Sir, I understand now. I spent a year and a half with NYPD and set up the Counterterrorist Bureau in the city. And again, as I said earlier, I have been in this job for a year.

I have also reviewed the casing reports in detail, and I have talked to Assistant Secretary Liscouski and Assistant Secretary Hughes. One is in charge of intelligence for the Department of Homeland Security and the other is in charge of critical infrastructure.

I have also had conversations with the leadership in the private sector in New York, as have my two assistant secretaries. And the bottom line is, there were lots of other things that could be done both in terms of those sites and improving security, or said another way, reducing vulnerabilities, as well as across the financial sector.

So, my folks, my leadership, not only looked at the sites identified in New Jersey, New York and Washington, but across the entire financial sector, and provided bulletins and information in terms of best practices and lessons learned. So there was, in my humble view, lots of work that needed to be done. Lots of it has been done, and we feel good about that, but as you might suspect, there is plenty of work to continue.

And once you get it in place, once you get a grade during an inspection or review of A-plus, that doesn't mean that you stop protecting that asset. And we have learned that sometimes the hard way.

Mr. HINOJOSA. I just want to note that I supported Ranking Member Sanders' amendment that would have prohibited the U.S. Government from having even more access to private information than it already does. We need to ensure that we protect our citizens' civil rights to as great a degree as possible as we implement the 9/11 Commission report's recommendations.

After listening to all of the questions and the dialogue that occurred this morning through 2:00, I feel like there is a great deal more that we can do, and the recommendations that are in that report are certainly the things that we, as a Committee on Financial Services, are going to try to implement as best—as soon as possible. So, I thank you.

And with that, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back.

Well, I will let Mr. Bell describe the fact that he is the last questioner as he did the last witness.

Mr. BELL. Thank you, Mr. Chairman.

I think some very interesting questions have been laid on the table today. And I think we are all concerned about civil liberties, but also recognize that we live in an era where we are constantly under the threat of terrorism. And after the bomb goes off or after the plane crashes, it is a little late. And the best way to stop terroristic activity is to stop it before it starts and to foil the plot, if you will. And probably one of the best trails to accomplishing that goal is the money trail.

But I have to say, Mr. Levey, in looking at your written statement, where you raise the question, the key question before us is whether the systems we have implemented to ensure financial transparency, most of which were aimed at money laundering, are sufficient to provide the Federal Government with the information it needs to vigorously track terrorist financing.

You seem to infer that they are not—and I want to be perfectly clear on this—and when you are talking about money laundering, I assume that a lot of the systems and tools that are in place are designed to capture large transactions, and that is when the alarm initially goes off. Is that fair?

Mr. LEVEY. Yes.

Mr. BELL. And what you are saying is that when it comes to financing some type of terroristic-type of activity, the size of the transaction may not be there. The alarm may never go off, as we have seen. Is that also fair?

Mr. LEVEY. There are two different things.

Mr. BELL. Will you turn on your mike?

Mr. LEVEY. No, I think it is on.

Mr. BELL. All right. I couldn't hear you.

Is that the problem, that when you are talking about financing terroristic activity, the size of the transaction may not set off any alarm?

Mr. LEVEY. That is one of the issues. That is one of the issues involved with it.

What I am saying is, we have a very robust system to detect money laundering, and that system is probably the best in the world. It provides great financial transparency in our system. And we need to build on that further and use that groundwork, too, to also look for terrorist financing.

But what I am saying is—it is sort of getting back to what Chairman Hamilton was saying about not relaxing and continue to involve—we can't continue to say we have a system in place and then hope it is going to help us detect terrorist financing. We have to continue to work to build it to do a better job.

Mr. BELL. But when you are talking about building upon that system, and if you are going to move outside the size of the transaction, then what other types of red flags are you going to be looking for, and when does it really start encroaching on people's civil liberties?

Are you going to be looking at transactions or numerous transactions made by people with Arab-sounding names? Is that the kind of tool and system that we are looking at implementing?

Mr. LEVEY. No. What I—I don't purport to have all the ideas that we are going to need on this. But the principal thing we need to do is figure out a better way to share information that the govern-

ment already has with the private sector and vice versa. To build on what we have got in Section 314 of the PATRIOT Act, which allows that information sharing in a more robust way than has ever occurred before, so that we can provide them with better guidance as to what they should be looking for and vice versa.

Mr. BELL. I don't think anybody has a problem with the information sharing per se, but what triggers the information sharing, and that is what I am trying to get at, what kind of factor outside the typical red flags you look for in a money laundering case, what kind of new factors would you be implementing to perhaps trigger the sharing of information?

Mr. LEVEY. I think that is exactly the dialogue we need to start.

Mr. BELL. We are not there yet?

Mr. LEVEY. No, we are not there.

Mr. BELL. Also, before my time runs out, you are familiar with the Culberson amendment to the Treasury appropriations, transportation bill, are you not?

Mr. LEVEY. Is this the matricula?

Mr. BELL. Yes. Could you comment on that? My understanding is that Treasury strongly opposes the amendment. And if you could explain, perhaps, what that—the impact might be if that amendment were to be passed?

Mr. LEVEY. Well, as a matter of fact, the Secretary of the Treasury wrote a letter to Chairman Young and also to Mr. Obey on this very issue. We do oppose the amendment. The amendment, as it is currently written, would prevent us from enforcing any of our regulations under Section 326 of the PATRIOT Act, and we have—the Secretary has written a letter requesting that the provision be removed from the bill during the consideration by the full Appropriations Committee.

Mr. BELL. All right. Thank you very much for your testimony today.

Thank you, Mr. Chairman. I will yield back.

The CHAIRMAN. The gentleman yields back.

The Chair would indicate that he is going to use the prerogative of the Chair to ask one last question, Mr. Levey. Since you are from Summit County, at least we ought to let you have the last one.

Among other things, as you know, section 314 of the USA PATRIOT Act mandates the government share information relevant to money laundering and terrorist financing with the financial industry, and we are in the process that FinCEN has begun under this section to gather information on an urgent basis about suspected terrorists. But inherent in the spirit of 314 and the line of 314 was the proverbial two-way street of information sharing.

Can you tell the committee what plans you have to fulfill this mandate?

Mr. LEVEY. Well, we have the Bank Secrecy Act Advisory Group that is set up, and we are going to continue to work within that context to maximize our information sharing with the private sector. As you know, that is statutorily mandated to be exempt from the requirements of the FACA and therefore gives us a great opportunity for a real robust exchange of views with the private sector.

One thing we are looking at, and we are trying to figure out how best to do it, is to bring law enforcement into that process and share information through that mechanism with the private sector. And we look forward to working with the private sector and figuring out exactly how that is going to work.

There are a lot of complications there with respect to law enforcement, sensitive information, et cetera. But we think that that is a mechanism that we should be pursuing.

The CHAIRMAN. Thank you. Please feel free to work with our committee, as well, since we wrote the language and are obviously sensitive to that issue. We appreciate all of you gentlemen testifying today.

The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

The CHAIRMAN. There being no further business before the committee, the committee stands adjourned.

[Whereupon, at 3:20 p.m., the committee was adjourned.]

A P P E N D I X

August 23, 2004

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"

August 23, 2004

Good morning to our witnesses and members. The Financial Services Committee meets today for an unusual August recess hearing to consider the findings and recommendations of the National Commission on Terrorist Attacks upon the United States. Evaluating and acting upon these recommendations is, in my view, a top priority for Congress to address this fall.

I want to welcome Lee Hamilton and thank you for your service on the 9/11 Commission and for taking the time to give us your views today.

The 9/11 Commission, chaired by former New Jersey Governor Tom Kean and the aforementioned Mr. Hamilton, has performed a valuable service to our nation by providing an exhaustive and compelling account of the terrorist threat that confronts us and by developing serious policy recommendations to help meet the threat.

As the House Committee that took the lead after September 11th in crafting the anti-terrorist finance provisions of the USA PATRIOT Act and in overseeing the government's efforts to shut off al Qaeda's funding sources, we have a particular interest in the Commission's work related to those subjects. More broadly, as the third anniversary of the 9/11 attacks approaches — and as intelligence reports suggest the possibility of another major attack — it is appropriate for this Committee to take stock of how far we have come in dismantling and disrupting the terrorists' financial networks.

While our troops and some American citizens abroad have been subjected to terrorism, we have been terror-free on U.S. land since 9/11. That is both an accomplishment and a challenge.

It's important to note that the most recent report issued on the 9/11 Commission's web site on Saturday actually gives predominantly positive reviews to both the PATRIOT Act and recent intelligence efforts. Quoting from the report, "While definitive intelligence is lacking, these efforts have had a significant impact on al Qaeda's ability to raise and move funds, on the willingness of donors to give money indiscriminately, and on the international community's understanding of and sensitivity to the issue. Moreover, the U.S. government has used the intelligence revealed through financial information to understand terrorist networks, search them out and disrupt their operations."

We at the Financial Services Committee are of course concerned about the recent heightened terror alert for the financial services sector. It serves as a stark reminder that this nation's financial institutions and the international financial institutions are part of the front line in the war against terrorists. We have made significant progress by discovering and exposing al Qaeda's interest in these targets, thus making their operations more difficult.

In its final report, the 9/11 Commission was complimentary of the PATRIOT Act and its effects on terrorist financing, recognizing the extraordinary cooperation that financial institutions have given to law enforcement. The government needs to reward and encourage those efforts by more effectively implementing those provisions of the PATRIOT Act, including section 314, that seek to create a two-way street for information-sharing between the public and private sectors. In this regard, I want to stress the importance of fully funding the Treasury's Financial Crimes Enforcement Network (FinCEN) so that it can carry out the critical responsibilities Congress gave it in the PATRIOT Act to identify terrorist money trails in "real time" and to provide law enforcement and the financial services industry with immediate feedback on suspicious financial activity.

The two major al Qaeda funding techniques emphasized in the 9/11 Commission report are Islamic charities and informal value transfer systems, such as hawala. Although no one is under any illusion that these avenues have been completely shut off to the terrorists, the government can boast of many recent successes in combating these forms of terrorist finance. Last month, for example, the Justice Department obtained money laundering indictments of five former leaders of the Holy Land Foundation, a Texas-based charity alleged to have funneled over $12 million to Hamas. The government has also made extensive use of section 373 of the PATRIOT Act to shut down unlicensed money transmitting businesses suspected of funding terrorism.

In addition, the government has created a great deal of international consensus on how best to create and tighten standards for fighting terrorist financing at both the multilateral and bilateral levels. While more needs to be done by key allies, the Organization for Economic Cooperation and Development (OECD) through the Financial Action Task Force has created strong international standards which are being implemented across the world. As a result, since 9/11, the number of Financial Intelligence Units has nearly doubled and the amount of information crossing borders in the fight against terror has expanded significantly. The International Monetary Fund and the World Bank are including these international standards in the infrastructure assessment processes within the financial sector. The regional development banks are establishing special facilities to channel development assistance in this area as well. Bilaterally, the number of countries where enhanced information-sharing arrangements exists is growing.

So, we have come a very long way since 9/11. We are committed to winning the war against global terrorism, a task which will require time, patience, courage, and perseverance.

REPRESENTATIVE SPENCER BACHUS

Statement for the Record on U.S. Government's Post-9/11 Efforts to Combat Terrorist Financing

August 23, 2004

Since the September 11th attacks, the Bush administration has succeeded in freezing roughly $140 million in terrorist-related assets worldwide, and has designated some 383 individuals and entities as terrorists or facilitators of terrorism. Much of the administration's efforts have been focused on attacking two mechanisms that the 9-11 Commission's report identifies as central to the funding of al Qaeda and other terrorist organizations: Islamic charitable organizations, and alternative remittance systems such as hawala. Last month, for example, the government announced the arrests and indictments of five former leaders of the Holy Land Foundation, once the largest Islamic charity in the U.S., on charges of sending over $12.4 million to the Palestinian terrorist group Hamas.

Earlier this year, acting pursuant to congressional directive, the administration created within the Treasury Department an Office of Terrorism and Financial Intelligence (TFI), consolidating in one structure all of Treasury's intelligence, enforcement, diplomatic, policy, and regulatory assets, including the Financial Crimes Enforcement (FinCEN), which serves as the U.S. government's Financial Intelligence Unit (FIU), and the Office of Foreign Assets Control (OFAC), which administers economic sanctions programs. On July 21, 2004, the Senate confirmed Stuart Levey to head up the new office.

To address the international scope of terrorist financing networks, the administration has worked to enhance cross-border information-sharing arrangements and to promote stronger anti-terrorist financing regimes in specific countries, including by offering technical assistance. Following the 9/11 attacks, the administration worked within the Financial Action Task Force (FATF), an intergovernmental policymaking body comprised of 31 member countries and territories, to develop "best practice" standards for combating terror finance, which have been widely adopted around the world. At the same time, the number of FIUs qualifying for membership in the Egmont Group, an international forum for coordinating global anti-terrorist financing and anti-money laundering efforts, has grown from 58 in 2001 to 94 today. Finally, the FATF standards are now a permanent part of the Financial Sector Assessment Program (FSAP) reviews undertaken by the International Monetary Fund (IMF).

J. GRESHAM BARRETT
THIRD DISTRICT, SOUTH CAROLINA

ASSISTANT MAJORITY WHIP

HOUSE COMMITTEES:
BUDGET
FINANCIAL SERVICES

WASHINGTON OFFICE:
1523 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5301
FAX: (202) 225-3216

Congress of the United States
House of Representatives
Washington, DC 20515–4003

DISTRICT OFFICES

AIKEN:
233 PENDLETON STREET, NW
AIKEN, SC 29801
(803) 649-5571
FAX: (803) 648-9038

ANDERSON:
P.O. BOX 4126
315 SOUTH McDUFFIE STREET
ANDERSON, SC 29622
(864) 224-7401
FAX: (864) 225-7049

GREENWOOD:
115 ENTERPRISE COURT, SUITE B
GREENWOOD, SC 29649
(864) 223-8251
FAX: (864) 223-1679

SUBMITTED FOR THE RECORD
BY REPRESENTATIVE J. GRESHAM BARRETT
COMMITTEE ON FINANCIAL SERVICES HEARING ENTITLED –
"THE 9/11 COMMISSION REPORT:
IDENTIFYING AND PREVENTING TERRORIST FINANCING"

August 23, 2004

First, I would like to thank our distinguished guests for taking time to testify before the Committee on such an important topic. Our duty today is to open our eyes to the past so we may better recognize and stop future terrorist funding sources.

Terrorists financing played a key role in the events leading up to September 11, 2001. According to the Commission's findings, Al Qaeda used many sources to create an estimated pre-9/11 budget of $30 million. Our financial institutions were not immune to being infected with Al Qaeda funds. In fact, over 2/3 of the money used for 9/11 passed through our own financial institutions. This fact alone teaches us the importance of using their financial transactions to serve as our guide to illuminate the dark corners of the world in which they hide.

I am proud of the Bush Administration for taking steps to use information about terrorist financing to better understand our enemies organizational structure so we may locate and disrupt their operations. Indeed, this strategy has reaped great rewards in the short-run because the death or capture of several key financial supporters has lead to key intelligence of their future plans, and it has increased the terrorists cost of doing business.

Although our efforts to increase transparency of their financial transactions through tools such as the Bank Secrecy Act and the USA PATRIOT Act have yielded positive results, we can do better. Today will be a great opportunity to learn how we can use our financial services industry as a great asset in the War Against Terrorism. I look forward to the comments from both panels as they help us identify and prevent terrorist financing.

Sincerely,

J. Gresham Barrett
Member of Congress

Committee on Financial Services
Hearing
The 9/11 Commission Report: Identifying and Preventing Terrorist Financing
Opening Statement of Shelley Moore Capito
August 23, 2004

Thank you Mr. Chairman,

Mr. Chairman, I appreciate your calling this special session of the Financial Services Committee. Even though Congress is not scheduled to re-convene for another two weeks, having studied the September 11th Commission's report over the last month, I believe that it is vital that we immediately begin the process of examining and deliberating the various recommendations of the panel.

First, let me commend the Commission for the incredible work they have done. All of the emotions I felt on that cool September day came rushing back as I turned the pages of the 9/11 Report. Upon finishing the first chapter, I half expected to look out my window in the Longworth Building and see the smoke from the Pentagon still rising toward the sky. While emotionally charged, I strongly believe that the report is something that every American should read. We must never forget the lengths that those who hate the freedoms we enjoy will go to in order to move their cause forward.

Many of the recommendations in the Report have great merit and I am looking forward to hearing the various proposals discussed today. I am especially interested to learn the panel's views on Title III of the USA Patriot Act, which this committee passed within weeks of the attack.

Under Chairman Oxley's leadership, this committee early on recognized that the ability to track and eventually choke off the flow of money to terrorist organizations would become one of our most effective weapons in the war on terror. Signed into law just six weeks after September 11th, Title III gave our law enforcement agencies the tools they needed to disrupt our enemy's ability to finance their war of destruction and hate. To date, we have successfully frozen almost $200 million in terror-related assets.

Title III also provided these law enforcement agencies with enhanced authority to share information and better coordinate their investigations with the intelligence community and the nation's financial institutions.

While we have accomplished much, recent revelations of Al Queda's detailed surveillance of U.S. financial institutions indicate that more may need to be done. The dilemma we face however is making sure that we do not tip the scales with respect to balancing our need to disrupt terrorist financing with further restrictions on our personal liberties. A fine line to be sure but an important one.

Again, I want to thank the Commissioners for appearing before us today and am looking forward to their testimony. And I thank the chair.

Statement of Congressman Michael N. Castle

Financial Services Committee Hearing on
"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"

August 23, 2004

Thank you Chairman Oxley and Ranking Member Frank for holding this important and timely hearing before the full Financial Services Committee today. I would also like to thank all of our distinguished witnesses for appearing before us, especially Lee Hamilton, not only for his appearance today, but also for his hard work in putting together this excellent, bipartisan report. You, Chairman Kean and all of the Commissioners deserve to be commended by Congress and the nation. The Commission's integrity has been maintained because you sought answers and found solutions, while avoiding the temptations of partisanship.

Although "chilling," the 9/11 report contains critical recommendations that must demand our close examination. Among the most basic of these recommendations is a reevaluation of how our intelligence community responds to the way terrorist organizations raise and spend the money used to fund their activities. Preventing future attacks is the challenge that we face. One thing I think we have learned since September 11th is that there is not one method we can use to prevent attacks. Instead, we are forced to spread a wide net, and investigate every possibility, before they do.

In order to break these groups down and destroy their ability to harm us, this committee has worked actively to block terrorist financing. After a number of hearings, provisions were included in the USA PATRIOT Act, which expanded our law enforcement agencies' ability to enforce anti-money laundering laws as a means of zeroing in on terrorist funding chains. In addition, international policy making bodies, such as the Financial Action Task Force, have made strides to encourage global compliance with counter-terrorism financing standards.

However, as the 9/11 report highlights, domestic enforcement policies and gathering effective international support for global money-laundering provisions - particularly in nations with less structured banking systems, will be an ever-evolving process. The 9/11 report states that the terrorists were able to work within the U.S. banking system by opening accounts and using their own names. This directly highlights the need for better and more secure banking procedures, which would limit terrorists' access to fraudulent accounts as well as combat their ability to travel.

According to the report, of the known terrorist funding frozen worldwide since September 11th, a great deal was blocked in the first three months. The stark reality is that since the beginning of 2002, we have been unable to secure substantial assets. I tend to agree with the Commission's belief that these groups have reacted to our initial success and have altered the way they earn and move money. Al Qaeda increasingly relies on informal methods of generating and using funds, which our intelligence community has been unable to effectively track.

Maybe we can learn today that this trend is turning. I am very interested to hear about the factors that affect the intelligence community's decisions to "freeze" or "follow" the accounts. Although I understand there are pros and cons to both choices, it is clear to me that we must reconsider our strategy in order to root out terrorist networks.

Amidst the discussion of broad reform within the intelligence community - specific reevaluation of what we have learned since September 11th is essential. One focus is to identify and disrupt terrorist sanctuaries. Tracking or stopping the funding streams can be one of our best defenses in preventing the spread of terrorism. The American intelligence community, in conjunction with other nations, can develop compromises for enforcing effective banking standards, including strategies to track terrorist funding - rather than focusing solely on seizing assets.

There are a number of important matters that Congress must continuously examine to improve our nation's homeland security and root out terrorists around the world. The Commission has identified the flow of terrorist assets as a priority and so will this committee. I would like to leave this hearing with a clear interpretation of these recommendations to further strengthen the prevention tactics within our intelligence community. I look forward to hearing from each of our distinguished witnesses. Thank you Mr. Chairman, I yield back my time.

Representative Jeb Hensarling
Opening Statement for Financial Services Hearing
"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"
Monday, August 23, 2004

Mr. Chairman, in a few weeks it will have been three years since terrorists attacked our nation.

During this time, we have had to dramatically adapt and change our way of thinking to meet the new threat.

We have been compelled to redefine the concept of national security.

For example, we are here today to discuss something that only became an immediate national security issue post-9/11 – that is tracking down the finances of terrorists and terrorist organizations.

The 9/11 commission estimates that the attacks on our country three years ago cost less than $500,000 to execute, so we know that it does not take huge sums of money to successfully wage terrorist warfare.

The challenge, therefore, is to track and freeze these funds, hidden in the billions and billions of dollars that circulate around the world every day. This is no easy task.

We are fortunate that the Bush administration has answered the call to do everything possible to protect Americans by choking off the funding sources of terrorists.

Although there is clearly a lot of work for us ahead, I believe this administration should be applauded for its diligent and tireless efforts over the past three years to disrupt the funding of terrorists, and prevent these groups from operating effectively.

Since 9/11 we have frozen approximately $200 million in terrorist finances – no small feat.

The Department of Treasury has identified more than 380 individuals and entities involved in financing terrorists. Treasury has also used its new authority under the PATRIOT Act to identify individuals and institutions that are facilitating money laundering or other acts of fraud often used to fund terrorists.

Treasury continues to work and coordinate their efforts with the efforts of the Department of Justice and the Department of Homeland Security.

Importantly, these agencies have worked hand in hand with private financial institutions to track down those terrorists who use our financial system.

The private sector's ability to improve their detection of potential terrorist financing is vital to the success of tracing and zeroing out the funds used for terror.

The Bush Administration should also be commended for expanding the use of the Financial Action Task Force (FATF) to improve international information sharing and help other countries develop their own terrorist financing detection infrastructures.

As the 9/11 Commission Report recommends, we must also be as proactive as possible, using our intelligence resources to follow terrorist money as it changes hands. We must be able to anticipate new methods these groups will employ to fund their deadly activities.

No one can doubt that Americans have had to accept many new frightening realities in our daily lives since 9/11. And no one would doubt that we will continue to face new challenges as we fight this War on Terror.

I thank the Chairman for his continued outstanding leadership on this issue, and look forward to hearing more about the Commission's recommendations.

I yield back the balance of my time.

OPENING REMARKS OF THE HONORABLE RUBÉN HINOJOSA
HOUSE FINANCIAL SERVICES COMMITTEE
"THE 9/11 COMMISSION REPORT: IDENTIFYING AND PREVENTING TERRORIST FINANCING"
AUGUST 20, 2004

Chairman Oxley and Ranking Member Frank, you are holding an extremely important and essential hearing today on the bipartisan 9/11 Commission report. This report, if implemented, will completely revamp certain Congressional Committees as well as intelligence agencies and hopefully help identify and prevent terrorist financing.

Today, we are addressing one of the most important sections of the 9/11 Commission Report - the recommendation that Congress combine terrorist travel intelligence, operations, and law enforcement in a strategy to identify terrorist financing and have the U.S. government, particularly the Department of Treasury, focus more on following the terrorist money trail, instead of just freezing terrorist assets. Preventing terrorist financing, finding terrorist travel facilitators, and constraining terrorist mobility are definitely the goals the Executive Branch and Congress should seek to achieve.

Before I go on, I want to say something about my visit to the World Towers following 9/11: The sight of the decimated towers. The sight of some people still walking around in a daze several days after the disaster trying to find a sound footing again after their lives had been turned upside down. The sights and sounds of the rescue workers and those attempting to put out all the remaining fires and remove the rubble. The strange odor combined of burning metal, gas and plastic. I will never forget these sights, sounds and smells when I first visited ground zero. They will forever be embedded in my mind to remind me that I, Congress and the Executive Branch must insure that the Treasury Department's approach to ending terrorist financing is the most effective one. This is a very important issue of national security. It is a matter of protecting my constituents from harm. This is a matter of protecting my two young daughters and my wife here in Washington from harm as well as my family and friends in Texas. This issue is now a personal one that each and every American must face each and every day.

I question why Treasury has continued to solely freeze alleged terrorist assets, many times without the cooperation of their overseas counterparts, in an attempt to thwart terrorist attacks. It would seem that common sense would dictate following the money trail to find the terrorists and eliminate the threat. The 9/11 Commission Report recommends this strategy, and the FBI and other agencies have used a similar strategy in the past to track down criminals. The USA PATRIOT Act gave Treasury and other federal agencies incredible powers too numerous to mention to track terrorist financing. Why has it taken them so long to consider the common sense "follow the money trail" approach that several other agencies have employed in the past? Had they employed this approach, Treasury might have helped find the terrorists, thus preventing them from funneling funds through any mainstream financial system or through financial systems as informal as payment systems such as *Hawalas.*

Mr. Chairman, I want to thank you again for holding this extremely important hearing. I hope that, as we implement the recommendations of the 9/11 Commission report, we do not create legislation as awkward, and at times counterproductive, as the USA PATRIOT Act.

I yield back the remainder of my time.

OPENING STATEMENT OF CONGRESSMAN PAUL E. KANJORSKI

COMMITTEE ON FINANCIAL SERVICES

HEARING ON THE 9/11 COMMISSION REPORT: IDENTIFYING AND PREVENTING TERRORIST FINANCING

MONDAY, AUGUST 23, 2004

Mr. Chairman, we meet today to examine the issues related to terrorist financing identified in the Final Report of the National Commission on Terrorist Attacks upon the United States. As you know, our panel has worked diligently in recent years to address these matters. In order to protect all Americans, we must continue to make every reasonable effort to identify, discourage and stop terrorist financing.

Late last month, the 9-11 Commission released its much-anticipated final report, which examines the circumstances surrounding the terrorist attacks on the World Trade Center and the Pentagon. This report provides many thoughtful recommendations for preventing future strikes.

While the majority of the report addresses intelligence issues, to a limited degree it also studies the issue of terrorist financing. I was pleased that the 9-11 Commission concluded that we have fixed the obvious vulnerabilities in the U.S. financial system regarding terrorist financing. The panel also recommends that vigorous efforts to track terrorist financing must remain "front and center" in ongoing counterterrorism efforts by the U.S. government. I wholeheartedly agree with this wise counsel.

Although we have made steady progress in combating terrorist financing, the 9-11 Commission has determined that terrorists have shown considerable creativity in altering their financing methods. It further suggests that if a decentralized system of terrorist cells evolves, we may then need to alter the tactics used to identify and prevent terrorist financing. On this point, the *Wall Street Journal* reported just last week that al Qaeda is forming smaller terrorist cells. It is therefore my hope that our witnesses will offer us their ideas as to how we can maintain a dynamic anti-terrorist financing enforcement system in light of this development.

While we must diligently work to obstruct terrorist financing, we must also protect the constitutional rights of law-abiding citizens. The Fourth Amendment protects individuals against unreasonable searches and seizures, and requires the government to support its warrants with probable cause. I consider these protections among our most important constitutional defenses.

Mr. Chairman, I would be remiss if I did not point out that the historical origins of the Fourth Amendment also affected the naming of at least one city in Pennsylvania. Specifically, the amendment's drafters knew of the famous cases involving John Wilkes taking place in England during the 1760s, and they sought to strike a fair balance between society's demand for public safety and the individual's need for privacy. The City of Wilkes-Barre in the heart of my congressional district derives its name in part from John Wilkes. I want to protect this legacy.

In closing, Mr. Chairman, it is important that we carefully examine the recommendations of the 9-11 Commission, and work in a bipartisan, deliberative and balanced manner to continue to monitor our government's efforts to fight terrorist financing and, if necessary, adopt further reforms to enhance current enforcement capabilities. I look forward to hearing from our distinguished witnesses regarding these important matters and yield back my remaining time.

Opening Statement of Vice Chair Sue Kelly
House Financial Services Committee
"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"
August 23, 2004

I want to thank Vice Chairman Hamilton for joining us here today to discuss the important contribution that the Commission has made to our efforts to protect our nation from further attacks.

I would also like to thank Mr. Levey, Mr. Libutti, and Mr. Sabin for their daily dedication to this critically important aspect of the fight against terrorism.

Under Chairman Oxley's leadership, this committee has held many hearings on this matter, and has contributed to the considerable progress we have made in the last three years.

Today's hearing holds great value for us as we consider the broader intelligence reforms proposed by President Bush, the 9/11 Commission and, most recently, the Chairman of the Senate Intelligence Committee. Improving our methods for fighting and tracking terror financing is certainly something that must be considered as a part of these reform efforts.

In fact, I believe that any comprehensive intelligence reform will be incomplete if it does not include measures that substantively improve our fragmented anti-money laundering system.

As we have learned, the fight against terror finance is a wide-ranging, often amorphous task that compels us to contemplate many possibilities:

- Things as blatantly remarkable as the smuggling of bulk shipments of cash, drugs and precious stones.
- Things as mundane as low-level scams involving coupons, cigarettes, baby formula, and counterfeit t-shirts.
- And things as wicked as the use of religious charities as cloaks for terrorist finances.

It is because of this broad diversity that I recently created, with some of my colleagues on the House side and with Senator Grassley in the Senate, a bipartisan Congressional Anti-Terrorist Financing Task Force to provide a forum for members of Congress to discuss and learn more about the many issues relevant to this matter.

But money laundering rightly remains a vital focus of our efforts.

As Treasury Secretary Snow recently wrote, "Our ability to combat terrorist financing is linked with our ability to combat money laundering." And in his written testimony today, Vice Chairman Hamilton recommends BSA enforcement as a top focus for the Committee as we move forward.

I read with interest recently an article that included a comment by a representative of the banking industry who stated: "Terrorist financing is not money laundering. Terrorist financing is impossible to detect on your own."

It is true that our work continues to require better intelligence and greater collaboration between the financial institutions and our government. It also is true that terrorists engage in routine financial activity that in-and-of-itself is not remarkable.

But it is comments such as these which seem to evoke an attitude still held by elements within the financial aristocracy that inadvertently but implicitly seeks to mitigate the responsibility of financial institutions and regulators in fighting terror finance. This is an outdated mindset that leads regulators and financial institutions to conclude that a strong anti-money laundering system is really not all that important.

This mindset has not been well-hidden. This committee has heard from the Treasury Inspector General and others who have presented a picture of an anti-money laundering system that is fraught with weaknesses.

We have been told that regulators have struggled consistently to meet the standards set out by the Bank Secrecy Act.

IG reports cite regulators for, among other things:

- Performing incomplete BSA examinations.
- Failing to follow-up on the suspicious activities they did identify.
- Slowness in taking enforcement actions against BSA violations.
- A glaring disinterest in notifying FinCEN of such violations.

And unfortunately, this Committee has had to examine some well-known regulatory failures that have clearly illuminated our vulnerabilities to the world.

I remain seriously concerned that our efforts to ensure an effective BSA compliance system are:

- Structurally hindered by a fragmented, center-less system created at a time when illicit money transactions were of less interest to the national security.
- Motivationally impaired by the long-standing culture among financial institutions and regulators that has traditionally viewed money laundering as a second-tier concern.

I firmly believe that a strong, centralizing force dedicated to BSA compliance is needed to overcome these impediments, and I sincerely hope that as we move forward with this deliberation in Congress, that there is an appropriate recognition of this need in any legislative proposals that are crafted.

I also believe that strong consideration should be given to other proposals, such as establishing a criminal enforcement program within Treasury, and to giving FinCEN the authority to receive international wire transfer data electronically, something that other countries are already doing.

Again, many thanks to Chairman Oxley and to our witnesses. I look forward to today's discussion and our ensuing efforts on this matter.

OPENING STATEMENT
CONGRESSMAN PETER T. KING
before the
HOUSE COMMITTEE ON FINANCIAL SERVICES

"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"

August 23, 2004

Thank you, Chairman Oxley.

I'd also like to thank our distinguished witnesses for taking time out of their busy schedules to testify today. We are fortunate to have experts from the Departments of Treasury, Justice and Homeland Security, along with the Vice Chairman of the 9/11 Commission, to share their thoughts on recommendations offered in the 9/11 Commission report regarding terrorist financing.

Since the attacks of September 11, 2001, the United States has worked aggressively to obstruct terrorist fundraising and money laundering efforts. This hearing builds upon the continued interest exhibited by this Committee overseeing the efficient and shared use of enhanced money laundering tools exerted by various executive agencies. Tools such as enhanced reporting requirements by banks, expanding the scope of forfeiture law, imposing new due diligence standards upon financial institutions managing large private accounts for foreign individuals, and measures for tracking and interrupting the flow of criminal funds through off-shore secrecy havens are examples of new authority granted by the USA PATRIOT Act. In addition, the Bush Administration signed an Executive Order shortly after the 9/11 attacks allowing the freezing of terrorist assets. These efforts led to the freezing or seizing of roughly $200 million in terrorist-related assets worldwide, and designation of 383 individuals and entities as terrorists or facilitators of terrorism.

Internationally, the U.S. continues to work with the Financial Action Task Force (FATF) to garner foreign support in the fight against terrorist financing. Although a difficult task, the U.S. continues to advocate for regulatory changes in foreign countries allowing for increased transparency of financial transactions to determine the true identity of various bank accounts. In addition, the Administration has worked to enhance information sharing arrangements and stronger anti-terrorist financing initiatives with various countries.

In accordance to its directive, the 9/11 Commission Report describes in detail the lapses and circumstances which led to the September 11, 2001 attack. It also offers numerous recommendations to prevent similar attacks. And although I applaud the work and commitment exhibited by the Commission within the time constraints imposed upon them, the report does not sufficiently address many of the international issues associated with combating terrorist finance. Indeed, the Commission's report does recommend building stronger international partnerships

to fight terrorist finance, but it lacks any guidance or insight on the efforts previously mentioned by the international community and the United States. I look forward to Vice Chairman Hamilton's comments on this matter, and whether he believes actions by the Administration have proven beneficial.

Lastly, the Commission's report stated the planning and execution of the 9/11 attack cost between $400,000 - $500,000 – most of which originated from fundraisers. Given the difficulty in spotting this relatively small amount of money, especially in the manner which it is raised (i.e. charities), and freezing it, the Commission suggests better success by following the money instead of immediately freezing the assets. This strategy has proven successful in the past when infiltrating organized crime, and I am curious to hear comments from our second panel of witnesses if they believe this strategy can be used successfully to combat terrorist finance abroad.

Again, I applaud the work accomplished by the 9/11 Commission and the ongoing efforts by the Departments of Treasury, State and Homeland Security in their coordinated battle to stop terrorist finance. I look forward to your testimony.

Thank you, Mr. Chairman.

Opening Statement: U.S. Rep Ed Royce (CA-40)
"The 9/11 Commission Report: Identifying and Preventing Terrorist Financing"
23 August 2004

Mr. Chairman, thank you for bringing this committee back to work to focus on such a critical issue on the war on terror. It is important for our enemies and our friends to know how serious we are about the subject of terror financing.

I would like to thank Lee Hamilton for his service. While the September 11th Commission did not allocate a significant part of its report to terror finance, it did recognize that the fight against terror financing is absolutely central to our long-term safety. I appreciate the Commission's position and I hope it will serve as a springboard for action.

The financing of terror can mean many things and take various forms. I think we must shed any myopic perspectives brought from the past. I think we should start with the "epicenter" of terrorism finance -- and that is none other than the Gulf States on the Arabian Peninsula. It is estimated that since the late 1970's the Gulf States have spent over $75 billion spreading Wahhabism to places like Africa, South East Asia, Pakistan, Europe, Russia and many of its former Republics, and the United States and Canada. Some recipients of this funding have been religious leaders that teach an extreme version of Wahhabi Islam, which advocates a real hatred of Christians, Jews, Hindus, and others. Let me be clear in saying I do not believe most Wahhabi religious leaders have spread hatred leading to terrorism, but it certainly has been a statistically significant number.

We cannot win the war on terror unless the global community works to cut off the flow of funds terrorists use and receive. Certain terrorist acts do not require vast amounts of funding; however, the costs of indoctrination, recruitment, and sustainability are quite high. If these rogue, terror groups have no financial support, it is difficult for them to continue to operate effectively.

In my view, the question we need to ask as members of this Committee is how can the financial services community play a lead role in the fight on terror?

We have the best safety and soundness financial regulators. As a part of their job financial regulators are also tasked to enforce the Bank Secrecy Act and Title 3 of the Patriot Act. This Committee needs to emphasize the importance of that role to these regulatory agencies.

Today, the Fed, the FDIC, the OCC, the OTS, the NCUA, the SEC, the CFTC, and the IRS are tasked with enforcing compliance with the Patriot Act and the Bank Secrecy Act. Based on evidence to date, I think it is fair to say that the aforementioned regulators have room for improvement. The cases at UBS, Riggs are just two recent problematic examples. Additionally, the $800 billion in hedge funds and the billions exchanged by money transfer businesses are not even being looked at today.

Furthermore, I think we need to create a new structure, and we may need legislation to accomplish changes, whereby each safety and soundness regulator would have a designated group that works hand-in-hand with the newly created Office of Terrorism and Financial Intelligence in the Treasury Department. My view is that Congress needs to strongly consider Treasury as the Agency to house and run our government's centralized Financial Intelligence Unit (FIU).

The Bank Secrecy Act and the Patriot Act give our examiners a number of tools to fight terror finance. This Committee should lead Congress down the path of creating an environment where financial intelligence is gathered, shared, analyzed, and used appropriately and effectively.

In addition to strengthening Treasury's domestic role, I believe it is important that it be strengthened because of the global problem we face. Money moves across borders faster than people or weapons. With a click of a mouse tens of millions of dollars can be sent almost anywhere in the world. Treasury, not the National Security Council, the Department of Homeland Security, the State Department, or the FBI, has an institutional and historical relationship with the foreign central banks and ministries of finance responsible for instituting anti-terror finance laws in their respective countries. Treasury also can apply pressure on nations through its seats on multilateral institutions like the World Bank and the IMF.

Mr. Chairman, thank you for holding this hearing and I look forward to working with you and other members of this committee as we work to strengthen the front lines in the war on terror finance. I yield back.

Prepared Statement of Lee H. Hamilton, Vice Chair
National Commission on Terrorist Attacks
before the Committee on Financial Services
U.S. House of Representatives
August 23, 2004

Chairman Oxley, Ranking Member Frank, distinguished members of the House Committee on Financial Services, it is an honor to appear before you this morning. This Committee has been deeply involved in the financial aspect of our country's war on terror, and we are grateful to you for the prompt consideration of our recommendations.

Additionally, I am submitting to you today a Commission staff report on terrorist financing, which I ask to be made part of the record. While Commissioners have not been asked to review or approve this staff report, we believe the work of the staff on terrorist finance issues will be helpful to your own consideration of these issues.

After the September 11 attacks, the highest-level U.S. government officials publicly declared that the fight against al Qaeda financing was as critical as the fight against al Qaeda itself. It was presented as one of the keys to success in the fight against terrorism: if we choke off the terrorists' money, we limit their ability to conduct mass casualty attacks.

In reality, stopping the flow of funds to al Qaeda and affiliated terrorist groups has proved to be essentially impossible. At the same time, tracking al Qaeda financing is an effective way to locate terrorist operatives and supporters and to disrupt terrorist plots.

Our government's strategy on terrorist financing has changed significantly from the early post-9/11 days. Choking off the money remains the most visible aspect of our approach, but it is not our only, or even most important, goal. Making it harder for terrorists to get money is a necessary, but not sufficient, component of our overall strategy.

Following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public, but it is a critical part of the overall campaign against al Qaeda. Today, the U.S. government recognizes—appropriately, in our view—that terrorist-financing measures are simply one of many tools in the fight against al Qaeda.

Financing of the 9/11 attack

The September 11 hijackers used U.S. and foreign financial institutions to hold, move, and retrieve their money. The hijackers deposited money into U.S. accounts, primarily by wire transfers and deposits of cash or travelers checks brought from

overseas. Additionally, several of them kept funds in foreign accounts, which they accessed in the United States through ATM and credit card transactions.

The hijackers received funds from facilitators in Germany and the United Arab Emirates or directly from Khalid Sheikh Mohamed (KSM) as they transited Pakistan before coming to the United States. The plot cost al Qaeda somewhere in the range of $400,000–500,000, of which approximately $300,000 passed through the hijackers' bank accounts in the United States.

While in the United States, the hijackers spent money primarily for flight training, travel, and living expenses (such as housing, food, cars, and auto insurance). Extensive investigation has revealed no substantial source of domestic financial support.

Neither the hijackers nor their financial facilitators were experts in the use of the international financial system. They created a paper trail linking them to each other and their facilitators. Still, they were adept enough to blend into the vast international financial system easily without doing anything to reveal themselves as criminals, let alone terrorists bent on mass murder.

The money-laundering controls in place at the time were largely focused on drug trafficking and large-scale financial fraud. They could not have detected the hijackers' transactions. The controls were never intended to, and could not, detect or disrupt the routine transactions in which the hijackers engaged.

There is no evidence that any person with advance knowledge of the impending terrorist attacks used that information to profit by trading securities. Although there has been consistent speculation that massive al Qaeda–related "insider trading" preceded the attacks, exhaustive investigation by federal law enforcement and the securities industry has determined that unusual spikes in the trading of certain securities were based on factors unrelated to terrorism.

Al Qaeda fund-raising

Al Qaeda and Usama Bin Ladin obtained money from a variety of sources. Contrary to common belief, Bin Ladin did not have access to any significant amounts of personal wealth, particularly after his move from Sudan to Afghanistan. He did not personally fund al Qaeda, either through an inheritance or businesses he was said to have owned in Sudan.

Al Qaeda's funds, approximately $30 million per year, came from the diversion of money from Islamic charities. Al-Qaeda relied on well-placed financial facilitators who gathered money from both witting and unwitting donors, primarily in the Gulf region.

No persuasive evidence exists that al Qaeda relied on the drug trade as an important source of revenue, had any substantial involvement with conflict diamonds, or was financially sponsored by any foreign government. The United States is not, and has

not been, a substantial source of al Qaeda funding, although some funds raised in the United States may have made their way to al Qaeda and its affiliated groups.

U.S. government efforts before the 9/11 attacks

Before 9/11, terrorist financing was not a priority for either domestic or foreign intelligence collection. Intelligence reporting on this issue was episodic, insufficient, and often inaccurate.

Although the National Security Council considered terrorist financing important in its campaign to disrupt al Qaeda, other agencies failed to participate to the NSC's satisfaction. There was little interagency strategic planning or coordination. Without an effective interagency mechanism, responsibility for the problem was dispersed among a myriad of agencies, each working independently.

The FBI gathered intelligence on a significant number of organizations in the United States suspected of raising funds for al Qaeda or other terrorist groups. The FBI, however, did not develop an endgame for its work. Agents continued to gather intelligence, with little hope that they would be able to make a criminal case or otherwise disrupt the operations of these organizations. The FBI could not turn these investigations into criminal cases because of:

- insufficient international cooperation;
- a perceived inability to mingle criminal and intelligence investigations due to the "wall" between intelligence and law enforcement matters;
- sensitivities to overt investigations of Islamic charities and organizations; and
- the sheer difficulty of prosecuting most terrorist-financing cases.

Nonetheless, FBI street agents had gathered significant intelligence on specific groups.

On a national level, the FBI did not systematically gather and analyze the information its agents developed. It lacked a headquarters unit focusing on terrorist financing. Its overworked counterterrorism personnel lacked time and resources to focus specifically on financing.

The FBI as an organization therefore failed to understand the nature and extent of the jihadist fund-raising problem within the United States or to develop a coherent strategy for confronting the problem. The FBI did not, and could not, fulfill its role to provide intelligence on domestic terrorist financing to government policymakers. The FBI did not contribute to national policy coordination.

The Department of Justice could not develop an effective program for prosecuting terrorist finance cases. Its prosecutors had no systematic way to learn what evidence of prosecutable crimes could be found in the FBI's intelligence files, to which it did not have access.

The U.S. intelligence community largely failed to comprehend al Qaeda's methods of raising, moving, and storing money. It devoted relatively few resources to collecting the financial intelligence that policymakers were requesting, or that would have informed the larger counterterrorism strategy.

The CIA took far too long to grasp basic financial information that was readily available—such as the knowledge that al Qaeda relied on fund-raising, not Bin Ladin's personal fortune.

The CIA's inability to grasp the true source of Bin Ladin's funds frustrated policymakers. The U.S. government was unable to integrate potential covert action or overt economic disruption into the counterterrorism effort. The lack of specific intelligence about al Qaeda financing, and intelligence deficiencies, persisted through 9/11. The Office of Foreign Assets Control (OFAC), the Treasury organization charged by law with searching out, designating, and freezing Bin Ladin assets, did not have access to much actionable intelligence.

Before 9/11, a number of significant legislative and regulatory initiatives designed to close vulnerabilities in the U.S. financial system failed to gain traction. They did not gain the attention of policymakers. Some of these, such as a move to control foreign banks with accounts in the United States, died as a result of banking industry pressure. Others, such as a move to regulate money remitters, were mired in bureaucratic inertia and a general antiregulatory environment.

Where are we now?

It is common to say the world has changed since September 11, 2001. This conclusion is particularly apt in describing U.S. counterterrorist efforts regarding financing. The U.S. government focused, for the first time, on terrorist financing and devoted considerable energy and resources to the problem. As a result , we now have a far better understanding of the methods by which terrorists raise, move, and use money. We have employed this knowledge to our advantage.

With a new sense of urgency post 9/11, the intelligence community (including the FBI) created new entities to focus on, and bring expertise to, the question of terrorist fund-raising and the clandestine movement of money. The intelligence community uses money flows to identify and locate otherwise unknown associates of known terrorists, and has integrated terrorist-financing issues into the larger counterterrorism effort.

Equally important, many of the obstacles hampering investigations have been stripped away. The current intelligence community approach appropriately focuses on using financial transactions, in close coordination with other types of intelligence, to identify and track terrorist groups rather than to starve them of funding.

Still, understanding al Qaeda's money flows and providing actionable intelligence to policymakers present ongoing challenges because of:

- the speed, diversity, and complexity of the means and methods for raising and moving money;
- the commingling of terrorist money with legitimate funds;
- the many layers and transfers between donors and the ultimate recipients of the money;
- the existence of unwitting participants (including donors who give to generalized jihadist struggles rather than specifically to al Qaeda); and
- the U.S. government's reliance on foreign government reporting for intelligence.

Bringing jihadist fund-raising prosecutions remains difficult in many cases. The inability to get records from other countries, the complexity of directly linking cash flows to terrorist operations or groups, and the difficulty of showing what domestic persons knew about illicit foreign acts or actors all combine to thwart investigations and prosecutions.

The domestic financial community and some international financial institutions have generally provided law enforcement and intelligence agencies with extraordinary cooperation. This cooperation includes providing information to support quickly developing investigations, such as the search for terrorist suspects at times of emergency. Much of this cooperation is voluntary and based on personal relationships.

It remains to be seen whether such cooperation will continue as the memory of 9/11 fades. Efforts to create financial profiles of terrorist cells and terrorist fund-raisers have proved unsuccessful, and the ability of financial institutions to detect terrorist financing remains limited.

Since the September 11 attacks and the defeat of the Taliban, al Qaeda's budget has decreased significantly. Although the trend line is clear, the U.S government still has not determined with any precision how much al Qaeda raises or from whom, or how it spends its money. It appears that the al Qaeda attacks within Saudi Arabia in May and November of 2003 have reduced—some say drastically—al Qaeda's ability to raise funds from Saudi sources. There has been both an increase in Saudi enforcement and a more negative perception of al Qaeda by potential donors in the Gulf.

However, as al Qaeda's cash flow has decreased, so too have its expenses, generally owing to the defeat of the Taliban and the dispersal of al Qaeda. Despite our efforts, it appears that al Qaeda can still find money to fund terrorist operations. Al Qaeda now relies to an even greater extent on the physical movement of money and other informal methods of value transfer, which can pose significant challenges for those attempting to detect and disrupt money flows.

Where do we need to go?

While specific, technical recommendations are beyond the scope of my remarks today, I would like to stress four themes in relation to this Committee's work:

First, continued enforcement of the Bank Secrecy Act rules for financial institutions, particularly in the area of Suspicious Activity Reporting, is necessary.

The Suspicious Activity Reporting provisions currently in place provide our first defense in deterring and investigating the financing of terrorist entities and operations. Financial institutions are in the best position to understand and identify problematic transactions or accounts.

Although the transactions of the 9/11 hijackers were small and innocuous, and could probably not be detected today, vigilance in this area is important. Vigilance assists in preventing open and notorious fundraising. It forces terrorists and their sympathizers to raise and move money clandestinely, thereby raising the costs and risks involved. The deterrent value in such activity is significant and, while it cannot be measured in any meaningful way, ought not to be discounted.

The USA PATRIOT Act expanded the list of financial institutions subject to Bank Secrecy Act regulation. We believe that this was a necessary step to ensure that other forms of moving and storing money, particularly less regulated areas such as wire remitters, are not abused by terrorist financiers and money launderers.

Second, investigators need the right tools to identify customers and trace financial transactions in fast-moving investigations.

The USA PATRIOT Act gave investigators a number of significant tools to assist in fast-moving terrorism investigations. Section 314(a) allows investigators to find accounts or transactions across the country. It has proved successful in tracking financial transactions and could prove invaluable in tracking down the financial component of terrorist cells. Section 326 requires specific customer identification requirements for those opening accounts at financial institutions. We believe both of these provisions are extremely useful and properly balance customer privacy and the administrative burden, on the one hand, against investigative utility on the other.

Third, continuous examination of the financial system for vulnerabilities is necessary.

While we have spent significant resources examining the ways al Qaeda raised and moved money, we are under no illusions that the next attack will use similar methods. As the government has moved to close financial vulnerabilities and loopholes, al Qaeda adapts. We must continually examine our system for loopholes that al Qaeda can exploit, and close them as they are uncovered. This will require constant efforts on the part of this Committee, working with the financial industry, their regulators and the law enforcement and intelligence community.

Finally, we need to be mindful of civil liberties in our efforts to shut down terrorist networks.

In light of the difficulties in prosecuting some terrorist fund-raising cases, the government has used administrative blocking and freezing orders under the International Emergency Economic Powers Act (IEEPA) against U.S. persons (individuals or entities) suspected of supporting foreign terrorist organizations. It may well be effective, and perhaps necessary, to disrupt fund-raising operations through an administrative blocking order when no other good options exist.

The use of IEEPA authorities against domestic organizations run by U.S. citizens, however, raises significant civil liberty concerns. IEEPA authorities allow the government to shut down an organization on the basis of classified evidence, subject only to a deferential after-the-fact judicial review. The provision of the IEEPA that allows the blocking of assets "during the pendency of an investigation" also raises particular concern in that it can shut down a U.S. entity indefinitely without the more fully developed administrative record necessary for a permanent IEEPA designation.

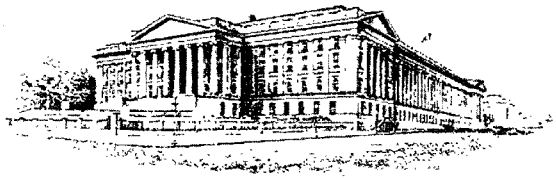
Conclusions

Vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. The government has recognized that information about terrorist money helps us to understand their networks, search them out, and disrupt their operations.

These intelligence and law enforcement efforts have worked. The death or capture of several important facilitators has decreased the amount of money available to al Qaeda, and increased its costs and difficulties in moving money. Captures have produced a windfall of intelligence.

Raising the costs and risks of gathering and moving money are necessary to limit al Qaeda's ability to plan and mount significant mass casualty attacks. We should understand, however, that success in these efforts will not of itself immunize us from future terrorist attacks.

I would be pleased to respond to your questions.



DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS

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Contact: Molly Millerwise
202-622-2920

Testimony of
Stuart A. Levey, Under Secretary
Terrorism and Financial Intelligence
U.S. Department of the Treasury

Before the House Financial Services Committee

Chairman Oxley, Congressman Frank and Members of the Committee, thank you for inviting me to testify before you today about our efforts to combat terrorist financing. I am pleased that my first time testifying as Under Secretary for the new Office of Terrorism and Financial Intelligence is on this important subject.

There is little need to underscore the importance of our campaign against terrorist financing, especially before this audience. This Committee has demonstrated its commitment to fighting the financial war against terror and I think would certainly agree, as I do, with the 9/11 Commission's recommendation that "vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts." As this statement implies, combating terrorist financing is part of a broader counterterrorism mission. I would therefore first like to describe the U.S. government's overall terrorist financing campaign and how it supports the broader war on terror. I will then describe the vital contribution that the Treasury Department makes to this campaign and how the creation of the Office of Terrorism and Financial Intelligence (TFI) at the Treasury Department will improve our overall performance.

In the course of my testimony, I will address what I believe are the central issues raised by the 9/11 Commission regarding our efforts to combat terrorist financing. Let me say at the outset that I agree with most of the Commission's report as it relates to terrorist financing, and I commend the Commission and its staff for a truly outstanding job analyzing this issue. Most important, I believe the report will us improve our efforts to combat terrorist financing.

A. Terrorist Financing: A Key Front in a Global War on Terror

As the Commission recognized, our terrorist financing campaign must be viewed as one front in a global war on terror. Rather than an end in itself, our attack on terrorist financing is but one means of achieving our broader goal. In the end, the goal is not to stop the money, but to stop the killing. To achieve this goal, we must bring to bear every power available to all relevant government agencies.

Similarly, in attacking terrorist financing, we need to keep open all of our options and choose the course that is most effective in each case. For example, if the most effective strategy with respect to a known financier is to observe him covertly so as to identify and possibly capture the next link in the chain, then we must do that. If the most effective course of action is to designate a financier in order to freeze terrorist-related assets and shut down a source or conduit of terrorist financing, we must pursue that option. As I will discuss, sometimes the different types of actions are complementary. Sometimes they are not and, in those cases, a choice must be made. Our options, however, must be weighed based on the facts of the case. We have an interagency process in place to do just this, where these different options are coordinated to inflict maximum damage to terrorist capabilities. Our goal is not to maximize the number of times that we exercise the tools of a particular agency, but to take the action as a government that will do the most to cripple terrorist organizations.
There are some who question the effectiveness of our strategy to prevent terrorism by attacking the financing that supports it. They note that terrorist attacks themselves cost very little money to carry out – the trivial cost of a suicide belt or similar device – and then leap to the conclusion that our efforts to combat terrorism by attacking terrorist resources are wasted or futile.

The 9/11 Commission wisely rejected this point of view. In the first place, the cost of financing terrorist activity cannot be measured by the cost of a primitive destructive act. The maintenance of those terrorist networks, like al Qaeda, which threaten our national security, is expensive – even if a particular attack does not cost much to carry out. As the 9/11 Commission explained, groups like al Qaeda must spend money for many purposes – to recruit, train, travel, plan operations, and bribe corrupt officials, for example. If we can eliminate or even reduce their sources and conduits of money, we can degrade their ability to do all of these things, and thus can make them less dangerous.

Of course, our attempts to prevent terrorist financing cannot possibly stop all terrorist attacks. Yet the financial networks of terrorist organizations represent vulnerabilities that we can exploit. For example, in appropriate cases, we can immediately strike at the finances of terrorists and their supporters through public designation and the corresponding freezing of terrorist-related assets. We can also quietly investigate and follow money trails to identify and unravel terrorist financing networks. When successful, this method allows us to trace funds "upstream" - to identify terrorist donors and facilitators - and "downstream" - to target terrorist operatives and cells. In addition to these strategies, we can also simultaneously increase transparency and accountability measures that force terrorists to raise, move and store money in riskier and costlier ways, thereby improving our ability to disrupt them.

B. The Interagency Character of Our Campaign Against Terrorist Financing

Our campaign against terrorist financing is, and must continue to be, an interagency effort, relying on cooperation across the U.S. government. The resources, authorities and expertise of all the relevant agencies cannot and should not be amalgamated in one Department. We need to draw on the full range of weapons in our arsenal - from intelligence activities to diplomatic pressure, from regulatory actions and administrative sanctions to criminal prosecutions - without concern for "turf" or the reputation of a particular agency.

The interagency team that has applied itself to this issue since 9/11 is truly extraordinary. My former home, the Department of Justice (DOJ) and the FBI, for example, have done heroic work to transform themselves to best tackle the terrorist financing problem. Law enforcement is a primary weapon on the domestic front, and the powerful, public effect of successful prosecutions is simply unrivaled. The FBI's financial investigators, coordinated out of the Terrorism Financing Operations Section (TFOS) created by Director Mueller after 9/11 here in Washington, have shown dedication and resourcefulness, marshaling the shared resources of law enforcement through Joint Terrorism Task Forces (JTTF's) across the country, integrating intelligence through unprecedented cooperation with the CIA, and building successful cases that would not have been thought viable a mere four years ago. Bringing these cases to court are talented assistant U.S. attorneys across the country, working under the guidance of a small group of experienced prosecutors at DOJ's Counter-Terrorism Section (CTS) under the leadership of my co-panelist here today, Barry Sabin. Over the past two months, the public has received dramatic reminders of this group's effectiveness, with the indictments of the Holy Land Foundation's leadership echelon and the convictions of Abdulrahman Alamoudi and the Elashi brothers.

The Civil Division of the Department of Justice also plays a key but often unnoticed role in the overall effort. A team of premier lawyers from the Civil Division and the Department of the Treasury has successfully defended every administrative action that Treasury has taken in the terrorist financing campaign against a wide range of constitutional challenges. Congress has given the Treasury Department some very robust powers, such as the ability to block suspected terrorist-related assets, even pending investigation. We have used these powers judiciously, as the courts have affirmed in rejecting legal challenges to these authorities and our use of them. Working together with the Civil Division, the Treasury Department has prevailed in the defense of lawsuits brought by three U.S.-based charities challenging their designation as Specially Designated Global Terrorists pursuant to E.O. 13224. The charities asserted that the Treasury Department, including the Office of Foreign Assets Control (OFAC), had exceeded its authority under the International Emergency Economic Powers Act and violated various constitutional guarantees. In addition, the charities brought an Administrative Procedure Act challenge to the type and quantum of evidence on which Treasury relied in making the designations. Courts of Appeals in the District of Columbia and the Seventh Circuit upheld the legality of Treasury's actions. Holy Land Foundation for Relief & Development v. Ashcroft, No. 02-5307, 2003 WL 21414301 (D.C. June 20, 2003); Global Relief Foundation, Inc. v. O'Neill, 315 F.3d 748 (7th Cir. 2002); Benevolence Intern. Foundation, Inc. v. Ashcroft, 200 F. Supp. 2d 935 (N.D. Ill. 2002).

Other law enforcement agencies, including Treasury's premier financial investigators in the Criminal Investigation Division of the IRS, have contributed to these efforts, untangling intricate money laundering and tax evasion schemes implicated in terrorist financing investigations to build cases for prosecution. U.S. Immigration and Customs Enforcement (ICE) at the Department of Homeland Security also plays a critical role in terrorist financing cases, working in close collaboration with the FBI. In an excellent example of information sharing between federal law enforcement agencies, ICE vets all of its terrorist financing leads through the FBI pursuant to a Memorandum of Agreement between DOJ and DHS. When an ICE investigation has a nexus to terrorism or terrorist financing, the investigating ICE field office is instructed to contact the appropriate FBI field office to arrange for a smooth transition of the investigation to the FBI-led JTTF. ICE special agents enhance many JTTF investigations by providing information and intelligence, language capabilities, and legal and investigative expertise. ICE and the FBI also established a Joint Vetting Unit staffed by senior personnel from each agency to identify investigations with a potential nexus to terrorist financing. Thus, the FBI and DOJ are immediately aware of all ICE cases that relate to terrorist financing. ICE also does important investigative work in such areas as bulk cash smuggling, unlicensed money remitters, and money laundering through insurance and other non-traditional financial mechanisms.

Other departments and agencies bring expertise, authorities and resources to the campaign against terrorist financing. When it comes to diplomatic efforts, the State Department is of course at the forefront. Since 9/11, the State Department has built a worldwide coalition against terrorist financing – a monumental achievement – and endeavors every day to strengthen it. And, in the overseas intelligence arena, the CIA and its intelligence partners have also reconstituted themselves since 9/11 in ways that are critical to the overall effort but which, in many respects, cannot be discussed in this setting. Our greatest accomplishments to date have all been collaborative efforts, and our success in the future will depend on the strength of our interagency communication, cooperation and collaboration.

C. The Office of Terrorism and Financial Intelligence -- Enhancing Treasury's Contribution

The Congress and the President have given the Treasury Department the responsibility to safeguard the integrity of the U.S. and international financial systems from abuse by terrorists, rogue states, money launderers, and criminals. Treasury – as the United States' Finance Ministry – is well situated to accomplish this mission given its role in both the domestic and international financial systems. Treasury has unique relationships in the international community, including with Finance Ministries, Central Banks, financial intelligence units, and international financial institutions, as well as with the private sector.

To safeguard the financial systems both at home and abroad, the Treasury Department draws upon several capabilities:

- *Sanctions and Administrative Powers*: Treasury wields a broad range of powerful economic sanctions and administrative powers to attack various forms of illicit finance, including E.O. 13224 issued under the International Economic Emergency Powers Act (IEEPA). Treasury's OFAC administers and enforces the various economic sanctions and restrictions imposed under the Secretary's IEEPA authority.

- *Financial Regulation and Supervision:* Treasury, through the Financial Crimes Enforcement Network (FinCEN), administers the Bank Secrecy Act (BSA) and issues and enforces anti-money laundering /counter-terrorist financing regulations. Treasury further maintains close contact with the federal financial supervisors – including the Treasury Department's Office of the Comptroller of the Currency and Office of Thrift Supervision – with the goal of ensuring that these regulations are being implemented consistently throughout the financial sectors.

- *International Initiatives:* Treasury is part of and has access to an extensive international network of Finance Ministries and Finance Ministry-related bodies such as the Financial Action Task Force (FATF) and various FATF-Style Regional Bodies, the International Monetary Fund (IMF), the World Bank, the G7, and various regional multilateral development banks. In addition, FinCEN is the critical facilitator for the international relationships among financial intelligence units organized through the Egmont Group.

- *Private Sector Outreach:* As a result of our traditional role in safeguarding the financial system, Treasury has developed a unique partnership with the private sector. Through such outreach programs as the BSA Advisory Group (BSAAG) and other regulatory and educational seminars and programs, Treasury maintains a close relationship with U.S. financial institutions to ensure a smooth exchange of information related to money laundering and terrorist financing. FinCEN administers Section 314 of the U.S.A. PATRIOT Act (Patriot Act), which mandates enhanced information sharing between the government and the financial sector.

- *Law Enforcement and Law Enforcement Support*: Treasury combats various forms of financial crime through the direct law enforcement actions of IRS-CI and the law enforcement support provided by FinCEN and Treasury's regulatory authorities.

These assets place the Treasury Department at the epicenter of the forces arrayed against terrorist financing. Since the September 11th attacks, Treasury has diligently applied these assets as part of a comprehensive campaign against terrorist financing. However, until just recently, Treasury's structure did not match its mission in combating terrorist financing as a distinct priority. At the same time that the Commission was preparing the release of its final report, the Treasury Department was preparing a new office structure to improve its ability to combat terrorist financing. The creation of the Office of Terrorism and Financial Intelligence (TFI) at the Treasury Department will enable the Department to bring all of its assets to bear more effectively than it ever has before and to play the leadership role that it should play in battling terrorist financing. The fight against terrorism financing will be a long one, and TFI is structured to manage all of Treasury's resources, authorities and expertise to attack terrorist financing over the long term.

One key function of TFI is to assemble, integrate and analyze intelligence. The war on terror remains a war of information, and TFI's Office of Intelligence and Analysis (OIA) is helping us meet this challenge. OIA will integrate, for the first time, all of the Department's information

and intelligence streams, including BSA data at FinCEN, OFAC targeting analysis and sanctions enforcement data, and all intelligence flowing into the Department from the intelligence community. Frankly, this is an area where significant improvement is needed because, prior to the creation of OIA, these data were generally kept in separate "stovepiped" channels. OIA ensures that appropriate security and privacy protections are implemented to safeguard data and that these data streams are reviewed, synthesized, and presented to policymakers for appropriate action.

TFI also includes the Office of Terrorist Financing and Financial Crimes (OTF), which is the policy and enforcement apparatus for the Department on terrorist financing, money laundering, financial crime, and sanctions issues. Building on earlier Treasury efforts, OTF integrates the important functions of OFAC and FinCEN with other components of the Department. OTF represents the United States at international bodies dedicated to fighting terrorist financing and financial crime, such as the FATF, and will increase our other international efforts in this field. Domestically, OTF will continue to develop and implement strategies against money laundering and other financial crimes. For example, OTF is working closely with FinCEN, which has the responsibility to effectively enforce the BSA and related provisions of the Patriot Act. OTF is also increasing our interaction with federal law enforcement and works closely with the criminal investigators at the IRS to deal with emerging domestic and international financial crimes of concern.

Both the intelligence and operational functions are under my direction, and it is my responsibility to ensure that they complement and support each other's missions. I believe that, if I do my job well, TFI will significantly enhance Treasury's contribution to our government's campaign against terrorist financing. I look forward to working with this Committee to achieve that goal.

D. Our Anti-Money Laundering Regime is Critically Important, but Cannot Alone Stop or Defeat Terrorist Financing

As I indicated earlier, I agree with the Commission's key recommendation that "[v]igorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts." The simple fact remains that the money trail generally does not lie. As we have developed, analyzed, and shared financial intelligence throughout the government, we have refined the way in which we can use money trails to identify, locate, and arrest or capture terrorists and their networks. Studying money trails can also help us understand how terrorists exploit vulnerabilities in our financial systems and take advantage of regulatory weaknesses. This, in turn, permits us to address these vulnerabilities through improved regulatory guidance and by informing private sector institutions of vulnerabilities in their systems.

In order to track money trails of any kind, you need financial information. Much of this information is obtained overtly, through laws promoting financial transparency like the BSA. The key question before us is whether the systems we have implemented to ensure financial transparency – most of which were aimed at money laundering – are sufficient to provide the federal government with the information it needs to "vigorously track terrorist financing."

Our approach to obtaining the necessary financial information to combat terrorist financing has been forged by nearly twenty years of experience in combating money laundering. But there are important and fundamental differences between the financing of terrorism and money laundering, and by relying exclusively on the same methods and tools, we may inhibit our ability to succeed. Treasury, through FinCEN, administers the BSA, which is principally aimed at achieving the appropriate level of financial transparency to detect and prevent money laundering. With money laundering, investigators look through a telescope trying to detect the movement of large amounts of cash. With terrorist financing, investigators need a microscope in order to identify and track the movement of relatively small amounts of often "clean" money supporting an evil purpose.

We have begun the effort to study whether we can devise tools or systems aimed more particularly at terrorist financing. I look forward to working together with this Committee on this important issue. As this Committee knows well, one critically important tool against both money laundering and terrorist financing was provided by Section 314 of the Patriot Act, which mandates the sharing of information with and among the financial sector, that is, both vertically (between the government and the industry) and horizontally (providing a safe harbor that allows industry members to share with each other). Treasury has implemented this section by creating a "pointer" system for law enforcement. This system gives law enforcement, in the right case, the ability to work with FinCEN to transmit names of persons of interest to the financial sector to determine whether those institutions have any relevant transaction or account information. The industry reports back only when it has information, and then law enforcement follows up with the institution with appropriate process. The system implemented by FinCEN has been successful, and law enforcement has advised that it has been a valuable tool. But this system is only a first step when it comes to information sharing.

We should endeavor to develop better processes for sharing information with the financial sector. The financial industry is eager to help – indeed, it has been very helpful already. We must figure out ways to effectively and appropriately share relevant information with the financial sector to better equip it to generate financial information that will help us identify terrorist financing. This will not be an easy task. Much of the information relevant to terrorist financing is classified. Moreover, law enforcement is correctly reticent about sharing information that could compromise an investigation. Finally, we need to be sensitive to the privacy and reputational interests of our citizens and ensure that appropriate controls are in place to safeguard information.

It is also important to remember that the movement of money in the 21st century knows no borders. Terrorism – particularly the type of terrorism we are dealing with since 9/11 – has global reach. The United States is leading the global effort to increase financial transparency, and rules guaranteeing a certain level of transparency are absolutely required if we are to be effective at tracking terrorist financing. Section 311 of the Patriot Act allows us to protect our financial systems from illicit funds emanating from jurisdictions that do not have such rules. This provision provides the authority to prevent jurisdictions and foreign financial institutions found to be of "primary money laundering concern" from doing business with the United States. Just this past May, the Treasury Department designated the Commercial Bank of Syria (CBS), based on concerns relating to financial transparency, and problems we observed with that

institution, including terrorist financing. Pursuant to this designation, we have issued a proposed rule that, when issued in final form, will oblige U.S. financial institutions to sever all correspondent relations with CBS. The Commercial Bank of Syria will either take effective steps to address our concerns, or we will cut it off from our financial system. Actions of this type will help cause jurisdictions and institutions to adopt real reforms that impose an acceptable degree of financial transparency, and will help protect the integrity of our financial system in the meantime. As Under Secretary of TFI, I will aggressively apply Section 311 when we have reason to believe that our financial system is being threatened by terrorist financing or other criminal networks.

E. Using Designations More Effectively

I think I have made clear my view that those of us engaged in the financial war against terrorism should, in every instance, wield whatever tool is best able to advance the overall mission to stop terrorism. Acting in accordance with that principle, however, requires an accurate understanding of the power of each of the relevant tools. In that regard, I would like to discuss the value of the public actions the Treasury Department can take – particularly public designations. The 9/11 Commission states that "public designation of terrorist financiers and organizations is still part of the fight, but it is not the primary weapon. Designations are instead a form of diplomacy, as governments join together to identify named individuals and groups as terrorists. They also prevent open fundraising." While I agree with the first quoted sentence, I think in this particular passage, the 9/11 Commission does not give enough credit to the potential power of public designations. In addition to being a form of diplomacy and stopping open fundraising, if used properly, designations can be valuable by:

(1) shutting down the pipeline through which designated parties raise and move money;
(2) informing third parties, who may be unwittingly financing terrorist activity, of their association with supporters of terrorism;
(3) deterring non-designated parties, who might otherwise be willing to finance terrorist activity; and
(4) forcing terrorists to use potentially more costly, less efficient and/or less reliable means of financing.

These benefits of designation cannot be measured by simply totaling the amount of terrorist-related assets frozen. Terrorist-related accounts are not pools of water awaiting discovery as much as they are rivers, with funds constantly flowing in and out. By freezing accounts, we dam that river, thus not only capturing whatever water happens to be in the river at that moment but, more importantly, also ensuring that this individual or organization can never in the future act as a conduit of funds to terrorists. Indeed, if fully implemented, a designation excommunicates supporters of terrorism from the formal financial system, incapacitating them or driving them to more expensive, more cumbersome, and riskier channels.

I say "if fully implemented" because, as the 9/11 Commission recognized, implementation is vital in this context, but not at all assured. The great majority of terrorist financiers and facilitators operate and store their money overseas. For designations to have a maximum impact, we must persuade other nations to take action alongside us. This is not a simple task. In some cases there is a failure of will, and in others there are insufficient means to take administrative

action. In either case, we must continue to persuade, cajole, or provide needed technical assistance to make sure that our designations are more than just words on paper. Over the past three years, the State Department has labored tirelessly in this cause, and its persistent work has yielded results: dozens of countries have joined us in submitting over 285 al Qaeda-linked targets for designation under the United Nations; 87 countries in every region of the world have either adopted new laws and regulations to fight terrorist financing or are in the process of doing so; and 20 different U.S. government offices and agencies have provided technical assistance and training to help front-line states develop counter-terrorist financing and anti-money laundering regimes. TFI is currently assisting foreign states to make designations more effective through the development of: intelligence-driven designation protocols; notification, freezing, seizing and reporting protocols for the private sector; and investigative protocols for following leads stemming from frozen accounts and transactions.

We can also improve the effectiveness of designations by focusing on key financial targets. We cannot afford to expend valuable resources and political capital on designations that have little or no practical effect in interdicting terrorist funding or deterring those who would otherwise support terrorism. In this sense, the number of designations issued, like the amount of terrorist-related assets frozen, is a potentially misleading metric, because that number says nothing about whether a designation has any real impact. Designations are most disruptive and effective when applied against terrorist financiers, facilitators, and donors whose financial support is critical to terrorist operations. Such designations also have the greatest deterrent effect among other potential terrorist supporters.

In assessing the potential value of designations, it is also important to realize that designations are also not necessarily applied at the expense of other actions. The administrative nature of designations and the congressionally-authorized use of classified information to support them allow us to shut down terrorist financing sources and conduits quickly when other options may not be ripe for action. In these instances, we can continue to pursue parallel criminal investigations and prosecutions.

For example, just two months after the President signed Executive Order 13224, the Treasury Department froze the assets of three large Islamic charities associated with terrorist financing activity in the U.S.: the Holy Land Foundation (HLF), the Global Relief Foundation (GRF), and the Benevolence International Foundation (BIF). These actions ensured that no more money would flow from these organizations to al Qaeda or other terrorist groups. The assets of these organizations were instantly locked in place. Thereafter, the Department of Justice successfully prosecuted BIF's chief executive officer, Enaam Aranout. In the case of HLF, the Department of Justice has also indicted the organization and its leadership on terrorist financing-related charges and is now seeking to forfeit the assets that Treasury blocked pursuant to designation. This combination of designation and law enforcement action created an optimal outcome. First, the more nimble administrative standard for designations allowed Treasury to intercede swiftly and shut down terrorist financing that was occurring through HLF accounts, thereby potentially preventing future terrorist acts. Second, the Justice Department was able to continue its criminal investigations of terrorist financing activity and carefully build its cases for criminal prosecution under the more restrictive processes and evidentiary standard that attend our criminal justice system. Third, Treasury's designation prevented the flight of terrorist-related assets out of the

United States, securing these assets for constructive use. These effects demonstrate how terrorist financing designations can facilitate and complement other actions by the government.

F. The Need for International Cooperation and Engagement

As I have mentioned above, our terrorist financing campaign depends on international cooperation. The terrorist threats that we face and the capital provided to fuel terrorist activity emanate principally from abroad. Attacking, preventing and protecting against these threats require international action. Treasury has worked together with the State Department and others in the interagency community to enlist international support in a global campaign against terrorist financing.

Building on Treasury's relationships with Finance Ministries around the world, we have developed a strategy to globalize this campaign that includes: (i) establishing or improving international standards to address identified vulnerabilities; (ii) ensuring global compliance with these standards; (iii) improving global capabilities to identify, freeze and investigate terrorist-related assets and accounts; (iv) addressing financing mechanisms of particular concern, and (v) facilitating the sharing of information.

Together with our counterparts in the FATF, Treasury has covered tremendous ground since 9/11 in developing international standards to combat terrorist financing, building from the international community's experience in combating money laundering. These standards have mobilized the international community to take action on important terrorist financing issues such as: freezing terrorist-related assets; regulating and monitoring alternative remittance systems; ensuring accurate and meaningful originator information on cross-border wire transfers, and protecting non-profit organizations from terrorist abuse. Treasury is also engaging the FATF to pursue the risk of terrorist financing through cash couriers. The recent decision by the IMF and World Bank to make country compliance with the FATF standards a part of their regular surveillance of global financial sectors is an important step forward in giving real meaning to these standards. These efforts have produced considerable results, but more can and should be done. TFI will continue to engage the international community to target specific issues and jurisdictions of concern, and to encourage effective implementation of standards to combat terrorist financing.

Conclusion

In preparing for my new position, I have repeatedly confronted questions about our effectiveness in the campaign against terrorist financing. Put simply, are we making progress? How can we know if we are achieving our objectives? How do we measure success?

These are important questions, and difficult ones. Al Qaeda does not release financial statements, and we will never know precisely how much money is flowing to a terrorist group in a given year or how much money intended for terrorists never reached their hands due to our efforts. We therefore often find ourselves discussing proxies for these ultimate questions: how many donors and facilitators are captured or behind bars; how much money has been frozen or seized; how many countries are joining us in freezing assets or upgrading their laws to make it

harder to move money illegally. Each of these benchmarks points to only one aspect of the problem, though, and imperfectly at that.

More revealing, to my mind, is intelligence that reflects the ease or difficulty with which terrorists are able to raise, move, and store money. If reporting suggests that fewer and fewer donors are willing to risk sending money to terrorist groups – that is a sign of success. If we see that a terrorist group is resorting to riskier and more cumbersome ways of moving money – that is also a sign of success. And if we receive intelligence that terrorist groups like al Qaeda or HAMAS are desperate for money, that is the best indicator we have that we are making a real difference.

The information available to us indicates that there are some encouraging answers to these questions. Not surprisingly, the information also suggests that we still have a lot of work to do. I think it is fair to say that, while we must prepare for a long term campaign against terrorist financing, our policies are beginning to achieve results, and we are headed in the right direction.

I would be happy to answer any questions that you may have.

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Statement by
Under Secretary Frank Libutti
Information Analysis and Infrastructure Protection Directorate
Department of Homeland Security
Before the House Financial Services Committee
August 23, 2004

Good morning Chairman Oxley, Congressman Frank and distinguished members of the Committee. I am pleased to appear before you today to discuss the protection of the financial services sector, including critical infrastructure protection initiatives. In my testimony today, I will provide an overview of the Information Analysis and Infrastructure Protection Directorate (IAIP), describe initiatives that the Department of Homeland Security has taken to protect the financial services critical infrastructure in general, and discuss some of the more specific actions taken after the recent elevation of the threat level to Code Orange for the financial services sector in New York City, Northern New Jersey, and Washington, DC.

Established by the Homeland Security Act of 2002, IAIP leads the Nation's efforts to protect our critical infrastructure from attack or disruption. The IAIP Directorate was created to analyze and integrate terrorist threat information, and to map those threats against vulnerabilities—both physical and cyber—to protect our critical infrastructure and key assets.

IAIP includes the Homeland Security Operations Center (HSOC), the Office of Information Analysis, the primary analytic center for threat information and intelligence within DHS, and the Office of Infrastructure Protection (IP). IP's mission is to lead the coordination of Federal, State, and local efforts to secure the Nation's infrastructure. I am responsible for all three.

In today's highly technical and digital world, we recognize that attacks against us may manifest themselves in many forms, including both physical and cyber attacks. In addition, we recognize the potential impacts one attack may have on a variety of other assets. This interconnected and interdependent nature of our infrastructure makes our physical and cyber assets difficult to separate, and it would be irresponsible to address them in isolation.

Recognizing the potentially devastating effects of disruption of services or catastrophic failures in the banking and financial sector, IAIP works on a daily basis to assess threats and vulnerabilities; mitigate risk; develop protective measures; and communicate with the sector. The banking and finance sector not only represents both physical and cyber vulnerabilities, but is also critically interconnected with every other critical sector within our Nation.

IAIP Coordination and Information Sharing

As directed by Homeland Security Presidential Directive 7, IAIP has focused on monitoring and assessing threats and vulnerabilities to all sectors, including the Banking and Finance sector. Sharing this information with the private sector is a vital component of IAIP's mission. DHS also acts as a coordinator with other government entities. In the financial field, IAIP partners with the US Treasury Department to share information with government entities and the private

sector through three entities: the Financial Services Sector Coordinating Council (FSSCC), a council of private-sector financial services associations, the Finance and Banking Information Infrastructure Committee (FBIIC), a body of government agencies, and the Financial Services Information Sharing and Analysis Center (FS-ISAC).

The FS-ISAC, established in 1999, provides a mechanism for gathering, analyzing, and appropriately sanitizing and disseminating information to and from infrastructure sectors and the Federal Government. Every two weeks the FS-ISAC conducts threat intelligence conference calls at the unclassified level for members, with DHS IAIP providing input. These calls cover physical and cyber threats, vulnerabilities, incidents that have occurred during the previous two weeks, and suggestions and guidance on future courses of action. The Financial Services ISAC, as with all ISACs, is capable of organizing crisis conference calls within an hour of the notification of a Crisis Alert. In addition, DHS has established close working relationships with the appropriately cleared senior members of the ISAC to exchange classified information as appropriate.

IAIP receives and evaluates current threat and incident information, including suspicious activity reports, submitted directly by the industry or through the ISAC and provides timely feedback on those issues. As recent events have exemplified, during times of elevated threat, IAIP intensifies its efforts to coordinate and reach out to the private sector, the entities described above and other government agencies.

IAIP Initiatives

In preparation for responding to threats and elevated threat levels, IAIP has been building and coordinating a two-way exchange of information with the public and private sectors. These efforts have also included building relationships with the private sector and government entities as well as implementing and integrating technical and information sharing solutions. I would like to take this opportunity to discuss two of these initiatives with you today.

HSIN-CI

The Homeland Security Information Network (HSIN) - Critical Infrastructure (CI) was launched earlier this summer and was specially designed to communicate real-time information to critical infrastructure owners and operators, 85 percent of whom are part of the private sector. HSIN–CI has the capacity to send alerts and notifications to the private sector at a rate of:

- 10,000 simultaneous outbound voice calls per minute
- 30,000 inbound simultaneous calls (hot line scenario)
- 3,000 outbound simultaneous faxes
- 5,000 outbound simultaneous Internet e-mail

The Homeland Security Operations Center (HSOC) regularly disseminates domestic terrorism-related information generated by the Information Analysis and Infrastructure Protection Directorate, known as "products" to Federal, State, and local governments, as well as private-sector organizations and international partners. The HSOC communicates in real-time to its

partners by utilizing HSIN internet-based counterterrorism communications tool, supplying information to all 50 states, Washington, D.C., and more than 50 major urban areas. Threat products come in two forms:

- Homeland Security Threat Advisories which are the result of information analysis and contain actionable information about an incident involving, or a threat targeting, critical national networks, infrastructures, or key assets. They often relay newly developed procedures that, when implemented, significantly improve security and protection. Advisories also often suggest a change in readiness posture, protective actions, or response, and

- Homeland Security Information Bulletins which are infrastructure protection products that communicate information of interest to the nation's critical infrastructures that do not meet the timeliness, specificity, or significance thresholds of Threat Advisories. Such information may include statistical reports, periodic summaries, incident response or reporting guidelines, common vulnerabilities and patches, and configuration standards or tools.

IAIP Response to Recent Financial Services Sector Threat

Before I address the role of IAIP in protecting our nation's critical financial infrastructure, I would be remiss, given this Committee's leadership in the fight against terrorist finance and financial crime, if I did not take a moment to highlight for you the other important role of DHS relative to the financial services industry – that is, our role in the investigation of a wide variety of financial crimes.

I know this Committee is uniquely positioned to appreciate the depth of financial investigative expertise and jurisdiction now housed within the Department of Homeland Security. The investigative functions and personnel of the former U.S. Customs Service, now housed within Immigration and Customs Enforcement, include some of the most experienced financial investigators in the U.S. government. In addition, DHS is also home to the United States Secret Service, which has, as one of its primary missions, the investigation of counterfeiting, credit card fraud, access device fraud, and cyber crime. Together, they represent a vast and impressive array of expertise critical to protecting our Nation's financial systems. ICE's investigative work in the areas of bulk cash smuggling, unlicensed money remitters, and other non traditional financial mechanisms, greatly enhances the U.S. government's ability to combat financial crime and detect and address vulnerabilities within the financial systems.

The latest series of events against the U.S. financial institutions was spurred by ongoing concerns over al-Qaida's interest in targeting U.S. critical infrastructure as well as recent intelligence revelations of detailed reconnaissance against several U.S. financial institutions. Based on the multiple reporting streams and the information contained in these reports, the Intelligence Community concluded that the information warranted the heightened alert status.

The level and specificity of information found was alarming, prompting DHS raise the threat level to ORANGE for the financial services sector in New York, northern New Jersey and Washington, D.C. on Sunday, August 1. This was the first time the level had been changed for an individual sector and geographic-specific area.

In response to the heightened threat level, IAIP acted on several fronts to address the threat. In accordance with established DHS notification protocol for raising the threat level, conference calls were arranged between DHS, FS-ISAC, FSSCC, FBIIC, state homeland security personnel, and local law enforcement. The Financial Services Roundtable, a private sector group representing the electronic commerce interests of the largest bank holding companies in the United States, was also included along with numerous other financial sector entities. In addition, senior leadership personally met with CEOs and Security Directors from the financial sector to better inform them of the evolving conditions and to provide guidance.

Simultaneously, Secretary Ridge activated the Interagency Incident Management Group to monitor and assess threat conditions. The IIMG is a headquarters-level multi-agency coordination entity that facilitates Federal domestic incident management activities. The mission of the IIMG is to provide strategic situational awareness, synthesize key intelligence and operational information, frame operational courses of action/policy recommendations, anticipate evolving requirements, and provide decision support to the Secretary of Homeland Security and other senior officials as requested during select periods of heightened alert and national-level domestic incidents. To accomplish this mission, the IIMG is task-organized to include representation from DHS components and staff offices as well as a tailored group of interagency participants.

Subsequent to providing immediate alerts to the financial sector regarding the threat, IAIP continued to work with the industry to ensure that all targeted financial institutions were individually briefed. IAIP coordinated with Federal, State, and local law enforcement entities to ensure that the appropriate information was exchanged between the government and the private sector. IAIP also polled the various financial institutions to determine what additional protective measures were implemented as a result of the heightened alert. This included the deployment of IAIP personnel to provide technical assistance to local law enforcement and facility owners and operators.

IAIP personnel were also immediately deployed to facilities in Washington, DC, New York City, and northern New Jersey. Teams of IAIP personnel conducted Site Assistance Visits (SAVs), in collaboration with local law enforcement officials and asset owners and operators, to facilitate vulnerability identification and discuss protective measure options. A total of 21 visits have been conducted thus far of facilities in the banking finance sector. Owners, operators, and security personnel were also given *Common Characteristics and Vulnerability* (CCV) reports and *Potential Indicators for Terrorist Attack* (PITA) reports to help them identify vulnerabilities and precursors to terrorist attacks.

In addition to SAVs, IAIP personnel have been working with individual facilities and local law enforcement entities to implement buffer zones around select banking and finance facilities. Buffer zones are community-based efforts focused on rapidly reducing vulnerabilities "outside

the fence" of select critical infrastructure and key resources. To support these efforts, IAIP provides assistance to local law enforcement officials to develop and implement buffer zones. To date, six buffer zone implementation plans for the banking and finance sector have been submitted to IAIP by State homeland security advisors.

Information gathered from SAVs and buffer zone implementation plans, and updates from the threat data, is being given to the Principal Federal Official (PFO) in New York City. The PFO is a US Secret Service agent designated by DHS as the lead Federal official to coordinate activities surrounding the Republican National Convention, a National Special Security Event (NSSE), and to coordinate department activities in response to the specific threat. IAIP personnel are assigned to the PFO staff to provide expert, subject-based knowledge and act as a conduit to resources held by the rest of the department. IAIP continues to support the New York PFO in the days leading up to the Republican National Convention with updated information, technical expertise, and material assistance when appropriate.

At this time, IAIP is continuing to work on assessing the threat posed by the recent surveillance discovery. IAIP is also studying the interdependencies between the financial sector and other critical infrastructures. The purpose of this analysis is to determine the level of potential interdependencies if any of the targeted institutions are attacked, as well as whether attacks on other critical infrastructure could even more seriously impact the financial sector. The results will be used to identify whether additional protective measures are required.

As I have discussed with you today, IAIP has taken many actions to secure the financial services sector. Our job, however, is not done. We will continue to monitor the evolving threat conditions and communicate even better with the private sector. Together with the Department of Treasury, we have laid the foundation for a true partnership with the public and private sector. Based on this foundation, and with continued dedication, we will continue to work to protect our Nation.

Again, thank you for the opportunity to testify before you today. I would be pleased to answer any questions you have at this time.

Testimony Before the
United States House of Representatives
Committee on Financial Services
August 23, 2004
Barry Sabin, Chief
Counterterrorism Section
Criminal Division
United States Department of Justice

Chairman Oxley, Congressman Frank, and Members of the Committee, I am honored to appear before this Committee. I am also pleased to share the microphone today with Treasury Undersecretary Stuart Levey, a dedicated and principled former colleague, as I discuss with you some of the Justice Department's efforts to investigate and prosecute terrorist financing matters, and how we are using the legislation Congress provided to the Executive Branch to protect the American people from future terrorist attacks.

The recent elevation of the United States terrorism threat level in connection with the financial services industry remind us that the terrorists continue to plot catastrophic attacks against us. Working in concert with our foreign partners yielded related terrorist arrests and charges just last week in the United Kingdom. In recent months, we have seen the seizures of large quantities of chemicals used to make bombs from a garage near London's Heathrow Airport; the bombings in Madrid; a car bombing in Riyadh that killed five and wounded 147 others; and the defusing of five other bombs in and around Riyadh. Usama bin Laden has issued yet another call for Al Qaeda and its supporters to continue their violent terrorist *jihad* against the United States. These developments, separately and collectively, indicate that the United States and its allies remain a target of deadly, worldwide attacks by Al Qaeda and others whose view of the world involves the indiscriminate killing of innocent people.

Working together, the various components involved in the United States' efforts to combat terrorism and its funding have made significant progress and scored key strategic victories, while continuing to respect human rights and the Constitutionally-guaranteed civil liberties of those affected by the threat of terrorism. We are extremely cognizant of the need to protect our nation's cherished freedoms and liberties during the struggle to preserve our national security interests. On a daily basis, throughout this country, indeed throughout the world, Justice Department lawyers selflessly contribute to this mission. We are sobered and ennobled by the unique opportunity that history has presented to us to seek justice, both in our words and in our actions.

To be clear, we will be aggressive, as Congress and the American people rightly expect that of us. Our concerted efforts and reliance on the rule of law have led to the disruption or demise of terrorist cells in locations such as Buffalo, Charlotte, Portland, Seattle and Northern Virginia. We continue to dismantle the terrorists' financial networks – including those that rely on petty crime or that prey on charities – through, in part, an

application of standard white collar investigative techniques. To be sure, criminal prosecution remains a vital component of the war on terrorism, and we at Justice have used our law enforcement powers when appropriate to prevent terrorist acts. Much of our success is due to the wide array of legislative tools made available to us by this Committee and the Congress, for which we are grateful. We are looking forward to additional legislative enactments, some of which will be considered by this Committee.

Today, I would like to survey: first, some of what we have done since 9/11 in the area of terrorist financing criminal enforcement; second, some of the future trends that we foresee; and lastly, how this work relates to the Treasury Department and the Department of Homeland Security, and the oversight responsibilities of this Committee. My goal is to cite some examples and highlight some trends, and I do not intend this description to be a comprehensive review of all that has been done in this area by the Justice Department.

A. What We have Seen Since 9/11

I must first stress our main priority since 9/11: preventing terrorist attacks *before* they occur. In the United States, we rightly do not criminalize thoughts or speech. Instead, our criminal laws are crafted to rely on demonstrable acts. A prosecutable crime occurs when these acts occur in combination with a requisite mental state. This presents a challenge where we seek to use the prosecutorial function to prevent terrorism, for we do not want to wait until the terrorists show their hand by taking a significant step towards a deadly attack in order to assure that we have enough evidence to convict.

Thanks to Congress, we have a legal regime that allows us to avoid this thorny operational issue. The crimes of providing material support to terrorists and terrorist organizations - 18 U.S.C. § 2339A and 2339B – criminalize conduct several steps removed from actual terrorist attacks. These crimes are specifically designed to redress the problem of the terrorist financier, someone whose role in violent plots is not obviously lethal but involves the act of logistical and financial facilitation. These offenses, along with the criminal penalty provisions of the International Emergency Economic Powers Act (IEEPA) - 50 U.S.C. § 1701, *et seq* – which we frequently use in material support prosecutions -- contain the offenses of attempt and conspiracy, which adds to our ability to take down terrorist plots at a very early stage of planning. Quite simply, we seek to intercept the money that is being transferred to purchase the explosive components, rather than intercept the terrorist with the bomb on his way to the scene of the attack.

Stemming from this legal regime, especially since September 11, we may glean some themes that illustrate important aspects of what Congress has provided us, how we have used those legislative tools, and what type of additional legislation may be in order.

(1) The FTO Designation Process and Terrorist Infiltration of Charities

The watershed legislative development of terrorist financing enforcement occurred in 1996, when Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA). This statute created the § 2339B offense, and the concept of "designated foreign terrorist organizations" (FTOs). In October 1997, the Secretary of State announced the first round of FTO designations, which included Hamas, Hizballah, and the Palestinian Islamic Jihad (PIJ). Al Qaeda was added in 1999. Today, there are 38 FTOs. This list is intentionally public, designed for all the world to see.

Section 2339B prohibits persons subject to U.S. criminal jurisdiction from knowingly providing material support to a foreign terrorist organization, irrespective of the donor's intent for the donation. Faced with this crime, persons in the U.S. – who were previously raising funds on behalf of such groups as Hamas, Hizballah and Palestinian Islamic Jihad – were forced to find another way to continue their activities.

In the 1990s, as Hamas' U.S.-based fundraising began to attract the notice of U.S. authorities, a Hamas leader named Musa Abu Marzook, who was then living in the United States, helped an organization known as Holy Land Foundation for Relief and Development become Hamas' U.S. beachhead and source of support. In December, 2001, the Holy Land Foundation itself was designated as a terrorist organization under the President's emergency economic authority. A few weeks ago, the Holy Land Foundation and its officers were indicted by a grand jury in Dallas, for, among other crimes, conspiring to provide material support to Hamas over the last decade.

Another accused U.S.-based terrorist financier, Sami Al-Arian, allegedly used his University of South Florida office and several non-profit entities he established to support the Palestinian Islamic Jihad. The trial of Dr. Al-Arian and his seven co-defendants is scheduled to begin in January 2005.

Leaders of other seemingly-legitimate charities, which went by such names as Benevolence International Foundation (Chicago) and Help the Needy (Syracuse) have been charged with criminal offenses based on their financial connections to terrorists and terrorist regimes. We expect that prosecutorial trend to continue as we work with our counterparts in the FBI, the Internal Revenue Service(IRS), U.S. Immigration and Customs Enforcement (ICE), and other agencies of and the Departments of the Treasury and Homeland Security.

(2) Definition of "Material Support or Resources"

Section 2339B, along with its companion statute, § 2339A (enacted in 1994), prohibit the act of knowingly providing "material support or resources" to terrorists, a term of art specifically defined in the statutes. Included in this term are funds and other forms of tangible items, as well as "personnel." Since 9/11, we have relied on the "personnel" prong of the definition to charge persons who sought to donate themselves to violent *jihad* causes around the world.

John Walker Lindh, who was charged under § 2339B, ultimately pleaded guilty to an IEEPA charge after being captured in Afghanistan fighting on behalf of the Taliban. He now is serving a 20-year prison term.

We prosecuted and obtained guilty pleas from several men living in Lackawanna, New York, who had attended an Al Qaeda training camp in Afghanistan. In New York City, we recently obtained the guilty plea and cooperation of Al Qaeda associate and military procurer Mohammed Junaid Babar.

In Portland, Oregon, we convicted several members of that community who attempted to travel to Afghanistan after 9/11 to fight against the U.S. military.

A former community leader in Seattle, Washington named James Ujaama was charged with helping al Qaeda set up a violent *jihad* training camp in rural Oregon, and ultimately pleaded guilty and agreed to cooperate in other terrorism investigations.

Recently in Northern Virginia, our prosecutors convicted several persons of training in the U.S. to engage in violent *jihad* activities in the Kashmir region of the Indian-Pakistani border. Earlier, we obtained in that district the guilty plea of Al Qaeda operative Iyman Fares.

Clearly, our ability to redress this conduct through criminal prosecutions would not have been possible had Congress not provided us with a powerful tool like the material support statutes.

(3) Penalties

Pursuant to section 810 of the USA PATRIOT Act, violations of the material support statutes carry a 15 year prison sentence and, in certain cases, the possibility of life imprisonment. These maximum penalties, combined with the terrorism enhancement of the U.S. Sentencing Guidelines, allow us to exert significant leverage over terrorist supporters to gain their cooperation, thereby parlaying the good results of one case into additional indictments and disruption of further terrorist plots. We are aware of and support pending legislation (H.R. 3016) that would increase the maximum penalty for IEEPA violations to 20 years.

This leverage was on display in the Lackawanna and Portland Jihad cases, in which the defendants all pleaded guilty and most agreed to cooperate. Tough sentences also played a significant role in the first § 2339B prosecution ever to go to a jury. The guilty plea of Said Harb in Charlotte, North Carolina provided us critical evidence that permitted our government to supersede the RICO indictment against other significant conspirators in a massive multi-state cigarette smuggling and tax evasion operation. Following a jury trial, Hammoud was convicted under § 2339B and sentenced to a 155-year prison term in the Hizballah military procurement plot. Prosecutors in other districts have benefitted from the cooperation of persons who pleaded guilty to terrorist support crimes in Lackawanna, Portland, and Northern Virginia.

(4) Serial Prosecutions

The very process of "material support" investigations and prosecutions often results in the identification of other targets and future prosecutions. For example:

- Following the Charlotte Hizballah case I mentioned, prosecutors in Detroit have built on these successes to charge other Hizballah-connected individuals linked to the cigarette smuggling and tax evasion conspiracy. Additionally, we recently arrested Fawzi Assi, a Hizballah procurer who fled to Lebanon after being charged under § 2339B.

- The Al-Arian case in Tampa has been supplemented by additional criminal charges against co-defendant Sameeh Hammoudeh and Hatem Fariz in Tampa and Chicago, respectively. Another Al-Arian associate, Fawaz Dahmra, was convicted by a jury in Cleveland of misrepresenting his terrorist associations on his U.S. naturalization application.

- The Holy Land Foundation case in Dallas was assisted by a FBI raid on September 7, 2001, of a related computer company known as INFOCOM. Last month, the brothers that ran INFOCOM were convicted by a jury in Dallas of illegally shipping computer parts to Libya and Syria.

- The Northern Virginia Jihad case described above was initiated on the basis of information developed by Chicago agents and prosecutors assigned to the Benevolence International Foundation investigation.

Simply stated, aggressive law enforcement begets more enforcement and further disruption of terrorist support mechanisms. Prosecutions generate more leads and intelligence. Let me underscore the point because I think it is a critical one: increased penalties yield cooperation by criminal defendants, which yields information -- indeed it yields actionable intelligence, -- which enables the government to more successfully prevent terrorist incidents and attack terrorist funding. As our terrorist financing enforcement program continues -- and assuming Congress agrees to provide us with additional personnel and resources -- we expect a dramatic growth in our prosecutorial volume.

(5) Information-Sharing and Coordination

No matter how effective our criminal statutes are in theory, using them depends on the development of facts. Since 9/11 and with the vital assistance provided by Congress with the USA PATRIOT Act, criminal investigators and prosecutors now have access to the full body of information developed by the U.S. intelligence community, including intelligence gathered through investigative activities authorized by the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1801 *et seq*. The Attorney General has declassified and authorized our prosecutors to use in criminal prosecutions, electronic

intercepts and other intelligence gathering undertaken through FISA.. These cases include the Holy Land Foundation and Sami Al-Arian cases previously described. The Chicago indictment of three Hamas operatives, announced by the Attorney General this past Friday, is another example. The Counterterrorism Section believes that Sections 218 and 504 of the USA PATRIOT Act, which has been vital to bringing these prosecutions, represent a key Congressional contribution to our counterterrorism efforts, and we are gratified that this view was shared by the National Terrorism Commission in its report.

Inter-governmental coordination, however, is not enough. Many of our prosecutions have been aided by cooperation that stretches across international boundaries. This is not surprising, given the global reach of the terrorist threat. For example:

- The prosecution that resulted in the recent guilty plea by Abdulrahman Alamoudi in an Alexandria, Virginia federal courtroom originated with information provided to us by British law enforcement, which questioned Alamoudi at Heathrow Airport about a briefcase containing $340,000. These funds, as it turns out, came from Libya, a country with which U.S. citizens, like Alamoudi, have been prohibited from financial dealings. Among the charges to which Alamoudi pleaded guilty was a violation of section 18 U.S.C. § 2332d, which prohibits financial transactions with the government of a nation that has been designated as a state sponsor of terrorism.

- Abu Hamza al-Masri and Baber Ahmed, who have been charged with terrorist support offenses in New York and Connecticut, respectively, are currently in British custody awaiting extradition to the U.S.

- The Charlotte Hizballah case would not have been successfully prosecuted without the great assistance of the Canadian Security Intelligence Service (CSIS).

- Mohammed Al-Moayed and Mohammed Zayed, Yemeni nationals allegedly involved in an Al Qaeda and Hamas fundrasing operation, were arrested in Germany and extradited to the U.S., where they will stand trial in Brooklyn.

B. <u>Future Trends</u>

As noted, many of these prosecutions were made possible by information-sharing rules that were changed with the help of the USA PATRIOT Act. These changes, combined with other helpful amendments to our criminal statutes and investigative authorities, have brought us where we are today.

I should also note something that frequently is overlooked in these types of discussions: our reliance on traditional, time-tested criminal investigative techniques - like undercover operations and financial analysis. Our enforcement record has benefitted from Director Mueller's decision, immediately after 9/11, to create a specialized unit of financial investigators to focus on the problem of international terrorism. This unit,

which is now known as the Terrorist Financing Operations Section (TFOS), is a permanent part of FBI Headquarters' Counterterrorism Division. Like the white-collar prosecutors we have brought into the Counterterrorism Section, the TFOS agents are being asked to apply their criminal law expertise to national security. Their analysis and techniques are, in many ways, not new. They are simply pointed at a different problem.

Undercover operations have resulted in several material support prosecutions. In San Diego, following an undercover sting that led to Hong Kong, several persons were charged in a plot to trade drugs for Al Qaeda-destined weaponry, and in Houston, an undercover operation resulted in the arrest and conviction of several persons who were plotting to procure military items for the Colombian terrorist group known as the AUC. FBI undercover operations have resulted in missile-plot arrests in Newark, New Jersey and, more recently, in Albany, New York as well as material support charges in the attempt to provide military gear, including night vision goggles, in cases investigated in Tennessee and New York. Undercover operations represent well-worn law enforcement techniques.

We will also continue to rely on other crimes that do not depend on proof of terrorism connections. The Bank Secrecy Act yielded information that resulted in the terrorist designation of a Somalian financial network known as Al Barakat and our prosecutors, relying on changes to the crime of operating an unlawful money transmitting business (18 U.S.C. § 1960) made by the USA PATRIOT Act, obtained the conviction of an Al Barakat agent in Massachusetts. This crime will remain a valuable part of our counterterrorism arsenal, and we support pending legislation (H.R. 3016) that would make § 1960 a RICO predicate.

We also continue to be concerned about the so-called "lone wolf" international terrorist. Currently, the definition of "agent of a foreign power" found in FISA includes individuals with ties to groups that engage in international terrorism. It does not, however, reach unaffiliated individuals who engage in international terrorism. Therefore, a terrorist in this country, earning money through legitimate means, may never trigger any of the prophylactic measures discussed above and by my colleagues. That is why the Department strongly supports H.R. 3179, specifically Section 4, which would plug this dangerous gap in FISA's coverage by expanding the definition of "agent of a foreign power" to include a non-United States person who is engaged in international terrorism or preparing to engage in international terrorism, even if he or she is not known to be affiliated with an international terrorist group.

The Senate has already acted in a strong bipartisan fashion to amend FISA to cover lone wolf terrorists. Section 4 of H.R. 3179 was included in S. 113, which passed the Senate on May 8, 2003, by a vote of 90 to 4. The Department urges the House of Representatives to follow suit and pass this important proposal to plug this dangerous gap in the scope of FISA's coverage to include "lone wolf" terrorists.

As you can see, we have had significant success in investigating and prosecuting terrorist financing, but we have not done it alone. The private sector, particularly the

financial services industry, has been helpful in providing the government information in particular cases in response to judicial process and has been responsive to USA PATRIOT Act § 314(a) broadcasts requesting information on certain potential customers. We hope to continue working with the Treasury to improve the utility of Bank Secrecy Act reports, including suspicious activity reports, to law enforcement, and to provide the financial services sector with additional feedback on the utility of such data to law enforcement.

To ensure that we maximize the utility of all information available to the government, we are assisting the FBI's efforts to exploit technology in order to identify appropriate connections. We are increasingly working with the private sector in providing them with information to allow them to apply similar technologies to the data they maintain. We are doing this in accordance with the laws designed to protect civil liberties, and are active in the legal analysis being done by the privacy experts and technology architects both within the government and in the private sector.

Finally, although we have been successful in prosecutions of persons who attended violent *jihad* training camps on the theory that such conduct represents an attempt to provide support to an FTO, we strongly support pending legislation (H.R. 4942) that would create a new crime of receiving military-type training from an FTO and would make other valuable amendments to the material support statutes.

C. Partnerships Across Departments

The Department recognizes that the terrorist threats we are facing today and in foreseeable future, can not be addressed by any single department, bureau or agency. That is why we would like to acknowledge our strong partnerships with the Departments of the Treasury and Homeland Security, the FBI, ICE, IRS, the U.S. Secret Service (USSS), and the Financial Crimes Enforcement Network (FinCen). We are all working together to fight this war on terrorism.

In particular, we are delighted to have someone we know so well heading the Treasury office responsible for terrorist financing. We share a common goal of doing all that the law and the Constitution allow to disrupt the financing of terrorism, both here and abroad. The addition of Mr. Levey has created an air of positive optimism.

As will be noted by Mr. Levey, both the criminal law enforcement approach to terrorist financing and the process of designating and freezing the assets of terrorist-affiliated groups and individuals is inextricably intertwined with other tools available to the United States. In many cases, such as the Holy Land Foundation and Benevolence International Foundation, these tools are complementary and significantly add to the disruption we seek. At the very least, the Treasury designation process, like the FTO designation system that is so important to those of us responsible for enforcing § 2339B, is important to our investigations. We hope to augment our enforcement efforts relating to the criminal sanctions of IEEPA in matters where the designated individual or entity is not an FTO. We are also looking forward to working with Mr. Levey's office in making

FinCEN an even more effective source of information both for the government and for the private sector, facilitated by § 314(a) of the USA PATRIOT Act, that mutually benefits compliance with legal and regulatory obligations.

Of course I would also take this oppurtunity to recognize the close working relationship I have seen develop between ICE and FBI agents who work on terrorist financing cases. The unprecedented exchange of information sharing between these two agencies -- pursuant to a Memorandum of Agreement (MOA) between DOJ and DHS -- is indicative of the information sharing that occurs across the board. For example, I am aware that ICE has detailed senior-level manager to the FBI's Terrorist Financing Operations Center (TFOS) to act as the Deputy Section Chief. FBI and ICE have worked out a vetting mechanism to ensure FBI and DOJ are immediately aware of all ICE cases that relate to terrorist financing and ensure a smooth transition of the investigation to the Joint Terrorism Task Force (JTTF).

Finally, it should be noted that all of the above cited cases were products of the JTTFs operating throughout the U.S. The JTTFs bring to bear the broad authorities and vast expertise within the FBI, ICE, IRS, and the many other participating agencies, to successfully address the complex and menacing crimes of terrorist financing, material support, and terrorism.

Conclusion

Mr. Chairman, that concludes my prepared remarks. I again thank this Committee for its continued leadership and support. Together, we will continue to make great strides in the long-term efforts to defeat those who seek to terrorize America.

I am happy to respond to any questions you may have.

Excerpts from 9-11 Commission Testimony and Staff Report Regarding U.S. Government Successes in Counter—Terrorist Financing

- "It is common to say the world has changed since September 11, 2001. This conclusion is particularly apt in describing U.S. counterterrorist efforts regarding financing. The U.S. government focused, for the first time, on terrorist financing and devoted considerable energy and resources to the problem. As a result, we now have a far better understanding of the methods by which terrorists raise, move, and use money. We have employed this knowledge to our advantage." (Monograph p. 6-7; Hamilton Testimony p. 4)

- "[The Government's] intelligence and law enforcement efforts have worked. The death or capture of several important facilitators has decreased the amount of money available to al Qaeda, and increased its costs and difficulties in moving money. Captures have produced a windfall of intelligence." (Hamilton Testimony p. 7)

- "With an understanding of the nature of the threat and with a new sense of urgency, the intelligence community (including the FBI) created new entities to focus on, and bring expertise to, the area of terrorist fund-raising and the clandestine movement of money. These entities are led by experienced and committed individuals, who use financial information to understand terrorist networks, search them out and disrupt their operations, and who integrate terrorist-financing issues into the larger counterterrorism efforts at their respective agencies. Equally important, many of the obstacles hampering investigations have been stripped away. The current intelligence community approach appropriately focuses on using financial information, in close coordination with other types of intelligence, to identify and track terrorist groups rather than to starve them of funding." (Monograph p. 7)

- **"The U.S. intelligence community has attacked the problem with imagination and vigor, and cooperation among the world's security services seems to be at unprecedented levels, but terrorist financing remains a notoriously hard target." (Monograph p. 49)**

- "The FBI's ability to do near real-time financial tracking has enabled it to locate terrorist operatives in a foreign country and prevent terrorist attacks there on several occasions. The system also helped crack a major criminal case, played a role in clearing certain persons wrongly accused of terrorism, and has proved very valuable in vetting potential threats." (Monograph p. 60)

- "The CIA has devoted considerable resources to the investigation of al Qaeda financing, and the effort is led by individuals with extensive expertise in the clandestine movement of money. The CIA appears to be developing an institutional and long-term expertise in this area, and other intelligence agencies have made similar improvements." (Monograph p. 7)

- "The NSC's interagency Policy Coordinating Committee (PCC) on terrorist financing has been generally successful in its efforts to marshal government resources to address terrorist-financing issues in the immediate aftermath of the attacks..." (Monograph p. 8)

- "Since 9/11 the intelligence community (including the FBI) has created significant specialized entities, led by committed and experienced individuals and supported by the leadership of their agencies, focused on both limiting the funds available to al Qaeda and using financial information as a powerful investigative tool. The FBI and CIA meet regularly to exchange information, and they have cross-detailed their agents into positions of responsibility." (Monograph p. 14)

- "The financial provisions enacted after September 11, particularly those contained in the USA PATRIOT Act and subsequent regulations, have succeeded in addressing obvious vulnerabilities in our financial system. Vigilant enforcement is crucial in ensuring that the U.S. financial system is not a vehicle for the funding of terrorists." (Monograph p. 15)

- "All relevant elements of the U.S. government—intelligence, law enforcement, diplomatic, and regulatory (often with significant assistance from the U.S. and international banking community)—have made considerable efforts to identify, track, and disrupt the raising and movement of al Qaeda funds." (Monograph p. 16)

- "While definitive intelligence is lacking, these efforts have had a significant impact on al Qaeda's ability to raise and move funds, on the willingness of donors to give money indiscriminately, and on the international community's understanding of and sensitivity to the issue. Moreover, the U.S. government has used the intelligence revealed through financial information to understand terrorist networks, search them out and disrupt their operations." (Monograph p.16)

- "The DOJ appears to be committed to aggressive prosecution of terrorist fund-raisers in the United States, believing that such prosecutions can deter more fund-raising and disrupt ongoing fund-raising operations." (Monograph p. 44)

- "In addition, the Saudis are participating in a joint task force on terrorist financing with the United States, in which U.S. law enforcement agents are working side by side with Saudi security personnel to combat terrorist financing. To further this effort, the Saudis have accepted substantial—and much needed—U.S. training in conducting financial investigations and identifying suspicious financial transactions, help that the Saudis had long refused. Although Saudi Arabia likely remains the best and easiest place for al Qaeda to raise money, the Saudi crackdown appears to have had a real impact in reducing its funding. In addition, the Saudi population may feel that as a result of the attacks against their own people, they should be more cautious in their giving." (Monograph p. 46)

- "Some entirely corrupt charities are now completely out of business, with many of their principals killed or captured. Charities that have been identified as likely avenues for terrorist financing have seen their donations diminish and their activities come under more scrutiny." (Monograph p. 48-49)

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

July 21, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
US House of Representatives
Washington, DC 20515

Dear Chairman Young:

I write to request your assistance concerning a provision changing the Administration's policy under the USA PATRIOT Act, which is now pending before the full Committee in the Transportation and Treasury Appropriations bill.

The provision at issue, which was adopted during Subcommittee consideration of the bill, would prevent the Treasury Department from spending any funds to issue or enforce regulations that do not preclude acceptance by financial institutions of the Matricula Consular card as a form of identification. Matricula Consular cards are identification cards issued by the Mexican Government to Mexican nationals abroad.

The Administration believes as a general matter that Americans are better protected if consumers of all nationalities are invited into the financial mainstream. Having consumers use regulated financial services providers offers better protections than leaving sectors of the population to underground providers, such as unregulated hawalas, where they may be more exposed to elements involved in money laundering and terrorist financing. Because this provision could drive large sections of the U.S. population to underground financial services, it would weaken the Government's ability to enforce our money laundering and terrorist financing laws.

In April 2003, the Treasury Department issued regulations under Section 326 of the USA PATRIOT Act. The regulations became effective in June of 2003 and were issued jointly with the federal functional regulators. They require financial institutions to develop effective methods for verifying the identity of their customers and direct the financial supervisors to validate the effectiveness of those methods. The amendment would prevent Treasury enforcement of these regulations.

In response to concerns raised on the Matricula Consular issue after the regulations were finalized, Treasury sought additional public comment on this issue from those affected by the regulations. Over 34,000 comments were received, including many from state and local law enforcement who accept the Matricula Consular card. After carefully considering the facts and all of the comments, over 80% of which agreed with the original regulations, we upheld the original regulations.

All types of identification documents have both strengths and weaknesses. For this reason, we have a flexible standard that accommodates local conditions as well as innovation in verification techniques—not a list of documents or methods that must or must not be used. Rather, we rely on financial institutions—rigorously supervised by their financial examiners—to verify the identity of their customers.

I respectfully request that this provision be removed from the bill during consideration by the full Appropriations Committee. I will continue to work with you and your staff on other matters of interest in the pending legislation.

A corresponding letter has been sent to Mr. Obey.

Sincerely,

John W. Snow

John W. Snow

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

July 21, 2004

The Honorable David R. Obey
Ranking Member
Committee on Appropriations
US House of Representatives
Washington, DC 20515

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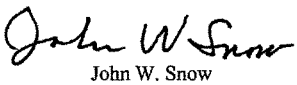
Sincerely,



John W. Snow

1120 Connecticut Avenue, N.W., 5th Floor
Washington, DC 20036

Phone: 202-663-7575 Fax: 202-663-5538
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EXECUTIVE DIRECTOR
Rebecca Morter

GENERAL COUNSEL

July 21, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
H218 Capitol
Washington, DC 20515

The Honorable David Obey
Ranking Member
Committee on Appropriations
1016 Longworth HOB
Washington, DC 20515

Dear Chairman Young and Ranking Member Obey:

The Bankers' Association for Finance and Trade is an organization that for more than 83 years has represented the interests of U.S. banks engaged in international business. We oppose an amendment that was added to the FY 2005 Transportation, Treasury and Independent Agencies appropriations bill last week in a subcommittee mark-up. The amendment would prohibit the Secretary of the Treasury from implementing regulations under the USA PATRIOT Act that would permit financial institutions to accept matricula consular cards as identification of their customers.

Matricula consular cards are official identification issued by the Mexican government to its citizens. The cards are accepted by many U.S. banks as a proper form of identification for Mexican workers who are in this country and otherwise would not have access to necessary banking services. The cards are accepted as identification by many police departments and other state and local government bodies and they are accepted by airlines as identification for passengers.

The U.S. Treasury Department's regulations permitting banks to accept these cards as identification were adopted after taking comments from the public and after careful analysis and study. We believe that it would be inappropriate for the Congress to adopt a measure designed to preempt the Treasury Department's regulations and block use of matricula consular cards before the appropriate authorizing committee has had an opportunity to consider the merits of the issue and determine whether further action is needed. Accordingly we urge you to delete the amendment from the legislation when it comes before your committee.

Sincerely yours,

Cory N. Strupp
General Counsel

cc: Cong. Roy Blunt
Cong. Tom DeLay
Cong. David Dreier
Cong. Barney Frank
Cong. Dennis Hastert
Cong. Ernest Istook
Cong. Mike Oxley

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone 202.785.1670
Fax: 202.776.1792
www.nclr.org

Raul Yzaguirre, President

July 20, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
H-218
The Capitol
Washington, DC 20515

The Honorable David R. Obey
Ranking Member
Committee on Appropriations
1016 LHOB
Washington, DC 20515

Dear Chairman Young and Ranking Member Obey:

On behalf of the National Council of La Raza (NCLR), the largest national Hispanic constituency-based organization in the U.S., I urge you to oppose legislative language offered by Congressman Culberson as an amendment to the 2005 appropriations bill for transportation and treasury agencies approved on July 15, 2004 by the Transportation, Treasury, and Independent Agencies Subcommittee of the House Appropriations Committee. We are concerned that this amendment will undermine the final rules adopted by the U.S. Department of Treasury in accordance with Section 326 of the USA PATRIOT Act, which allow for financial institutions to accept foreign-issued identification, specifically the Mexican consular ID, commonly referred to as the *matrícula consular*. We believe that the final Section 326 rules strike a balance between efforts to intercept the financing of terrorist activities and the ability of financial institutions to open accounts by accepting certain forms of foreign identification.

Unfortunately, the *matrícula consular* has become entangled in a debate over immigration. A few members are using the *matrícula* as a means of advancing their immigration agenda by alleging that the *matrícula* is an unsecure document that it is being used to promote a surreptitious legalization agenda. The truth is that the *matrícula consular* is simply an identification card. It **does not** "legalize" the status of any immigrant, it **cannot** be used to obtain any immigration or citizenship benefits such as work authorization or the right to vote, and it **cannot** be used to obtain public benefits. Its continued use and acceptance, however, does have a positive impact on the communities where immigrants work and reside and fosters greater transparency, which benefits us all. Therefore, we request that you remove this harmful language from the Treasury/Transportation Appropriations bill and allow the continued

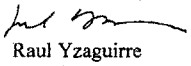
acceptance of the *matrícula consular*, thereby promoting national security, encouraging competition in the marketplace, and ensuring the physical and financial security of Latino communities.

Mexican consular IDs enhance public safety, crime prevention and investigation, and national security. *Matrículas* make communities safer because they facilitate easier access to mainstream financial services, which deters crimes and predatory schemes against immigrants, who are more vulnerable not only because they are more likely to have a lot of cash on hand to pay for daily needs, but because they are the least likely of residents to report crimes to local police. Unbanked individuals often carry large sums of cash making them easier targets for crime – especially theft or robbery. Because of these safety concerns, more than 1,000 police departments throughout the country support the use of these IDs along with efforts to link immigrant workers to mainstream financial institutions as a means of reducing crime and violence in neighborhoods and communities and as a means of promoting good community policing. Currently, over 350 financial institutions now accept *matrículas* and, as a result, immigrants can open bank accounts, allowing them to deposit their money safely in a bank.

Moreover, having a secure identification system allows the Mexican government to work with the U.S. to minimize fraud. Preventing individuals from obtaining legal identity documents, however, increases demand for fraudulent documents. In a security-conscious environment, we want people who are in this country, whatever their immigration status, to be able to prove their identity.

The acceptance of the Mexican *matrícula consular* by financial institutions improves national security and community safety efforts, bolsters competition in the marketplace, and has a positive financial impact on Latino workers, their families, and the financial institutions which serve them. Therefore, I urge you to remove the legislative language included in the Culberson amendment to ensure that the final rules as promulgated under Section 326 of the USA PATRIOT Act remain unchanged. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Raul Yzaguirre
President/CEO

cc: House Appropriations Committee

THE FINANCIAL SERVICES ROUNDTABLE

1001 Pennsylvania Avenue, NW
SUITE 500 South
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-289-1903

E-Mail sbartlett@f-round.org
www.fsround.org

Steve Bartlett
President and Chief Executive Officer

July 20, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
H218 Capitol
Washington, DC 20515

The Honorable David Obey
Ranking Member
Committee on Appropriations
H218 Capitol
Washington, DC 20515

Dear Chairman Young and Ranking Member Obey:

I am writing to express strong opposition to an amendment in the FY '05 Transportation-Treasury Appropriations Bill which would eliminate the use of consular identification cards as legitimate forms of identification for opening a banking account and other routine purposes. I urge that this amendment be removed from the bill when it is marked-up by the full committee this week.

Consular identification cards, like the *matricula consular*, serve legitimate and necessary purposes. Section 326 of the USA Patriot Act requires that financial institutions recognize matricula cards as means of ensuring the legitimacy of customers. These cards do not confer immigration "status" on the holder; they merely serve as official identification, and as such, are another line of defense in the continuing efforts to ensure that terrorists do not have access to our financial institutions.

Treasury's decision to include matricula cards on the list of recognized forms of identification was the product of a critical examination of the facts surrounding consular identification cards. Treasury received over 34,000 comments on the matter, and there is no data to support the notion that consular cards are less accurate, or more prone to falsification than a standard state-issued driver's license.

Every day, financial institutions must determine how well they know their customers. Two forms of ID are required to open any account and many Roundtable members choose to recognize consular-issued ID's as one of those two. Without the use of matricula, many immigrants will be shut out of the banking system and confined to interaction with predatory service providers who charge exorbitant sums to cash paychecks or facilitate remittances. Restricting matricula cards will seriously hamper the ability of financial institutions to ensure the legitimacy of customers, comply with anti-money laundering and anti-terrorist financing statutes, and bring the unbanked into the formal banking system.

I strongly encourage that this amendment be removed. Please do not hesitate to contact me if I may be of assistance on this or other matters.

Best regards,

Steve Bartlett

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STAFF DIRECTOR

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

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July 15, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
H218 Capitol
Washington, D.C. 20515

The Honorable David R. Obey
Ranking Member
Committee on Appropriations
H218 Capitol
Washington, D.C. 20515

Dear Chairman Young and Ranking Member Obey:

We are writing to express our strong objection to several provisions included in the FY 2005 Transportation, Treasury and Independent Agencies appropriations measure scheduled to be marked up next week by your committee. As reported by the subcommittee, this bill would undermine the Federal government's efforts to deny terrorists access to the U.S. financial system; inadequately fund anti-money laundering and anti-terrorist financing programs; and impede proper implementation of the historic Gramm-Leach-Bliley financial modernization legislation.

First, the subcommittee adopted an amendment that prohibits the Secretary of the Treasury from expending any funds to "publish, implement, administer or enforce regulations that permit financial institutions to accept the matricula consular identification card as a form of identification." The regulations in question were promulgated by the Treasury Department last year pursuant to section 326 of the USA PATRIOT Act, which was originally drafted in the Financial Services Committee and signed into law by President Bush in October 2001.

Section 326 was intended to enhance the ability of financial institutions to detect and prevent money laundering and the financing of terrorism by requiring those institutions to develop comprehensive procedures for verifying customer identity. The provision was motivated in part by the apparent ease with which several of the September 11th terrorists were able to gain access to the U.S. banking system in the period leading up to the attacks. In implementing this provision through regulation, the Treasury Department sought to give institutions the flexibility to tailor their customer identification programs to the risks of money laundering or terrorist financing posed by their products,

services and customer base. Consistent with this risk-based approach, the final regulations implementing section 326 afford financial institutions the discretion to determine which forms of identification issued by a foreign government they will accept, and under what circumstances.

Treasury's regulations implementing section 326 were finalized only after a lengthy period for public comment – which included extensive input from the financial services industry, law enforcement agencies, and a host of other interested parties – and after careful analysis and study by the Treasury Department and other regulators. The regulations became effective on October 1, 2003, and are currently being enforced by Treasury and the Federal banking agencies, and implemented by financial institutions across the country. The amendment adopted by the subcommittee throws into question the obligation of financial institutions to adhere to the customer identification and verification procedures outlined in the regulations, and ties Treasury's hands in enforcing one of the centerpieces of the post-September 11th congressional response to the terrorist financing threat.

While the intent of the proponents of the amendment may have been to discourage the acceptance of a particular form of identification issued by the Mexican government, by casting doubt on the legitimacy of the entire customer identification and verification regime established by section 326, the practical effect of the amendment is to strike a serious blow at the government's efforts to combat terrorist financing. Moreover, to make such a far-reaching and fundamental change in the direction of U.S. anti-money laundering policy in an appropriations rider does a grave disservice to the legislative process.

Second, we believe it is imperative that the full Appropriations Committee restore the funding level for the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to that requested in the President's budget: $64.5 million. We are well aware of the significant constraints under which the Subcommittee drafted its product and understand that any Appropriations bill, whether subcommittee mark or full committee product, is an extraordinarily difficult balancing act. That said, it is our belief that even the President's budget undershot the mark in it's request for the FinCEN account.

As you know, FinCEN administers the Bank Secrecy Act (BSA), the government's primary tool for gathering and analyzing information on financial crimes that can lead to the interruption of funding for terror attacks and to elimination of the financial incentives for drug dealers and those who traffic in, for example, child prostitution. By administering a database of information on financial crimes, FinCEN provides law enforcement entities ranging from the Federal Bureau of Investigation (FBI) to Immigration and Customs Enforcement (ICE) the means to identify and prosecute such schemes, and prevents both the needless duplication of such record-keeping at different law-enforcement entities and an unnecessary multiple-agency reporting system that would overly burden the private sector.

As terrorists and criminals use increasingly imaginative ways to evade detection of their dirty money, FinCEN must be adept at helping law enforcement uncover that money, which means state-of-the-art hardware and software, constantly updated. For those reasons, the funding level requested by the President is the bare minimum, and we ask that

you take whatever steps necessary at Full Committee at least to restore it, if not increase the level.

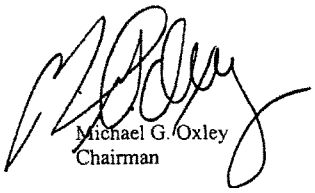
Third, the bill reported by the subcommittee bars the expenditure of any Treasury Department funds to finalize a regulation jointly proposed by Treasury and the Federal Reserve more than three years ago to permit financial holding companies and national bank subsidiaries to engage in real estate brokerage and management activities. The proposed regulation was intended to implement a key provision of the Gramm-Leach-Bliley financial modernization law, which directs the Treasury and the Federal Reserve to update periodically a list of permissible activities for financial holding companies and national bank subsidiaries.

As we have expressed to you on prior occasions, this spending limitation serves not only to disrupt the specific rulemaking relating to bank real estate activities, but it also undermines the overall implementation of the Gramm-Leach-Bliley Act. Until the Federal Reserve and Treasury promulgate a final rule in this matter, legislative remedies of the kind included in the subcommittee-reported bill are premature. Moreover, any legislative proposal purporting to govern the permissible activities of financial holding companies and national bank subsidiaries should be considered under regular order by the Committee on Financial Services, which has primary jurisdiction over this matter.

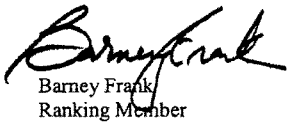
For all of the foregoing reasons, we strongly urge you to strike the two provisions described above and fund FinCEN at the level requested in the President's Budget when the full Appropriations meets to mark up the FY 2005 Transportation, Treasury and Independent Agencies bill.

Thank you for considering our views in this matter. If you have any further questions on any of the issues raised in this letter, please contact us or our staffs and we will be happy to discuss our concerns with you in greater detail.

Yours truly,



Michael G. Oxley
Chairman



Barney Frank
Ranking Member

July 19, 2004

The Honorable C.W. Bill Young
Chairman
Committee on Appropriations
H218 Capitol
Washington, DC 20515

The Honorable David Obey
Ranking Member
Committee on Appropriations
1016 Longworth HOB
Washington, DC 20515

Dear Chairman Young and Ranking Member Obey:

America's Community Bankers and the American Bankers Association are writing to express our opposition to the amendment to the FY 2005 Transportation, Treasury and Independent Agencies appropriations bill that would prohibit the Secretary of the Treasury from spending funds to implement and administer regulations implementing the USA PATRIOT Act. Specifically, the measure would prohibit Treasury from implementing regulations issued on May 9, 2003, that permit financial institutions to accept *matricula consular* identification cards as part of a valid program of identification.

This amendment does not merely discourage the acceptance of *matricula consular* cards, it effectively prohibits Treasury from enforcing the USA PATRIOT Act's customer identification provisions that are designed to combat money laundering and terrorist finance. Section 326 of the Act requires institutions to establish "reasonable procedures" for verifying the identity of customers seeking to open a new account; retaining the amendment adopted in subcommittee would prevent Treasury from enforcing these important rules.

Furthermore, America's Community Bankers and the American Bankers Association oppose efforts to prevent the use of *matricula consular* cards as identification to open bank accounts. There are over 10 million individuals within the United States who do not have a formal relationship with a regulated financial institution. Prohibiting these documents would effectively deny access to basic financial services for these people. It has been a goal of leaders in Congress and the financial services industry to provide greater access to mainstream financial services for the unbanked. Amendments to ban the use of *matricula consular* cards would merely shut the door to the unbanked while providing no greater security against money laundering. Under current law banks must have in place comprehensive money laundering programs that are designed to prevent money laundering through their institutions, and they are examined for compliance with these programs.

We urge you to strike the amendment.

Sincerely,

Robert R. Davis
Executive Vice President
America's Community Bankers

Edward L. Yingling
Executive Vice President
American Bankers Association

cc: The Honorable Michael J. Oxley, Chairman, House Committee on Financial Services
The Honorable Barney Frank, Ranking Member, House Committee on Financial Services

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EXECUTIVE DIRECTOR
Linton Joaquin

LOS ANGELES (HEADQUARTERS)
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
fax 213 639-3911

WASHINGTON, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
fax 202 216-0266

OAKLAND
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
fax 510 663-2028

July 19, 2004

Rep. C.W. Bill Young, Chairman
Rep. David R. Obey, Ranking Member
House Appropriations Committee
Washington, DC

Dear Rep. Young and Rep. Obey:

The National Immigration Law Center (NILC), a national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their family members, urges you to strike an amendment to the 2005 appropriations bill for transportation and treasury agencies approved on July 15, 2004 by the Transportation, Treasury and Independent Agencies Subcommittee of the House Appropriations Committee. The amendment, offered by Rep. Culberson (R-TX), provides that "None of the funds made available in this Act to the Secretary of the Treasury may be used to publish, implement, administer, or enforce regulations that permit financial institutions to accept the *matricula consular* identification card as a form of identification." The goal of the Culberson amendment appears to be to prevent financial institutions from accepting the *matricula consular* as proof of identity in opening bank accounts. We believe that result would undermine public safety, crime prevention, and national security. It would also have a detrimental impact on our economy as it would once again impose a barrier to bringing the "unbanked" into the financial mainstream.

BACKGROUND

On May 9, 2003 the U.S. Department of the Treasury issued final regulations regarding section 326 of the USA PATRIOT Act. Those regulations required financial institutions such as banks, credit unions, and thrifts to develop a written customer identification program which is subject to evaluation by regulators, gave banks flexibility to adopt verification procedures appropriate to their circumstances, and placed the responsibility squarely on banks to establish procedures which allow them to form a reasonable belief that they know their customers' true identity. As a result, many banks agreed to accept the *matricula consular* (literally, "consular registration"), as proof of identity. The Mexican Consular ID card has been issued by the government of Mexico to its nationals overseas since 1871.

On July 1 – not even 2 months after the issuance of the final rules -- the Treasury Department, in a highly unusual move reportedly responding to Congressional pressure, asked the public and interested parties to provide additional comments regarding whether banks should be prohibited from accepting foreign government-issued documents other than passports as acceptable forms of ID.

Banks and banking associations submitted comments strongly opposing a change in the rules. They argued that the new comment period undermined the credibility of the rulemaking process and that acceptance of consular ID cards helps bring the unbanked into the mainstream financial system. Rejection of consular ID cards would deprive the government of regulatory oversight, result in retaliatory

measures against U.S. government-issued IDs in other countries, reduce the ability of U.S. banks to attract foreign investment, and encourage unregulated remittance systems.

Lawmakers and advocates for immigrants likewise argued that acceptance of foreign government-issued identification such as a consular ID card helps bring immigrants out of the informal and unregulated economy. Without this, many hard working and taxpaying immigrants cannot open a bank account, get loans, or establish a credit history. As a result, they are forced to carry and store large amounts of cash (which makes them vulnerable to crime) and rely on illegal loans. Because of the role that immigrants play in sending remittances to their families in their home countries, immigrants will be forced to use money wiring services that charge exorbitant rates. Their financial transactions are harder to track and to tax; and they have a smaller financial stake in their communities. The cards help the police quickly establish the identity of the people with whom they deal, allowing them to focus resources on crime prevention and community safety. Proof of identity enables immigrants to report crimes and other suspicious behavior without fearing that their lack of acceptable ID makes them suspect or puts them at risk. The acceptance of alternative ID also helps law enforcement combat money laundering and terrorism.

The official comment period ended July 31, 2003, and commentators overwhelmingly supported acceptance of foreign identity documents. Of the 23,898 comments submitted, 19,770 (or 83 percent of the total) asked that the rules remain unchanged. On September 18, 2003 the Treasury Department announced that the rules allowing banks to accept such documents from persons seeking to open accounts would not be changed. The department concluded that it had already considered all relevant information when it issued the rules in the first place. The Culberson amendment would undo that determination.

WHY THE CULBERSON AMENDMENT SHOULD BE STRICKEN

The amendment is irrational and undermines protection of national security

Of all the identity documents in the United States and the world, only the *matricula consular* would be explicitly banned as proof of identity in opening a bank account in this country. This draconian rejection of a Mexican government-issued document is not supported by any evidence whatsoever.

Rules which give banks the discretion to accept a Mexican consular ID are aimed at stopping, detecting and prosecuting international money laundering and the financing of terrorism around the globe. Scapegoating Mexicans and preventing them from opening bank accounts will do nothing to advance those goals. Moreover, there is no indication that the Treasury Department rules have not worked.

Pseudo-national security measures such as the Culberson amendment actually undermine national security because they are completely unrelated to this nation's safety and only give the illusion of protecting it. This is the height of folly in these dangerous times. Effective anti-terrorism measures are targeted and strategic, not

discriminatory, wholesale measures that single out an entire nation and its official documents.

Immigrants' Access to the Banking System Serves the Public Interest

It is counterproductive and contrary to U.S. national interests to prevent Mexicans from opening bank accounts. Immigrants create wealth for this country and strengthen the economy by putting their money in financial institutions, because these funds exponentially make more credit available in the U.S. Acceptance of consular identity cards helps bring immigrants out of the informal and unregulated economy and into the financial mainstream. If immigrants cannot open checking and savings accounts, they are forced to carry and store large amounts of cash and rely on illegal loans; their financial transactions are harder to track and to tax; and they have a lesser financial stake in their communities. This is not just a cost for them, it is also a cost to the U.S. and its economy.

Immigrants' Access to Bank Accounts Helps Law Enforcement

Enabling immigrants to open bank accounts helps deter robberies and assaults against taxpaying immigrants and reduces the threat of crime in communities. Four out of five (82%) unbanked individuals use check-cashing outlets and, therefore, must often carry large sums of cash making them easier targets for crime – especially theft or robbery. If immigrants store their money in banks, they are less tempting targets for criminals seeking cash. For this reason, police departments across the country support the use of consular identity cards and efforts to link immigrant workers to mainstream financial institutions, because they help reduce crime and violence and promote good community policing.

The acceptance of alternative identification also helps law enforcement combat money laundering and terrorism. Banks and thrifts, in comparison to other financial providers, are subject to federal regulation, routine examinations, and more extensive record keeping and reporting requirements. This enhances the ability of federal officials to monitor international money transmissions and distinguish legitimate transfers from those conducted for money laundering or terrorist financing purposes.

Mexican Consular Identity Cards Have Advanced Security Features

No identity document, including those produced and accepted in the U.S., is 100% counterfeit-proof or free from fraudulent use. Rejection of a particular identity document because some instances of abuse have been found would cause the rejection of every identity document currently accepted by banks in opening accounts, including documents issued by the United States. This would be an absurd result.

In contrast with issuers of many U.S. identity documents, the Mexican government has taken steps to ensure the reliability and security of its identity card. When issuing a consular ID, the Mexican government requires all applicants to present the same documents as proof of nationality and identity as when requesting a passport based on the *Law of Nationality and Identity*, including an original birth certificate and an official photo ID card. This may be a passport, Military Service

Card, Mexican Voter's Card, Record of Clearance from the Police Department, Driver License, and/or expired *matricula*. The Mexican Voter card itself contains a photograph, thumbprint and eight security features. Consulates have now been connected to the Consular Information System to ensure that a person cannot obtain a second consular ID unless it is reported stolen or lost and to prevent theft.

Each *matricula* bears several security safeguards to prevent falsification and to ensure that law enforcement officials from Mexico and the U.S. are able to determine the authenticity of the document including a photo of the applicant taken at the consulate, a legal address, a signature, and a serial number. Moreover, the *matricula* is printed on a green security paper with the Official Mexican Seal and has a hologram of the Foreign Affairs Ministry (SRE) seal that appears over the entire front of the card and has an infrared band in the upper corner on the back. A special decoder is required to view the invisible security marks, and Mexican consulates have been distributing decoders to law enforcement officials throughout the U.S.

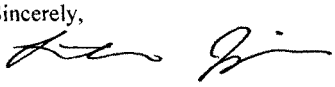
The Culberson amendment is an unwarranted dismissal of the substantial steps taken by the Mexican government to enhance the security features of its card.

CONCLUSION

The *matricula consular* is simply an identification card and does not "legalize" the status of any immigrant, nor can it be used to obtain any immigration or citizenship benefits such as work authorization or the right to vote. It has unfortunately become entangled in an immigration debate, in which advocates of greater immigration restrictions mask their intentions by providing misinformation about bank acceptance of the *matricula consular*. Protection of public safety and national security demands more than simple-minded solutions such as the Culberson amendment.

Thank you for your consideration of this important issue.

Sincerely,



Linton Joaquin
Executive Director
Los Angeles, CA

Joan Friedland
Immigration Policy Attorney
Washington, DC

cc: Members, Appropriations Committee

INDEPENDENT COMMUNITY BANKERS of AMERICA

DALE L. LEIGHTY
Chairman
DAVID HAYES
Chairman-Elect
TERRY JORDE
Vice Chairman
AYDEN R. LEE JR.
Treasurer
GEORGE G. ANDREWS
Secretary
C.R. CLOUTIER
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

July 19, 2004

Chairman C. W. Young
United States House of Representatives
Washington, DC 20515

Dear Congressman Young:

The Independent Community Bankers of America urges you to strike language in the Transportation and Treasury Appropriations bill that would bar the Treasury from enforcing regulations that currently permit financial institutions to accept matricula consular cards as a form of identification.

The USA PATRIOT Act imposed additional burdens on the nation's financial institutions by requiring them to take steps to verify the identify of their customers, but ICBA members understand that they are necessary to detect and deter money laundering and terrorist financing. In a successful attempt to balance these considerations, the Treasury's customer identification regulation provided financial institutions the flexibility to verify the identity of prospective customers using methods that they believe would be most effective by allowing individual banks to assess and address the particular risks associated with each account and borrower. Many community bankers believe that the matricula consular card is one form of identification that they should be permitted to use to comply with the regulation. The amendment added by the subcommittee would undermine this option.

More important, the amendment could actually undermine the goals of the USA PATRIOT Act. Allowing consumers to use the matricula consular as a form of identification where appropriate is an effective way for those without bank accounts to qualify for banking services. It is better to encourage non-U.S. citizens to participate in the banking system since that provides law enforcement with audit trails of transactions. Precluding banks from accepting certain foreign identification documents and forcing these individuals to turn to other avenues to meet their financial needs, could help foster the development of underground financial markets. Transaction information is extremely difficult to obtain and monitor in these markets, so encouraging their development could help facilitate terrorist financing and money laundering.

This is also contrary to the repeated urging by Congress, financial regulatory agencies, and others that banks take greater steps to bring the unbanked into the nation's formal financial services structure. Unless the matricula consular can be used as bank

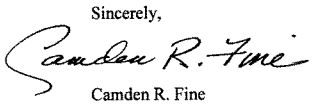
One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

customer identification, many unbanked individuals could be relegated to check cashers and payday lenders.

For these reasons, ICBA recommends that the Appropriations Committee remove this amendment before sending it to the House floor.

Thank you for considering our views.

Sincerely,



Camden R. Fine
President and CEO

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

July 19, 2004

Dear Appropriations Committee Member:

On behalf of the Credit Union National Association (CUNA) and the nation's nearly 85 million credit union members, I am writing in strong opposition to an amendment that was included in the subcommittee mark-up of the FY2005 Transportation, Treasury and Independent Agencies appropriations measure, and ask for your support to remove this provision when the full committee meets this week.

Specifically, we oppose the amendment language that the Treasury, Postal Subcommittee adopted that prohibits the Secretary of the Treasury from expending any funds to "publish, implement, administer or enforce regulations that permit financial institutions to accept the matricula consular identification card as a form of identification."

Many credit unions in the United States already use matricula identification cards to open financial accounts for non-U.S. citizens, providing a safe alternative for Mexican nationals who otherwise would be forced to use expensive payday and predatory lenders for check-cashing and remittance services. It is crucial for credit unions, particularly for those in low-income areas, to be able to rely on official documents such as the matricula in opening accounts. Recognizing the legal authority supporting this documentation not only provides financial institutions with a measure of protection against fraud, but serves a broader purpose of integrating immigrants into the mainstream of American life.

This amendment also defeats the anti-money laundering intent of Section 326 of the USA PATRIOT Act, and undermines financial institutions' abilities to detect and prevent money laundering and the financing of terrorism. Under the PATRIOT Act, credit unions and financial institutions are afforded the ability to determine what types of customer identifications will be accepted at their own institutions, based upon their member base and products and services that are offered.

Again, CUNA and its member credit unions strongly support the removal of this provision in the FY2005 Transportation, Treasury and Independent Agencies appropriations measure scheduled to be marked up this week by your committee. Your support to strike this provision would be greatly appreciated.

Thank you,

Daniel A. Mica
President & CEO

Congress of the United States
Washington, DC 20515

July 21, 2004

The Honorable C. W. Young
Chairman
Committee on Appropriations
H-218
The Capitol
Washington, D.C. 20515

The Honorable Ernest J. Istook, Jr.
Chairman
Subcommittee on Transportation, Treasury
and Independent Agencies
H-218
The Capitol
Washington, D.C. 20515

The Honorable David R. Obey
Ranking Member
Committee on Appropriations
1016 LHOB
Washington, D.C. 20515

The Honorable John W. Olver
Ranking Member
Subcommittee on Transportation, Treasury
and Independent Agencies
1016 LHOB
Washington D.C. 20515

Dear Chairman Young, Chairman Istook, Ranking Member Obey and Ranking Member Olver:

We the undersigned Members of the Congressional Hispanic Caucus are writing to express our strong opposition to a provision included in the FY 2005 Transportation, Treasury and Independent Agencies appropriations measure scheduled to be marked up by the full committee this Thursday, July 22, 2004 and request that the language of that provision be removed from the bill during the committee markup.

We specifically oppose the amendment language that the Subcommittee adopted that prohibits the Secretary of the Treasury from expending any funds to "publish, implement, administer or enforce regulations that permit financial institutions to accept the matricula consular identification card as a form of identification."

The House Financial Services Committee drafted Section 326 of the USA PATRIOT Act for the purpose of ensuring that financial institutions were performing consistently the most basic of anti-money laundering procedures: verifying the identity of accountholders. On June 9, 2003, the Treasury Department approved rules implementing Section 326 to establish reasonable procedures for the identification and verification of new account holders at financial institutions. On the basis of those rules, United States financial institutions may continue to accept the matricula consular identification card as a valid form of ID for the purpose of opening a bank account. The matricula consular identification card is a document that has been issued by Mexican consular authorities for over 131 years. It was enhanced after March 2002 with a series of additional security features that make it one of the most secure documents issued in the United States. The United States State Department issues similar cards to its citizens overseas in certain circumstances.

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These regulations were finalized only after a lengthy comment period, which included extensive input from many different sectors, including our Caucus and law enforcement agencies. Law enforcement agencies from across the country submitted comment letters in support of the matricula consular identification card. They contended, and argue to this day, that the cards assist law enforcement and others in identifying and tracking down individuals when they have valuable information or are otherwise needed. Preventing individuals from using legal consular identity documents would only increase demand for fraudulent documents as more people would turn to the illegal market. We and law enforcement officials deem these cards to be a benefit to public safety, not a liability. The language that the Transportation and Treasury and Independent Agencies Subcommittee adopted would in effect hinder law enforcement efforts, and it would call into question financial institutions' obligation to adhere to the identification and verification procedures outlined in the Section 326 anti-money laundering regulations.

For these reasons and more, we, the undersigned write in strong opposition to the matricula consular identification card language currently in the Transportation, Treasury Appropriations bill and request your assistance in removing it during full committee markup.

cc: Members of House Committee on Appropriations

Member of Congress | Member of Congress | Member of Congress

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Most Frequently Asked Questions Regarding the Matrícula Consular (MCAS)

EXECUTIVE SUMMARY

- *Matrícula Consular de Alta Seguridad* (or MCAS, for it's initials in Spanish) means High Security Consular Registration Document. As such, it is the official record for Mexican individuals living abroad.

- The registration of nationals through the consular offices is a practice recognized by the Vienna Convention on Consular Relations. Mexican consulates have issued these certificates since 1871.

- The purpose of consular registration is to enable consular officers to provide protection and access to consular services, as well as to help relatives and authorities of the sending state to locate their nationals overseas. Consular posts of every country around the world exercise this service.

- There are 4 basic requirements that the applicant must fulfill in order to obtain a MCAS in a Mexican Consulate:

  1. *Present Proof of Mexican Nationality* with any of the following documents: Birth Certificate, Certificate of Mexican Nationality, Certificate of Naturalization, or Passport.
  2. *Present Proof of his/her Identity* with documents issued by Mexican or U.S. authorities: Military Service Identification Card (*Cartilla*), Electoral ID, Passport, expired *Matrícula Consular*; driver's license, green card or INS permission, school record, police clearance report, U.S. passport or state ID.
  3. *Present Proof of Residence within the Consular District* with any of the following documents: A contract or receipt of payment for services or utilities such as water, electricity, gas, phone service and rent payments. In addition, the person may accredit the residence requirement by presenting a state ID or driver's license issued by the local authority, if it contains a local address.
  4. *Issuance Fee Payment.* The applicant must pay a U.S.$26 fee for issuance of the MCAS.

- All the *matrículas consulares* are issued for a period of 5 years. By 2007 all the old *matrículas consulares* will have been replaced by the MCAS. As of March of 2002, the MCAS incorporate cutting-edge technology, holograms and other embedded designs to prevent its forgery. The MCAS has 13 security features, such as:

  - A visible "Advantage®" seal which is a variable color, tamper proof, Optical Security Device, used to mark the ID photograph, and is solely manufactured by a U.S. provider. No one else in the world has access to this technology or design, which makes counterfeiting the

ID highly improbable. This feature is used by the U.S. Government in several high security documents such as FBI badges.

- "Scrambled Indicia®" is a pixel level security feature which conceals encoded text or graphics within the visible design. These encoded features are only visible through special purpose lenses. The Consular ID card includes two versions of this feature: fixed text and graphics printed on both sides of the teslin blanks, and variable text containing biodata of the holder, encoded within a security stripe or "doc-u-lok®", and over the photograph in two directions. This is also a proprietary security feature and is used by the U.S. government in its high value postage stamps and its new High Security Visa, amongst other uses.
- Other security features include ultraviolet logos on the outer laminate, micro-text on the teslin blanks signature lines, infrared band over the ID bar code and high definition bank note type printing on both sides of the blanks.

- The Mexican Government has developed a national database in which the consulates can verify if there are homonyms and if the applicant has previously received a MCAS. They also check the applicant's identity against a Mexican government "stop list" containing approximately 13,000 records of persons who are not allowed to obtain documents issued by the Mexican government.

- Consular employees are trained to detect the typical mistakes made by forgerers, and to carefully verify the information during the production of the MCAS. In addition to the yearly Consular Services training, special training is conducted for the issuance of the new High Security Consular Registration Card (MCAS).

- With the launch of the new High Security version, from March 6, 2002 to July 18, 2004, the Mexican government issued 2,214,738 MCAS. The Mexican government estimates that almost 4 million Mexicans in the United States have *matrículas consulares*.

- Currently, 377 cities, 163 counties and 33 states, as well as 178 financial institutions and 1180 police departments in the U.S., accept the MCAS as a valid ID. Additionally, 12 states have accepted the MCAS as one of the proofs of identity required to obtain a driver's license. The local governments of 80 cities accept the MCAS for obtaining a library card or business licenses, entering public buildings, registering children for school, and accessing some public services. Private companies have begun to accept the matrícula for opening accounts for utilities and insurance. Some airlines also accept the MCAS as a valid ID.

- The MCAS has become an important tool for opening financial institutions to the un-banked people. The positive impacts of such access go beyond individuals simply being able to open bank accounts. They also have positive implications for the day-to-day lives of U.S. communities by unleashing economic transactions that would not occur otherwise.

- The acceptance of the MCAS by key financial institutions has significantly reduced the cost of sending remittances. The Mexican government estimates that, since the MCAS have been accepted by banks and financial institutions, the increase in use of bank transfers as a means for sending remittances has led to savings of more than U.S.$700 million for migrants and their families.

- The acceptance of the MCAS by key financial institutions also improves their ability to track the use of money and prevent criminal activities. The use of MCAS has contributed to shrink informal channels associated with the potentially dangerous existence of financial "black markets".

- The MCAS assists law enforcement officials' communication with migrant communities by ensuring that people are not afraid to come forward as witnesses and report crimes. The MCAS make it easier to identify dead or unconscious people. They save time and resources for the police and facilitate communication with relatives.

- The MCAS reduce the vulnerability of migrants as objects of criminal activity. Before the MCAS were accepted in financial institutions, undocumented workers were forced to keep as cash whatever resources they had; thus, they frequently became prime and repeated targets of crime, including robberies and break-ins to their homes.

- The MCAS has no relation with the sovereign right of the United States to determine who can or cannot be admitted into its territory, as well as the conditions for any person to remain there. In no way does the MCAS constitute a form of "immigration status regularization" which may hinder the enforcement of immigration laws. MCAS holders are aware that this is only an identification card, which has no bearing upon their immigration or visa status.

Most Frequently Asked Questions Regarding the Matrícula Consular (MCAS)

Last updated: July 19th, 2004

▪ General Information:

1. What is a "*Matrícula Consular*" (MCAS)?

Matrícula Consular de Alta Seguridad (or MCAS, for it's initials in Spanish) means High Security Consular Registration Document. As such, it is the official record for Mexican individuals living abroad. Consular registration services also include notary, birth, death, and marriage registration services. In Mexican consular practice a certificate of each registration service is given to the petitioner as a proof of record.

2. What is the origin of the MCAS?

The registration of nationals through the consular offices is a practice recognized by the Vienna Convention on Consular Relations. Mexican consulates have issued these certificates since 1871. This means that *Matrícula Consular* ID Cards have been issued for more than 133 years in Mexican consulates around the world.

3. What is the purpose behind the MCAS?

The purpose of consular registration is to enable consular officers to provide protection and access to consular services, as well as to help relatives and authorities of the sending state to locate their nationals overseas.

Consular registration of Mexican nationals is a very helpful tool for Mexican consulates to comply with the functions recognized by the Vienna Convention on Consular Relations. This registration facilitates the access to protection and consular services, since the certificate issued accordingly is considered as evidence of Mexican nationality.

Currently, the MCAS has become an important means of identification for Mexican nationals living abroad, particularly since these documents became portable documents with a photograph (similar to driver's licenses).

▪ Matrículas Consulares and International Law:

4. Is the use of documents like the MCAS a recognized practice in international law?

The practice of consular registration has been recognized by international law. Consular posts of every country around the world exercise this service. Consular Registration Cards are the legal proof of record of such registration.

Essentially, the identity document issued by Mexican consulates to Mexican nationals is not significantly different in nature from other types of identity documents, such as passports.

5. Does the United States engage in similar practices abroad?

The U.S. consular posts also provide these consular registration services for its nationals who live in other countries. The principal purpose of this service, quoting Roberta S. Jacobson, Acting Deputy Assistant Secretary of State for the for the Bureau of Western Hemisphere Affairs, testifying before the U.S. Congress (June 26, 2003), is *"...[to create] an official record of U.S. citizens which will enable consular and diplomatic officers to furnish promptly and efficiently all services which are the inherent right and privilege of such citizenship."*

Furthermore, "*...the Department [of State] views foreign consular identification cards as a possible tool for facilitating consular notification by accountable law enforcement officials... a foreign consular identification card is a means to identify an individual as a foreign national..."*

Roberta S. Jacobson also stated that, ..."we [the U.S. government] *must also carefully avoid taking action against consular identification cards that foreclose our options to document or assist American citizens abroad. The Department itself issues documentation other than a passport for U.S. citizens abroad and at times occasionally issues similar identity cards or travel documents.*"[1]

6. Is there any U.S. jurisprudence regarding the MCAS or similar instruments?

The recognition of consular certificates has precedents in U.S. law: A New York Federal Court stated that "*consular certificates carry greater weight than those of a notary public in determination of nationality.*" (114NYS 2nd, 280 (1952), cited in 47 AJIL 152 (1953)). Additionally, the United States District Court in New York, SDNY, in accepting as sufficient proof a certificate from a foreign Consul-General in New York, said: "*Each country has the undoubted right to determine who are its nationals and it seems to be general international usage that such a determination will be accepted by other nations. Since regularity of the procedure of foreign agencies is to be presumed... the certificate of the Consul-General is sufficient proof of the facts stated there-in*" (133 F.Supp.496 (1955), cited in 50 AJIL 139 (1956)).

▪ Document Security:

- Proof of Identity and Process of Issuance:

7. What are the requirements for issuance of a MCAS?

There are 4 basic requirements that the applicant must fulfill in order to obtain a MCAS:

- *The Applicant must Present Proof of Mexican Nationality.* According to the Mexican Law of Nationality, a person can prove his/her nationality with any of the following documents: Birth Certificate, Certificate of Mexican Nationality, Certificate of Naturalization, or Passport.

- *The Applicant must Present Proof of his/her Identity.* A person can prove his/her identity with any of the following documents issued by Mexican authorities: Military Service Identification Card (*Cartilla*), Electoral ID, Passport, expired *Matrícula Consular*; or with an official ID issued by the local U.S. authority (e.g.

[1] Statement of Roberta S. Jacobson, Acting Deputy Assistant Secretary of State for the Bureau of Western Hemisphere Affairs, "The Federal Government's Response to Consular Identification Cards", Hearing before the Subcommittee on Immigration, Border Security, and Claims, June 26th, 2003.

driver's license, green card or INS permission, school record, police clearance report with a cancelled picture, U.S. passport or state ID).

- *The Applicant must Present Proof of Residence within the Consular District.* A person can prove that they reside within the Consular District (the area covered by the issuing consular office) with any of the following documents: A contract or receipt of payment for services or utilities such as water, electricity, gas, phone service and rent payments. In addition, the person may accredit the residence requirement by presenting a state ID or driver's license issued by the local authority, if it contains a local address.

- *Issuance Fee Payment.* The applicant must pay a U.S.$26 fee for issuance of the MCAS.

8. How do Mexican authorities ensure the authenticity of Mexican documents?

Consular employees are trained regarding the necessary elements in the production of Mexican birth certificates and all other documents applicants are required to present. They are trained to detect the typical mistakes made by forgerers, and to carefully verify the information during the production of the MCAS. In fact, the application form for a MCAS contains information beyond that of a birth certificate, thus allowing our officers to look for mistakes or inaccuracies. Additionally, all applicants are personally interviewed. If any doubt exists, the Consul in charge of documentation will make an evaluation, and if necessary, will contact Mexican Civil Registry authorities to verify the authenticity of the document.

In addition to the yearly Consular Services training, special training is conducted for the issuance of the new High Security Consular Registration Card (MCAS).

9. Are birth certificates being crosschecked against computerized records in Mexico to determine authenticity?

While there is wide variety of Mexican birth certificate formats (similar to U.S. birth certificates) our authorities, like American authorities, do not often engage in this procedure, unless there is suspicion of wrongdoing. One should point out that the modern version of Mexican birth certificates includes more security features.

In a report to Congress dated October 21, 2002, Treasury noted that *"any identity verification system for foreign nationals will have to rely, at least to some extent, on foreign documents" and "because of the many possible types of identification documents", an identity verification system for foreign nationals would not be able to "list acceptable forms of identification".* As The Financial Services Roundtable expressed in a letter to the U.S. Department of Treasury on July 31, 2003, *"any attempt to proscribe certain foreign identification documents would be inconsistent with this acknowledgment".*

10. Is the birth certificate the only document needed to obtain a MCAS?

This is not the case. In order to apply for a MCAS, you need to already have another official picture ID and proof of address.

11. What mechanisms does Mexico have in place to prevent potential acts of corruption in the issuance of the MCAS?

There are many. The Mexican government has a variety of safeguards and legal remedies to fight corruption.

- All documents submitted along with the application are copied so that later review can reveal abnormalities or errors.
- No money is exchanged between the person reviewing the information, the person inputting the information into the system or the person giving the finished product and the applicant. That is another reason for breaking the process into several steps.
- The applicant pays for the service after his/her documents have been reviewed and accepted. This payment is made at a cashier's window, which accepts payment for all consular services.
- In addition, some consular offices have a closed circuit security system. Consular Employees are directly supervised by Consular Officers.
- Foreign Service Officers have to declare all their income, including all accounts in and outside of Mexico. Failure to do so is grounds for firing the officer. The Bureau for Public Function (our Federal Comptroller and primary anti-corruption agency) reviews this information periodically.
- Both Consular officers and employees are subject to the Federal Penal Code of Mexico and the Law of Professional Responsibility for Public Servants, and can face penalties depending on the severity of the crime, ranging from fines, losing their job and prison terms.

- Characteristics of the MCAS:

12. What is the difference between older versions and the "High Security" version?

Like many other official documents, the MCAS has evolved over the years. Originally it had the form of a certificate. In the middle of the 20th century these certificates became smaller, portable documents with photographs. During the last two decades of the 20th century, it took a form similar to that of driver's licenses, which included more security features. The MCAS, issued since March of 2002, has many more security features than the previous versions. All the *matrículas consulares* are issued for a period of 5 years. By 2007 all the old *matrículas consulares* will have been replaced by MCAS.

13. Why is the MCAS preferred over the Mexican Passport?

The principle reasons have to do with the price and convenience of the MCAS. The MCAS with a 5-year validity costs U.S.$26, while the 5-year passport costs U.S.$79. Secondly, the MCAS is a small ID and is easier to carry than the passport.

14. Are there specific assurances being made indicating that the MCAS is tamper proof and/or duplicate proof?

This updated high-tech MCAS, incorporates cutting-edge technology, holograms and other embedded designs to prevent its forgery. The following features are significantly important to mention:

- A visible "Advantage®" seal which is a variable color, tamper proof, Optical Security Device, used to mark the ID photograph, and is solely manufactured by a U.S. provider. No one else in the world has access to this technology or design, which

makes counterfeiting the ID highly improbable. This feature is used by the U.S. Government in several high security documents such as FBI badges.

- "Scrambled Indicia®" is a pixel level security feature which conceals encoded text or graphics within the visible design. These encoded features are only visible through special purpose lenses. The Consular ID card includes two versions of this feature: fixed text and graphics printed on both sides of the teslin blanks, and variable text containing biodata of the holder, encoded within a security stripe or "doc-u-lok®", and over the photograph in two directions. This is also a proprietary security feature and is used by the U.S. government in its high value postage stamps and its new High Security Visa, amongst other uses.
- Other security features include ultraviolet logos on the outer laminate, micro-text on the teslin blanks signature lines, infrared band over the ID bar code and high definition bank note type printing on both sides of the blanks.

Through the Mexican consulates 649,000 codifiers were given to banks, the Bureau of Immigration and Customs Enforcement (BICE), police departments, airlines, border patrol, and other institutions.

It is important to stress the Mexican government's willingness to listen to any consideration and recommendation from U.S. Federal, State and local authorities to work together to improve the security of the Mexican MCAS.

- Control of MCAS issuance:

15. How is Mexico assuring that the MCAS are representative of one person/one identity?

Since the MCAS was launched, the standard of scrutiny for issuance became much stricter and thus has gradually minimized our exposure to error or fraud. Our Passport and our Consular ID have more security features than most U.S. issued driver's licenses.

The Mexican Government has also developed a national database, which allows the data entered into the computer to be self-analyzed and inform the authorities if there are homonyms and if the applicant has previously received a MCAS. The person's picture is also stored in the database, thus allowing Mexican authorities to see if it is the same person, while also facilitating the replacement of lost MCAS. Mexican passport information also is kept in this system. In addition, consulates can verify the identity of an applicant who uses a Mexican voter registration card by checking it electronically against a voter registration database in Mexico. There is a database within each Consular district and a central database in Mexico City.

Through the database, the consulates can also check the applicant's identity against a Mexican government "stop list"—a list containing records of persons who are not allowed to obtain documents issued by the Mexican government, including fugitives or persons who have tried to use fake documents at consulate offices in the past. Mexican officials estimate this database contains approximately 13,000 records.

Additionally, the Mexican Government is analyzing different alternative systems that would enable the establishment of biometric features.

- Comparison with U.S. Documents:

16. How secure is the MCAS compared to U.S. documents?

In many instances, the MCAS is more secure than most locally issued driver's licenses or State ID's, as it incorporates more security features. The MCAS has 13 security features and the requirements for issuance of a MCAS are similar to those of most U.S. official documents.

Sheila Blair, former Assistant Treasury Secretary for Banks in the current administration, in declarations made to the Los Angeles Times on July 31, 2003, stated that critics *"are holding the Matriculas to standards that many driver's licenses and other [U.S.] domestic governmental-issued IDs couldn't meet".*

- **Relevant data:**

17. What Information is available about MCAS acceptance by local authorities in the U.S.?

Currently, 377 cities, 163 counties and 33 states, as well as 178 financial institutions and 1180 police departments, accept the MCAS as a valid ID. Additionally, 12 states have accepted the MCAS as one of the proofs of identity required to obtain a driver's license. The local governments of 80 cities accept the MCAS for obtaining a library card or business licenses, entering public buildings, registering children for school, and accessing some public services.

Private companies have begun to accept the matrícula for opening accounts for utilities and insurance. Given that the Transportation Safety Administration allows airlines to set their own criteria for acceptable identification for passenger check-in, some airlines accept the MCAS as a valid ID.

18. How many MCAS have been issued thus far?

From March 6, 2002 to July 18, 2004, the Mexican government issued 2,214,738 MCAS. The Mexican government estimates that almost 4 million Mexicans in the United States have *matrículas consulares.*

- **Security Benefits in the U.S.:**

19. How does the MCAS benefit U.S. Security?

Acceptance of the MCAS provides U.S. authorities with a further instrument to comply with section 312 of the Patriot Act, according to which banking institutions shall "...ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g)...."

"Personal accountability. Economic vitality. Financial stability. Homeland Security. These are just four of the reasons why acceptance of the Matrícula Consular is so important."
(Statement of Illinois Congressman Luis V. Gutierrez, regarding 'The Issuance, Acceptance, and Reliability of Consular Identification Cards,' before the House Judiciary Subcommittee on Immigration, Border Security, and Claims, June 19, 2003).

The following are some of the benefits for U.S. Homeland Security:

- The acceptance of the MCAS by key financial institutions improves their ability to track the use of money and prevent criminal activities. The use of MCAS has contributed to shrink informal channels associated with the potentially dangerous existence of financial "black markets".
- The MCAS assists law enforcement officials' communication with migrant communities by ensuring that people are not afraid to come forward as witnesses and report crimes. This also allows police to keep better records. People without identification who might have important information are more likely to flee from the police.
- The MCAS reduce the vulnerability of migrants as objects of criminal activity. Before the MCAS were accepted in financial institutions, undocumented workers were forced to keep as cash whatever resources they had; thus, they frequently became prime and repeated targets of crime, including robberies and break-ins to their homes. In some cases, the police themselves have asked local banks to accept the MCAS in order to prevent these problems.
- Carrying a MCAS saves resources and time for the police and the detained. When the police stop someone without identification on a minor charge, they are forced to hold them overnight when a citation would otherwise suffice.
- The MCAS make it easier to identify dead or unconscious people. They save time and resources for the police and facilitate communication with relatives.
- The MCAS facilitates compliance by law enforcement officials of the provisions on consular notification included in Article 36 of the Vienna Convention on Consular Relations. As stated by a U.S. Department of State official: *"...the Department views foreign consular identification cards as a possible tool for facilitating consular notification by accountable law enforcement officials... a foreign consular identification card is a means to identify an individual as a foreign national..."*[2]. However, it must be emphasized that the police are generally not responsible for immigration enforcement; therefore, immigration status is irrelevant for their purposes.

The numerous benefits of MCAS for U.S. security explain why more than 1180 local U.S. police and sheriff departments have been among the most enthusiastic backers of the consular IDs. Many cities, banks and governmental offices have also received the scanners that allow officers to check the cards' most sophisticated security features. It is important to clarify that the Department of Homeland Security has not explicitly made decisions involving the MCAS.

As stated by Texas Representative Sheila Jackson Lee, referring to the use of the MCAS by Mexican immigrants to open bank accounts and to identify themselves before law enforcements authorities: *"Isn't this better than them having their money under a mattress or somewhere else? This way we can track whether the money in these accounts is being used for illegal purposes. This is an asset to us. This helps law enforcement".* (National Review on Line, June 20, 2003)

20. Do MCAS make it easier for criminals or terrorists to enter and/or organize their activities in the United States?

MCAS in no way facilitate a foreign national's entry to U.S. Through the information provided by the Mexican consulates and government, Mexicans who own a MCAS are aware that this is only an identification card, which has no bearing upon their

[2] Statement of Roberta S. Jacobson, Acting Deputy Assistant Secretary of State for the Bureau of Western Hemisphere Affairs, "The Federal Government's Response to Consular Identification Cards", Hearing before the Subcommittee on Immigration, Border Security, and Claims, June 26th, 2003.

immigration or visa status. Given the fact that MCAS are accepted only as one of the requirements for a person to open a bank account or have access to other services in the U.S., by itself, this document cannot facilitate illegal activities within U.S. institutions.

The government of Mexico shares the security concerns of the United States and is an active partner in the fight against terrorism worldwide. Therefore, we are taking extra steps to ensure the reliability of all documents issued by our government, including the MCAS. It is important to stress that Mexican and U.S. authorities have been working more closely to enhance their security and to prevent terrorist activities in both countries. To date there have been no reports about any link of the use of Mexican MCAS and people connected to or even suspects of being engaged in terrorist activities.

21. What is the impact of the FBI's statements regarding the reliability of the MCAS?

The U.S. Government has not taken a formal stance against the nationwide acceptance of the MCAS.

On June 25th, 2003, the FBI's representative testifying before the U.S. House of Representatives Judiciary Subcommittee on Immigration, Border Security and Claims acknowledged that the issues surrounding the security of the MCAS are not unique to this document and are shared by U.S. issued documents as they *"all have different vulnerabilities."* [3]

Sheila Blair, former Assistant Treasury Secretary for Banks in the current administration, indicated that critics *"are holding the Matrículas to standards that many driver's licenses and other [U.S.] domestic governmental-issued IDs couldn't meet", adding that "the tie to terrorism is stretch."* [4]

- **Economic Benefits in the U.S.:**

22. Has there been a measurable impact of the increased use of MCAS in the remittances market?

The acceptance of the MCAS by key financial institutions has significantly reduced the cost of sending remittances. The Mexican government estimates that, since the MCAS have been accepted by banks and financial institutions, the increase in use of bank transfers as a means for sending remittances has led to savings of more than U.S.$700 million for migrants and their families.[5]

The use of the MCAS is also contributing to shrink informal channels associated with the potentially dangerous existence of financial "black markets".

It is also important to mention the 30% increase in remittances tracked to Mexico during the first semester of 2003, as compared to the previous year, and a 23.6% increase in the same period for 2004. The total of remittances sent to Mexico in 2003 (approximately U.S.$14 billion) represented an increase of 35.2% compared with the previous year.

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[3] *See* Ricardo Alonso, "Storm Swirls Around Mexican ID Card Use," Los Angeles Times (July 31, 2003).
[4] *See* R. Alonso, "Storm Swirls..." Los Angeles Times (July 31, 2003).
[5] Speech by President Vicente Fox, Austin, November 6, 2003.

23. What is the relationship between Banks and the MCAS?

The MCAS has become an important tool for opening financial institutions to the un-banked people. For many Mexican nationals living in the United States, obtaining a MCAS represents the first step towards participating in the financial system. The positive impacts of such access go beyond individuals simply being able to open bank accounts. They also have positive implications for the day-to-day lives of U.S. communities by unleashing economic transactions that would not occur otherwise.

Access to the financial mainstream by those currently un-banked is a critical component of local development in the United States. This is, in fact, an issue that goes beyond Mexicans living in the U.S. Although estimates vary, several studies indicate that as many as 10 million American households (65 million people) do not have bank accounts.[6] Additionally, according to the Federal Reserve Board's 1998 *Survey of Consumer Finances and the Treasury Department's Notice of Funds Availability Regarding First Accounts*, almost one family in ten in the U.S. (generally with annual income of less than $25,000) does not have a draft/checking account or a savings account.

The contribution of the MCAS to address such an important problem, coupled with its enhanced security features, is among the several reasons that have led an increasing number of state and local authorities in the United States to accept it as valid ID.

24. Why Should U.S. Banks and Financial Institutions Accept the MCAS?

Financial institutions can tap new customers who are now able to access fundamental financial services previously unattainable to them. Measured just in terms of the remittances sent home by Mexicans living in the U.S., resources involved amounted to almost U.S.$14 billion in 2003.

Today, 178 financial institutions accept the MCAS. By June 2003, Wells Fargo, estimated that it had opened 60,000 new accounts since it began accepting the *matrículas consulares* in November 2001[7]. Only in the Chicago area, the FDIC's office conducted a survey of banks accepting the MCAS. Of the eight banks they had surveyed by June 2003, 12,978 new bank accounts had been opened, representing $50 million dollars in deposits.[8]

25. Why do so many banks oppose the U.S. Federal Government adopting a position forbidding the use of the MCAS?

Banks and other financial institutions' primary interest is to ensure the reliability of the documents they accept, in order to protect themselves and their investors.

Current law allows for Banks and other financial institutions, being private and independent in nature, a high degree of independence in evaluating the reliability of

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[6] Statement of Chairman Spencer Bachus, U.S. House of Representatives Subcommittee on Financial Institutions and Consumer Credit, "Serving the Underserved: Initiatives to broaden access to the financial mainstream", June 26th, 2003.
[7] Statement of Sheila Blair, University of Massachusetts, "Serving the Underserved: Initiatives to Broaden Access to the Financial Mainstream", Hearing before the U.S. House of Representatives Subcommittee on Financial Institutions and Consumer Credit, June 26th, 2003.
[8] *Id.*

foreign documents and accepting them. National banks, such as Citibank, Bank of America and Wells Fargo, who serve large portions of the immigrant community, have had a positive experience with the MCAS, as evidenced by the following statement:

> *"Wells Fargo has not experienced any issues with the new accounts that have been established... [their] experience with the accounts opened has been no different than for the accounts opened with U.S. driver's licenses or state identification"* (Statement of Wells Fargo Spokeswoman Miriam Galicia Duarte, July 08, 2003).

The fact that so many banks have acquiesced to the use of the MCAS as a safe document speaks for the security and high quality of the document.

Illinois Congressman Luis Gutiérrez, Senior member of the House Financial Services Committee, issued the following statement: *"The Matrícula card has become an important tool for opening financial institutions to the unbanked... having fair access to financial services is not simply a convenience--it is crucial."* (Hearing on "The Issuance, Acceptance, and Reliability of Consular Identification Cards" of the House Judiciary Subcommittee on Immigration, Border Security, and Claims, June 6, 2003).

Many organizations, including the Financial Services Roundtable (FSR),[9] did not support any changes to the record-keeping requirements issued on May 9, 2003. In a letter to U.S. Treasury Secretary John W. Snow, dated July 31st, 2003, the FSR expressed their belief that *"...the existing requirements adhere to a risk-based approach, and are designed to provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing"*.

The California Bankers Association (CBA) also supported the risk-based approach to handle customer identification and argued that *"...the creation of an inflexible, bureaucratic process that discriminates against non-U.S. citizens would create a host of difficulties not justified by any benefits that have been articulated so far."* (Letter to U.S. Department of Treasury, July 28,2003)

- **MCAS and Immigration Status:**

26. Is the issuance of the MCAS a form of "immigration status regularization"?

Criticism of the MCAS sometimes focuses, not on the security features of the document, but on its assumed relation to immigration law. Such assumption is mistaken and based on a misunderstanding. The MCAS has no relation with the sovereign right of the United States to determine who can or cannot be admitted into its territory, as well as the conditions for any person to remain there. In no way does the MCAS constitute a form of "immigration status regularization" which may hinder the enforcement of immigration laws. This fact is clearly understood by the Mexican Government and the MCAS holders. It is important to keep in mind that the MCAS are used by all Mexicans, including legal residents who carry it for convenience.

As Senator Edward Kennedy expressed on July 24th, 2003, *"...with respect to undocumented immigrants, there is no other information available to assist law enforcement officers in solving crimes and maintaining records on illegal activities. The*

[9] The Roundtable is a national association that represents 100 of the largest integrated financial services companies providing banking, securities, insurance, and other financial products and services to American consumers and businesses.

Mexican consular identification cards do not change the laws related to immigration. They do not legalize undocumented aliens or pose risk to our antiterrorism efforts. I believe that the major impact of the cards is in facilitating the contact of Mexican immigrants with American businesses and institutions."[10]

"Some people seem to think that by doing this, we're supporting illegal immigration. That's not the case. The fact is, all the people we serve should be given equal protection under the law, and we believe this will help us provide that equal protection" (Statement of Jim Spreine, Laguna Beach Police Chief and President of the Orange County Police Chiefs and Sheriff's Association, Los Angeles Times, November 8, 2001).

"The acceptance of a foreign national's identification by a financial institution confers no legal status upon an alien. This is solely for identification purposes, not for immigration purposes" (The Financial Services Roundtable, Letter to U.S. Department of Treasury, July 31, 2003).

- **Acceptance of MCAS in Mexico:**

27. Is the Matrícula Consular accepted in Mexico as a valid form of identification?

The acceptance of the MCAS in Mexico is a matter of market and demand. The MCAS are only issued to people who reside outside Mexico and are mostly used outside of the country; thus, the use of MCAS within Mexico had not been contemplated in the Mexican banking laws and regulations. However, with time, Mexican authorities recognized the importance of this ID and began accepting it as one of the many means available to prove Mexican nationality upon entering Mexico.

In 2001, an internal campaign was initiated to inform states in Mexico about the MCAS with very successful results. Currently, 13 states and the Federal Electoral Institute (IFE) have officially recognized the MCAS as a valid form of identification.

Banks need proof of residency within Mexico, therefore the MCAS is not useful for opening a bank account, since by definition, it only includes U.S. addresses. However, certain Mexican banks, especially those at the border, do accept the MCAS as a valid form of identification.

It is important to stress that banks in the U.S. couple the MCAS with other requirements, such as the Income Tax Identification Number (ITIN), Social Security, Passports, proof of address and other requirements. Therefore, they take steps to protect themselves and, throughout the process, validate the fact that the MCAS is as secure as other instruments of identification.

28. Is there an equivalent form of identification that is accepted in Mexico, thus allowing the MCAS to be used only for international identification purposes?

Yes. There are many forms of identification that are accepted by the banks in Mexico (Electoral ID, drivers licenses, passport, etc.) However, the Mexican government is working toward wider acceptance of the MCAS within Mexico in order to assist returning migrant workers.

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[10] Letter of U.S. Senator Edward Kennedy to U.S. Treasury Secretary John W. Snow, July 24th, 2003.

- **Costs of forbidding the acceptance of MCAS:**

29. Who would be the most severely affected groups, if acceptance of the MCAS were no longer viable?

U.S. Economy:
The acceptance of MCAS by banks contributes to the creation and replication of a wide variety of economic transactions and products that would not exist or be used otherwise. By accepting the MCAS, Mexican workers are able to open accounts, cash checks and use other bank services, not available to them in the past, unleashing a positive effect in the United States economy.

If banks could no longer open accounts for Mexican migrants by accepting the MCAS they would be unable to participate in one of the most dynamic and lucrative segments of the market. They would be forced to close the tens of thousands of accounts that have been opened nationwide, resulting in a multimillion-dollar loss to this industry. They would also lose the market growth they have experienced in the remittances field, which, in turn, would constitute a backward-step, driving upwardly the prices of sending money abroad. This would also reduce the capital flows to Mexico and increase the likelihood of consumer fraud perpetrated against migrants by driving them back into informal channels.

Law Enforcement:
Law Enforcement Authorities who currently accept the MCAS would no longer have a reliable means of identification for both victims and perpetrators of crimes. Migrants would lose the confidence that has been gained over the last few years to safely interact with these authorities, and provide useful information.

As Senator Edward Kennedy expressed on July 24th, 2003, *"an important aspect of the new regulations gives financial institutions the discretion to accept identification documents issued by foreign governments; such as the consular identification cards issued by the government of Mexico. The more we can enhance the identification of immigrants and visitors, the safer our society becomes".*

Local and State governments:
Local and State governments would no longer be able to serve large portions of their populations who use the MCAS in their daily interaction with these authorities (e.g. as a form of identification to enter public buildings, obtain library cards, business licenses and driver's licenses, register children for school, or access certain public services). It would also make it more difficult for Mexicans to have the confidence to participate in activities as part of the local community.

Nancy Pelosi, House Minority Leader in the California State Assembly, stated: *"As a nation of immigrants, we need to ensure that newcomers have basic access to our government. We won't give up until the Matrícula consular is recognized by the federal government"* (quoted in The Dallas Morning News, July 17, 2003).

Migrants:
The Mexican migrants themselves would also endure negative repercussions without the benefits of a MCAS as a proper form of identification. Their vulnerability would increase by having to carry their money with them or keep it at home. The cost of sending remittances home would increase. They would also experience procedural

difficulties with law enforcement authorities by not having a proper identification card and it would make it more difficult to contact their families in case of an emergency.

- **The U.S. Department of the Treasury Survey:**

30. What was the result of the U.S. Department of Treasury's online survey regarding the acceptance of the MCAS?

On July, 2003, the U.S. Department of Treasury conducted an online survey to collect public comment on its bank rules regarding the acceptance of the matrícula consular.

The importance of the issue was reflected by the fact that 16,258 individuals and organizations participated through the online survey. The Treasury received approximately 24,000 opinions through different means. Almost 25% of the participants online were from the states with the largest Hispanic population, Texas and California; 77% of their votes were in favor of the MCAS.

It is important to point out that the U.S. Administration has not stated it's opposition to the MCAS and that our actions do not contradict the Administration's position on this issue.

31. Is the Mexican Government's issue of the MCAS an interference with U.S. domestic affairs?

By promoting the MCAS, the Mexican government does not interfere in U.S. domestic affairs. The Vienna Convention on Consular Relations gives Sending States the right to register their nationals, a practice which has been recognized by international law and has been exercised by every country around the world, including the U.S.

One of the responsibilities of the Mexican government is to protect Mexican nationals abroad. One of the most basic steps in ensuring their well-being is to provide nationals with proper documents for identification purposes. One of the main purposes of the Mexican government is to ensure that the discussion around the MCAS is based on objective, accurate and truthful information.

The Mexican Ministry of Foreign Affairs informs that, as part of the **Integral Program for the Improvement of the Consular Services**, on March 6, 2002 started issuing a new higher security Consular ID, called *"Matrícula Consular de Alta Seguridad"* or *MCAS*.

(FRONT)

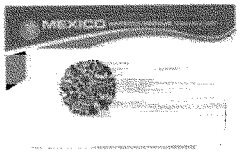
(BACK)

The main MCAS security backs are either visible or invisible security features:

Visible security features:

1) Green security paper, with a special security pattern.

2) "Advantage seal", with a Mexican Official seal that appears over the bearer's picture that changes color from green to brown when seen with natural light.



3) Infra red band on the back of the MCAS.

4) Using a flourescent-light lamp, you are able to read *SRE* all over the front of the MCAS.

Invisible security features:

in order to be able to reveal the invisible MCAS security marks, a special decoder is needed. Using this decoder you can see the following:

On the front side:
1) The word *MEXICO* written at the left side of the MCAS, next to the bearer's picture.

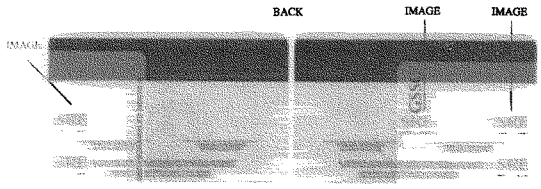
2) The legend *"MATRICULA CONSULAR CONSULAR ID CARD"*, written at the bottom of the MCAS

3) The capital letters *"SRE"*, written three times on the right side of the MCAS.

On the back side:

1) Written on the left side of the green line, while using the decoder, you will read the bearer's name and the ID number. On the right side, you will read the ID's expiration date and the name of the issuing office, for example *"CONSULMEX CHICAGO"*.

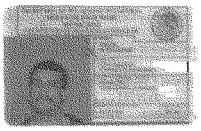
2) Turning the decoder 90° degrees, you will read SRE written five times over the MCAS, with the following pattern:



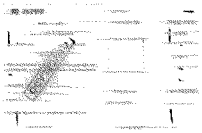
3) Using the decoder over the picture, you will read the bearer's name.

4) Using the decoder over the picture and turning it 90° degrees, you will read the capital letters *"SRE"* and the bearer's D.O.B.

Please note that the two Consular IDs *(Matriculas Consulares)* previously issued by the Mexican Consulates in the United States, both, the one laminated and the booklet-like one, are going to be valid until their expiration date.



(LAMINATED)



(BOOKLET-LIKE)

National Commission on Terrorist Attacks Upon the United States

Monograph on Terrorist Financing

Staff Report to the Commission

John Roth
Douglas Greenburg
Serena Wille

Preface

The Commission staff organized its work around specialized studies, or monographs, prepared by each of the teams. We used some of the evolving draft material for these studies in preparing the seventeen staff statements delivered in conjunction with the Commission's 2004 public hearings. We used more of this material in preparing draft sections of the Commission's final report. Some of the specialized staff work, while not appropriate for inclusion in the report, nonetheless offered substantial information or analysis that was not well represented in the Commission's report. In a few cases this supplemental work could be prepared to a publishable standard, either in an unclassified or classified form, before the Commission expired.

This study is on terrorist financing. It was prepared principally by John Roth, Douglas Greenburg, and Serena Wille, with editing assistance from Alice Falk. As in all staff studies, they often relied on work done by their colleagues.

This is a study by Commission staff. While the Commissioners have been briefed on the work and have had the opportunity to review earlier drafts of some of this work, they have not approved this text and it does not necessarily reflect their views.

Philip Zelikow

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Chapter 1

Introduction and Executive Summary

Introduction

After the September 11 attacks, the highest-level U.S. government officials publicly declared that the fight against al Qaeda financing was as critical as the fight against al Qaeda itself. It has been presented as one of the keys to success in the fight against terrorism: if we choke off the terrorists' money, we limit their ability to conduct mass casualty attacks. In reality, completely choking off the money to al Qaeda and affiliated terrorist groups has been essentially impossible. At the same time, tracking al Qaeda financing has proven a very effective way to locate terrorist operatives and supporters and to disrupt terrorist plots.

As a result, the U.S. terrorist financing strategy has changed from the early post-9/11 days. Choking off the money remains the most visible aspect of our approach, but it is not our only, or even most important, goal. Ultimately, making it harder for terrorists to get money is a necessary, but not sufficient, component of our overall strategy. Following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public, but it is a critical part of the overall campaign against al Qaeda. Moreover, the U.S. government recognizes—appropriately, in the Commission staff's view—that terrorist-financing measures are simply one of many tools in the fight against al Qaeda.

This monograph, together with the relevant parts of the Commission's final report, reflects the staff's investigation into al Qaeda financing and the U.S. government's efforts to combat it. This monograph represents the collective efforts of a number of members of the staff. John Roth, Douglas Greenburg and Serena Wille did the bulk of the work reflected in this report. Thanks also go to Dianna Campagna, Marquittia Coleman, Melissa Coffey and the entire administrative staff for their excellent support. We were fortunate in being able to build upon a great deal of excellent work already done by the U.S. intelligence and law enforcement communities.

The starting point for our inquiry is 1998, when al Qaeda emerged as a primary global threat to U.S. interests. Although we address earlier periods as necessary, we have not attempted to tell the history of al Qaeda financing from its inception. We have sought to understand how al Qaeda raised, moved, and stored money before and after the September 11 attacks, and how the U.S. government confronted the problem of al Qaeda financing before and after 9/11. We have had significant access to highly classified raw and finished intelligence from the intelligence community, have reviewed law enforcement, State Department, and Treasury Department files, and have interviewed at

length government officials, from street-level agents to cabinet secretaries, as well as non-government experts, representatives from the financial services industry, and representatives of individuals and entities directly affected by U.S. government action to combat al Qaeda financing.

This monograph does not attempt a comprehensive survey of all known data on al Qaeda financing and every government action to combat it. Rather, we have sought to understand the issues that make a difference, what the 9/11 disaster should have taught us about these issues, and the extent to which the current U.S. strategy reflects these lessons. What we have found is instructive in the larger analysis of what the U.S. government can do to detect, investigate, deter, and disrupt al Qaeda and affiliated terrorist groups bent on mass casualty attacks against the United States.[1]

Executive Summary

September 11 financing

The September 11 hijackers used U.S. and foreign financial institutions to hold, move, and retrieve their money. The hijackers deposited money into U.S. accounts, primarily by wire transfers and deposits of cash or travelers checks brought from overseas. Additionally, several of them kept funds in foreign accounts, which they accessed in the United States through ATM and credit card transactions. The hijackers received funds from facilitators in Germany and the United Arab Emirates or directly from Khalid Sheikh Mohamed (KSM) as they transited Pakistan before coming to the United States. The plot cost al Qaeda somewhere in the range of $400,000–500,000, of which approximately $300,000 passed through the hijackers' bank accounts in the United States. The hijackers returned approximately $26,000 to a facilitator in the UAE in the days prior to the attack. While in the United States, the hijackers spent money primarily for flight training, travel, and living expenses (such as housing, food, cars, and auto insurance). Extensive investigation has revealed no substantial source of domestic financial support.

Neither the hijackers nor their financial facilitators were experts in the use of the international financial system. They created a paper trail linking them to each other and their facilitators. Still, they were easily adept enough to blend into the vast international financial system without doing anything to reveal themselves as criminals, let alone terrorists bent on mass murder. The money-laundering controls in place at the time were largely focused on drug trafficking and large-scale financial fraud and could not have detected the hijackers' transactions. The controls were never intended to, and could not, detect or disrupt the routine transactions in which the hijackers engaged.

[1] Our investigation has focused on al Qaeda financing and the country's response to it. Although much of our analysis may apply to the financing of other terrorist groups, we have made no systematic effort to investigate any of those groups, and we recognize that the financing of other terrorist groups may present the government with problems or opportunities not existing in the context of al Qaeda.

There is no evidence that any person with advance knowledge of the impending terrorist attacks used that information to profit by trading securities. Although there has been consistent speculation that massive al Qaeda–related "insider trading" preceded the attacks, exhaustive investigation by federal law enforcement and the securities industry has determined that unusual spikes in the trading of certain securities were based on factors unrelated to terrorism.

One of the pillars of al Qaeda: Fund-raising

Al Qaeda and Usama Bin Ladin obtained money from a variety of sources. Contrary to common belief, Bin Ladin did not have access to any significant amounts of personal wealth (particularly after his move from Sudan to Afghanistan) and did not personally fund al Qaeda, either through an inheritance or businesses he was said to have owned in Sudan. Rather, al Qaeda was funded, to the tune of approximately $30 million per year, by diversions of money from Islamic charities and the use of well-placed financial facilitators who gathered money from both witting and unwitting donors, primarily in the Gulf region. No persuasive evidence exists that al Qaeda relied on the drug trade as an important source of revenue, had any substantial involvement with conflict diamonds, or was financially sponsored by any foreign government. The United States is not, and has not been, a substantial source of al Qaeda funding, although some funds raised in the United States may have made their way to al Qaeda and its affiliated groups.

After Bin Ladin relocated to Afghanistan in 1996, al Qaeda made less use of formal banking channels to transfer money, preferring instead to use an informal system of money movers or bulk cash couriers. Supporters and other operatives did use banks, particularly in the Gulf region, to move money on behalf of al Qaeda. Prior to 9/11 the largest single al Qaeda expense was support for the Taliban, estimated at about $20 million per year. Bin Ladin also used money to train operatives in camps in Afghanistan, create terrorist networks and alliances, and support the jihadists and their families. Finally, a relatively small amount of money was used to finance operations, including the approximately $400,000–500,000 spent on the September 11 attacks themselves.

U.S. government efforts before the September 11 attacks

Terrorist financing was not a priority for either domestic or foreign intelligence collection. As a result, intelligence reporting on the issue was episodic, insufficient, and often inaccurate. Although the National Security Council considered terrorist financing important in its campaign to disrupt al Qaeda, other agencies failed to participate to the NSC's satisfaction, and there was little interagency strategic planning or coordination. Without an effective interagency mechanism, responsibility for the problem was dispersed among a myriad of agencies, each working independently.

The FBI gathered intelligence on a significant number of organizations in the United States suspected of raising funds for al Qaeda or other terrorist groups. Highly motivated street agents in specific FBI field offices overcame setbacks, bureaucratic inefficiencies, and what they believed to be a dysfunctional Foreign Intelligence Surveillance Act (FISA) system[2] to gain a basic understanding of some of the largest and most problematic terrorist-financing conspiracies since identified. The FBI did not develop an endgame, however. The agents continued to gather intelligence with little hope that they would be able to make a criminal case or otherwise disrupt the operations. The FBI could not turn these investigations into criminal cases because of insufficient international cooperation, a perceived inability to mingle criminal and intelligence investigations due to the "wall" between intelligence and law enforcement matters, sensitivities to overt investigations of Islamic charities and organizations, and the sheer difficulty of prosecuting most terrorist-financing cases. As a result, the FBI rarely sought to involve criminal prosecutors in its terrorist-financing investigations. Nonetheless, FBI street agents had gathered significant intelligence on specific groups.

On a national level the FBI did not systematically gather and analyze the information its agents developed. It lacked a headquarters unit focusing on terrorist financing, and its overworked counterterrorism personnel lacked time and resources to focus specifically on financing. The FBI as an organization therefore failed to understand the nature and extent of the jihadist[3] fund-raising problem within the United States or to develop a coherent strategy for confronting the problem. The FBI did not, nor could it, fulfill its role to provide intelligence on domestic terrorist financing to government policymakers and did not contribute to national policy coordination. For its part, the Criminal Division of the Department of Justice had no national program for prosecuting terrorist-financing cases, despite a 1996 statute that gave it much broader legal powers for doing so. The Department of Justice could not develop an effective program for prosecuting these cases because its prosecutors had no systematic way to learn what evidence of prosecutable crimes could be found in the FBI's intelligence files, to which they did not have access.

The U.S. intelligence community largely failed to comprehend al Qaeda's methods of raising, moving, and storing money, because it devoted relatively few resources to collecting the strategic financial intelligence that policymakers were requesting or that would have informed the larger counterterrorism strategy. Al Qaeda financing was in many respects a hard target for intelligence gathering. But the CIA also arrived belatedly

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[2] This monograph is a survey and analysis of the government's efforts with regard to terrorist financing both before and after 9/11. This necessarily touches on many different aspects of the government's counterterrorism efforts, including the FISA review process and barrier between law enforcement and intelligence information. We did not attempt, however, to conduct an exhaustive review of those issues. Rather, we refer the reader to the 9/11 Commission Report, pp.78-80.

[3] We use the term *jihadist* to include militant Islamist groups other than the Palestinian terrorist groups, such as Hamas and Palestinian Islamic Jihad, and Lebanese Hizbollah. The other jihadist groups who have raised money in the United States appear to loosely share a common ideology, and many of them have been linked directly or indirectly to al Qaeda. These groups raise funds in the United States to support Islamist militants around the world; some of these funds may make their way to al Qaeda or affiliated groups. The Palestinian groups and Hizbollah, which have raised large amounts of money domestically, present different issues that are beyond the scope of our investigation.

at an understanding of some basic operational facts that were readily available—such as the knowledge that al Qaeda relied on fund-raising, not Bin Ladin's personal fortune. The CIA's inability to grasp the true source of Bin Ladin's funds and the methods behind their movement hampered the U.S. government's ability to integrate potential covert action or overt economic disruption into the counterterrorism effort. The lack of specific intelligence about al Qaeda financing frustrated policymakers, and the intelligence deficiencies persisted through 9/11.

Other areas within the U.S. government evinced similar problems. The then-obscure Office of Foreign Assets Control (OFAC), the Treasury organization charged by law with searching out, designating, and freezing Bin Ladin assets, lacked comprehensive access to actionable intelligence and was beset by the indifference of higher-level Treasury policymakers. Even if those barriers had been removed, the primary Bin Ladin financial flows at the time, from the Gulf to Afghanistan, likely were beyond OFAC's legal powers, which apply only domestically.

A number of significant legislative and regulatory initiatives designed to close vulnerabilities in the U.S. financial system failed to gain traction. Some of these, such as a move to control foreign banks with accounts in the United States, died as a result of banking industry pressure. Others, such as a move to regulate money remitters, were mired in bureaucratic inertia and a general antiregulatory environment.

The U.S. government had recognized the value of enlisting the international community in efforts to stop the flow of money to al Qaeda entities. U.S. diplomatic efforts had succeeded in persuading the United Nations to sanction Bin Ladin economically, but such sanctions were largely ineffective. Saudi Arabia and the UAE, necessary partners in any realistic effort to stem the financing of terror, were ambivalent and selectively cooperative in assisting the United States. The U.S. government approached the Saudis on some narrow issues, such as locating Bin Ladin's supposed personal wealth and gaining access to a senior al Qaeda financial figure in Saudi custody, with mixed results. The Saudis generally resisted cooperating more broadly against al Qaeda financing, although the U.S. government did not make this issue a priority in its bilateral relations with the Saudis or provide the Saudis with actionable intelligence about al Qaeda fund-raising in the Kingdom. Other issues, such as Iraq, the Middle East peace process, economic arrangements, the oil supply, and cutting off Saudi support for the Taliban, took primacy on the U.S.-Saudi agenda.

The net result of the government's efforts, according to CIA analysis at the time, was that al Qaeda's cash flow on the eve of the September 11 attacks was steady and secure.

Where are we now?

It is common to say the world has changed since September 11, 2001, and this conclusion is particularly apt in describing U.S. counterterrorist efforts regarding financing. The U.S. government focused, for the first time, on terrorist financing and devoted considerable

energy and resources to the problem. As a result the United States now has a far better understanding of the methods by which terrorists raise, move, and use money and has employed this knowledge to our advantage.

With an understanding of the nature of the threat and with a new sense of urgency, the intelligence community (including the FBI) created new entities to focus on, and bring expertise to, the area of terrorist fund-raising and the clandestine movement of money. These entities are led by experienced and committed individuals, who use financial information to understand terrorist networks, search them out and disrupt their operations, and who integrate terrorist-financing issues into the larger counterterrorism efforts at their respective agencies. Equally important, many of the obstacles hampering investigations have been stripped away. The current intelligence community approach appropriately focuses on using financial information, in close coordination with other types of intelligence, to identify and track terrorist groups rather than to starve them of funding.

The CIA has devoted considerable resources to the investigation of al Qaeda financing, and the effort is led by individuals with extensive expertise in the clandestine movement of money. The CIA appears to be developing an institutional and long-term expertise in this area, and other intelligence agencies have made similar improvements. Still, al Qaeda financing remains a hard target for intelligence gathering. Understanding al Qaeda's money and providing actionable intelligence present ongoing challenges because of the speed, diversity, and complexity of the means and methods for raising and moving money; the commingling of terrorist money with legitimate funds; the many layers and transfers between donors and the ultimate recipients of the money; the existence of unwitting participants (including donors who give to generalized jihadist struggles rather than specifically to al Qaeda); and the U.S. government's reliance on foreign government reporting for intelligence.

Since the attacks, the FBI has improved its dissemination of intelligence to policymakers, usually in the form of briefings, regular meetings, and status reports. The creation of a unit focusing on terrorist financing has provided a vehicle through which the FBI can effectively participate in interagency terrorist-financing efforts and ensures that these issues receive focused attention rather than being a footnote to the FBI's overall counterterrorism program. Still, the FBI needs to improve the gathering and analyzing of the information developed in its investigations. The FBI's well-documented efforts to create an analytical career track and enhance its analytical capabilities are sorely needed in this area.

Bringing jihadist fund-raising prosecutions remains difficult in many cases. The inability to get records from other countries, the complexity of directly linking cash flows to terrorist operations or groups, and the difficulty of showing what domestic persons knew about illicit foreign acts or actors all combine to thwart investigations and prosecutions. Still, criminal prosecutors now have regular access to information on relevant investigations, and the Department of Justice has created a unit to coordinate an aggressive national effort to prosecute terrorist financing.

In light of the difficulties in prosecuting some terrorist fund-raising cases, the government has used administrative blocking and freezing orders under the International Emergency Economic Powers Act (IEEPA) against U.S. persons (individuals or entities) suspected of supporting foreign terrorist organizations. It may well be effective, and perhaps necessary, to disrupt fund-raising operations through an administrative blocking order when no other good options exist. The use of IEEPA authorities against domestic organizations run by U.S. citizens, however, raises significant civil liberty concerns because it allows the government to shut down an organization on the basis of classified evidence, subject only to a deferential after-the-fact judicial review. The provision of the IEEPA that allows the blocking of assets "during the pendency of an investigation" also raises particular concern in that it can shut down a U.S. entity indefinitely without the more fully developed administrative record necessary for a permanent IEEPA designation.

The NSC's interagency Policy Coordinating Committee (PCC) on terrorist financing has been generally successful in its efforts to marshal government resources to address terrorist-financing issues in the immediate aftermath of the attacks, although its success likely resulted more from the personalities of its members than from its structure. As the government's response to the problem has evolved over time, the NSC is better situated than an agency or a stand-alone "czar" to take the lead in forming an interagency strategic and operational response to terrorist financing.

The attacks galvanized the international community to set up a near-universal system of laws, tied to United Nations Security Council Resolution 1373, to freeze the assets of terrorists and their supporters. The United States pursued an ambitious course of highly visible asset freezes of terrorists, terrorist supporters, and terrorist-related entities. The State Department embarked on a course of intense diplomatic pressure to ensure that the asset freezes were truly international. Multilateral institutions, such as the Financial Action Task Force, began to develop international antiterrorist finance standards for financial institutions.

Saudi Arabia is a key part of our international efforts to fight terrorist financing. The intelligence community identified it as the primary source of money for al Qaeda both before and after the September 11 attacks. Fund-raisers and facilitators throughout Saudi Arabia and the Gulf raised money for al Qaeda from witting and unwitting donors and divert funds from Islamic charities and mosques. The Commission staff found no evidence that the Saudi government as an institution or as individual senior officials knowingly support or supported al Qaeda; however, a lack of awareness of the problem and a failure to conduct oversight over institutions created an environment in which such activity has flourished.

From the 9/11 attacks through spring 2003, most U.S. officials viewed Saudi cooperation on terrorist financing as ambivalent and selective. U.S. efforts to overcome Saudi recalcitrance suffered from our failure to develop a strategy to counter Saudi terrorist financing, present our requests through a single high-level interlocutor, and obtain and

release to the Saudis actionable intelligence. By spring 2003 the U.S. government had corrected these deficiencies. Not just a more effective U.S. message but more especially al Qaeda operations within the Kingdom in May and November 2003 focused the Saudi government's attention on its terrorist-financing problem, and dramatically improved cooperation with the United States. The Saudi government needs to continue to strengthen its capabilities to stem the flow of money from Saudi sources to al Qaeda. A critical part of the U.S. strategy to combat terrorist financing must be to monitor, encourage, and nurture Saudi cooperation while simultaneously recognizing that terrorist financing is only one of a number of crucial issues that the U.S. and Saudi governments must address together. Managing this nuanced and complicated relationship will play a critical part in determining the success of U.S. counterterrorism policy for the foreseeable future.

The domestic financial community and some international financial institutions have generally provided law enforcement and intelligence agencies with extraordinary cooperation, particularly in providing information to support quickly developing investigations, such as the search for terrorist suspects at times of emergency. Much of this cooperation, such as providing expedited returns on subpoenas related to terrorism, is voluntary and based on personal relationships. It remains to be seen whether such cooperation will continue as the memory of 9/11 fades. Efforts within the financial industry to create financial profiles of terrorist cells and terrorist fund-raisers have proved unsuccessful, and the ability of financial institutions to detect terrorist financing remains limited.

Since the September 11 attacks and the defeat of the Taliban, al Qaeda's budget has decreased significantly. Although the trend line is clear, the U.S government still has not determined with any precision how much al Qaeda raises or from whom, or how it spends its money. It appears that the al Qaeda attacks within Saudi Arabia in May and November of 2003 have reduced—some say drastically—al Qaeda's ability to raise funds from Saudi sources, because of both an increase in Saudi enforcement and a more negative perception of al Qaeda by potential donors in the Gulf. However, as al Qaeda's cash flow has decreased, so too have its expenses, generally owing to the defeat of the Taliban and the dispersal of al Qaeda. Despite our efforts, it appears that al Qaeda can still find money to fund terrorist operations. Al Qaeda now relies on the physical movement of money and other informal methods of value transfer, which can pose significant challenges for those attempting to detect and disrupt money flows.

Understanding the difficulties in disrupting terrorist financing, both in the United States and abroad, requires understanding the difference between seeing "links" to terrorists and proving the funding of terrorists. In many cases, we can plainly see that certain nongovernmental organizations (NGOs) or individuals who raise money for Islamic causes espouse an extremist ideology and are "linked" to terrorists through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts. Although sufficient to whet the appetite for action, these suspicious links do not demonstrate that the NGO or individual actually funds terrorists and thus provide frail support for disruptive action, either in the United States or abroad. In assessing both

the domestic efforts of the U.S. government and the overseas efforts of other nations, we must keep in mind this fundamental and inherently frustrating challenge of combating terrorist financing.

Case studies and common themes

The Commission staff examined three significant terrorist-financing investigations in existence prior to September 11 in order to (a) understand U.S. efforts to stem al Qaeda-related terrorist financing before the September 11 attacks, (b) trace the evolution of U.S. policy and operations since the attacks, and (c) illustrate the problems and opportunities in the area of terrorist financing. These case studies—a Somalia-based worldwide money-remitting organization with alleged ties to al Qaeda; two Illinois charities that allegedly raised money for al Qaeda; and an international Saudi-based private charity, with ties to the Saudi government, accused of being a conduit of terrorist money—have given the staff insights into the larger problems and recommendations.

Al-Barakaat: The informal movement of money and its implication for counterterrorist financing

Al-Barakaat (literally, "the blessing"), a money-remitting system centered in Somalia with outlets worldwide, took shape after the collapse of the government and the banking system in Somalia. The intelligence community developed information that Usama Bin Ladin had contributed money to al-Barakaat to start operations, that it was closely associated with or controlled by the terrorist group Al-Itihaad Al-Islamiya (AIAI), and that some of al-Barakaat's proceeds went to fund AIAI, which in turn gave a portion to Usama Bin Ladin.

In the United States the FBI developed an intelligence case on the al-Barakaat network in early 1999, and had opened a criminal case by 2000. Shortly after 9/11 al-Barakaat's assets were frozen and its books and records were seized in raids around the world, including in the United States. Subsequent investigation by the FBI, including financial analysis of the books and records of al-Barakaat provided in unprecedented cooperation by the UAE, failed to establish the allegations of a link between al-Barakaat and AIAI or Bin Ladin. No criminal case was made against al-Barakaat in the United States for these activities. Although OFAC claims that it met the evidentiary standard for designations, the majority of assets frozen in the United States under executive order (and some assets frozen by other countries under UN resolution) were unfrozen and the money returned after the U.S.-based al-Barakaat money remitters filed a lawsuit challenging the action.

The Illinois Charities: Domestic charities used to fund al Qaeda?

Two Illinois-based charities, the Global Relief Foundation, Inc. (GRF), and the Benevolence International Foundation (BIF), have been publicly accused of providing financial support to al Qaeda and international terrorism. GRF, a nonprofit organization

with operations in 25 countries, ostensibly devoted to providing humanitarian aid to the needy, raised millions of dollars in the United States in support of its mission. U.S. investigators long believed that GRF devoted a significant percentage of the funds it raised to support Islamic extremist causes and jihadists with substantial links to international terrorist groups, including al Qaeda, and the FBI had a very active investigation under way by the time of 9/11. BIF, a nonprofit organization with offices in at least 10 countries, raised millions of dollars in the United States, much of which it distributed throughout the world for purposes of humanitarian aid. As in the case of GRF, the U.S. government believed BIF had substantial connections to terrorist groups, including al Qaeda, and was sending a sizable percentage of its funds to support the international jihadist movement. BIF was also the subject of an active investigation before 9/11.

After 9/11 OFAC froze both charities' assets, effectively putting them out of business. The FBI opened a criminal investigation of both charities, ultimately resulting in the conviction of the leader of BIF for non-terrorism-related charges. The Immigration and Naturalization Service detained and ultimately deported a major GRF fund-raiser. No criminal charges have been filed against GRF or its personnel.

The cases of BIF and GRF illustrate the U.S. government's approach to terrorist fund-raising in the United States before 9/11 and how that approach dramatically changed after the terrorist attacks: the government moved from a strategy of investigating and monitoring terrorist financing to actively disrupting suspect entities through criminal prosecution and the use of its IEEPA powers to block their assets in the United States. Although effective in shutting down its targets, this aggressive approach raises potential civil liberties concerns, as the charities' supporters insist that they were unfairly targeted, denied due process, and closed without any evidence they actually funded al Qaeda or any terrorist groups.[4] The BIF and GRF investigations highlight fundamental issues that span all aspects of the government efforts to combat al Qaeda financing: the difference between seeing links to terrorists and proving funding of terrorists, and the problem of defining the threshold of information necessary to take disruptive action.

Al Haramain: International charities and Saudi Arabia

Al Haramain Islamic Foundation is a Saudi Arabia–based Islamic foundation. It is a quasi-private, charitable, and educational organization dedicated to propagating a very conservative form of Islam throughout the world. At its peak, al Haramain had a presence in at least 50 countries with estimates of its total annual expenditures ranging from $30 to $80 million. The government of Saudi Arabia has provided financial support to al

[4] Legal actions taken by the aggrieved parties have been largely unsuccessful either because, as in the case of al-Barakaat, the government unfroze assets, or because of the highly deferential standard of review afforded to the President in the exercise of his Commander in Chief powers under IEEPA. The issue is not whether the government had the power to conduct the actions that it did. Rather, the issue is whether, based on the nature and quality of the evidence involved, and the threat of likely harm, the government appropriately exercised those powers against U.S. persons.

Haramain in the past, although that has perhaps decreased in recent years. At least two Saudi government officials have supervisory roles (nominal or otherwise) over al Haramain.

Since at least 1996 the U.S. intelligence community has developed information that various al Haramain branches supported jihadists and terrorists, including al Qaeda. Since 9/11 high-level U.S. officials have considered their options regarding al Haramain. As of January 2003 the U.S. government was concerned that personnel in 20 of al Haramain's offices, including personnel within Saudi Arabia, were aiding and abetting al Qaeda and its affiliated terrorist groups.

In March 2002 the U.S. and Saudi governments froze the assets of the Somali and Bosnian offices of al Haramain and, simultaneously, submitted these names to the United Nations for international listing as terrorist supporters. The United States has raised al Haramain's involvement in terrorist financing with the Saudi government repeatedly, in different forms and through different channels, since 1998, but most effectively since 2003. The Saudi government has made some moves to rein in the charity since May 2003, including replacing the executive director of al Haramain, announcing the shutdown of all overseas branches of al Haramain, and changing its relevant laws and regulations. Some of these actions proved to be ineffective and, as a result, the U.S. and Saudi governments froze the assets of four additional branch offices of al Haramain in January 2004 and five additional branch offices in June 2004. The U.S. government took additional action against the U.S. entities in February 2004 and against the former executive director in June 2004. It remains to be seen whether the Saudis have the political will to develop the necessary capabilities to stem the flow of funds to al Qaeda and its related groups and to sustain these efforts over the long haul.

We completed our investigation of al Haramain in early June 2004. Subsequently, the Saudi government announced that it would dissolve the al Haramain Islamic Foundation and that a new Saudi charity commission would "take over all aspects of private overseas aid operations and assume responsibility for the distribution of private charitable donations from Saudi Arabia." We have not assessed the state-of-play or impact of these actions. They are moving targets and it is difficult to come to any final conclusions about the status of al Haramain. Regardless, we believe the discussion in this chapter tells an important story about U.S.-Saudi cooperation on terrorist financing in the post 9/11 period from which important lessons can be drawn.

Findings

The funding of the hijackers

- The 9/11 plot cost al Qaeda approximately $400,000–500,000, of which approximately $300,000 was deposited into U.S. bank accounts of the 19 hijackers. Al Qaeda funded the hijackers in the United States by three primary and unexceptional means: (1) wire transfers from overseas to the United States, (2) the physical transport of cash or traveler's checks into the United States, and (3) the accessing of funds held in foreign financial institutions by debit or credit cards. Once here, all of the hijackers used the U.S. banking system to store their funds and facilitate their transactions.

- The hijackers and their financial facilitators used the anonymity provided by the vast international and domestic financial system to move and store their money through a series of unremarkable transactions. The existing mechanisms to prevent abuse of the financial system did not fail. They were never designed to detect or disrupt transactions of the type that financed 9/11.

- Virtually all of the plot funding was provided by al Qaeda. There is no evidence that any person in the United States, or any foreign government, provided any substantial funding to the hijackers.

- Exhaustive investigation by U.S. government agencies and the securities industry has revealed no evidence that any person with advance knowledge of the 9/11 attacks profited from them through securities transactions.

Raising and moving money for al Qaeda

- Contrary to public opinion, Bin Ladin did not have access to any significant amounts of personal wealth (particularly after his move from Sudan to Afghanistan) and did not personally fund al Qaeda, either through an inheritance or businesses he owned in Sudan. Rather, al Qaeda relied on diversions from Islamic charities and on well-placed financial facilitators who gathered money from both witting and unwitting donors, primarily in the Gulf region.

- The nature and extent of al Qaeda fund-raising and money movement make intelligence collection exceedingly difficult, and gaps appear to remain in the intelligence community's understanding of the issue. Because of the complexity and variety of ways to collect and move small amounts of money in a vast worldwide financial system, gathering intelligence on al Qaeda financial flows will remain a hard target for the foreseeable future.

Intelligence gathering on al Qaeda

- Within the United States, although FBI street agents had gathered significant intelligence on specific suspected fund-raisers before 9/11, the FBI did not systematically gather and analyze the information its agents developed. The FBI as an organization failed to understand the nature and extent of the problem or to develop a coherent strategy for confronting it. As a result the FBI could not fulfill its role to provide intelligence on domestic terrorist financing to government policymakers and did not contribute to national policy coordination.

- Outside the United States, the U.S. intelligence community before 9/11 devoted relatively few resources to collecting financial intelligence on al Qaeda. This limited effort resulted in an incomplete understanding of al Qaeda's methods to raise, move, and store money, and thus hampered the effectiveness of the overall counterterrorism strategy.

- Since 9/11 the intelligence community (including the FBI) has created significant specialized entities, led by committed and experienced individuals and supported by the leadership of their agencies, focused on both limiting the funds available to al Qaeda and using financial information as a powerful investigative tool. The FBI and CIA meet regularly to exchange information, and they have cross-detailed their agents into positions of responsibility.

Economic disruption of al Qaeda

- Before 9/11 the limited U.S. and UN efforts to freeze assets of and block transactions with Bin Ladin were generally ineffective.

- Before 9/11 the Department of Justice had little success developing criminal cases against suspected terrorist fund-raisers, despite a 1996 law that dramatically expanded its power to do so. Because of the "wall" between criminal and intelligence matters, both real and perceived, the prosecutors lacked access to the considerable information about terrorist fund-raising in the United States maintained in the FBI's intelligence files.

- The United States engaged in a highly visible series of freezes of suspected terrorist assets after 9/11. Although few funds have been frozen since the first few months after 9/11, asset freezes are useful diplomatic tools in engaging other countries in the war on terror and have symbolic and deterrence value. The use of administrative freeze orders against U.S. citizens and their organizations may, at times, be necessary but raises substantial civil liberties issues.

- Since 9/11 the FBI has recognized that its investigations of terrorist fund-raising within the United States must have an endgame: to stop the funding or otherwise

disrupt the terrorist supporters. The Department of Justice has created a unit to coordinate an aggressive national effort to prosecute terrorist financing and now regularly receives information from the FBI about terrorist fund-raising in the United States, which it lacked before 9/11. Still, prosecuting most terrorist-financing cases remains very challenging.

- The financial provisions enacted after September 11, particularly those contained in the USA PATRIOT Act and subsequent regulations, have succeeded in addressing obvious vulnerabilities in our financial system. Vigilant enforcement is crucial in ensuring that the U.S. financial system is not a vehicle for the funding of terrorists.

- Financial institutions have the information and expertise to detect money laundering, but they lack the information and expertise to detect terrorist financing. As a result, banks and other financial institutions play their most important role by obtaining accurate information about their customers that can be provided to government authorities seeking to find a known suspect in an emergency or investigating terrorist fund-raisers.

- Although the government can often show that certain fund-raising groups or individuals are "linked" to terrorist groups (through common acquaintances, group affiliations, historic relationships, phone communications, or other such contacts), it is far more difficult to show that a suspected NGO or individual actually funds terrorist groups. In assessing both the domestic efforts of the U.S. government and the overseas efforts of other nations, we must keep in mind this fundamental and inherently frustrating challenge of combating terrorist financing.

Interagency cooperation and coordination

- Terrorist financing is, and must continue to be, closely integrated with the broader counterterrorism effort. Terrorist-financing measures both rely on and feed the broader effort. Terrorist financing is neither intrinsically different from nor more complex than other counterterrorism issues. The NSC (as opposed to an agency or a terrorist-financing "czar") is well situated to lead the operational and strategic integration of terrorist financing with counterterrorism generally. The government should resist the temptation to create a terrorist-financing czar or specialized, stand-alone entities focused on terrorist financing, and should support the current NSC-led interagency Policy Coordinating Committee.

Diplomatic efforts and Saudi Arabia

- Before the September 11 attacks, the Saudi government resisted cooperating with the United States on the al Qaeda financing problem, although the U.S. government did not make this issue a priority or provide the Saudis with actionable intelligence about al Qaeda fund-raising in the Kingdom.

- Notwithstanding a slow start, since the al Qaeda bombings in Saudi Arabia in May and November of 2003 and the delivery of a more consistent and pointed U.S. message, it appears that the Saudis have accepted that terrorist financing is a serious issue and are making progress in addressing it. It remains to be seen whether they will (and are able to) do enough, and whether the U.S. government will push them hard enough, to substantially eliminate al Qaeda financing by Saudi citizens and institutions. The highest levels of the U.S. government must continue to send an unequivocal message to Saudi Arabia that the Saudis must do everything within their power to substantially eliminate al Qaeda financing by Saudi sources. The U.S. government must assist by continuing to provide actionable intelligence and much-needed training to the Saudis. At the same time, the Saudis must take the initiative to develop their own intelligence and disrupt terrorist financing without U.S. government prompting.

Overall effectiveness of the U.S. government's efforts on terrorist financing since 9/11

- All relevant elements of the U.S. government—intelligence, law enforcement, diplomatic, and regulatory (often with significant assistance from the U.S. and international banking community)—have made considerable efforts to identify, track, and disrupt the raising and movement of al Qaeda funds.

- While definitive intelligence is lacking, these efforts have had a significant impact on al Qaeda's ability to raise and move funds, on the willingness of donors to give money indiscriminately, and on the international community's understanding of and sensitivity to the issue. Moreover, the U.S. government has used the intelligence revealed through financial information to understand terrorist networks, search them out and disrupt their operations.

- While a perfect end state—the total elimination of money flowing to al Qaeda—is virtually impossible, current government efforts to raise the costs and risks of gathering and moving money are necessary to limit al Qaeda's ability to plan and mount significant mass casualty attacks. We should understand, however, that success in these efforts will not of itself immunize us from future terrorist attacks.

Chapter 2

Al Qaeda's Means and Methods to Raise, Move, and Use Money

There are two things a brother must always have for jihad, the self and money.
An al Qaeda operative[5]

Al Qaeda's methods of raising and moving money have bedeviled the world's intelligence agencies for good reason. Al Qaeda has developed "an elusive network...an unconventional web"[6] to support itself, its operations, and its people. Al Qaeda has demonstrated the ability, both before and after 9/11,[7] to raise money from many different sources, typically using a cadre of financial facilitators, and to move this money through its organization by a variety of conduits, including hawaladars (see the discussion of halawas, below), couriers, and financial institutions. These sources and conduits are resilient, redundant, and difficult to detect.

Contrary to popular myth, Usama Bin Ladin does not support al Qaeda through a personal fortune or a network of businesses. Rather, al Qaeda financial facilitators raise money from witting and unwitting donors, mosques and sympathetic imams, and nongovernment organizations such as charities. The money seems to be distributed as quickly as it is raised, and we have found no evidence that there is a central "bank" or "war chest" from which al Qaeda draws funds. Before 9/11 al Qaeda's money was used to support its operations, its training and military apparatus, the Taliban, and, sporadically, other terrorist organizations. Since 9/11 al Qaeda's money supports operations and operatives and their families.

Since 9/11 the disruption of al Qaeda's sources, facilitators, and conduits, primarily through deaths and arrests, has made funds less available and their movement more difficult. At the same time, al Qaeda's expenditures have decreased since 9/11 because it no longer supports the Taliban, its training camps, or an army. That said, al Qaeda still appears to have the ability to fund terrorist operations.

Intelligence Issues

There is much that the U.S. government did not know (and still does not know) about Bin Ladin's resources and how al Qaeda raises, moves, and spends its money. The combination of Bin Ladin's move to Afghanistan in 1996 and his censure by the

[5] Intelligence reporting, Apr. 13, 2004. The discussion of al Qaeda financing in this chapter is derived from an extensive review of documents from State, Treasury and the intelligence community, as well as interviews of intelligence analysts, law enforcement agents, and other government officials.
[6] Intelligence reporting, Apr. 12, 2001.
[7] Our pre-9/11 analysis focuses on al Qaeda after Bin Ladin arrived in Afghanistan in 1996, and especially after he firmly established himself there by 1998.

international community following the 1998 East Africa bombings contributed to the difficulty in tracking this money.[8]

The CIA expressed the extent of the problem in April 2001:

> Usama Bin Ladin's financial assets are difficult to track because he uses a wide variety of mechanisms to move and raise money[;]...he capitalizes on a large, difficult-to-identify network with few long-lasting nodes for penetration. It is difficult to determine with any degree of accuracy what percentage of each node contributes to his overall financial position. Gaps in our understanding contribute to the difficulty we have in pursuing the Bin Ladin financial target. We presently do not have the reporting to determine how much of Bin Ladin's personal wealth he has used or continues to use in financing his organization; we are unable to estimate with confidence the value of his assets and net worth; and we do not know the level of financial support he draws from his family and other donors sympathetic to his cause.[9]

Even after the September 11 attacks, the intelligence community could not estimate the total income or the relative importance of any source of Bin Ladin's revenue stream. High-level policymakers were frustrated and characterized themselves as "seriously challenged...by an inability to obtain on a consistent basis solid and credible background information on targets for blocking of assets[.]"[10] More than a year after 9/11, the head of the government's terrorist-financing coordination effort described this gap in knowledge:

> [S]ometime in the next 3 months a Congressional committee is rightfully going to haul us up to the Hill (or the President is going to call us into the Oval office) and ask us 4 questions:
>
> 1. Who finances al Qaeda?
> 2. How?
> 3. Where is it?
> 4. Why don't you have it (and stop it)?
>
> Paul [O'Neill, secretary of the Treasury] could not [be able to] answer [those questions] today.[11]

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[8] Mainstream Gulf area donors and the Bin Ladin family generally turned away from Usama Bin Ladin after the East Africa bombings. Additionally, UN Security Council Resolution 1333 in December 2000 called on all member states to freeze funds in accounts associated with al Qaeda, a point discussed more fully later in this monograph.

[9] Intelligence reporting, Apr. 12, 2001.

[10] State Department Memorandum, Dec. 3, 2001.

[11] Treasury Department email, Nov. 14, 2002. The CIA contends it has much better intelligence about al Qaeda financing than is indicated by this Department of Treasury document. In the CIA's view, Treasury was unhappy because the CIA's intelligence was often extremely sensitive, so it could not be released to support public designations.

The volume and quality of the intelligence appear to have improved since the summer of 2002, mostly because a flood of information is being derived from custodial interviews of captured al Qaeda members. Reliance on this information, of course, has its perils. Detainees may provide misinformation and may misrepresent or mischaracterize their roles or the roles of others. As a result, corroborating their information, through other custodial interviews, documentary evidence, or other intelligence collection, is critical in assessing what we know about al Qaeda financing. Even if what detained al Qaeda members tell us is accurate, the information can be stale, as it necessarily describes the state of affairs before their capture, and it is unlikely to be "actionable"—that is, sufficient to create an opportunity for disruption or to enable investigators to follow a money trail forward to operational elements or backward to the donors or facilitators.

Understanding al Qaeda's money flows and providing actionable intelligence present ongoing challenges because of the speed, diversity, and complexity of the means and methods for raising and moving money; the commingling of terrorist money with legitimate funds; the many layers and transfers between donors and the ultimate recipients of the money; the existence of unwitting participants (including donors who give to generalized jihadist struggles rather than specifically to al Qaeda); and the U.S. government's reliance on foreign government reporting for intelligence.

Commission staff evaluated the existing information regarding al Qaeda's financing, before 9/11 and today, in light of these limitations. We describe what we know, acknowledge where the information is simply insufficient, and discuss what we are reasonably certain did *not* occur. The list of purported al Qaeda funding sources is legion: counterfeit trademarked goods, consumer coupon fraud, drug trafficking, insider trading, support from Gulf-area governments, and conflict diamonds are the most common. In many cases, one or two threads of information make such theories tantalizing; but after careful review of all of the evidence available to us, including some of the most sensitive information held by the U.S. government, we have judged that such theories cannot be substantiated.

Al Qaeda's Financing: Sources, Movement, Uses

Where did al Qaeda get its money?

Al Qaeda relied on fund-raising before 9/11 to a greater extent than thought at the time. Bin Ladin did not have large sums of inherited money or extensive business resources. Rather, it appears that al Qaeda lived essentially hand to mouth. A group of financial facilitators generated the funds; they may have received money from a spectrum of donors, charities, and mosques, with only some knowing the ultimate destination of their money. The CIA estimates that it cost al Qaeda about $30 million per year to sustain its activities before 9/11, an amount raised almost entirely through donations.

Dispelling myths

For many years, the United States thought Bin Ladin financed al Qaeda's expenses through a vast personal inheritance or through the proceeds of the sale of his Sudanese businesses. Neither was true. Bin Ladin was alleged to have inherited approximately $300 million when his father died, funds used while in Sudan and Afghanistan. This money was thought to have formed the basis of the financing for al Qaeda.[12] Only after NSC-initiated interagency trips to Saudi Arabia in 1999 and 2000, and after interviews of Bin Ladin family members in the United States, was the myth of Bin Ladin's fortune discredited. From about 1970 until 1993 or 1994, Usama Bin Ladin received about a million dollars per year—adding up to a significant sum, to be sure, but not a $300 million fortune. In 1994 the Saudi government forced the Bin Ladin family to find a buyer for Usama's share of the family company and to place the proceeds into a frozen account. The Saudi freeze had the effect of divesting Bin Ladin of what would otherwise have been a $300 million fortune. Notwithstanding this information, some within the government continued to cite the $300 million figure well after 9/11, and the general public still gives credence to the notion of a "multimillionaire Bin Ladin."

Nor were Bin Ladin's assets in Sudan a source of money for al Qaeda. Bin Ladin was reputed to own 35 companies in Sudan when he lived there from 1992 to 1996, but some may never have actually been owned by him and others were small or not economically viable. Bin Ladin's investments may well have been designed to gain influence with the Sudanese government rather than be a revenue source. When Bin Ladin was pressured to leave Sudan in 1996, the Sudanese government apparently expropriated his assets and seized his accounts, so that he left Sudan with practically nothing. When Bin Ladin moved to Afghanistan in 1996, his financial situation was dire; it took months for him to get back on his feet. While relying on the good graces of the Taliban, Bin Ladin reinvigorated his fund-raising efforts and drew on the ties to wealthy Saudi nationals that he developed during his days fighting the Soviets in Afghanistan.

Financial facilitators and their donors

Al Qaeda depended on fund-raising to support itself. It appears that al Qaeda relied heavily on a core of financial facilitators who raised money from a variety of donors and other fund-raisers. Those donors were primarily in the Gulf countries, especially Saudi Arabia. Some individual donors knew of the ultimate destination of their donations, and others did not; they were approached by facilitators, fund-raisers, and employees of

[12] Reporting from November 1998 concluded that although the $300 million figure probably originated from rumors in the Saudi business community, it was a "reasonable estimate" as of a few years earlier, representing what would have been Bin Ladin's share of his family's business conglomerate in Saudi Arabia. The intelligence community thought it had adequately verified this number by valuing Bin Ladin's investments in Sudan as well as what he could have inherited from his fathers construction empire in Saudi Arabia. Finished intelligence supported the notion that Bin Ladin's "fortune" was still intact by concluding that Bin Ladin could only have established al Qaeda so quickly in Afghanistan if he had ready access to significant funds. Intelligence reporting, Nov. 17, 1998.

corrupted charities, particularly during the Islamic holy month of Ramadan. The financial facilitators also appeared to rely heavily on imams at mosques, who diverted zakat donations to the facilitators and encouraged support of radical Islamic causes. Al Qaeda fund-raising was largely cyclical, with the bulk of the money coming in during the Islamic holy month of Ramadan.

Charities

Al Qaeda's charities' strategy before 9/11 had two prongs. In some instances, al Qaeda penetrated specific foreign branch offices of large, internationally recognized charities. In many cases, lax oversight and the charities' own ineffective financial controls, particularly over transactions in remote regions of the world, made it easy for al Qaeda operatives to divert money from charitable uses. These large international Gulf charities donated money to end recipients, usually smaller in-country charities, whose employees may have siphoned off money for al Qaeda. In the second class of cases, entire charities from the top down may have known of and even participated in the funneling of money to al Qaeda. In those cases, al Qaeda operatives had control over the entire organization, including access to bank accounts.

Much has been made of the role of charities, particularly Saudi charities, in terrorist financing. A little context is necessary here. Charitable giving, known as zakat, is one of the five pillars of Islamic faith. It is broader and more pervasive than Western ideas of charity, in that it also functions as a form of income tax, educational assistance, foreign aid, and political influence. The Western notion of the separation of civic and religious duty does not exist in Islamic cultures. The Saudi government has declared that the Koran and the Sunna (tradition) of Muhammad are the country's constitution, and the clergy within Saudi Arabia wield enormous influence over the cultural and social life of the country.

Funding charitable works is ingrained into Saudi Arabia's culture, and Saudi zakat has long provided much-needed humanitarian relief in the Islamic world. In addition, a major goal of Saudi charities is to spread Wahhabi beliefs and culture throughout the world. Thus Saudi efforts have funded mosques and schools in other parts of the world, including Pakistan, Central Asia, Europe, and even the United States. In some poor areas these schools alone provide education; and even in affluent countries, Saudi-funded Wahhabi schools are often the only Islamic schools available.

Since 9/11

Financial facilitators are still at the core of al Qaeda's revenue stream, although there is little question that the arrests and deaths of several important facilitators have decreased the amount of money al Qaeda has raised and have made it more expensive and difficult to raise and move that money. The May 2003 terrorist attacks in Riyadh, moreover, seem to have reduced al Qaeda's available funds even more—some say drastically—for a

number of reasons. First, it appears that enhanced scrutiny of donors by the Saudi government after the attacks may be having a deterrent effect. Second, Saudi law enforcement efforts have reduced al Qaeda's cadre of facilitators. Individuals such as Riyadh, an al Qaeda facilitator, and "Swift Sword," known for their ability to raise and deliver money for al Qaeda, have been captured or killed. Lastly, the Saudi population may feel that the fight has come to their homeland, and that they should be more cautious in their giving as a result.

Entirely corrupt charities, such as the Wafa Charitable Foundation, are now out of business, with many of their principals killed or captured. Charities that have been identified as likely avenues for terrorist financing have seen their donations diminish and their activities come under more scrutiny. The challenge is to control overseas branches of Gulf-area charities, prevent charities from reopening under different names, and keep corrupt employees of nongovernmental organizations from corrupting other NGOs as they move from job to job.

Despite the apparent reduction in its overall funding, al Qaeda continues to fund terrorist operations with relative ease. The amounts of money required for most operations are small, and al Qaeda can apparently still draw on hard-core donors who knowingly fund it and sympathizers who divert charitable donations to it.

The exact extent to which the donors know where their money is going remains unknown. Still, substantial evidence indicates that many Gulf donors did know and even wanted evidence that the fund-raisers really were connected to al Qaeda. In addition, some donations, while not completely sinister, are not completely innocent. For example, many donors gave funds to support the families of mujahideen fighters in Afghanistan. Such donors may not have intentionally funded terrorism, but they certainly knew they were supporting the families of combatants. Moreover, there is evidence that donations increased substantially after the United States attacked al Qaeda in Afghanistan, suggesting considerable anti-U.S. sentiment among the donors. At the same time, it seems very likely that facilitators diverted funds from unwitting donors. To stop such revenue from well-intentioned donors, it is necessary to capture or kill the facilitators who raise the funds or to remove the corrupt imans, NGO officials, or others who divert them to al Qaeda.

Allegations of other sources of revenue

Allegations that al Qaeda used a variety of illegitimate means to finance itself, both before and after 9/11, continue to surface. The most common involve the drug trade, conflict diamonds, and state support; none can be confirmed.

After reviewing the relevant intelligence on al Qaeda's involvement in drug trafficking and interviewing the leading authorities on the subject, we have seen no substantial evidence that al Qaeda played a major role in the drug trade or relied on it as an important source of revenue either before or after 9/11. While the drug trade was an important

source of income for the Taliban before 9/11, it did not serve the same purpose for al Qaeda. Although there is some fragmentary reporting alleging that Bin Ladin may have been an investor, or even had an operational role, in drug trafficking before 9/11, this intelligence cannot be substantiated and the sourcing is probably suspect. One intelligence analyst described the reporting as "bizarre." Bin Ladin may, however, have encouraged drug traffickers to sell to Westerners as part of his overall plan to weaken the West (though much of that intelligence is also suspect).

It is even less likely that al Qaeda is currently involved in the drug trade. Substantial post-9/11 intelligence collection efforts have failed to corroborate rumors of current narcotic trafficking. In fact, there is compelling evidence the al Qaeda leadership does not like or trust those who today control the drug trade in Southwest Asia, and has encouraged its members not to get involved. Although some individuals with some connection to al Qaeda may be involved in drug trafficking, there is no convincing evidence that al Qaeda plays a major role in it or that it is an important source of revenue.[13] In addition to the lack of affirmative evidence, there are substantial reasons to believe that al Qaeda has no role in drug trafficking: al Qaeda members are geographically hemmed in and are unable to travel as the narcotics business demands. Trafficking would unnecessarily expose al Qaeda operatives to risks of detection or arrest. Moreover, established traffickers have no reason to involve al Qaeda in their lucrative businesses; associating with the world's most hunted men would attract unwanted attention to their activities and exponentially increase the resources devoted to catching them. Furthermore, Al Qaeda neither controls territory nor brings needed skills and therefore has no leverage to break into the sector.

Allegations that al Qaeda has used the trade in conflict diamonds to fund itself similarly have not been substantiated. Commission staff has evaluated the sources of information for these various public reports raising the diamond allegations. These include reports of journalists, the United Nations, and certain nongovernmental organizations investigating this issue. The FBI conducted an intensive international investigation of the conflict diamond issue, including interviews of key witnesses with direct knowledge of the relevant facts, and found no evidence of any substantial al Qaeda involvement; the CIA has come to the same judgment. Additionally, detained operatives have since reported that al Qaeda was not involved in legal or illegal trading in diamonds or precious stones during its Afghan years. We have evaluated the U.S. government investigations in light of the public reports to the contrary, the relative veracity of the sources of information, and the best available intelligence on the subject, and see no basis to dispute these conclusions. There is some evidence that specific al Qaeda operatives may have either dabbled in trading precious stones at some point, or expressed an interest in doing so, but that evidence cannot be extrapolated to conclude that al Qaeda has funded itself in that manner.

[13] We are aware of the December 2003 seizure of two tons of hashish from a ship in the Persian Gulf, and of the initial press reports that three individuals on board had purported al Qaeda links. Both the CIA and the DEA discount the significance of those links, and neither agency believes that this seizure is evidence that al Qaeda is financing itself through narcotics trafficking. We have seen no evidence to the contrary.

Other than support provided by the Taliban in Afghanistan, there is no persuasive evidence of systematic government financial sponsorship of al Qaeda by any country either before or after 9/11. While there have been numerous allegations about Saudi government complicity in al Qaeda, the Commission staff has found no persuasive evidence that the Saudi government as an institution or as individual senior officials knowingly support or supported al Qaeda.[14]

Al Qaeda fund-raising in the United States

The United States is not, and has not been, a substantial source of al Qaeda funding, but some funds raised in the United States may have made their way to al Qaeda and its affiliated groups. A murky U.S. network of jihadist supporters has plainly provided funds to foreign mujahideen with al Qaeda links. Still, there is little hard evidence of substantial funds from the United States actually going to al Qaeda. A CIA expert on al Qaeda financing believes that any money coming out of the United States for al Qaeda is "minuscule." Domestic law enforcement officials, acknowledging the possibility of schemes that they have not identified, generally state it is impossible to know how much, if any, funding al Qaeda receives out of the United States. These officials agree that any funds al Qaeda raises in the United States amount to much less than is raised by other terrorist groups, such as Hamas and Hezbollah, and that the United States is not a primary source of al Qaeda funding.

Finally, contrary to some public reports, we have not seen substantial evidence that al Qaeda shares a fund-raising infrastructure in the United States with Hamas, Hezbollah, or Palestinian Islamic Jihad. None of the witnesses we interviewed, including the FBI's leading authorities on terrorist financing generally and its expert on Palestinian extremist fund-raising specifically, reported evidence of this overlap, although supporters of Palestinian extremist groups travel in the same general circles as suspected al Qaeda supporters and have some contact with them.[15] In fact, there is far more evidence of fund-raising collaboration between Hamas and Hezbollah than between either of these groups and al Qaeda, according to the FBI official responsible for tracking these groups' funding.

How did al Qaeda move its money?

[14] The Saudi government turned a blind eye to the financing of al Qaeda by prominent religious and business leaders and organizations, at least before 9/11, and the Saudis did not begin to crack down hard on al Qaeda financing in the Kingdom until after the May 2003 al Qaeda attacks in Riyadh. See chapter 3, "Government Efforts Before and After the September 11 Attacks," and chapter 7 on al Haramain and Saudi Arabia.

[15] In addition, individuals may have made donations both to suspected Hamas front groups and to other organizations believed to be somehow affiliated with al Qaeda. Such overlap does not establish any organizational coordination or cooperation, however.

Before 9/11 al Qaeda appears to have relied primarily on hawala[16] and couriers to move substantial amounts of money for its activities in Afghanistan. Charities were also used as conduits to transfer funds from donors to al Qaeda leaders. At times al Qaeda operatives and supporters in the West and other banking centers freely used the international financing system.

Hawala

Al Qaeda moved much of its money by hawala before 9/11. In some ways, al Qaeda had no choice after its move to Afghanistan in 1996; the banking system there was antiquated and undependable. Hawala became particularly important after the August 1998 East Africa bombings increased worldwide scrutiny of the formal financial system. Bin Ladin turned to an established hawala network operating in Pakistan, in Dubai, and throughout the Middle East to transfer funds efficiently. Hawalas were attractive to al Qaeda because they, unlike formal financial institutions, were not subject to potential government oversight and did not keep detailed records in standard form. Although hawaladars do keep ledgers, their records are often written in idiosyncratic shorthand and maintained only briefly. Al Qaeda used about a dozen trusted hawaladars, who almost certainly knew of the source and purpose of the money. Al Qaeda also used both unwitting hawaladars and hawaladars who probably strongly suspected that they were dealing with al Qaeda but were nevertheless willing to deal with anyone.

Financial institutions

Al Qaeda itself probably did not use the formal financial system to store or transfer funds internally after Bin Ladin moved to Afghanistan. Bin Ladin's finances were initially in dire straits; al Qaeda was living hand to mouth and did not have any funds to store. Additionally, the Afghan banking system was rudimentary at best, and the increased scrutiny after the East Africa bombings and the UN resolutions against Bin Ladin and the Taliban made the use of such institutions problematic.

Al Qaeda's extended network of supporters and operatives did use the formal financial system before 9/11. Hawaladars associated with al Qaeda (like hawaladars generally) relied on banks as part of their hawala operations. One bank, for example, had 1,800 to 2,000 branches in Pakistan, making it relatively easy for a hawaladar to use the bank to move funds.[17] In addition to hawaladars, charities such as Wafa Humanitarian

[16] A definition of *hawala* is contained in the case study of the al-Barakaat network. Additionally, a good discussion of hawala is found in U.S. Department of Treasury, *A Report to Congress in Accordance with Section 359 of the USA PATRIOT Act,* November 2002 (online at www.fincen.gov.hawalarptfinal11222002.pdf).

[17] Hawala was frequently combined with other means of moving money. For a single transaction, the hawaladars sometimes used both hawala and the formal banking system or money remitters; the senders and receivers of the funds also often used couriers to transfer the funds to and from their respective hawaladars. Hawala also enabled operatives to access the banking system without having to open an account.

Organization had accounts at banks, which served as a means to move money for terrorists.

Fund-raisers for al Qaeda also used banks to store and move their money. Most banks probably did not know their institutions were being used to facilitate the flow of funds to al Qaeda, although some may have. Corrupt individuals on the inside of these banks may have facilitated the transactions. There is little question that the near-total lack of regulation and oversight of the financial industry in the UAE and Pakistan before 9/11 allowed these activities to flourish.

Al Qaeda operational cells outside Afghanistan made extensive use of the formal financial system. As discussed in appendix A, the September 11 hijackers and their co-conspirators had bank accounts and credit cards, made extensive use of ATM cards, and sent and received international wire and bank-to-bank transfers. Those al Qaeda operatives and supporters who were relatively anonymous could more easily risk using the formal financial system than could al Qaeda's core leadership.

Couriers

Al Qaeda used couriers because they provided a secure way to move funds. Couriers were typically recruited from within al Qaeda and could maintain a low profile—perhaps because of their background, language skills, ethnicity, or documentation—and so, ideally, no outsiders were involved or had knowledge of the transaction. They usually did not know the exact purpose of the funds. A single courier or several couriers might be used, depending on the route and the amount of money involved. They picked up money from a hawaladar, financial facilitator, or donor, and took it to its destination. For example, al Qaeda reportedly used a Pakistani-based money changer to move $1 million from the UAE to Pakistan, at which point the money was couriered across the border into Afghanistan. The 9/11 transaction provides a good example of al Qaeda's use of couriers. As discussed in appendix A, the plot leader Khalid Sheikh Mohammad delivered a large amount of cash, perhaps $120,000, to the plot facilitator Abdul Aziz Ali in Dubai; Ali then used the cash to wire funds to the hijackers in the United States.

Since 9/11

Since 9/11 the core al Qaeda operatives have relied on cash transactions involving trusted hawaladars and couriers. The hawala network that existed prior to 9/11 seems to have been largely destroyed. Several of the main hawaladars who were moving money for al Qaeda before 9/11 have been detained, and the identities of others have been revealed in seized records. Al Qaeda may have developed relationships with other hawaladars, and it most likely uses them to move some of its money. However, major cash transfers apparently are done by trusted couriers or, for added security, by the main operatives themselves. Some couriers may be carrying information (although not specific operational details) as well as cash.

Using couriers has slowed down al Qaeda's movement of money, as physically transporting money over large distances necessarily takes much longer than using electronic means such as wire transfer. In addition, there is evidence that significant delays in moving money, especially to al Qaeda operatives in far-flung parts of the world, have been caused by the limited supply of trusted couriers. Moreover, transferring funds by courier requires planning, coordination, and communication, all of which take time. Al Qaeda's use of couriers presents challenges and opportunities for the intelligence and law enforcement communities. Couriers can be vulnerable to certain forms of enforcement, however.

How did al Qaeda spend its money?

Before 9/11 al Qaeda's expenses included funding operations, maintaining its training and military apparatus, contributing to the Taliban and their high-level officials, and sporadically contributing to related terrorist organizations. The CIA estimates that prior to 9/11 it cost al Qaeda about $30 million per year to sustain these activities.

Al Qaeda's expenses

Once in Afghanistan, Bin Ladin focused on building al Qaeda into a fully operating organization. Al Qaeda spent money on military training and support, including salaries for jihadists, training camps, and related expenses. Reportedly there were also propaganda and proselytizing-related expenses and costs to support al Qaeda outside Afghanistan.

Before 9/11 al Qaeda was reportedly highly organized, with a committee structure that included the Finance Committee. Credible evidence indicates that Bin Ladin played a significant role in planning each operation and was very attentive to financial matters. Other than Bin Ladin, the person with the most important role in al Qaeda financing was reportedly Sheikh Qari Sa'id. Sa'id, a trained accountant, had worked with Bin Ladin in the late 1980s when they fought together in Afghanistan and then for one of Bin Ladin's companies in Sudan in the early to mid-1990s. Sa'id was apparently notoriously tightfisted with al Qaeda's money.[18] Operational leaders may have occasionally bypassed Sa'id and the Finance Committee and requested funds directly from Bin Ladin. Al Qaeda members apparently financed themselves for day-to-day expenses and relied on the central organization only for operational expenses.

Al Qaeda funded a number of terrorist operations, including the 1998 U.S. embassy bombings in East Africa (which cost approximately $10,000), the 9/11 attacks (approximately $400,000–500,000), the October 18, 2002, Bali bombings (approximately

[18] Sa'id reportedly vetoed a $1500 expense for travel to Saudi Arabia to get visas for the 9/11 attacks until Bin Ladin overruled him (although there is no reason to believe that Sa'id knew the reason for the travel at that time).

$20,000), and potential maritime operations against oil tankers in the Strait of Hormuz (approximately $130,000). The actual operations themselves were relatively cheap, although these figures do not include such "overhead" as training at camps, evaluation of trainees, and recruitment. Although the cyclical nature of fund-raising may have created periodic cash shortfalls, we are not aware of any evidence indicating that terrorist acts were interrupted as a result.

Money for the Taliban

Once Bin Ladin revitalized his fund-raising after moving to Afghanistan, he provided funds to the Taliban in return for safe haven. Al Qaeda probably paid between $10 to 20 million per year to the Taliban. As time passed, it appeared that the Taliban relied on al Qaeda for an ever-greater share of their needs, such as arms, goods, and vehicles, and even social projects. In return, the Taliban resisted international pressure to expel Bin Ladin or turn him over to a third country.

Money to other terrorist groups

Before 9/11 Bin Ladin appears to have used money to create alliances with other Islamic terrorist organizations. Al Qaeda's cash contributions helped establish connections with these groups and encouraged them to share members, contacts, and facilities. It appears that al Qaeda was not funding an overall jihad program but was selectively providing start-up funds to new groups or money for specific operations. Generally, however, al Qaeda was more likely to provide logistical support and cover and to assist with terrorist operations than to provide money.

Since 9/11

Al Qaeda's expenditures have decreased significantly since the 9/11 attacks and the defeat of the Taliban, although it is impossible to determine to what extent. Al Qaeda has become decentralized and it is unlikely that the Finance Committee still exists. Sa'id continues to operate, but given the difficulties of communication, it is doubtful that he exerts much control. The direction and financing of operations are now based more on personal relationships with operatives than on a management structure.

Al Qaeda no longer pays money to the Taliban (for safe haven or otherwise) and no longer operates extensive training camps in Afghanistan or elsewhere. It still provides operatives and their families with modest support. Al Qaeda occasionally provides funds to other terrorist organizations, especially those in Southeast Asia. Intelligence analysts estimate that al Qaeda's operating budget may be only a few million dollars per year, although such estimates are only tentative.

We have learned much since 9/11 about how al Qaeda raises, moves, and stores money, but our understanding is still somewhat speculative. The U.S. intelligence community is forced to extrapolate from current information to fill in the gaps in our knowledge. Detainees have confirmed the basic sources of al Qaeda funding and methods of moving money, and have provided insights into changes in al Qaeda's financing since 9/11. Moreover, al Qaeda adapts quickly and effectively, creating new difficulties in understanding its financial picture. Intelligence challenges remain and are likely to continue, although the picture is clearer today than ever before. As al Qaeda becomes more diffuse—or becomes essentially indistinguishable from a larger global jihadist movement—the very concept of al Qaeda financing may have to be reconsidered. Rather than the al Qaeda model of a single organization raising money that is then funneled through a central source, we may find we are contending with an array of loosely affiliated groups, each raising funds on its own initiative.

Chapter 3

Government Efforts Before and After the September 11 Attacks

This chapter discusses the U.S. government terrorist financing efforts before September 11, and describes and assesses our current efforts. As in other areas of counterterrorism, the government has poured vastly more resources and attention to combating terrorist financing since the attacks, and has made great strides in a difficult area.

Before the September 11 Attacks

Notwithstanding the government's efforts to choke off Bin Ladin's finances before 9/11, on the eve of the September 11 attacks the CIA judged that Bin Ladin's cash flow was "steady and secure."[19] Although fund-raising was somewhat cyclical, al Qaeda had enough money to operate its network of Afghan training camps, support the families of its members, pay an estimated $10–20 million to the Taliban and its officials, and fund terrorist operations.[20]

Domestic intelligence and law enforcement

Before September 11, FBI street agents in a number of field offices gathered intelligence on a significant number of suspect terrorist-financing organizations. These FBI offices, despite setbacks and bureaucratic inefficiencies, had been able to gain a basic understanding of some of the largest and most problematic terrorist-financing conspiracies that have since been identified. The agents understood that there were extremist organizations operating within the United States supporting a global Islamic jihad movement. They did not know the degree to which these extremist groups were associated with al Qaeda, and it was unclear whether any of these groups were sending money to al Qaeda. The FBI operated a web of informants, conducted electronic surveillance, and engaged in other investigative activities. Numerous field offices, including New York, Chicago, Detroit, San Diego, and Minneapolis, had significant intelligence investigations into groups that appeared to be raising money for foreign jihadists or other radical Islamist groups. Many of these groups appeared to the FBI to have had some connections either to al Qaeda or to Usama Bin Ladin.

The FBI was hampered by an inability to develop an endgame; its agents continued to gather intelligence with little hope that they would be able to make a criminal case or otherwise disrupt an operation. Making a case in terrorist financing was certainly as if not

[19] Intelligence report, 29 August 2001. Commission staff has seen no evidence that would contradict the CIA's assessment.

[20] Commission staff, in researching this chapter, conducted a comprehensive review of government materials on terrorist financing from essentially every law enforcement, intelligence and policy agency involved in the effort. This review included interviews of current and former government personnel, from intelligence analysts and street agents, up to and including members of the cabinet.

more difficult than in other similarly complex international financial criminal investigations. The money inevitably moved overseas—and once that occurred, the agents were at a dead end. Financial investigations depend on access to financial records. This usually requires a formal legal request, typically through a previously negotiated mutual legal assistance treaty (MLAT), or an informal request to a foreign government security service through the FBI's legal attaché (Legat) responsible for the relevant country. The United States rarely had mutual legal assistance treaties with the countries holding the most important evidence; and when agents could make an MLAT request, the process was slow and sometimes took years to get results. In addition, an MLAT request required the existence of a criminal investigation. Because the vast majority of FBI terrorist-financing investigations involved intelligence, not crimes, agents could not avail themselves of even this imperfect vehicle for accessing critical foreign information. Informal requests were frequently ignored, even when made of U.S. allies in important cases. Moreover, simply to make a request required that the agents disclose the target and the nature of the evidence. The risk of potential compromise was great, and most agents were not willing to take the risk against such a speculative outcome. Obtaining foreign financial records thus was often a practical impossibility.

As was true in other areas of counterterrorism, agents perceived themselves as being stymied by rules regarding the commingling of intelligence and criminal cases. Chicago intelligence investigators looking at a Hamas subject thought, for example, that opening a criminal case precluded their ability to obtain approvals from the Justice Department for a FISA (Foreign Intelligence Surveillance Act) warrant to tap telephones. The agents believed that the Justice Department would think that the request under FISA would appear to be simply a pretext to further the criminal case.[21] No agents wanted to block themselves from using what could be the most productive investigative tool they had—FISA—so criminal investigations were not opened and potential criminal charges were not seriously contemplated.

Some agents also hesitated because of the nature of the cases. Indicting or even investigating an Islamic charity or group of high-profile Middle Easterners required special sensitivity. Fears of selective prosecution or inappropriate ethnic profiling were always a consideration in going after a high-profile and sensitive target. Certainly, the evidence had to be strong before a prosecution would be considered. As one highly experienced prosecutor told the Commission staff, if the FBI had aggressively targeted religious charities before 9/11, it would have ultimately had to explain its actions before a Senate committee.

Lastly, the legal tools in terrorist financing were largely new, untested, and unfamiliar to field agents and prosecutors in U.S. Attorney's offices. Congress in 1996 had made it a crime to provide "material support" to foreign terrorist organizations.[22] Before the

[21] The actual procedures were somewhat different that the agent's perceptions, however. See the 9/11 Commission, Final Report, at 78 to 80, and accompanying footnotes, for a discussion of the issue.
[22] 18 U.S.C. Section 2339B makes it a crime to provide "material support or resources to a foreign terrorist organization." The secretary of state designates foreign terrorist organizations in consultation with the secretary of the treasury and the attorney general.

enactment of this statute, prosecuting a financial supporter of terrorism required tracing donor funds to a particular act of terrorism—a practical impossibility. Under the 1996 law, the prosecutor had only to prove that the defendant had contributed something of value to an organization that had been named by the secretary of state, after a formal process, as a foreign terrorist organization (FTO). Unfortunately, al Qaeda was not named an FTO until 1999, so criminal prosecution could not be considered earlier. Even then, there was little impetus to focus on prosecuting material support cases or committing resources to train prosecutors and agents to use the new statutory powers. As a result, the prospect of bringing a criminal case charging terrorist financing seemed unrealistic to field agents.

It was far easier for agents to find a minor charge on which to convict a suspect, thereby ultimately immobilizing and disrupting the operation. This strategy was used in San Diego in 1999, for example; knowing that individuals may have been supporting a specific terrorist group, the FBI and the U.S. Attorney's Office for the Southern District of California developed a case charging the individuals with relatively low-level fraud. This prosecution effectively disrupted the operation. More often, however, agents knew that it would have been hard to persuade a busy prosecutor to bring a case on low-level fraud or minor money-laundering crimes. If the prosecutors knew the classified intelligence underlying the case, the agents might have had a better shot at convincing them. But sharing that intelligence was difficult, and required approval from FBI headquarters and notice to OIPR. Additionally, some of these low-level crimes carried no jail time, and most agents did not think prosecution for a crime ultimately ending in a probationary sentence would have been sufficient to disrupt an ongoing funding operation.

On a national level, the FBI never gained a systematic or strategic understanding of the nature and extent of the jihadist or al Qaeda fund-raising problem within the United States. The FBI did not understand its role in assisting national policy coordination and failed to provide intelligence to government policymakers. For example, shortly after the East Africa embassy bombings in 1998, a staff member of the National Security Council was assigned the task of coordinating government resources in the hunt for Bin Ladin's finances and ensuring effective interagency coordination of the issue. The NSC wanted the FBI to produce an assessment of possible al Qaeda fund-raising in the United States by al Qaeda supporters, but the FBI shared little information regarding Usama Bin Ladin or al Qaeda. The NSC therefore concluded that the FBI did not have relevant information.

The problem stemmed in part from the FBI's failure to create high-quality analytic products on al Qaeda financing or an effective system for storing, searching, or retrieving information of intelligence value contained in the investigative files of various field offices.[23] There was very little finished intelligence that FBI program managers could use to show trends, estimate the extent of the problem, or distribute to policymakers or other agencies.

[23] The Commission staff, in interviews with field agents and in searching the FBI's automated case-tracking system, found a treasure trove of information regarding suspected terrorist fund-raising organizations in the United States, yet none of this information was readily accessible.

The FBI lacked a headquarters unit focused on terrorist financing. According to the then-head of its Counterterrorism Division, the FBI considered setting up such a unit prior to 9/11. However, the FBI viewed terrorist-financing cases as too difficult to make. It also believed that fighting terrorist financing would have little impact, since most terrorist acts were cheap. As a result, the issue was left to the FBI's general counterterrorism program office. Those agents, overworked and focusing on the day-to-day approvals and oversight of the entire FBI counterterrorism program, had neither the time nor the expertise to wade through reports, talk to case agents, or focus on the terrorist-financing problem.

For its part, the Criminal Division of the Department of Justice also lacked a national program for prosecuting terrorist-financing cases, under the 1996 "material support" statute or otherwise. The DOJ's Terrorism and Violent Crime Section (TVCS) had played a role in drafting the material support statute and took the lead in developing the administrative record to support the first round of FTO designations in 1997. After such designations began to be made, TVCS worked on developing a program to use the 1996 statute, but it had little practical success before 9/11.

The fundamental problem that doomed efforts to develop a program to prosecute terrorist fund-raising cases was that DOJ prosecutors lacked a systematic way to learn of evidence of prosecutable crimes in the FBI's intelligence files. The prosecutors simply did not have access to these files because of "the wall." Although the attorney general's 1995 guidelines required the FBI to pass to the Criminal Division intelligence information indicating potential past, current, or future violations of federal law, the FBI almost never did so with respect to terrorist fund-raising matters. Lacking access to the relevant FBI investigations, the TVCS made some efforts to investigate cases on its own, including a cooperative effort with a foreign service to probe potential Hamas fund-raising in the United States. These initiatives took a great deal of time and effort and did not produce any solid criminal leads. As a small section with many responsibilities, the TVCS had insufficient personnel for the resource-intensive task of investigating terrorist financing.

The wall may, in fact, have created a disincentive for FBI intelligence agents to share evidence of prosecutable crimes with criminal prosecutors. One experienced prosecutor believed that it would have violated every bone in their bodies for these agents—who were evaluated in large part on the number and quality of their FISA investigations—to share information with the Criminal Division and thereby jeopardize the continuing viability of a successful intelligence investigation. Another experienced prosecutor expressed the view that FBI agents were focused on potential violent threats and did not think the uncertain prospect of bringing a fund-raising case justified the risk of losing a FISA investigation that might locate terrorist operatives. In any event, the FBI and DOJ's relationship regarding terrorist financing was dysfunctional; FBI agents rarely shared information of potentially prosecutable crimes with DOJ prosecutors, who, therefore, could play no role in trying to develop a strategy to disrupt the fund-raising operations.[24]

[24] Richard Clarke of the NSC, who was interested in terrorist fund-raising in the United States, expressed concern about the lack of terrorist fund-raising prosecutions to the chief of the TVCS. Clarke actually brought to a meeting material he had printed off the Internet indicating extremists were soliciting support in

In early May 2000, in response to an inquiry from the NSC's Richard Clarke, a TVCS attorney drew up a detailed proposal for developing a program to prosecute terrorist-financing cases, providing a sophisticated analysis of the relevant legal and practical considerations. The memorandum pointed out that the "vast majority" of the FBI's terrorist-financing investigations were being run as intelligence investigations, and contended that the FBI gave preference to intelligence equities at the expense of the criminal when the two overlapped. To circumvent this problem, the memo proposed the creation of a unit to identify and pursue potential fund-raising matters as criminal rather than intelligence investigations, and described a systematic methodology to investigate and prosecute domestic fund-raisers for foreign terrorist organizations.

The memorandum had no effect; no resources were allocated to pursue the proposal, and it was not implemented. The FBI continued its intelligence investigations, and the criminal prosecutors largely sat on the sidelines.

Most fundamentally, the domestic strategy for combating terrorist financing within the United States never had any sense of urgency. The FBI investigations lacked an endgame. FBI agents in the field had no strategic intelligence that would have led them to believe that any of the fund-raising groups posed a direct domestic threat, so there was no push to disrupt their activities. Without access to the intelligence files, prosecutors had no ability to build criminal cases, and the DOJ was doing little on a practical level to change the situation. As a result, FBI intelligence agents merely kept tabs on the activities of suspected jihadist fund-raisers, even as millions of dollars flowed overseas.

U.S. foreign intelligence collection and analysis

As we note in chapter 2, the CIA's understanding of Usama Bin Ladin and al Qaeda before the September 11 attacks was incomplete. The intelligence reporting on the nature of his wealth was largely speculative, and sourced to general opinion in the Saudi business community.[25]

The intelligence community learned the reality only after White House–level prodding. In 1999 Vice President Al Gore spoke to Saudi Crown Prince Abdullah during a visit to Washington, DC about isolating and disrupting Bin Ladin's financial network. The two leaders agreed to set up a meeting on this issue between U.S. counterterrorism experts and high-ranking Saudi officials. As a result there were two NSC-initiated trips to Saudi Arabia, in 1999 and 2000. During these trips NSC, Treasury, and intelligence representatives spoke with Saudi officials, and later interviewed members of the Bin Ladin family, about Usama's inheritance. They learned that the Bin Ladin family had sold Usama's share of the inheritance and, at the direction of the Saudi government, placed the money into a specified account, which was then frozen by the Saudi

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the United States and asked the TVCS chief what the DOJ was doing about the problem. The answer was, unfortunately, not much.

[25] For example, a 1998 intelligence report acknowledges that the CIA did not know the exact state of Bin Ladin's personal wealth, although it cited his inheritance as $300 million.

government in 1994. The urban legend that Bin Ladin was a financier with a fortune of several hundred million dollars was nevertheless hard to shake, and U.S. government intelligence documents even after the September 11 attacks sometimes referred to him as such.

The lack of specific intelligence was a source of frustration to policymakers. As the NSC's Richard Clarke testified to the Senate Banking Committee in 2003:

> The questions we asked then [in 1995] of the CIA were never answered—and we asked them for six years: how much money does it cost to be al Qaeda? What's their annual operating budget? Where do they get their money? Where do they stash their money? Where do they move their money? How? Those questions we asked from the White House at high levels for five or six years were never answered because, according to the intelligence community, it was too hard.[26]

The CIA's response to Clarke's criticism was that terrorist financing was an extraordinarily hard target and that, given the legal and policy limitations on covert action against banks during this period, there was little utility in simply collecting intelligence on terrorist financing.

The CIA obtained a very general understanding of how al Qaeda raised money. It knew relatively early on, for example, about the loose affiliation of financial institutions, businesses, and wealthy individuals who supported extremist Islamic activities. It also understood that nongovernmental agencies (NGOs) and Saudi-based charities played a role in funding al Qaeda and moving terrorist-related money. The problem, however, was that the government could not disrupt funding flows, through either covert action or economic sanctions, because the information was not specific enough. The CIA had intelligence reporting on Sudan and the purported businesses Bin Ladin owned there, but by the time of the East Africa embassy bombings this information was dated and not useful. Much of the early reporting on al Qaeda's financial situation and structure came from a single source, a former al Qaeda operative, who walked into the U.S. Embassy in Eritrea in 1996.

CIA devoted few resources to collecting the types of strategic financial intelligence that policymakers were looking for, or that would have informed the larger counterterrorism strategy. The CIA's virtual station—ALEC station—was originally named CTC-TFL (Counter Terrorism Center - Terrorist Financial Links), reflecting the CIA's early belief that Bin Ladin was simply a terrorist financier, as opposed to someone who actually planned and conducted operations. However, the intelligence reporting was so limited that one CIA intelligence analyst told Commission staff that, unassisted, he could read

[26] Clarke testimony before the Senate Banking Committee, Oct. 22, 2003; see also Clarke testimony to the Congressional Joint Inquiry. Contemporaneous documents support Clarke's recollection concerning his frustration. For example in November 1998, Clark wrote that four years after the NSC first asked the CIA to track down UBL's finances, the CIA can only guess at the main sources of Bin Ladin's budget, where he parks his money, and how he moves it.

and digest the universe of intelligence reporting on al Qaeda financial issues in the three years prior to the September 11 attacks. Another person assigned to ALEC station told the Commission staff that while its original name may have been Terrorist Financial Links, the station appeared to him to do everything but terrorist financing. Any intelligence it had on terrorist financing appeared to have been collected collaterally, as a consequence of gathering other intelligence. According to one witness, this approach stemmed in large part from the chief of ALEC station, who did not believe that simply following the money from point A to point B revealed much about the terrorists' plans and intentions. As a result, terrorist financing received very little emphasis. Another witness recalled that ALEC station made some effort to gather intelligence on al Qaeda financing, but it proved to be too hard a target, the CIA had too few sources, and, as a result, little quality intelligence was produced.

Some attributed the problem to the CIA's separation of terrorist-financing analysis from other counterterrorism activities. Within the Directorate of Intelligence, a group was devoted to the analysis of all financial issues, including terrorist financing. Called the Office of Transnational Issues (OTI), Illicit Transaction Groups (ITG), it dealt with an array of issues besides terrorist financing, including drug trafficking, drug money laundering, alien smuggling, sanctions, and corruption. The ITG was not part of the CTC, and rotated only a single analyst to the CTC. Moreover, ITG analysts were separated from the operational side of terrorist financing at the CTC, which planned operations against banks and financial facilitators. Members of the NSC staff stressed that this structure was defective because there was almost no intersection between those who understood financial issues and those who understood terrorism. As a result, the NSC was forced to try to educate two different groups on the issues. Inevitable turf wars also resulted.

Before 9/11, the National Security Agency had a handful of people working on terrorist-financing issues. The terrorist-financing group had no foreign-language capability. As a result, its collection had to focus on targets most likely to use the English language. The NSA's effectiveness was limited by sparse lead information from other elements of the intelligence community on financing and, like the rest of the intelligence community, by the wall between intelligence and law enforcement that gave it only limited access to law enforcement information.

One possible solution to these weaknesses in the intelligence community was the proposed all-source terrorist financing intelligence analysis center at Treasury's Office of Foreign Assets Control (OFAC), called the Foreign Terrorist Asset Tracking Center (FTATC), which had been recommended in 2000 by the National Commission on Terrorism (the so-called Bremer Commission). The NSC spearheaded efforts to create the FTATC, but bureaucratic delays and resistance by Treasury and CIA officials delayed its implementation until after the September 11 attacks. The delays resulted from the CIA's belief that the FTATC would duplicate some of its functions, the CIA's unwillingness to host the center temporarily until OFAC could accommodate it, and Treasury's reluctance to create a secure facility to host the center and allow OFAC direct access to intelligence.

The government also considered possible economic disruption, to be effected by targeting the banks in which Bin Ladin's financial resources or by intercepting money couriers or hawaladars who handled Bin Ladin's money.

There is little doubt that the CIA had the authority to use methods of covert disruption to go after cash couriers or hawaladars. Ultimately it was unsuccessful in doing so, either because it was unable to identify specific useful targets or because such disruption was judged to be too dangerous.

Economic and diplomatic efforts

Treasury's Office of Foreign Assets Control had an early interest in searching out and freezing Bin Ladin assets. Its primary tool, the International Emergency Economic Powers Act (IEEPA), allows the president to designate individuals and entities as a threat to the United States and thereby freeze their assets and block their transactions. OFAC, for example, had long experience in freezing assets associated with Libya and Cuba. In the 1990s the government began to use these powers in a different, more innovative way, to go after nonstate actors. It first imposed sanctions against persons and entities interfering with the Middle East peace process (MEPP) and then against other nonstate threats, such as the Cali, Colombia, narcotics-trafficking cartel. OFAC personnel were interested in trying to find and freeze Bin Ladin's assets, but to do so required either a presidential designation of Bin Ladin or the discovery of a link between Bin Ladin and someone named for disrupting the MEPP. Efforts were made before the East Africa bombings to link Bin Ladin to the names on the MEPP list, but their lack of usable intelligence on the issue hampered OFAC analysts. OFAC did not collect its own intelligence; rather, it relied on the intelligence community to collect and often analyze the evidence, which it then used to make designations.

After the East Africa bombings in August 1998, President Clinton formally designated Usama Bin Ladin and al Qaeda as subject to the sanctions available under the IEEPA program, giving OFAC the ability to search for and freeze any of their assets within the U.S. or in the possession or control of U.S. persons. OFAC had little specific information to go on, however, and few funds were frozen.[27] The futility of this effort is attributed to the lack of usable intelligence, OFAC's reluctance to rely on what classified information there was, and Bin Ladin's transfer of most of his assets out of the formal financial system by that time. Even if OFAC had received better intelligence from the intelligence community, it could have taken little effective action. OFAC has authority over only U.S. persons (individuals and entities), wherever located. Because Al Qaeda money flows depended on an informal network of hawalas and Islamic institutions moving money from Gulf supporters to Afghanistan, these funds would stayed outside the U.S. formal financial system.

[27] OFAC did freeze accounts belonging to Salah Idris, the owner of the Al-Shifa facility bombed in response to the East Africa embassy bombings. Idris filed suit against his bank and OFAC, and OFAC subsequently authorized the unfreezing of those accounts.

The Taliban was designated by the president under the IEEPA in July 1999 for harboring Usama Bin Ladin and al Qaeda. Here, OFAC experienced better success against a more stationary target: it blocked more than $34 million in Taliban assets held in U.S. banks, mostly consisting of assets of Afghanistan's central bank and national airline. The Federal Reserve Bank of New York's holdings of more than $215 million in gold and $2 million in demand deposits from the Afghan central bank were also blocked.

With the exception of some limited attempts by Treasury's Financial Crimes Enforcement Network (FinCEN) to match classified information with reports filed by banks, U.S. financial institutions and Treasury regulators focused on finding and deterring or disrupting the vast flows of U.S. currency generated by drug trafficking and by high-level international fraud. Large-scale scandals, such the use of the Bank of New York by Russian money launderers to move millions of dollars out of Russia, captured the attention of the Department of the Treasury and Congress. As a result, little attention was paid to terrorist financing.[28]

A number of significant anti-money-laundering initiatives failed to gain traction during this time. One, the Money Laundering Control Act of 2000, championed by Treasury at the close of the Clinton administration, proposed controls on foreign banks with accounts in the United States. These accounts had been shown to be significant unregulated gateways into the U.S. financial system. The legislation had broad bipartisan support in the House of Representatives but foundered in the Senate Banking Committee, whose chair opposed further regulation of banks.

Additionally, the Treasury Department and the financial regulators had proposed draft regulations in 1999, under the rubric of "know your customer" requirements. Broadly, these regulations required a bank to know the beneficial owner of the money and the sources of the money flowing through the owner's accounts, and to take reasonable steps to determine this information. This proposal caused such a storm of controversy—Treasury received more than 200,000 negative comments and fierce resistance from the financial services industry—that it was abandoned. Congress even considered rolling back the money-laundering controls then in place. As a result, Treasury regulators hesitated to move forward with future directives.

Another foundering financial regulation involved "money services businesses" (MSBs) loosely defined as check cashers, businesses involved in wiring money, and those selling money orders and traveler's checks. It would also have covered informal movers of money, such as hawaladars and other neighborhood shops that could wire money to a foreign country for a fee. These businesses were unregulated for money laundering and posed a huge vulnerability: criminals shut out of the banking system by regulatory controls could easily turn to these industries to move and launder criminal proceeds. Investigators had seen a significant increase in the use of these casual money remitters. Drug traffickers in particular took advantage of this relatively inexpensive and risk-free method of moving money. A study commissioned by FinCEN in 1997 recognized the

[28] The 2001 National Money Laundering Strategy, for example, issued by Treasury in September 2001, does not discuss terrorist financing in any of its 50 pages.

vulnerability of MSBs to money laundering. In 1994 Congress directed Treasury to regulate these businesses to discourage money laundering, but Treasury failed until after 9/11 to implement regulations that would have required the businesses to register with the government and report activity judged to be suspicious.[29]

On the diplomatic front, the State Department formally designated al Qaeda in October 1999 as a "foreign terrorist organization." This designation allowed the criminal prosecution of any U.S. person proven to be materially supporting the organization, required U.S. banks to block its funds, and denied U.S. visas to aliens associated with it. Additionally, the United Nations Security Council passed UNSCR 1267 on October 15, 1999, calling for the Taliban to surrender Bin Ladin or face a U.S.-style international freeze of assets and transactions. The resolution provided a 30-day period before sanctions would take effect, however, allowing al Qaeda operatives to repatriate funds from banks in the United Kingdom and Germany to Afghanistan. The United Nations adopted a second resolution, UNSCR 1333, against the Taliban and Usama Bin Ladin on December 19, 2000. These sanctions brought official international censure, but were easily circumvented. Other than this UN action, there was no multilateral mechanism to encourage countries to outlaw terrorist financing or ensure that their financial systems were not being used as conduits for terrorists.[30] The effect, according to a State Department assessment, was to leave the Middle East vulnerable to the exploitation of its financial systems because of generally weak or nonexistent financial controls.

Before the September 11 attacks, the Saudi government resisted cooperating with the United States on the al Qaeda financing problem, although the U.S. government did not make this issue a priority or provide the Saudis with actionable intelligence about al Qaeda fund-raising in the Kingdom. Despite high-level intervention by the U.S. government in early 1997, the Saudis universally refused to allow U.S. personnel access to al Qaeda's senior financial figure, al-Ghazi Madani al Tayyib, who had turned himself in to Saudi authorities. Two NSC-led trips to Saudi Arabia, while producing useful intelligence about Bin Ladin's personal finances, failed to gain any traction on the larger question of al Qaeda's fund-raising or any commitment to cooperate on terrorist financing. However, the United States did little to prod the Saudis into action; the generalized and nonactionable nature of the existing intelligence made a confrontation

[29] Draft regulations did not come out until 1997; a final rule was not issued until 1999, setting the implementation date for December 31, 2001. In the summer of 2001, Treasury announced that it would push back the requirement for registration an additional six months and the requirement for reporting nine months. After the September 11 attacks, Treasury decided to maintain the earlier implementation date.

[30] The Financial Action Task Force (FATF), a multilateral government organization dedicated to setting standards, focused on money laundering, particularly as it related to crimes involving vast amounts of illegally gotten money, such as drug trafficking and large-scale fraud. As part of the setting of standards, FATF engaged in a concentrated effort to assess the world's anti-money-laundering efforts and "named and shamed" jurisdictions that failed to establish minimum safeguards by publicly listing them and instituting economic sanctions against them. Although in December 1999 the United Nations General Assembly adopted the International Convention for the Suppression of Financing Terrorism, which had been proposed by the French and drafted by the G-8 members, the convention did not enter into force until April 2002.

difficult.[31] Moreover, other issues, such as supporting the Middle East peace process, ensuring the steady flow of oil, cutting off support to the Taliban, and assisting in the containment of Iraq, took primacy on the U.S.-Saudi bilateral agenda.

Saudi Arabia had not enforced its professed money-laundering regulations and, like most of the countries in the Middle East, it had enacted no other controls on the movement of money. Moreover, it had delegated the regulation of charities to the government's religious establishment and did little to address the problem of al Qaeda fund-raising in the Kingdom.

The United Arab Emirates, the financial center for the Gulf area, also had a reputation for being "wide open," with few regulations on the control of money and a woefully inadequate anti-money-laundering program.[32] The UAE system had been a concern of U.S. policymakers long before the 9/11 attacks, and they directly raised their concerns with UAE officials. The UAE had no money-laundering law, although at U.S. urging in 1999 it started drafting one, which was not finalized until after 9/11. Although the UAE was aware that terrorists and other international criminals had laundered money through the UAE, and that it was the center for hawala and courier operations, it did little to address the problem. Additionally, the United States expressed its concern about UAE support for Ariana Airlines and the movement of Bin Ladin funds through Dubai. Shortly before the September 11 attacks, the departing U.S. ambassador to the UAE warned senior officials in the Emirates that they needed to move forward on money-laundering legislation, so as not to be placed on the Financial Action Task Force (FATF) "blacklist" of countries not fully complying with international standards in this area. These warnings had no discernible effect.

Intergovernmental coordination and policy development

NSC Senior Director Richard Clarke considered terrorist financing important, and he established an NSC-led interagency group on terrorist financing after the East Africa embassy bombings. This group consisted of representatives from the NSC, Treasury, the CIA, the FBI, and State and was initially focused on determining and locating Bin Ladin's purported wealth. After interagency visits to Saudi Arabia in 1999 and 2000, the group succeeded in dispelling the myth that Bin Ladin was funding al Qaeda from his personal fortune. The group also focused on trying to figure out how to stop the flow of funds to Bin Ladin and was concerned about Bin Ladin's apparent ability to raise funds from charities. While the CIA paid more attention to terrorist financing during the interagency group's life span, Clarke was unable to get the FBI to participate

[31] State Department memorandum, Nov. 24, 1998 ("We are still far, however, from possessing detailed information that would enable us to approach key Middle Eastern and European government with specific action requests concerning Bin Ladin's financial network").
[32] The vast majority of the money funding the September 11 attacks flowed through the UAE. The fact that Ali Abdul Aziz Ali was able to use an alias or partial name, and show no identification, for five of the six wire transfers from the UAE should come as a surprise to no one.

meaningfully in the interagency process. Responsibility for the problem was dispersed among a myriad of agencies, each working independently and cooperating, if at all, on an ad hoc and episodic basis.

Where Are We Now?

Since September 11 the world has indeed changed, and nowhere more than in the area of countering terrorist financing. The attacks galvanized the world community and an international sanctions regime against terrorists and their supporters was established, with the United States leading the way with a vigorous effort to freeze their assets. With an understanding of the nature of the threat, both the intelligence and law enforcement communities established significant entities to focus on and bring expertise to this area. These new entities are led by experienced individuals committed to the issue who know how to use money flows to identify and locate unknown associates of known terrorists. They are supported by the leadership within their respective agencies, who have provided them significant resources and authority to do the job. A broad and active interagency mechanism was established and new legal provisions against terrorist financing were enacted, while many of the legal obstacles hampering terrorist-financing investigations were stripped away.

Domestic intelligence and law enforcement

In the days after the September 11 attacks, the FBI set up the Financial Review Group (FRG) to bring order to a chaotic financial analysis of the attacks, in which every FBI field office conducted its own investigation as though it were the originating office. The initial goals of the FRG were to investigate the September 11 plot and look for an al Qaeda support mechanism that could sustain a second attack. All relevant federal agencies, including Customs, the Internal Revenue Service, the banking regulators, FinCEN, and OFAC, agreed to staff the FRG and work together. The FRG brought in agents with financial investigative expertise from around the country. The local field offices continued their investigations, but provided everything they learned to the FRG for coordination.

The FRG, ultimately renamed the Terrorist Financing Operations Section (TFOS) and located in the FBI's counterterrorism division, is the FBI's national program office for terrorist financing. The FBI believes that TFOS allows for (1) consistency of financial investigations and the assurance that every major terrorism case will have a financial investigative component; (2) the establishment of effective working relationships with international banking, law enforcement, and intelligence communities;[33] (3) the development of a real-time financial tracking capability, resting in large part on the FBI's extensive relationships with the financial community, which has transformed financial investigations from the traditional, methodical, slow-paced analysis to a tool that can

[33] In this regard, one experienced criminal prosecutor said TFOS does a very good job at outreach to the financial community because its agents "speak the language" of accountants and auditors.

provide near real-time information in urgent situations;[34] and (4) the formation of teams that can be sent to field offices to bolster document-intensive financial investigations and provide guidance and leadership on conducting financial investigations. Significantly, it is the first time a single office has been given responsibility for coordinating the FBI's terrorist-financing efforts.

TFOS and the FBI still need to improve their abilities to systematically gather and analyze the information developed in their investigations and create high-quality analytic products and finished intelligence. As of spring 2004, the FBI has generated very little quality finished intelligence in the area of al Qaeda financing. The FBI's well-documented efforts to create an analytical career track and enhance its analytical capabilities are sorely needed in this area.[35] TFOS must also establish its own formal system for tracking and evaluating the extent of terrorist fund-raising by various groups in the United States. TFOS has created a program management unit responsible for, among other things, evaluating the extent and scope of the terrorist-financing problem in the United States. Such an effort is plainly needed to help guide the allocation of law enforcement resources and to help inform policymakers.

The individual FBI field offices retain primary responsibility for conducting terrorist-financing investigations, but TFOS provides field agents with resources not previously available as well as coherent programmatic leadership. To help integrate the field offices' efforts with TFOS, each field office has a terrorist-financing coordinator who serves as a liaison with headquarters and a resource to fellow field agents. As of spring 2004, this program is in its early stages, but it is a positive step toward a truly national effort.

The Department of Justice also has dramatically increased its focused efforts to investigate and disrupt terrorist financing in the United States. The Terrorism and Violent Crimes Section, using resources from various parts of the DOJ (including prosecutors from U.S. Attorney's offices, the Criminal Tax Section, and other sections of the Criminal Division), formed a unit to implement an aggressive program of prosecuting terrorist-financing cases. That unit ultimately evolved into a distinct Terrorist Financing Unit within the DOJ's Counterterrorism Section (CTS). The Terrorist Financing Unit coordinates and pursues terrorist-financing criminal investigations around the country and provides support and guidance to U.S. Attorney's offices on terrorist-financing issues.

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[34] TFOS has made extraordinary strides in this area, including a great leap forward in the use of sophisticated software to help locate terrorist suspects in urgent situations.

[35] Some of the FBI's post-9/11 efforts in this area have been disappointing, in part because of a disconnect between the FBI's new analytical operation and TFOS. For example, a December 2002 analytical document titled "Al-Qaida's US Financial Network Broad and Adaptable" was distributed to FBI field offices and Legats worldwide. The then-head of TFOS told Commission staff that this piece was prepared by FBI analysts entirely without any involvement of TFOS and that its conclusion, as reflected in the title, was dramatically overstated and did not reflect a law enforcement judgment about what the evidence actually showed concerning any Al Qaeda financing network in the United States. Since December 2002, the FBI has taken steps to ensure analytical product about terrorist financing not be distributed without TFOS involvement.

In stark contrast to the dysfunctional relationship between the FBI and DOJ that plagued them before 9/11, the two entities now seem to be working cooperatively. The leadership of TFOS praises the CTS Terrorist Financing Unit for its unwavering support. TFOS leadership also believes that the U.S. Attorney's offices have been supportive and that the CTS Terrorist Financing Unit has been helpful in resolving any issues that have arisen between FBI field offices and U.S. Attorney's offices. The head of the CTS Terrorist Financing Unit identifies TFOS, as well as the FBI's post-9/11 International Terrorism Operating Section, as valuable allies, and describes the enthusiasm of these sections for criminal prosecutions as a "sea change" from the FBI's recalcitrance before 9/11.

Fundamentally, the FBI now understands that its terrorist fund-raising investigations must have an endgame. TFOS, in particular, with its financial investigative skills and prosecutorial mind-set, is a strong ally of the DOJ's terrorist-financing prosecutors. Generally, the demise of "the wall" has facilitated the flow of terrorist-financing information between the FBI and the DOJ's criminal prosecutors. This sharing of information has addressed the problems that stymied the DOJ before 9/11. Still, information-sharing problems arise in the field, and the DOJ must at times encourage its prosecutors to fight for access to classified FBI information.

Despite these improvements, prosecuting terrorist-financing cases continues to present vexing problems for prosecutors and agents. Although some within the DOJ argue that the average terrorist fund-raising case is no harder to investigate and prosecute than any complex white-collar criminal case,[36] sophisticated jihadist fund-raising operations, especially those involving international NGOs that support both humanitarian and militant causes, are generally very difficult to penetrate and prosecute. Investigating a material support case usually requires obtaining records from another country to show the destination of the money, which itself is often very difficult, as discussed above. Even with access to the relevant records, tying the funds to a specific criminal act or a designated terrorist group is extraordinarily difficult. Funds are often dispersed overseas in cash, making them virtually impossible to trace.

Unraveling terrorist-financing schemes can be even more complicated because the same groups that finance terror and jihad often provide real humanitarian relief as well. The people running these groups believe in charity, practice it, and keep voluminous records of it, thereby serving to conceal their illicit fund-raising activities more effectively. Prosecutors who fail to acknowledge that the corrupt NGOs do provide charity will likely be confronted with the beneficiaries of the charity lining up in the courtroom to testify for the defendant.

Even if money can be traced to an illicit activity or a designated group, proving the U.S. donors or NGOs knew where the money was going can also be extraordinarily difficult.

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[36] It may well be that cases involving Hamas or certain other terrorist groups are easier to prosecute because the fund-raisers are more open about supporting causes that have legitimacy in certain circles and, therefore, are more likely to make incriminating comments on wiretaps or to informants. Anyone raising money in the United States for al Qaeda or groups affiliated with al Qaeda is likely to be extremely secretive and do everything possible to ensure the funds cannot be traced back to him or her.

Although there may be substantial grounds for suspicion, proving the level of knowledge required in a criminal case poses significant problems. Notwithstanding this difficulty, the DOJ appears to be committed to aggressive prosecution of terrorist fund-raisers in the United States, believing that such prosecutions can deter more fund-raising and disrupt ongoing fund-raising operations. The best cases may well require luck, fruitful electronic surveillance or a well-placed informant, or even the prosecution of the suspect organization for a non-terrorism-related charge such as fraud or tax evasion. This strategy can be effective in disrupting suspected terrorist fund-raisers, but can also lead to accusations of selective prosecution and oppression of Muslim charities.[37]

In addition to the FBI, other agencies, including the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the IRS's Criminal Investigative Division, play a role in investigating terrorist financing through their participation in the Joint Terrorism Task Force (JTTF). The FBI is the lead agency on terrorist-financing investigations through the FBI-led JTTF structure.[38] Commission staff believes this is appropriate. Terrorist-financing investigations are inextricably intertwined with overall terrorism enforcement; a fund-raising investigation may give rise to evidence of a group poised to commit a terrorist act, or the investigation of a terrorist group will necessarily use financial leads to further its investigation. One agency needs to be in charge of the entire counterterrorism effort and other agencies can still contribute expertise in particular cases through the JTTF. Of course, giving the FBI the lead requires continuing vigilance to ensure that the FBI properly shares information and willingly coordinates with its JTTF partners.

U.S. foreign intelligence collection and analysis

The day after the September 11 attacks, the CIA began beefing up its effort on terrorist financing and by mid-month had created a new section dedicated to terrorist financing, whose purpose was to create long-term intelligence capacity in this area. It is staffed with personnel from the FBI, NSA, and DoD and it absorbed the CIA intelligence analysts working on terrorist-financing issues in the Office of Transnational Issues, thereby correcting the perceived structural defect previously identified. This new section's mission is to use information about terrorist money to understand their networks, search them out, and disrupt their operations. The CIA has devoted considerable resources to the task, and the effort is led by individuals with extensive expertise in the clandestine movement of money. It appears that the CIA is devoted to developing an institutional and long-term expertise in this area.

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[37] See chapter 6 (discussing reaction to non-terrorism conviction of the executive director of the Benevolence International Foundation).

[38] This designation occurred in a May 2003 memorandum of understanding (MOU) between the secretary of the DHS and the attorney general. The MOU became necessary to resolve turf battles between the FBI and ICE, largely resulting from Operation Green Quest, which began as a U.S. Customs–led initiative to investigate terrorist financing after 9/11 and followed Customs when it moved from Treasury to become part of DHS/ICE. For a report on the success of the MOU, see GAO Report 04-464R, *Investigations of Terrorist Financing, Money Laundering and Other Financial Crimes* (Feb. 20, 2004).

The FBI and CIA report that the information sharing between the FBI and the CIA is excellent, and that FBI personnel assigned to the CTC's new unit have duties indistinguishable from those of the CIA personnel and have complete access to all CIA data systems, subject to a need-to-know requirement. The CIA has access to FBI data as well. The CIA distributes its information to the FBI through criminal information referrals, liaisons at the field-level JTTFs, and interactions between their respective headquarters units.

Economic and diplomatic efforts

On September 23, 2001, President Bush signed Executive Order 13224 against al Qaeda, Bin Ladin, and associated terrorist groups, freezing any assets belonging to the listed terrorists or their supporters and blocking any economic transactions with them. Thereafter, the U.S. government embarked on a public course of issuing additional lists of designated terrorist supporters—a pattern that continued into the winter of 2002. The goal was to try to deprive the terrorists of money, but this approach also served to assure the general public that action was being taken in the area of terrorist financing and to keep the intelligence and world communities focused on identifying terrorist financiers.

The United States, understanding that an executive order covered only U.S. persons and transactions, pushed at the United Nations for a near-universal system of laws to freeze terrorist assets worldwide. The United Nations Security Council, galvanized into action as a result of the attacks, passed Resolution 1373 on September 28, mandating member nations formulate laws to designate individuals and entities as supporters of terrorism and freeze their assets. In the weeks after 9/11, in an intense effort around the world, more than 100 nations drafted and passed laws addressing terrorist financing or money laundering. Worldwide, more than $136 million, including $36 million in the United States, has been frozen. Currently, approximately 170 nations have the legal ability to freeze terrorist assets. Moreover, the United States engaged in a broad diplomatic and educational offensive to make other countries aware of some of the basic methods of raising and moving money in support of terrorist activities.

There are significant multilateral norms now in place to set standards for ensuring that terrorists do not use the formal financial system. Chief among these are the efforts of the Financial Action Task Force (FATF), which, prior to 9/11, had been the multilateral body responsible for setting international standards for the detection and prosecution of money laundering. In the months after 9/11, the FATF expanded its remit to include setting standards for terrorist financing, and made eight recommendations to prevent terrorist financing. These recommendations included, for example, creating the ability to freeze terrorist assets, licensing informal money remitters, and regulating nongovernmental organizations.[39] While setting standards is a necessary exercise, far more will depend on each country's diligently implementing and enforcing these standards.

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[39] FATF, "Special Recommendations on Terrorist Financing," Oct. 31, 2001 (online at http://www1.oecd.org/fatf/pdf/SRecTF_en/pdf); FATF, "Guidance for Financial Institutions in Detecting

As part of the USA PATRIOT Act, Congress enacted financial institution regulations that had been largely rejected before the attacks; many were only tangentially related to terrorist financing. In part, they give the Secretary of the Treasury the power to name countries, institutions, or transactions found to be of primary money-laundering or terrorist-financing concern and implement new requirements that banks more closely scrutinize their relationships with foreign persons and banks. A broader range of industries—insurance companies, money services businesses, broker-dealers, and credit card companies, for example—were potentially subject to a host of new requirements, including reporting suspicious financial activity on the part of their customers to the Treasury Department. Federal Reserve examiners now inspect banks for compliance with antiterrorism directives. As noted in chapter 4, private financial institutions provided, and continue to provide, significant assistance in investigating terrorist groups.

Although Saudi Arabia's cooperation on al Qaeda financing was limited and inconsistent in the first year and a half after the September 11 attacks, the situation changed dramatically after the May 12, 2003, al Qaeda attacks in Riyadh. Saudi leadership, now finally understanding the al Qaeda threat, is by all accounts providing significantly higher levels of cooperation. Much of the Saudi government's efforts understandably focus on killing or capturing terrorist operatives, but the Saudis also have moved against fund-raisers and facilitators, shared intelligence, and enacted financial controls, such as requiring that all charitable donations destined for overseas be administered by the government and banning cash donations in mosques. They have taken significant action against al Haramain, for example, a charity suspected of funneling money to terrorist organizations, and seem prepared to go further. In addition, the Saudis are participating in a joint task force on terrorist financing with the United States, in which U.S. law enforcement agents are working side by side with Saudi security personnel to combat terrorist financing. To further this effort, the Saudis have accepted substantial—and much needed—U.S. training in conducting financial investigations and identifying suspicious financial transactions, help that the Saudis had long refused. Although Saudi Arabia likely remains the best and easiest place for al Qaeda to raise money, the Saudi crackdown appears to have had a real impact in reducing its funding. In addition, the Saudi population may feel that as a result of the attacks against their own people, they should be more cautious in their giving.[40]

The Saudis have demonstrated they can and will act against Saudi financiers of al Qaeda when the United States provides them with actionable intelligence and consistently applies high-level pressure on them to take action. At least until recently, as noted in chapter 7, the Saudis have generally moved slowly, and only after considerable U.S. prodding. Because Saudi Arabia remains the primary source for al Qaeda fund-raising, it is in a better position than the United States to identify the fund-raisers and collect intelligence about their activities. Apparently the Saudis may now be willing to take the

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Terrorist Financing," Apr. 24, 2002 (online at http://www1.oecd.org/fatf/pdf/GuidFIT01_en/pdf); Jaime Caruana and Claes Norgren, "Wipe Out the Treasuries of Terror," *Financial Times*, Apr. 7, 2004, p.17.

[40] See chapter 7, the case study on al Haramain, and chapter 2, on al Qaeda financing, for more on these issues.

initiative. Certainly, the joint task force, their willingness to accept U.S. training in conducting financial investigations, and their recent successful actions against key facilitators are significant steps in the right direction. Time will tell whether the Saudis follow through on these efforts and accept their responsibility to lead the fight against al Qaeda fund-raising by Saudi sources.

Intergovernmental coordination and policy development

Terrorist financing is now, and has been since the attacks, the subject of extensive interagency coordination mechanisms involving the intelligence community, law enforcement, Treasury, and State. An NSC-level Policy Coordinating Committee (PCC) on Terrorist Financing was established in March 2002 to replace the ad hoc structure that had arisen in the immediate aftermath of the attacks. The PCC was chaired by the General Counsel of the Department of the Treasury until he left government service in November 2003. The process, often driven by force of personality rather than by any structural mechanism, appears to have worked well in resolving differing points of view on terrorist-financing policy and operational differences. The key participants in the interagency process, especially the leaders of the CIA and FBI terrorist-financing units, have lavishly praised each other's commitment to cooperation and information sharing. The PCC often was not fully integrated into the United States' broader counterterrorism policy and Saudi relations, however.

An Assessment

After 9/11, the government, in an attempt to "starve the terrorists of money," engaged in a series of aggressive and high-profile actions to designate terrorist financiers and freeze their money, both in the United States and through the United Nations. Donors and al Qaeda sympathizers, wary of being publicly named and having their assets frozen, may have become more reluctant to provide overt support. The overall or long-term effect of these actions, however, is not clear.

Moreover, these initial designations were undertaken with limited evidence, and some were overbroad, resulting in legal challenges. Faced with having to defend actions in courts that required a higher standard of evidence than was provided by the intelligence that supported the designations in the first place, the United States and the United Nations were forced to "unfreeze" assets (see, generally, chapter 5).

The difficulty, not completely understood by the policymakers when they instituted the freezes, was that the intelligence community "linked" certain entities or individuals to known terrorist groups primarily through common acquaintances, group affiliations, historic relationships, phone communications, and other such contacts. It proved far more difficult to actually trace the money from a suspected entity or individual to the terrorist group, or to otherwise show complicity, as required in defending the designations in court. Intelligence agents, long accustomed to the Cold War reality of collecting intelligence for extended periods of time before public action was necessary, were now

faced with a new demand for intelligence that needed not only to be immediately and publicly acted on but to be defended in court as well. Policymakers, many newly thrust into the world of intelligence, were sometimes surprised to find that intelligence assessments were often supported by information far less reliable than they had presumed.[41]

These early missteps have made other countries unwilling to freeze assets or otherwise act merely on the basis of a U.S. action. Multilateral freezing mechanisms now require waiting periods before money can be frozen, a change that has eliminated the element of surprise and virtually ensured that little money is actually frozen. The worldwide asset freezes have not been adequately enforced and have been easily circumvented, often within weeks, by simple methods.

Treasury officials were forthright in recognizing the difficulty in stopping enough of the money flow to stop terrorist attacks, but argue that such freezes and the prohibition of transactions have other benefits. Designations prevent open fund-raising and assist, for example, in preventing al Qaeda from raising the amounts of money necessary to create the kind of refuge it had in Afghanistan, or from expending the sums necessary to buy or develop a weapon of mass destruction. Moreover, freezing groups or individuals out of the world's financial systems forces them into slow, expensive, and less reliable methods of storing and moving money. Additionally, there is significant diplomatic utility in having the world governments join together to condemn named individuals and groups as terrorists.

A far more nuanced and integrated strategy has since evolved. As the government's understanding of the methods al Qaeda uses to raise, move, and spend money has sharpened, the United States has recognized that measures to counter terrorist financing are among the many tools for understanding terrorist networks, to be used in conjunction with and in close proximity to other types of intelligence. Moreover, these measures, again when closely coordinated with the overall counterterrorism effort, can be used to disrupt terrorist operations and support systems. Intelligence and law enforcement agencies have targeted the relatively small number of financial facilitators—individuals al Qaeda relied on for their ability to raise and deliver money—at the core of al Qaeda's revenue stream (see chapter 2), and appear to have reaped benefits as a result. The death and capture of several important facilitators have decreased the amount of money al Qaeda has raised and have increased the costs and difficulty of raising and moving that money. These captures have additionally provided a windfall of intelligence, which can then be used to continue the disruption.

Some entirely corrupt charities are now completely out of business, with many of their principals killed or captured. Charities that have been identified as likely avenues for

[41] Compare Tenet's speech at Georgetown University, Feb. 5, 2004 ("In the intelligence business, you are almost never completely wrong or completely right") with Mueller's testimony to the 9/11 Commission, April 14, 2004, p. 126 ("If there's one concern I have about intelligence, it is that often there are statements made about an uncorroborated source with indirect access and then there is a stating of a particular fact....I think there has to be a balance between the information we get and the foundation of that information").

terrorist financing have seen their donations diminish and their activities come under more scrutiny. Controlling overseas branches of Gulf-area charities remains a complex task, however. The sheer volume of charitable dollars originating in the Gulf region, the nature of charitable giving in the Islamic world, and the austere and uncompromising version of Islam practiced by many Saudis pose a daunting challenge.[42] U.S. efforts have shown that detecting and disrupting the terrorist money among the billions is extremely difficult, even with the best capabilities and intentions.[43]

The May 2003 terrorist attacks in Riyadh, moreover, apparently have contributed to a reduction of funds available to al Qaeda. Increased public scrutiny and public designations of high-profile Gulf-area donors have made other donors cautious. The fight has come to the Saudi homeland, and Saudis and their government (as well as other Gulf-area governments) have come to realize the problems that unfettered financial flows may bring.[44] Although Saudi Arabia has by most accounts become more fully engaged in stopping al Qaeda financial flows, the Kingdom requires considerable technical assistance and must take the initiative in combating terrorist financing, as opposed to merely responding to U.S. requests. The Saudi regime must balance its terrorist-financing efforts, the legitimate charitable relief Saudi charities provide, and the need to maintain its own stability. A critical part of the U.S. strategy to combat terrorist financing must be to monitor, encourage, and nurture Saudi cooperation while simultaneously recognizing that terrorist financing is only one of a number of crucial issues that the U.S. and Saudi governments must address together. Managing this nuanced and complicated relationship will play a critical part in determining the success of U.S. counterterrorism policy for the foreseeable future.

While overall al Qaeda funding has apparently been reduced, it is nevertheless relatively easy to fund terrorist operations. When investigators do not know where to look, the tiny amounts of money needed for deadly operations are impossible to find and stop in a multi-trillion-dollar global economy. The U.S. intelligence community has attacked the problem with imagination and vigor, and cooperation among the world's security services seems to be at unprecedented levels, but terrorist financing remains a notoriously hard target. The small sums involved, al Qaeda's use of decentralized and informal methods of moving funds (including trusted hawaladars and relatively anonymous couriers), and the existence of a cadre of dedicated financial facilitators who raise money from potentially unwitting sources all contribute to a significant and ongoing challenge for the intelligence community for the foreseeable future.

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[42] See chapters 2 and 7 for a discussion of the role of charities in Saudi Arabia.

[43] The United States perhaps leads the world in its ability to conduct financial investigations, yet often finds itself stymied in doing the financial tracing and analysis necessary to detect terrorist money flows. See generally chapter 6.

[44] As noted in chapter 2, despite numerous allegations about Saudi government complicity in al Qaeda, the Commission has found no persuasive evidence that the Saudi government as an institution or senior officials within the Saudi government knowingly support or supported al Qaeda. A lack of awareness of the problem and failure to conduct oversight over institutions, however, probably created an environment in which such activity has flourished.

The U.S. financial community and some international financial institutions have generally provided law enforcement and intelligence agencies with extraordinary cooperation, particularly in furnishing information to support quickly developing investigations. Obvious vulnerabilities in the U.S. financial system, such as the largely unchecked use of correspondent or private banking accounts by foreign banks or other high-risk customers, have been corrected. However, no valid financial profile of terrorist financing exists (despite efforts to create one), and the ability of financial institutions to detect terrorist financing without receiving more information from the government remains limited.

Law enforcement investigations often fail to prove the destination and purpose of money transferred across continents in complex transactions, and transactions recorded in a bank statement or a wire transfer say nothing about their source or purpose. Funds are sent overseas through a charity; a fraction of these funds may then be diverted for terrorist or jihadist purposes, often through additional charities and cash transactions. The investigations of the Benevolence International Foundation (BIF) and the Global Relief Foundation (GRF) vividly illustrate that even substantial intelligence of ties to terrorist groups can be insufficient to prove a criminal case beyond a reasonable doubt (see chapter 6). When terrorism charges are not possible, the government has brought nonterrorist criminal charges against those suspected of terrorist financing. Such an approach, while perhaps necessary, leaves the government susceptible to accusations of ethnic or religious profiling that can undermine support in the very communities where the government needs it most. Moreover, ethnic or geographic generalizations, unsupported even by intelligence, can both divert scarce resources away from the real threats and violate the Constitution.

Because prosecuting criminal terrorist fund-raising cases can be difficult and time-consuming, the government has at times used administrative orders under the IEEPA to block transactions and freeze assets even against U.S. citizens and entities, as we show in the case studies of the al-Barakaat money remitters and the Chicago charities (in chapters 5 and 6). In some cases, there may be little alternative. But the use of administrative orders with few due process protections, particularly against our own citizens, raises significant civil liberty concerns and risks a substantial backlash. The government ought to exercise great caution in using these powers, as officials who have participated in the process have acknowledged,[45] particularly when the entities and individuals involved have not been convicted of terrorism offenses.

The designated person or entity in such a situation does not have certain rights that might be available in a civil forfeiture action, when the government in most circumstances must file a lawsuit and bear the burden of proof by a preponderance of the evidence. As in any other lawsuit, the owner of the property has the right to conduct discovery of the government's evidence, such as taking sworn depositions and obtaining documents. Moreover, the defendant has the right to avoid forfeiture by demonstrating that he or she

[45]*See, e.g.,* Treasury Memorandum, Apr. 12, 2002. The memorandum proposed a six-month limit for discussion purposes, and offered a "clear recommendation" that "temporary blocking orders be pursued with due diligence and an anticipated end date."

is an innocent owner—that is, obtained or possessed the property in question without knowing its illegal character or nature. The difference between an IEEPA freeze and a civil forfeiture is that a freeze does not technically divest title. But when a freeze separates the owner from his or her money for dozens of years, as it has in other IEEPA contexts, that is a distinction without a difference.

Even more controversial is the government's use of the provisions to block assets "during the pendency of an investigation," codified in the USA PATRIOT Act. The government is able to (and has, on at least three occasions) shut down U.S. entities without developing even the administrative record necessary for a designation. Such action requires only the signature of a midlevel government official. The "pending investigation" provision may be necessary in true emergency situations, when there is not time to marshal the evidence to support a formal designation before a terrorist financier must be shut down. But when the interim blocking lasts 10 or 11 months, as it did in the Illinois charities cases (as we note in chapter 6), real issues of administrative due process and fundamental fairness arise.

The premise behind the government's efforts here—that terrorist operations need a financial support network—may itself be outdated. The effort to find, track, and stop money presumes that it is being sent from a central source or group of identifiable sources. As al Qaeda is further disrupted and its members are killed and dispersed, it loses the central command and control structure it had before. Some terrorist operations do not rely on outside sources of money, and cells may now be self-funding, either through legitimate employment or through low-level criminal activity. Terrorist groups only remotely affiliated with al Qaeda—and dependent on al Qaeda as a source of inspiration rather than operational funding—pose a significant threat of mass casualty attacks. Our terrorist-financing efforts can do little to stop them, as there is no "central command" from which the money flowed, as in the 9/11 attacks. Terrorist operations cost next to nothing. It is to our advantage to ensure that operational cells receive as little money as possible from established terrorist organizations, but our success in doing so will not guarantee our safety.

Chapter 4

Combating Terrorist Financing in the United States: The Role of Financial Institutions

Since the 9/11 terrorist attacks, U.S. financial institutions have, almost uniformly, wanted to do everything in their power to prevent their use by terrorist operatives and fund-raisers. Indeed, law enforcement and intelligence officials have praised the private financial services sector for its willingness to assist in terrorist-related investigations. The effort is clearly there, but what about the results?

The current regulatory regime was designed primarily for discovering and reporting money laundering—the efforts of criminals, such as drug traffickers, to filter huge amounts of cash through the financial system. Only banks have the information needed to discover and report those kinds of transactions. A regulatory regime in which valuable data are passed from the banks to the government, in that context, makes sense.

For terrorist financial transactions, the amount of money is often small or consistent with the customer's profile (such as a charity raising money for humanitarian aid) and the transactions seemingly innocuous. As a consequence, banks generally are unable to separate suspicious from legitimate transactions. The government, however, may have information that would enable banks to stop or track suspicious transactions. As a result, financial institutions can be most useful in the fight against terrorist financing by collecting accurate information about their customers and providing this information—pursuant to legal process—to aid in terrorism investigations. At the same time, the government should strive to provide as much unclassified information to financial institutions as possible.

Terrorist Financing in the United States

The term "terrorist financing" is commonly used to describe two distinct types of activity. First, it can consist of the financing of operational terrorist cells, like the 19 hijackers who conducted the 9/11 attacks. This financing consists of the funds the cell needs to live and to plan, train for, and commit the terrorist act. The second type of terrorist financing is fund-raising—the process by which an organized terrorist group, such as al Qaeda or Hamas, raises money to fund its activities. Such fund-raising often takes place through nongovernmental organizations, which may raise money for legitimate humanitarian purposes and divert a fraction of their total funds for illicit purposes.

The funding of terrorist operations involves relatively small dollar amounts, from the estimated $10,000 cost of the 1998 U.S. embassy bombings in East Africa, to the estimated $400,000–500,000 for the 9/11 attacks themselves (of which roughly $300,000 passed through U.S. bank accounts over a period of nearly two years). The 9/11 attack provides a good case study of how a large terrorist cell can be financed in the United States. The hijackers moved money into the United States in three ways. They received

wires totaling approximately $130,000 from overseas facilitators in the United Arab Emirates and Germany; they physically carried large amounts of cash and traveler's checks with them; and some of them set up accounts overseas, which they accessed in the United States with credit or ATM cards. Once here, the hijackers opened bank accounts in their real names at U.S. banks, which they used just as millions of other people do to conduct the routine transactions necessary to their plan. The hijackers used branches of both large national banks and smaller regional banks.[46]

Nothing the hijackers did would have alerted any bank personnel to their being criminals, let alone terrorists bent on mass murder. Their transactions were routine and caused no alarm. Their wire transfers, in amounts from $5,000 to $70,000, were utterly anonymous in the billions of dollars moving through the international financial system on a daily basis. Their bank transactions, typically large deposits followed by many small ATM or credit card withdrawals, were entirely normal, especially for foreign students living in the United States. No financial institution filed a suspicious activity report (SAR) and, even with benefit of hindsight, none of them should have.[47] Contrary to numerous published reports, there is no evidence the hijackers ever used false Social Security numbers to open any bank accounts. In some cases, bank employees completed the Social Security number fields on the new account application with a hijacker's date of birth or visa control number, but did soon their own to complete the form.[48]

The use of a financial institution for a fund-raising operation looks entirely different from the use of an institution by a terrorist cell, like the 9/11 plotters. The transactions are often much larger. For example, the Benevolence International Foundation (BIF), an Illinois charity designated a terrorist supporter by the U.S. government in 2002, received more than $15 million in donations between 1995 and 2000.[49] Funds are likely pooled from multiple small donors and then sent overseas, frequently to troubled places in the world under the auspices of a charity. For example, the Global Relief Foundation (GRF), another Illinois charity designated a terrorist supporter by the U.S. government in 2002, annually sent millions of dollars overseas, especially to such strife-torn regions as Bosnia, Kashmir, Afghanistan, Lebanon, and Chechnya. According to its IRS filings, GRF sent $3.2 million overseas in 1999 and $3.7 million in 2000. Like the financing of a cell such as the 9/11 hijackers, however, a competent terrorist fund-raising operation will not be apparent to bank personnel. The money sent overseas will not go to al Qaeda or any designated terrorist group. Instead, the money will go to an overseas office of the charity or an affiliated charity, and the diversions to terrorist facilitators or operatives will likely

[46] See appendix A (discussing 9/11 transactions in detail).
[47] As discussed later, U.S. law requires banks to report potentially criminal financial activity by filing SARs with the Financial Crimes Enforcement Network (FinCEN) within 30 days of the suspicious transaction.
[48] This is not to say that the hijackers were experts in the use of the U.S. financial system. For example, the teller who opened an account for plot leaders Atta and al Shehhi spent an hour with them, explaining the procedures for ATM transactions and wire transfers, and one branch refused to cash a check for al Shehhi on one occasion because he presented IDs with different addresses. This incident led the bank to issue a routine, internal security alert to watch the account for possible fraud, but provided no basis for concern about serious criminality—let alone terrorism. These minor blips provided no clue to the financial institution about the hijackers' murderous purpose.
[49] Whether BIF actually funded al Qaeda remains an open question. See chapter 6.

take place overseas. In the current environment, the donors presumably will not include pro-Jihad comments on the memo line of their checks, as did pre-9/11 donors to one suspect charity the FBI investigated. The fund-raising operation will look to the bank like a charity sending money to troubled parts of the world—which it is doing, at least in part.

Why Suspicious Activity Reporting Works for Money Laundering But Is Less Useful for Terrorist Financing

The Bank Secrecy Act (BSA) regime, described below, was designed to combat money laundering and related offenses and, assuming that it is well-implemented and well-enforced, it is reasonably effective for this purpose. However, the requirement that financial institutions file SARs does not work very well to detect or prevent terrorist financing, for there is a fundamental distinction between money laundering and terrorist financing. Financial institutions have the information and expertise to detect the one but not the other.

The Bank Secrecy Act—what it is and what it does

The premise behind the money-laundering laws and regulations was that because the underlying crimes generate enormous amounts of cash, criminal enterprises need to convert that cash into something less traceable and more usable. In perhaps the best-known example of money laundering, Russian and U.S. shell corporations were able to move billions of dollars through correspondent accounts owned by foreign banks at the Bank of New York and Citibank. Likewise, Raul Salinas, the former president of Mexico, was found to have laundered millions of dollars in alleged public corruption money through Citibank accounts. The role of Mexican banks was highlighted in a U.S. law enforcement investigation known as Operation Casablanca, which found that millions of drug-tainted dollars had been laundered through Mexican banks.

The United States' method to prevent criminals from taking advantage of the financial system relies on the basic premise that financial institutions—not the government—are in the best position to detect money laundering and related illicit transactions. Thus, the law imposes on financial institutions the obligation to report suspicious activity that involves their use. This law and related regulations, generically referred to as the "Bank Secrecy Act," require banks (and now a host of other financial institutions, including broker-dealers, credit card companies, insurance companies, and money service businesses)[50] to understand, control, and report transactions that may have a questionable origin or purpose. Specifically, banks are required to report cash transactions in excess of $10,000, as well as any other transactions they deem "suspicious."[51]

[50] For purposes of this discussion, we use the term *bank*, although in most respects the obligations extend to other financial institutions.

[51] Additionally, banks must ensure that they do not unwittingly engage in transactions with individuals listed on Treasury's list of prohibited persons, maintained by the Office of Foreign Assets Control (OFAC). Such transactions are prohibited by a number of statutes tied to the president's ability to bar U.S. persons

The SAR requirement is at the core of the government's anti-money-laundering effort. Inherent in a bank's responsibility to report (or refuse to conduct) a suspicious transaction is an obligation to have sufficient knowledge of its own transactions and customers to understand what is suspicious. This requires a bank to "know" its customer—who the beneficial owner of an account is, what the customer's likely transactions should be, and what, in general, is the source of the customer's money. Once it understands its customer and the customer's likely transactions, the bank is able to determine whether the customer is conducting transactions out of character for that profile. Additionally, understanding the customer's probable transactions enables the bank to assess the risk that the account will be used to launder money, and will in some respects determine how closely the institution monitors the customer's account. A bank's failure to report suspicious activities, or to have a system in place that could reasonably detect suspicious financial transactions, is punishable by some combination of administrative sanctions, civil fines, and criminal penalties.

A bank can best detect suspicious transactions at one of two points. The "front end" of a transaction involves the tellers and other individuals who may have face-to-face contact with the customer and can often determine if a specific transaction is worth a second look. A bank will typically train tellers and other such individuals to look for specific "red flags" to determine if a transaction is suspicious. The second likely point of detection occurs in the "back office"—an analysis of financial transactions, which takes place in a specialized unit, for example, or in particularly high-risk areas such as the bank's wire transfer operations. Money-laundering analysts look at the bank's transactions to determine if they can conclude, by examining patterns of transactions, whether those patterns are suspicious.

Analysts are aided significantly by software that is programmed to catch "anomalies" (i.e., unusual financial transactions) that are indicative of money laundering. The key is to find those transactions that would be out of character for the customer's purported business activity. A large cash deposit would not be suspicious for a customer like Wal-Mart, but it would be for a customer whose only reported source of income is a Social Security check. Sophisticated software should be able to distinguish between such transactions and alert the money-laundering compliance analyst at the bank to investigate further. This software, however, is not self-executing. It must be set up and fine-tuned. Such adjustments can only be done by the bank itself; they require a deep and thorough understanding both of the bank's ordinary business and of its potential high-risk product lines and high-risk customers. Additionally, the bank typically has specialists with a fairly sophisticated understanding of money laundering. Because money laundering must involve large transactions, banks are able to safely ignore a significant percentage of their transactions that fall below specific thresholds.

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from trading with an enemy of the state. Violations of these prohibitions are enforced by criminal penalties or by civil fines, depending on the seriousness of the offense, among other factors. The listing process, described elsewhere, is generally considered to be too cumbersome to be of use in detecting operational elements of terrorist organizations.

If further review does not dispel suspicions, the bank is required to file a SAR within 30 days from the discovery of the suspicious conduct. (When a bank cannot identify a suspect, it has an additional 30 days to try to do so.) The bank must also monitor the account and should refuse to engage in future transactions it deems to be suspicious. In some cases, it may terminate the relationship with the customer.

The BSA regime also reflects sensitivities concerning financial privacy. A system requiring bank reporting was thought to be less intrusive than allowing unfettered government surveillance of bank records. The specter of a bank "knowing its customer" is somewhat less threatening than the idea that the government ought to understand and know all of a citizen's probable financial transactions.

As a result of the BSA regime, most money launderers, drug dealers, and high-level fraudsters understand that trying to pump massive amounts of cash through a U.S. bank is fraught with peril. As a result, they generally prefer instead to use other, less risky, methods to move money—sending it in bulk across our porous borders, for example, or through a less-regulated industry like money-transmitting services. If they do use banks, they take care to structure smaller transactions among dozens of different accounts—less risky, to be sure, but considerably slower and more costly.

The terrorist-financing model

The model of banks having superior knowledge to detect illicit activity may not apply to terrorist financing. Although the U.S. government may possess the intelligence that could reveal terrorist operatives and fund-raisers, financial institutions generally do not. The 9/11 operation provides a perfect example. The 19 hijackers hid in plain sight: none of their transactions could have revealed their murderous purpose, no matter how hard the banks looked at them (see appendix A). Intelligence the government had, however, could have been critical to identify the terrorists among us. For example, the U.S. government had reason to believe that future hijackers Khalid al Mihdhar and Nawaf al Hazmi were al Qaeda operatives in the United States. Both these terrorists had U.S. bank accounts, but bank personnel never could have suspected that their customers were terrorists no matter how diligently they studied the transactions, which were utterly routine.

Since September 11, financial institutions and the government have made efforts to create a financial profile of terrorist operatives. The FBI examined the financial transactions of the 9/11 hijackers and came up with some distinguishing features: they arrived at banks in groups; they listed their occupation as students; they spent a large percentage of their income on flight schools and airfare, particularly first-class airfare; and they were funded in large part through wire transfers from the UAE. This profile might help detect another plot exactly like 9/11, but we can expect that the next plot will look entirely different. As a result, this profile does not especially help banks find future terrorist operatives, who we can expect will make different, although equally routine, use of the financial system. In fact, no effective financial profile for operational terrorists located in the United States exists. The New York Clearinghouse, a private consortium of the largest money-center banks, attempted to put together such a profile in partnership with government investigators. After two years, they concluded it could not be done.

Creating a profile for terrorist fund-raising groups is not necessarily any easier. An Islamic organization that collects funds from small donors, pools the funds, and then sends large monthly wire transfers to Chechnya, Afghanistan, Kashmir, or the West Bank could be a jihadist or terrorist fund-raising operation, or an entirely legitimate humanitarian operation devoted to serving civilians in impoverished and war-torn regions of the world. The government may have information (derived from sources such as electronic surveillance or human intelligence) from which it can distinguish between the two rationales for the transactions, but it is unlikely that banks will be able to tell the difference from the transactions themselves.

The government has also tried to describe suspicious activity indicative of terrorist fund-raising. The Financial Crimes Enforcement Network (FinCEN) conducted a comprehensive analysis of potential terrorist-financing patterns, which it published in January 2002. Drawing on actual SARs filed by banks, it described five cases that might have been examples of terrorist fund-raising. Ultimately, these cases centered on financial transactions indicative of money laundering that involved, as FinCEN delicately put it, "nationals of countries associated with terrorist activity."[52] This analysis appears to be of little use in ferreting out a sophisticated terrorist fund-raising operation, which will likely look to the bank identical to a legitimate Islamic charity.

Although FinCEN took great pains to caution that country of origin or ethnicity should not, absent other factors, be taken to indicate potential criminal activity, the report highlights a problem with applying the BSA regime to terrorist financing. The inability to develop meaningful indicia of a terrorist cell or terrorist fund-raising operation creates a risk that financial institutions could rely primarily on religious, geographic, or ethnic profiling in an attempt to find some criteria helpful for identifying terrorist financing. Such profiling raises a number of problems. Fundamentally, it will not be an effective means to combat terrorist financing. The vast majority of Islamic or Arab bank customers are not terrorists or terrorist supporters, so indiscriminately filing SARs on them will do nothing but waste resources and cause bad will. Similarly, reporting that an Islamic charity is sending money to Afghanistan will not be particularly effective in finding terrorist financiers; there are certainly many legitimate humanitarian needs there. In addition to doing little good, this type of profiling may subject customers to heightened scrutiny without legitimate basis, and could even extend to refusing to service customers meeting a certain profile. Of course, religion, nation of origin, or ethnicity can and should be taken into consideration, along with many other factors, in the subjective judgment as to whether a certain transaction or account is suspicious. Our point is that profiling—by itself—is both an unfair and an ineffective way for financial institutions to attack terrorist financing.

[52] FinCEN, *SAR Bulletin*, no. 4 (Jan. 2002). Typically, they included structuring multiple deposits or other transactions to be below the $10,000 reporting threshold, collecting funds through a variety of financial channels then funneling them to a small number of foreign beneficiaries, or a volume of financial activity inconsistent with the stated purpose of the account.

That being said, there may be utility in having financial institutions examine transactions for indicia of terrorist financing. It certainly assists in preventing open and notorious fund-raising and forces terrorists and their sympathizers to raise and move money clandestinely, thereby raising the costs and risks involved. The deterrent value in such activity is significant and, while it cannot be measured in any meaningful way, ought not to be discounted.

Financial Institutions Have a Role in Combating Terrorist Financing in the United States

The inability of financial institutions to detect terrorist operatives or terrorist fund-raising does not relegate the private sector to the sidelines in the fight against terrorism. To the contrary, there are a number of things that financial institutions can do right now. There also are a number of things that could be done in the future, if current law or government policies are changed. This section addresses what can be done now and assesses some possibilities for the future.

Now: Helping the government find the terrorists

Financial tracking

Although financial institutions lack information that can enable them to identify terrorists, they have information that can be absolutely vital in finding terrorists. If the government can determine where a terrorist suspect banks, his account opening documents can provide his address, and his ATM and credit card usage can show where he is and what he is doing. Again, the 9/11 plot provides a good example. Had the U.S. government been able in August 2001 to learn that hijackers Nawaf al Hazmi and Khalid al Mihdhar had accounts in their names at small New Jersey banks, it could have found them. The hijackers actively used these accounts, through ATM, debit card, and cash transactions, until September 10. Among other things, they used the debit cards to pay for hotel rooms—activity that would have enabled the FBI to locate them, had the FBI been able to get the transaction records fast enough. Moreover, al Hazmi used his debit card on August 27 to buy tickets on Flight 77 for himself, his brother, and fellow Flight 77 hijacker Salem al Hazmi.

If the FBI had found either al Mihdhar or Nawaf al Hazmi, it could have found the other. They not only shared a common bank but frequently were together when conducting transactions. After locating al Mihdhar and al Hazmi, the FBI could have potentially linked them through financial records to the other Flight 77 hijackers. For example, as noted, Nawaf al Hazmi used his debit card on August 27 to buy plane tickets for himself and his brother, linking those two hijackers. Nawaf al Hazmi and Flight 77 pilot Hani Hanjour had opened separate savings accounts at the same small New Jersey bank at the same time and both gave the same address. On July 9, 2001, the other Flight 77 muscle hijacker, Majed Moqed, opened an account at another small New Jersey bank at the same

time as Nawaf al Hazmi, and used the same address. Given timely access to the relevant records and sufficient time to conduct a follow-up investigation, the FBI could have shown that Hani Hanjour, Majed Moqed, and Salem al Hazmi were connected to potential terrorist operatives al Mihdhar and Nawaf al Hazmi. No one can say where the investigation would have gone from there, but financial records could potentially have been used, along with other information—including perhaps information found in the possession of or provided by the Flight 77 hijackers—to link the Flight 77 hijackers to the others and, perhaps, disrupt the plot.

Unfortunately, this theoretical investigation would not have worked quite as smoothly in the world that existed before September 11. First, an agent attempting to locate the hijackers would have needed to know where to look. There are thousands of financial institutions in the United States, and making an inquiry of each one of them, regardless of the exigency of the situation, would not have been a realistic enterprise. Even an experienced agent tasked to find al Mihdhar or al Hazmi would have been unlikely to think to use financial tracking; and an agent who did probably would have first called those institutions with which he or she had some personal relationship—probably big banks.

Moreover, before 9/11 financial investigations almost always moved at a slow, methodical pace. In a typical investigation, a financial institution received a grand jury subpoena or a National Security Letter (NSL) from a federal prosecutor or agent. The subpoena had a return date—the date by which the bank was required to produce the records requested. In a typical investigation, the bank searched its records and produced hard copies of the material requested. Banks and other financial institutions then needed substantial time to locate and produce records, even in response to a lawful subpoena. Financial institutions had been prohibited from giving law enforcement certain records absent compulsory legal process.

Before 9/11, the U.S government did not think in terms of financial tracking, certainly not systematically and on an urgent basis. The terrorist attacks changed this thinking. Since 9/11, the government uses financial information to search out terrorist networks so that a known suspect like al Mihdhar could be quickly located. There are now two primary approaches for doing this: FBI outreach that has enhanced private sector cooperation and Section 314(a) of the USA PATRIOT Act.

The FBI's Terrorist Financing Operations Section (TFOS) has taken the existing legal rules, which were developed within the context of traditional after-the-fact investigation of financial crimes, and created a systematic approach to gain expedited access to financial data in emergencies. To facilitate emerging situations, the FBI has compiled a list of high-level contacts within the financial community—banks, brokerage houses, credit card vendors, and money services businesses—to whom it can turn to get financial information on an expedited basis at any time, including nights, weekends, and holidays. The FBI serves them on an expedited basis with a subpoena or other legal process to get the relevant data. In true emergencies, the FBI can get information quickly to locate an individual or find links among co-conspirators.

Applying the post-9/11 FBI approach to the pre-9/11 search for al Mihdhar and al Hazmi strongly suggests the current system would have enabled the hijackers to be quickly located. Indeed, the recently retired founder and chief of TFOS stated that given the same circumstances today, the FBI would find al Mihdhar "in a heartbeat."[53] Corroborating this contention, FBI has successfully used its system a number of times to locate terrorist suspects and prevent terrorist attacks. For example, after the FBI received information that certain potential terrorists had infiltrated the United States, TFOS put into practice the process it had developed to track the suspects through their financial transactions. The TFOS process proved successful in obtaining useful data in a very compressed time frame. Although the subjects proved not to be terrorists, the system demonstrated its capability. The FBI's ability to do near real-time financial tracking has enabled it to locate terrorist operatives in a foreign country and prevent terrorist attacks there on several occasions. The system also helped crack a major criminal case, played a role in clearing certain persons wrongly accused of terrorism, and has proved very valuable in vetting potential threats.

The second approach to obtaining basic financial information on an expedited basis is through a regulation issued under Section 314(a) of the USA PATRIOT Act. By this regulation, the Department of Treasury requires financial institutions upon the government's request to search their records and determine if they have any information involving specific individuals. Financial institutions must report any positive matches to law enforcement within two weeks after the request for information. If there are matches, law enforcement must follow up with a subpoena to obtain the actual transaction records as discussed above. In an emergency, law enforcement can ask Treasury to require banks to respond more quickly to the request, sometimes in two days, a procedure that they have used on several occasions thus far.

In practice, this process enables law enforcement to find out if an individual of interest has accounts or has conducted transactions in any one of thousands of financial institutions across the country. It saves an investigator hundreds of hours that would have otherwise been spent on a bank-by-bank inquiry—an inquiry that would not have been done under the old system owing to time and resource constraints. One agent told the Commission staff that the new procedure so far has produced "tremendous results." She cited an instance in which a terrorism investigation resulted in the discovery of two bank accounts using conventional investigative techniques. Then, as a result of the Section 314 process, investigators were able to identify 19 other accounts across the country—accounts that they would have never been able to find otherwise.[54]

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[53] By contrast, he said that while it would have been theoretically possible to use financial tracking to find the hijackers before 9/11, the probability of doing so in a timely fashion would have been extremely low.

[54] One concern about the Section 314 process is the possibility that a request to thousands of financial institutions will cause the information to be leaked. In a Las Vegas criminal investigation in October 2002 and a New York terrorism case in March 2003, the media published the fact of the law enforcement requests. In the New York case, the *New York Post* even called the subjects to ask them why the FBI was making the request. As a result, the FBI conducts a risk-benefit analysis before making each request. There are civil and criminal penalties in the event of a disclosure, and Treasury includes a warning with every request. There is no guarantee, however, that such warnings will be sufficient to deter leaks.

Account opening and customer identification procedures/data retention

Financial institutions play a critical role in any effort to find terrorists under either the FBI's system or Section 314. To fulfill this role properly in the life-and-death emergencies that can arise, financial institutions must (1) know their customers by their real names and possess other essential identifying information, (2) have the ability to access this information in a timely fashion, and (3) quickly provide this information to the government in a format in which it can be effectively used.

Section 326 of the USA PATRIOT Act requires that financial institutions "enhance the financial footprint" of their customers by ensuring effective measures for verifying their identity. Section 326 recognized that effective customer identification may deter the use of financial institutions by terrorist financiers and money launderers and also assist in leaving an audit trail that law enforcement can use to identify and track terrorist suspects when they conduct financial transactions. In May 2003 the Department of the Treasury issued regulations implementing the statute, setting forth the type of information that must be collected as well as the acceptable methods for verifying identity.

The need for accurate identifying information puts a premium on financial institutions having effective account opening procedures that vet the true identify of each customer, to the extent possible. A name search for Khalid al Mihdhar will not find him if he is banking under another name. Obviously, banks cannot be expected to detect perfectly forged passports and other identification documents; but terrorists rarely are perfect, and training in spotting false identification documents could help bank personnel catch the most egregious examples. In addition, bank personnel must ensure that account documents reflect the full and accurate name of the customer, even if that name is long.[55] Equally important, banks must obtain and accurately record key identifying information about their customers, including date of birth, Social Security number, and passport number. Many names are so common that nationwide searches for them would generate so many false positives as to be useless in an emergency. At times, however, the FBI can obtain and provide other identifying information, such as a passport number, which can be crucial in narrowing the search—provided that the institution where the subject is a customer has that information.

The need to locate terrorist operatives in the most exigent circumstances means that financial institutions must be able to access their data quickly. Quick retrieval can be a problem for some financial institutions, where years of piecemeal information-system upgrades have created a dysfunctional structure that greatly complicates the task of determining if a particular person is a customer. For example, an official of one midsize

[55] Shortening the name could mean that the account will be missed if the FBI is seeking a permutation different than the one used. For example, Ali Abdul Aziz Ali, a.k.a. Ammar al Baluchi, a key facilitator of the 9/11 attacks, would not be found if a bank listed him only as Abdul Aziz Ali and the FBI was looking for Ammar al Baluchi.

regional bank told Commission staff that his institution must email 28 different people to respond to a Section 314(a) request. Some banks simply lack electronic searching capability altogether. An FBI agent with a leading role in the Bureau's financial-tracking effort said that many financial institutions can search their data only manually, which is both resource-intensive and painfully slow in an emergency. Ideally, financial institutions should be able to do quick electronic searches by customer name, by other identifying information such as Social Security number or date of birth, or even by address or employment. Many financial institutions lack this ability today.

Once a financial institution has informed the government that a suspect is a customer and has received appropriate legal process, it can assist law enforcement greatly by providing continuous updates about the suspect's transactions. For example, the information that the suspect just used his credit card to rent a hotel room, book an airline flight, or rent a Ryder truck can be essential in an emergency. Many sophisticated financial institutions can provide the FBI with near "real-time" information on a suspect's activities, but other institutions entirely lack this capability, owing to technical limitations.

Finally, upon receipt of legal process, financial institutions must be able to communicate the relevant account information to the government officials quickly and efficiently. For many types of information, this means in electronic format. Although the FBI has long lagged behind the rest of the country in information systems technology, it has made tremendous strides since 9/11 in using available technology to find terrorists suspects, especially through TFOS's financial-tracking efforts. In many cases, emergency tracking can be streamlined if information is provided to TFOS in electronic format. Many financial institutions lack this capability, however.

The FBI's ability to find terrorist suspects in an emergency through financial tracking depends in large part on the private sector's voluntary cooperation. By all reports, the financial sector's cooperation has been immense since 9/11, but there is a risk that cooperation will decrease as the terrorist attacks fade into history and antiterrorism efforts become just another cost center for financial institutions. Government misuse of emergency procedures in non-emergency situations could also substantially reduce the likelihood that the private sector will respond when its help is truly needed to save lives. To avoid this problem, it is critical that law enforcement and the financial community maintain good lines of communication. This communication is important at all levels. Industry groups and major national institutions must meet regularly with national law enforcement leaders, such as the senior agents running FBI TFOS and the director of FinCEN, to focus on larger strategic issues. At the same time, FBI field offices need to reach out to smaller regional financial institutions, which they may need to contact in an emergency.

This is not to say that financial institutions should become simply another appendage of law enforcement. To the contrary, under either the FBI approach or Section 314(a), without legal process financial institutions can answer only one basic question: does X have an account at your bank? Everything beyond this question requires legal process under current law. It is hard to see why any privacy or liberty concerns should be raised

about the private sector and financial institutions working together to develop streamlined procedures for providing critical data quickly in an emergency—pursuant to a lawful subpoena or other process.

The future: What more can be done?

A number of proposals have been made in recognition that the traditional BSA approach is inadequate to address the challenges of terrorist financing.

Sharing classified information with bank personnel: A bad idea

The BSA model fails with respect to terrorist financing because the government—not the financial institutions—has the information that can best identify the terrorist operatives or fund-raisers. Some have proposed correcting that problem by providing security clearances to financial institution personnel and then providing these cleared officials with classified intelligence about terrorist financing. The idea is that the cleared bank personnel, armed with intelligence to give them a better idea of what they are looking for, will be able to ferret out the terrorists among their customers.[56]

The idea of clearing financial institution personnel may be attractive on its face, particularly to those unfamiliar with the nature of financial intelligence. The proposal would likely do little, however, to help banks combat terrorist financing and creates a number of serious privacy and civil liberty concerns. Most intelligence on terrorist financing is not actionable—it does not identify specific terrorist financiers and their accounts with sufficient precision to allow actions to disrupt the activity. The intelligence tends to be limited and speculative, and it frequently relies on dubious sources of information. It can be valuable to trained intelligence experts, who can evaluate it in the context of the broad spectrum of available information, but not to bank compliance directors, who will necessarily lack the time and current knowledge to properly evaluate it. Even if bank personnel have time and expertise, the intelligence rarely will yield information that they would find useful, such as names of specific account holders.

To the extent that the intelligence community can generate specific names or accounts, such information can usually be shared with banks in an unclassified way. Banks can be told to be aware of person X from country Y without needing to know how that information was obtained. If the intelligence community develops patterns or trends, this information presumably also can be shared with financial institutions without need for security clearances.

[56] See, e.g., testimony of former National Security Council official Richard A. Clarke, Senate Banking, Housing and Urban Development Committee (October 22, 2003) (clearing bank compliance personnel will "bring us back great benefits because then they'll know what to look for"). Representatives of financial institutions made similar recommendations to Commission staff.

Providing intelligence about terrorist financing to bank personnel raises serious privacy and civil liberty issues. People may be named in intelligence reports, but many of the allegations within these reports are unproven. Some reports prove to be entirely baseless. Turning these reports over to private citizens like bank personnel runs the risk that entirely unsubstantiated allegations may lead banks to shut customer accounts or take other adverse action. Even assuming that the classified information itself is never leaked, the names of people identified in the intelligence cannot be kept secret. When the bank compliance officer who receives the secret intelligence asks for scrutiny of a customer's accounts for no apparent reason, other bank personnel will likely surmise that classified information drove this request.

Supporters of giving security clearances to bank personnel point out that the U.S. government regularly clears private citizens, such as employees of defense contractors. There are, however, few if any instances in which the U.S. government provides classified information potentially adverse to U.S. citizens to private actors for the specific purpose of causing those private actors to subject the U.S. citizens to greater scrutiny.[57] Creating such an unusual and potentially dangerous situation cannot be justified by the minimal benefits that sharing classified information might produce.

Broad government access to private data: Perhaps someday

A more radical, but perhaps far more effective, proposal would give government authorities direct unfettered access to private financial data for the limited purpose of finding or detecting terrorist operatives or fund-raisers.[58] Under this approach, counterterrorist officials would be able to access privately held data by using computer technology to search for known terrorist suspects by name, data of birth, Social Security number, or other identifying information, which would find terrorist suspects living under their own name and also help identify others living under assumed names. The government could also use privately held financial data in conjunction with a wide variety of other data to link a suspect to his or her associates. As one former government official testified to the Commission: "Counterterrorism officers should be able to identify known associates of the terrorist suspect within 30 seconds, using shared addresses, records of phone calls to and from the suspect's phone, emails to and from the suspect's accounts, financial transactions, travel history and reservations, and common memberships in organizations, including (with appropriate safeguards) religious and expressive organizations."[59] The government is currently far from these capabilities, and

[57] The commonality of many names, especially Arabic names, compounds the potential for mayhem. For example, an official of one major financial institution told Commission staff that there were 85 Mohamed Attas in New York City alone. Intelligence reports of varying quality may provide the basis for bank action against not only the persons alleged to be involved in terrorist financing but innumerable people with the same or similar names.

[58] See, e.g, *Creating a Trusted Network for Homeland Security*, Second Report of the Markle Foundation Task Force (Dec. 2003), appendix F ("Within 30 seconds [of learning the identify of a terrorist suspect], the counterterrorism agency should be able to access U.S. and international financial records associated with the suspect").

[59] Prepared testimony of Stewart Baker, Dec. 8, 2003.

significant technical, legal and privacy hurdles would need to be crossed before it would have anything remotely approaching this ability.

Supporters of this approach contend that privacy would be protected through anonymity and technology. The data of millions of people could be electronically searched but all individuals would remain anonymous except those identified as terrorist suspects, who would then be subjected to further scrutiny. Sophisticated technology would control access to the data, electronically audit the data and keep a detailed record of exactly who accessed it for what purpose, and ensure the anonymity of persons whose data are searched.

If such a system existed, it would be tremendously useful in looking for known terrorist operatives living under their own name, such as al Mihdhar or al Hazmi, or future hijackers living under false identities. Technology could be imagined that would scan masses of financial data looking for terrorist fund-raising operations as well, while preserving the anonymity of the data belonging to persons whom it does not identify as potential terrorist fund-raisers.

Of course, major technological improvements would be required to implement this kind of a system. Currently, financial records are spread out across the country in thousands of financial institutions, each with its own data collection and retrieval system and level of technological sophistication.[60] There is no single database that the government can tap even in an emergency.

Even if such a database could be created, sweeping legal changes would be required to use it. The government does not have unfettered access to this financial information under current laws. Although the Supreme Court has stated that an account holder does not have an expectation of privacy in information he or she gives to another, such as a bank, there are a number of restrictions on the government's right to obtain such data. Most fundamentally, the government can obtain financial information or data only by lawful process, such as a grand jury subpoena or an NSL, for a particular case or investigation. The government has no general authority to access the entire country's financial records en masse, so that it can scan them to find potential terrorists or criminal suspects. Instead, an inquiry has to be made of each financial institution for each investigation.

Pushing the technological and legal limits even further is the idea that the government could develop the technology to sift through all the financial data that exists and create a program able to single out those financial transactions that are inherently suspicious.

[60] Banks and other financial institutions keep records as a part of the operation of their ongoing businesses. Financial institutions are generally required to keep financial information on hand, in a retrievable form, for five years. In contrast, other industries whose records would also be of use to counterterrorism investigators, such as Internet service providers, are not required to keep transaction records for any length of time and can (and do) regularly destroy them unless law enforcement requests that they be maintained. This has often been a source of frustration to law enforcement and intelligence agents, whose investigations are often hampered in the digital age by lack of a uniform and mandated record retention policy for internet service providers.

These ideas have been discussed in the open literature and have triggered major controversy and speculation. The Department of Defense's "Total Information Awareness" program, complete with its logo of an all-seeing eye, was a prime example of this type of technology. This research program sought to use sophisticated technologies to detect terrorist planning activities from the vast data in cyberspace; in other words, it sought to "pick the signal out of the noise." Congress has prohibited the funding of such a program, largely because of privacy concerns. Despite 9/11, it seems that privacy concerns will prevent anything remotely like these ideas from becoming reality in the foreseeable future.

That is not to say research should not go forward. Government and the private sector can, and should, continue to work on technology that could scan vast amounts of financial data to find known terrorist suspects, while protecting the privacy of the innocent persons whose data are searched. Perhaps sophisticated technology can be developed that would even be able to pick out unknown terrorist operatives or fund-raisers by their financial transactions—currently a near impossibility. Legitimate concerns about privacy should not retard research that might someday make us safer and, at the same time, actually not infringe on privacy rights. Ideally, the research efforts should draw on both the law enforcement and intelligence expertise of the government and the sophisticated technology and data management expertise of the private sector. Obviously, no such technology should ever be implemented on real data without public acceptance that the technological and legal safeguards in place will be sufficient to ensure privacy. The development of such technology and any public acceptance of it remain, at this point, pure speculation.

Chapter 5

Al-Barakaat Case Study

The Somali Community and al-Barakaat

In about 1991, the East African country of Somalia became embroiled in turbulent civil unrest that wreaked devastation on its people and institutions. Already destitute, the government collapsed and basic services withered. Famine and violence in the country were the norm, and a diaspora of Somalis began. Many arrived in the United States. In one of those strange flukes sometimes found in patterns of migration, cold and snowy Minneapolis has the largest concentration of Somali immigrants in the United States.

Somali immigrants, like individuals in immigrant communities throughout the United States, sought a safe, quick, and effective way to move money earned in the United States back to their families and homes. The need was even more dire for Somalia, as this was one of the only sources of hard currency available to the country. Many foreign workers in the United States have a number of different options to move money internationally. The most formal and obvious way is to use the established backbone of the international wire transfer system to shift funds between a bank account in the United States and one in the destination country. This method has several significant advantages. It is safe and convenient, particularly when large amounts of money are being sent between commercial customers. There are drawbacks to wiring money, however: it can be expensive; banks can hold the money for extended periods before sending it; it requires a bank account in the United States; and the banks are required to use the official exchange rate and in some countries levy a tax on foreign exchange, which often makes the effective rate of exchange punitively high. Indeed, other countries often restrict the export of foreign currency and foreign exchange.

However, for Somalis living in the United States, the question was moot. Somalia simply had no banking system and no central bank by which foreign exchange could be made. Thus, a different way had to be found to get money to Somalia. The al-Barakaat network of money remitters was set up to address this need. Founded by Ahmed Nur Ali Jumale in 1985, al-Barakaat at the time of 9/11 had more than 180 offices in 40 countries, all existing primarily to transfer money to Somalia. The financial headquarters for al-Barakaat was in the United Arab Emirates, where Jumale had opened a number of accounts at the Emirates Bank International (EBI) to facilitate the transmission of money. At the time of the terrorist attacks, al-Barakaat was considered the largest money remittance system operating in Somalia; in addition to being used by a significant number of Somalis who had fled the anarchy in their home country, it was the primary means that the United Nations used to transmit money in support of its relief operations there.

A money remitter, described most simply, collects money from an individual at one point and pays it to another in another location, charging a fee for the service. The money itself does not actually move; rather, the originating office simply sends a message to the destination office, informing it of the amount of money and the identity of the sender and

of the recipient. The destination office then pays the ultimate recipient. To settle, money is periodically wired in aggregate amounts from the originating office's bank account either to a central clearing account owned by the money-remitting company or through correspondent bank accounts. The central office, in turn, settles with the destination office. Each office is typically an agent or licensee of the main office, and its relationships are usually arm's-length and governed by a written contract. The main office is responsible for keeping track of the settling transactions with all of the other offices. Most money remitters in the United States belong to large franchise, such as Western Union or MoneyGram. They effectively operate along the same principles as al-Barakaat, albeit more formally. Additionally, the absence of any agents for large, Western-based money remitters in Somalia forced Somalis to use smaller, ethnically based ones.

Al-Barakaat has been commonly called a hawala, but it is not one.[61] There are similarities between the two systems. In both, there is a need to compensate the agent who has paid out money pursuant to a money transfer. In both, the money is not sent for each individual transaction; rather, there is a larger settling transaction conducted periodically to adjust for the differences in what each office took in and what it had to pay out.

The key difference is in how the money or value moves between the office obtaining the money from the customer and the office paying the money out to the ultimate beneficiary. In transferring value between the sending and the receiving offices, a money remitter uses the formal financial system, typically relying on wire transfers or a correspondent banking relationship. A hawala, at least in its "pure" form, does not use a negotiable instrument or other commonly recognized method for the exchange of money. Hawaladars instead employ a variety of means, often in combination, to settle with each other: they can settle preexisting debt, pay to or receive from the accounts of third parties within the same country, import or export goods (both legal goods, with false invoicing, or illegal commerce, such as drug trafficking) to satisfy the accounts, or physically move currency or precious metal or stones.

There are other distinguishing characteristics of a hawala. Many hawalas operate between specific areas of the world, or even specific areas within a specific country. An individual wanting to send money from Canada to one area in Pakistan, for example, might use one hawaladar; to move money to a different part of Pakistan, it may be necessary to use a different one. Hawalas typically do not maintain a large central control office for settling transactions. Instead, a loose association of hawaladars conduct business with each other, typically without any formal or legally binding agreements. Hawaladars often keep few formal records; those that do exist are usually handwritten in idiosyncratic shorthand and are typically destroyed once the transaction is completed.

As noted in chapter 2, Usama Bin Ladin and al Qaeda made significant use of hawalas to move money in the Middle East—particularly in Pakistan, the UAE, and Afghanistan—in

[61] The following discussion is aided by two reports, both produced by FinCEN: *A Report to Congress in Accordance with Section 359 of the USA PATRIOT Act,* (2002) and *Hawala: the Hawala Alternate Remittance System and its Role in Money Laundering*, (undated, probably 1996)

the period before 9/11. This does not make the use of hawalas inherently criminal, although it has been recognized that some of their characteristics allow criminal activity to flourish: little formal record keeping, lack of government controls, and settling transactions that do not go through formal financial channels.

The Somali money remitters in Minneapolis had attracted official attention for some time. There were three primary remitters in Minneapolis in the late 1990s: al-Barakaat, Dahb Shiil, and Shirkadda Xawilada Amal. Al-Barakaat had by far attracted the most attention. A local bank had filed Suspicious Activity Reports (SARs)[62] as early as the summer of 1996 with the Treasury Department regarding what they believed to be suspicious financial activity: large amounts of cash and other instruments were being deposited and then immediately wire transferred to a single account in the UAE the next day. The SARs did not describe what the bank thought the nature of the activity was, just that it seemed inconsistent with normal banking activity. By 9/11, these reports numbered in the hundreds.

The FBI, which received a regular summary of these reports, opened a criminal money-laundering case file on al-Barakaat in May 1997.[63] In a typical money-laundering investigation, an investigative agent tries to develop evidence that the money was derived from a crime that was statutorily described as a "specified unlawful activity" (SUA), and that the purpose of the transaction was either to disguise the nature, source, ownership, or control of the money or to further the criminal activities. The difficulty here, which would plague both the intelligence and criminal investigators for the rest of the investigation into al-Barakaat, was that the transactions themselves revealed neither who the recipient of the money was nor what happened to the money once it arrived in the UAE. The source of the money or purpose behind the transaction could be legitimate or nefarious: in the absence of further information, it was impossible to know which. After a preliminary investigation, the FBI closed its criminal investigation of al-Barakaat in August 1998, unable to find an SUA or gain an understanding of the purpose of the transactions. More SARs continued to pour in, however, and U.S. Customs and Internal Revenue Service agents in Minneapolis, who had opened a separate investigation into al-Barakaat, continued to investigate.

[62] Suspicious Activity Reports and their role in the overall scheme of anti-money laundering regulation of banks and other financial institutions are discussed in chapter 4.

[63] The description of the FBI intelligence and multi-agency law enforcement investigation against al-Barakaat was derived from a review of FBI case reports and source reporting, as well as face to face interviews with the agents and FBI officials involved. The description of the government's understanding of al-Barakaat prior to 9/11 was derived from a review of intelligence agency reporting. The description of the foreign government participation in the al-Barakaat action is derived from State Department cables and Treasury memoranda. The discussion of OFAC is derived from review of internal Treasury documents and from interviews of Treasury and OFAC officials.

The Early Intelligence Case

The primary domestic investigation of potential Somali-based terrorist activities occurred in Minneapolis.[64] The lead case agent was able to develop intelligence both from his own investigative efforts and from his review of the materials in the possession of the CIA. In December 1998, a case agent in the intelligence squad in Minneapolis developed a source of information on the activities of the Somali community. The source indicated that the terrorist group Al-Itihaad Al-Islamiya (AIAI) had a cell in Minneapolis, and that it supported radical Islamic activities against the United States. The investigation focused on a specific individual within the United States, who was alleged to have plotted to bomb U.S. embassies in Uganda and Ethiopia and to have been engaged in fund-raising in Minneapolis to support AIAI activities overseas. Additionally, the source provided information regarding about 15 Somali immigrants. After further inquiry, including searches and an interview, the investigations were closed when it was found that the FBI's original source lacked credibility regarding this specific threat and that other reliable sources had no knowledge of the suspected plotter.

While the original source did not pan out, the agent was able to learn from his contacts in the intelligence community, particularly the CIA, a great deal about AIAI. The agent learned that AIAI operated primarily in East Africa and was considered a loose affiliation of Islamists. AIAI was considered a significant threat by the Defense Intelligence Agency, which had experience in Somalia during the early 1990s, and intelligence suggested that AIAI had links to Usama Bin Ladin. For example, there were indications that Usama Bin Ladin had visited Somalia and visited an AIAI stronghold in southern Somalia to look for a new base of operations when his stay in Sudan ended. Bin Ladin purportedly met with the leaders of AIAI as well, and was said to have given AIAI $400,000 in 1997 to support attacks on Ethiopia. Some of this intelligence was reinforced after 9/11, when it was reported that AIAI discussed hiding Bin Ladin in the event he needed to leave Afghanistan.

Despite these troubling links, the State Department thought AIAI did not meet the standard for designation as a Foreign Terrorist Organization (FTO), which would have the effect, among other things, of criminalizing support of it. Additionally, there was a concern on the part of the State Department that some of the reporting involving AIAI was simply not credible. State said that multiple reports from the CIA discredited its earlier sources.

In the late 1990s, the intelligence community also began to draw links between AIAI, al-Barakaat (particularly its founder, Ahmed Nur Ali Jumale) and Usama Bin Ladin. The reporting centered on a few key facts. First, it alleged that Usama Bin Ladin not only assisted Jumale in establishing al-Barakaat in about 1992 but was in fact a silent partner, and that Jumale managed Bin Ladin's finances as well. This was consistent with other information that indicated a prior relationship between Jumale and Bin Ladin. Second,

[64] The first FBI investigation on AIAI and al-Barakaat was started in San Diego in October 1996, on an individual investigated as a result of his connection with HAMAS.

the reporting indicated that al-Barakaat was associated with AIAI, in that al-Barakaat managed the finances of AIAI, and AIAI used al-Barakaat to send money to operatives. Variations of that reporting stated that the head of al-Barakaat, Jumale, was part of the AIAI leadership, or that Usama Bin Ladin used al-Barakaat to fund AIAI. Third, there were allegations that al-Barakaat actually assisted in procuring weapons for AIAI or sold weapons to AIAI. There were specific reports, for example, of al-Barakaat's supplying Somalia's Sharia court with 175 "technicals" and 33 machine guns between January and mid-July 2000, and AIAI with 780 machine guns, which it had procured from sources in China and Chechnya. Other reporting indicated that al-Barakaat was founded by members of the Muslim Brotherhood in order to facilitate the transfer of money to terrorist organizations, including Hamas and AIAI.

Lastly, there was fairly detailed information from a U.S. embassy in Africa in July 1999. Two sources known to the embassy claimed that Usama Bin Ladin was a silent partner and frequent customer of al-Barakaat. One of the sources further related that Bin Ladin gave Jumale $1 million of venture capital to start al-Barakaat, and that terrorist funds were intermingled with the funds sent by NGOs. A third source told the embassy that al-Barakaat did not practice any kind of due diligence in making financial transactions. Both sources claimed that al-Barakaat security forces supported Usama Bin Ladin by providing protection for Bin Ladin operatives when they visited Mogadishu. The embassy cautioned that the allegations could not be confirmed and noted the risk that the sources may simply be spreading negative information about their rivals.

The Minneapolis FBI intelligence agent continued to develop sources and investigate the activities of the Somali community. By July 1999, he was able to open a "full field investigation" (FFI) into AIAI as a group. All FBI FFIs require predication: that is, some evidence must already exist to give the FBI reason to believe that an individual is involved in activities on behalf of a foreign government or terrorist organization, which would justify further surveillance or intelligence collection. This requirement, which prevents the FBI from undertaking random domestic intelligence collection on individuals, was introduced as a way to protect civil liberties. An FFI can be instituted after a preliminary investigation (PI), which is opened to determine whether an FFI is justified. A PI can be opened only for a limited time, and agents in a PI are restricted in their methods of collecting intelligence.

When they opened the AIAI investigation, the Minneapolis agents saw it as "purely intelligence gathering." They simply wanted to learn whether AIAI was operating in the United States and, if so, determine the nature of its activities (such as fund-raising, logistics, or operations). There was no attempt to build a criminal case in the traditional sense, nor was any effort given to developing probable cause, the standard that criminal case agents typically work toward. They were interested in developing probable cause that specific individuals were agents of a foreign power or the particular communications were to be used in the furtherance of terrorist activities, the standard used to obtain a FISA warrant.

Considering a Criminal Case

The intelligence agent knew of the SARs and knew that al-Barakaat was closely tied into the Somali network in Minneapolis. Moreover, the intelligence agent knew what the federal criminal agents investigating the money-laundering claims did not: intelligence reports tied the al-Barakaat network to AIAI and Usama Bin Ladin. As a result, the intelligence agent thought that it would be useful to open a criminal case on al-Barakaat. This was a matter of some controversy, as there was a fairly rigid rule within the FBI and Department of Justice against mingling intelligence cases and law enforcement cases. In the jargon of the day, this prohibition was known as "the wall," and it was the source of considerable confusion among agents in the field. Working-level agents understood that headquarters frowned on having simultaneous criminal and intelligence cases, although it was hard for them to articulate why.

Opening a criminal case to complement the intelligence case would have several advantages, however, if the agent could get the approvals. First, criminal charges could be threatened against subjects, providing motivation for them to cooperate in furthering the intelligence investigations. Equally important, a criminal case would give the intelligence agent far better tools to investigate al-Barakaat and the suspected AIAI members in Minneapolis. These tools included grand jury subpoenas to obtain bank records. Grand jury subpoenas were far preferable to National Security Letters (NSLs), the method for obtaining documents in intelligence investigations, because the FBI could obtain subpoenas almost instantly, whereas NSLs took 6 to 12 months to be issued.[65] Outside of the New York Field Office, which had its own procedures, NSLs could be approved only at FBI headquarters and had to be signed by a supervisor.

Additionally, the intelligence agent wanted to brief the Assistant U.S. Attorney (AUSA), the local federal prosecutor in Minneapolis, on the intelligence investigation. He thought that it would be useful for the prosecutor to obtain an understanding of the context and motivation for the criminal case. From past experience the agent believed that the U.S. Attorney's Office would not get involved in a criminal spin-off of an intelligence case unless FBI headquarters approved the transfer. And he also knew from past experience that because the potential criminal charges evident at that time were relatively minor, the U.S. Attorney's Office would not be interested unless the prosecutors were briefed on al-Barakaat's terrorist connections.[66] As a result, the agent applied for permission to brief the AUSA on the case. He did not receive this approval for 13 months—many months after the FBI Director himself took a personal interest in the case.

The FBI Radical Fundamentalist Unit (RFU) at headquarters, responsible for approving this briefing, initially opposed it. The RFU did not see it as necessary and questioned whether the evidence was strong enough to justify breaching the wall between criminal

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[65] According to the intelligence agent doing these types of investigations, this delay no longer exists, and NSLs can be obtained just as fast as grand jury subpoenas.

[66] The most obvious crime was "structuring financial transactions." The crime consists of breaking apart cash bank deposits into increments of less than $10,000, so that the bank does not file a form identifying such depositors to the Department of the Treasury.

and intelligence cases. At the time, FBI headquarters required greater evidence to brief the U.S. Attorney's Office on an intelligence case than it did to open an intelligence full field investigation, and headquarters did not think the evidence regarding the AIAI case had reached the requisite level. In the Minneapolis intelligence agent's view, headquarters viewed Minneapolis as excessively aggressive in pushing the limits of the wall and may have been more cautious in this case as a result.

According to the Minneapolis intelligence agent, the RFU thought the case was not strong for a number of reasons. First, the RFU supervisor did not believe AIAI was a threat to the United States and questioned whether AIAI, with its decentralized command structure, was really a group at all. Moreover, AIAI had not been designated a foreign terrorist organization by the Secretary of State. This was a significant point because without that designation, it was not a crime to give AIAI material support (absent evidence that the support went to carrying out a specific terrorist attack). As for al-Barakaat, the RFU thought that the information about connections with al Qaeda was dated; also, it pointed out, there was no evidence that any of the Somalis who used al-Barakaat to remit funds did so with the intention of supporting terrorism. The agent agreed that all of these allegations remained unproven and required further investigation, but he wanted to brief the AUSA to obtain better tools to find out the truth.

While waiting for the approval to brief the AUSA, the Minneapolis intelligence agent came to learn of the IRS and U.S. Customs investigation, and in October 1999 he met with those involved. The FBI opened a criminal investigation in November 1999. The agents agreed to work together, along with the Immigration and Naturalization Service, to see whether they could make a criminal case. Multiagency cooperation has become common in large criminal investigations, as each agency brings its unique skills to bear: the FBI provides resources and investigative experience, the IRS has a reputation for very well trained and skilled financial investigators, Customs has the ability to control the borders, and INS brings to bear its authorities to enforce the immigration laws (critical to developing witnesses in investigations of this type). Moreover, a joint case makes possible information sharing, as each agent can search his or her own agency's database and communicate the results to the group.

Ultimately, following several meetings by officials in Washington, the Minneapolis FBI received approval to brief the AUSA in December 2000 on the connections between the criminal violations and the larger intelligence issues, which it did. It thereafter enjoyed an excellent relationship with the U.S. Attorney's Office in Minneapolis.

The strategy in the criminal case was to try to gather evidence and gain an understanding of where the money was going once al-Barakaat sent it, and thus to determine whether it was being used to support terrorism. The focus was on the employees and owners of the three al-Barakaat outlets in Minneapolis. Part of the mission of the criminal case would be to support the intelligence case. At the time, the investigators were "still trying to find out what we had." The criminal FBI agent (the criminal case had to have a separate investigator because of "wall" issues, although both agents worked in the same

intelligence squad) was looking more toward a "nickel-and-dime fraud case." There did not seem to be enough evidence to make a pure terrorist-financing case.[67]

One difficulty was that it was almost impossible to follow the money once it left the United States. All of the transfers went to the UAE, and there the investigators lost the trail. To pick it up again, they would have to get records from the bank the money was being wired to—the Emirates Bank International in Dubai. But U.S. law enforcement could not simply ask the EBI for the records. Rather, the agents would have to ask the government of the UAE to ask the EBI for the records. Then, the UAE could turn the records over to the United States. Obtaining records from a foreign government is a long and cumbersome process, filled with potential pitfalls. To begin with, there is no guarantee that the foreign country will even consider the request, particularly in the absence of a treaty requiring such cooperation. Each country has its own notions about bank secrecy and many jurisdictions resist opening up their records to another country. Even if the foreign jurisdiction agrees in principle to the request, it must be persuaded that the United States has a legitimate need for the records and is not merely undertaking a fishing expedition. This showing may require the disclosure of sensitive information to a foreign government, and the United States may not necessarily be able to trust that government or have confidence in its control over the further dissemination of the information. Thus, an agent conducting such an investigation has to balance the need for the records against the possibility of disclosure.

Al-Barakaat was moving significant amounts of money overseas, and to the Minneapolis criminal case agent, it seemed improbable that the relatively low-skilled Somali community in Minneapolis, although large, could have amassed so much money through legitimate wages. In early 2001, al-Barakaat was transferring as much as $1,000,000 through its Minneapolis facilities. The agent believed that some of that money *must* have been derived from fraud.

The Other Field Offices Pick Up the Investigation

In the meantime, other FBI field offices were finding similar al-Barakaat activity. By the summer of 1999, the FBI knew that there were al-Barakaat offices in San Diego, Washington, D.C., and Minneapolis, and Minneapolis was actively polling other cities to determine the links. Seattle opened a case in December 1999, and by February 2001 had developed a source who reported that "apparently" al-Barakaat fees were used to fund AIAI.[68] The FBI field offices coordinated with each other, and ultimately held

[67] The central terrorist financing crime is called "material support," in violation of 18 U.S.C. 2339B. This requires the knowing contribution of something of value (it need not be money) to an organization that has been listed as a Foreign Terrorist Organization by the Secretary of State. It is an extraordinarily broad statue, in that prosecutors need not trace specific money to a terrorist act.

[68] A review of the FBI files in the case revealed a substantial amount of secondary reporting. The most valuable intelligence is from first hand witnesses: individuals who can report something based on personal experience. There were few sources who could do this regarding al-Barakaat. Rather, most of what was collected was information that others had heard. The line between intelligence and rumor mongering can be quite thin, and great care needed to be taken to evaluate that information for what it was.

multidistrict meetings in April 2000 and May and June 2001. Unlike in other cases, however, there was very little to coordinate: each al-Barakaat office appeared to be operating independently, with the EBI account in the UAE serving as the only link between them. By 9/11, there were FBI investigations in Charlotte, Cincinnati, New York, Seattle, San Diego, and Washington, D.C.

Al-Barakaat also had attracted the attention of the Financial Crimes Enforcement Network (FinCEN), the Treasury agency established to review and disseminate suspicious activity reports submitted by banks and other financial institutions. In December 1999 (about four months after the FBI was reporting that al-Barakaat had ties to Bin Ladin and offices in at least three U.S. cities), a FinCEN analyst reviewing intelligence community cables noted a reference to al-Barakaat along with the identification of a specific account in the UAE. The analyst recalled that a co-worker the previous month had noted an anomaly in reviewing al-Barakaat SARs. FinCEN analyzed the al-Barakaat SARs and, in February 2000, briefed FBI headquarters concerning the results. By March 2000, FinCEN had prepared a report and link-analysis chart highlighting the connections between the al-Barakaat entities and the UAE accounts. Still, no one knew the purpose behind the money transfers, the source of the money, or the ultimate destination. To get to the source, the agents would have to locate informants in the community who could tell them; to understand the ultimate destination of the money, they would need access to the records within the UAE.

The FBI had a number of informants who could tell them about al-Barakaat. The criminal case agent, in the course of the criminal investigation, had found two confidential sources who were reporting that al-Barakaat was siphoning money to AIAI. The sources also indicated that to be an al-Barakaat representative, one also had to be a member of AIAI. But the criminal case agent's sources had no direct knowledge of these claims; they were simply repeating what was purportedly common knowledge within the Somali community.

In conjunction with members of the intelligence community, the intelligence agent also worked two sources who could speak out of personal knowledge. These sources were able to travel and provide intelligence on AIAI and the situation in East Africa. His sources claimed direct contact with senior al-Barakaat management. Much of the reporting, however, concerned AIAI in Somalia; there was less on the local AIAI cells within the United States, or on the relationship of al-Barakaat to either AIAI or Usama Bin Ladin.

Nevertheless, the statements of these two sources did corroborate information regarding the relationship between al-Barakaat, al Qaeda, and AIAI. The sources contended that at the direction of senior management, al-Barakaat funneled a percentage of its profits to terrorist groups and that UBL had provided venture capital to al-Barakaat founder Ahmed Jumale to start the company. The agent believed these sources, because they had been vetted and the information they were providing was consistent with intelligence he had previously received. Moreover, the intelligence agent believed that relationship of these

sources to al-Barakaat management was such that the sources would have firsthand knowledge of al-Barakaat's activities.

The September 11 attacks

After the attacks, "all bets were off." The al-Barakaat criminal team—the FBI, U.S. Customs, and the IRS—which had been working in separate offices received space to work together. More agents were assigned. Moreover, they contemplated bringing criminal charges, and considered getting criminal search warrants on the al-Barakaat businesses. The headquarters of both FBI and Customs, too, started to take a special interest in the case. FBI headquarters had set up a "financial review group" to sift through the financial transactions of the 9/11 hijackers. It started to look at the al-Barakaat case, as did "Operation Green Quest," a newly formed Treasury task force with essentially the same mission as the FBI's group.

Moreover, within the upper levels of the National Security Council (NSC) and State, attention turned to al-Barakaat, and specifically to the EBI as a facilitator of terrorist finance. According to State Department cables at the time, the U.S. government had "strong evidence" that the EBI was used as a facilitator of terrorist financing. An obvious option would be to designate the bank as a supporter of terrorism and block its assets from coming into the country, a move that would send a message to the world financial community. The UAE agreed to act against al-Barakaat and allowed a U.S. law enforcement team to take a look at the EBI records—something none of the agents in either the intelligence or the law enforcement investigations had been able to access previously.[69]

Designation by the Office of Foreign Asset Control

On September 23, 2001, the President signed Executive Order 13224, which expanded the list of terrorist organizations subject to freezing and blocking.

Pre-9/11 designation efforts

The mission and authorities of the Office of Foreign Asset Control (OFAC) deserve a brief discussion here. In implementing sanctions programs aimed at combating global terrorism, OFAC derives its authority from delegations under the President's powers pursuant to the International Emergency Economic Powers Act (IEEPA) and other Presidential authorities. IEEPA grants the President broad powers to deal with any unusual and extraordinary threat to the national security, foreign policy, or the economy of the United States if the President declares a national emergency with respect to such threat. The source of the threat must be in whole or substantial part outside the United

[69] As we note in chapter 3, the UAE had been a source of concern before 9/11 for their largely unregulated financial system.

States. The President may also designate specific entities or individuals who pose or contribute to the threat and set forth the standards for identifying more such entities and individuals. The President delegates to the Executive Branch, generally the Department of Treasury or State, the task of finding those who meet that criteria and "designating" them as subject to the Executive order.

President Bill Clinton signed Executive Order 12947 in January 1995, blocking the assets in the United States of specific terrorists and terrorist groups who threatened to use force to disrupt the Middle East peace process and prohibiting U.S. persons from engaging in transactions with these groups. The groups were named as a result of a presidential judgment that they stood in the way of peace in the Middle East and, because peace in the Middle East is deemed to be vital to our own national security, posed a national security threat to the United States. The authority was not limited to those named in the executive order; those supporting or associated with those named could also be listed by an administrative designation authorized by the director of OFAC (a "secondary designation"). Usama Bin Ladin was not named on this 1995 list. However, beginning in approximately 1995 until the East Africa embassy bombings in the summer of 1998, OFAC attempted to discover a link between Usama Bin Ladin and those named on the list. This effort was not successful, both because the links between Usama Bin Ladin and such groups were tenuous and because OFAC did not have the ability to undertake any significant classified research or analysis.[70] In the late 1990s, there was no thought given to issuing a new executive order naming Bin Ladin, because of what one participant in the process described as "sanctions fatigue" and a general reluctance by Treasury policymakers to impose additional sanctions.

The NSC had a long and deep interest in trying to provide OFAC with sufficient resources to conduct classified all-source analysis on terrorist financing. At the direction of Richard Clarke, the Office of Management and Budget requested, and Congress appropriated, $6.4 million dollars for a center to conduct such analysis, dubbed the Foreign Terrorist Asset Tracking Center (FTATC), beginning in fiscal year 2001 (nominally October 2000). By November 2000, Clarke had suggested a two-week pilot program, which would use CIA facilities to test if the FTATC concept was workable. On the eve of 9/11, FTATC was little more than a plan on paper and an unspent budget authorization.

After the East Africa bombings, President Clinton amended E.O. 12947 to name Usama Bin Ladin and his key aides, thereby prohibiting any U.S. persons from financial dealings with any of them. But the OFAC's success in blocking terrorist assets under this order was limited, for it covers only property or interests in of U.S. persons or within the United States. Moreover, because it named individuals, not groups, OFAC could not build on it with secondary designations—a listing by the head of OFAC of individuals

[70] This was a significant problem both before and after the September 11 attacks. OFAC line level analysts were nearly universal in their frustration in not being able to engage in the type of all source analysis that would be required to understand the financial links involved. One analyst with a background in intelligence described the process by which OFAC obtained classified documents as 20 years behind the procedure used by the CIA.

supporting the group named in the executive order. In addition, there was little intelligence on assets to block. These limitations were sources of frustration for the NSC, which wanted action on the financial front of the government's war on Bin Ladin. In retrospect, one OFAC official thought that the reason it was unable to freeze Bin Ladin assets is because none existed within OFAC's jurisdiction.

The United Nations Security Council passed UNSCR 1267 on October 15, 1999, calling for the Taliban to surrender Bin Ladin or face a U.S.-style international freeze of its assets and transactions. The resolution gave a 30-day period before sanctions took effect, however, allowing the Taliban and al Qaeda to repatriate funds from banks in the United Kingdom and Germany to Afghanistan. As a result, these sanctions brought official international censure but were easily circumvented.

Post-9/11 designation efforts

After the 9/11 attacks, the President signed Executive Order 13224 with great fanfare (the White House described it as the "first strike in the war on terror"), but since OFAC already had the ability to go after Bin Ladin and Taliban assets from the prior executive orders, it did little to change OFAC's authorities to name, block, and freeze assets associated with Usama Bin Ladin or the Taliban. After the attacks, OFAC accelerated the search for entities to name by either a presidential declaration (by amending the list attached to E.O. 13224) or a secondary administrative designation, working off a CIA-supplied list of entities and persons. OFAC analysts and attorneys, like everyone in the government engaged in counterterrorism at the time, were working nights and weekends to evaluate and put together administrative records sufficient to freeze the assets of these entities. A significant number of these individuals needed access to classified information, but they had virtually no facilities in which to handle it. As a result, a number of them crammed into the secure FinCEN facility in Northern Virginia that, unlike OFAC's downtown offices, could handle the most highly sensitive materials.

OFAC analysts started working on the designation of al-Barakaat about two weeks after the attacks. This effort won preliminary approval almost immediately from Treasury officials, on the basis of a one-page memo. Thereafter, OFAC officials began a two-pronged approach to supporting the designation: gathering information informally through an OFAC analyst's contacts with U.S. law enforcement, and conducting research on classified documents at FinCEN's secure facility. The informal method for gathering law enforcement data was necessary because of the weaknesses of the FBI's data system. The FBI, unlike the foreign intelligence agencies, wrote very few finished intelligence reports. The only way to find out what was happening domestically was either to troll the FBI's data system, ACS (Automated Case Support), for periodic reports (a hit-or-miss proposition at best) or call field agents and ask them what was going on (if you knew whom to call). The analysts' efforts to survey the foreign intelligence were easier because the reports were more centralized, but had other frustrations: because of Treasury's archaic method of retrieving intelligence, the analysts received only about half of the relevant intelligence on Jumale and al-Barakaat, and the omitted material included some

of the best, most useful reports (a fact that was not known to the analysts until after the designation).

Nevertheless, the OFAC analysts plowed forward and put together a package on al-Barakaat. They were greatly helped by a list of worldwide al-Barakaat offices seized during a raid of an al-Barakaat office in Norway and shared with the United States. The analysts were told that they did not need to have evidence that each al-Barakaat entity took part in terrorist financing; it was sufficient to show only that the main entity itself was involved to be able to close all of the branches and freeze all of the money. Thus, the analysts needed only to refer to the seized telephone lists or a commercial index of businesses such as Dun & Bradstreet to justify the closing of each al-Barakaat branch office. The Justice Department, which would have to defend any action should there be a legal challenge, blessed the sufficiency of this tactic.

More nationwide coordination took place, including meetings at the NSC, the FBI, and Customs. As people within the law enforcement community came to understand what OFAC was planning, they asked it to hold off for 60 or 90 days so they could continue their investigations. A number of field offices made this request, as did the Office of Naval Intelligence, which was in the midst of a major intelligence operation on al-Barakaat. OFAC, however, was under substantial pressure to proceed with the designation as rapidly as possible. The analysts also wanted more time to make their evidentiary package more complete and robust, but the OFAC management, apparently reacting to external demands, told them they could not have it. Moreover, the head of the FBI's terrorist-financing effort ultimately concurred in the action.

The post-9/11 period at OFAC was "chaos." The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that the United States was serious about pursuing the financial targets. It entailed a major designation every four weeks, accompanied by derivative designations throughout the month. As a result, Treasury officials acknowledged that some of the evidentiary foundations for the early designations were quite weak. One participant (and an advocate of the designation process generally) stated that "we were so forward leaning we almost fell on our face." The rush to designate came primarily from the NSC and gave pause to many in the government. Some believed that the government's haste in this area, and its preference for IEEPA sanctions, might result in a high level of false designations that would ultimately jeopardize the United States' ability to persuade other countries to designate groups as terrorist organizations. Ultimately, as we discuss later, this proved to be the case with the al-Barakaat designations, mainly because they relied on a derivative designation theory, in which no direct proof of culpability was needed.

A range of key countries were notified several days in advance of the planned U.S. designation of the al-Barakaat entities, and were urged to freeze related assets pursuant to the own authorities.

The November Raids

On November 7, 2001, federal agents entered eight al-Barakaat offices in Minneapolis; Columbus, Ohio; Alexandria, Virginia; Seattle, Washington; and Boston, Massachusetts. Using Treasury Department private contractors who handle asset forfeiture, OFAC and federal agents seized everything with the businesses. In the UAE, about $1 million was seized from the UAE EBI accounts, four offices were raided and their records seized, and Jumale was ordered not to leave the UAE. The U.S. actions resulted in the freezing of approximately $1.1 million, and Treasury claimed that the actions disrupted approximately $65 million in annual remittances from the United States alone.

The President of the United States traveled to FinCEN's offices and, with the Secretary of the Treasury and Attorney General, announced the action in a press event, describing Jumale as a "friend and supporter of Usama Bin Ladin." Secretary of the Treasury Paul O'Neill described al-Barakaat offices as "the money movers, the quartermasters of terror . . . a principal source of funding, intelligence and money transfers for Bin Ladin." He later announced that "we estimate that $25 million was skimmed from the al-Barakaat network of companies each year, and re-directed toward terrorist operations."

Abdullahi Farah was the owner of Global Services, one of the Minneapolis wire remittance companies named in the November 7, 2001 blocking order. He is a naturalized U.S. citizen, having emigrated from Somalia in 1992. Although there already were money remitters in Minneapolis at the time, Farah believed that there was still a need for his services in the Somali community. Farah previously had been a customer of al-Barakaat and had dealt with the al-Barakaat business representative for North America. After having applied for a license and after establishing a formal business relationship with al-Barakaat, Farah opened his operation. He claims that he never met Jumale and had only an arm's-length business relationship with al-Barakaat. While the business was cyclical, with more money being transmitted during Ramadan, Farah generally transmitted about $200,000 per month. He banked at the local Norwest Bank, where he would deposit cash from his customers and then wire aggregate amounts to al-Barakaat's central office in the UAE. Farah made approximately $1,200 per month from this business, and paid another employee about the same.

Farah's first interaction with the federal government with regard to his business occurred on November 7, 2001, when armed agents entered and seized his business, confiscated all his records and his office equipment, and put a seal on the door preventing reentry. His three business accounts, containing approximately $298,000 of his customers' money, were frozen, making it impossible for him to send that money forward on their behalf. The name of his company was placed on the U.S. and UN lists as a supporter of terrorism.

The money that his customers, primarily Somali immigrants, had entrusted to Farah was not delivered to the intended recipients; his customers were angry and suspicious and did not accept his explanations as to what had become of it. Most of his customers simply did not believe that the U.S. government could do such a thing. For many Somalis, the

blocked money represented their life savings and an economic lifeline to an impoverished country. The United Nations estimated that the freeze cut the remittances to Somalia in half.

Another of the Minneapolis money remitters, Garad Nor (also a U.S. citizen), had a considerably bigger problem. On November 30, 2001, both Nor and his business were publicly designated as a supporter of terrorist as a consequence of running a money-remitting company. The net effect of that designation was that no one in the United States could engage in any financial transactions with him. Not only could he not work but, in the words of his lawyer, "the guy couldn't buy a cup of coffee" without violating the OFAC blocking order. On April 26, 2002, after he filed suit against the United States, OFAC issued a license to Nor to allow him to get sufficient money to live. As a result, for five months Nor, a U.S. citizen, faced the unenviable choice of starving or being in criminal violation of the OFAC blocking order.

The Effect of the al-Barakaat Seizures

Al-Barakaat offices were closed in the United States, the UAE, Djibouti, and Ethiopia. Before the action against al-Barakaat, the CIA surmised that AIAI would easily move to other financial institutions in the event that al-Barakaat was shut down. It also understood that the loss of money from al-Barakaat would only temporarily disrupt AIAI, which had other revenue sources. Early intelligence reporting after the freeze indicated that AIAI came under financial pressure because of the closure of al-Barakaat, but moved quickly to develop alternative funding mechanisms. There was no analysis of whether that pressure was the natural result of the closing of the country's largest conduit of funds or was due particularly to al-Barakaat's alleged complicity in funding AIAI. Al-Barakaat ultimately moved its offices to other locations in Dubai and Somalia and changed its name. Moreover, AIAI was able to move money through alternative means. Even as early as mid-November 2001, the CIA judged the Islamic terrorist-funding networks to be "robust," indicating that most Sunni-based Islamic terrorist funding went through interlocking Islamic NGOs and financial entities in the Gulf region. To this day, the Commission staff has uncovered no evidence that closing the al-Barakaat network hurt al Qaeda financially.

U.S. Investigators Travel to the UAE

As OFAC continued to gather support for designations, or designation packages, plans were made to send a team of investigative agents to the UAE to look at records seized from the al-Barakaat offices as well as the al-Barakaat bank records at the EBI. The investigators moved into the main conference room of the UAE's central bank and were supplied with thousands of pages of documents culled from ten accounts held by al-Barakaat. They were able to take back to the United States for further analysis about 7,000 pages of documents from this trip. The investigators obtained unparalleled access and support (unparalleled even in the United States, where criminal investigators do not typically work closely with the central bank regulators). However, the size and complexity of this investigation of a worldwide financial network, responsible for

moving millions of dollars, required a follow-up trip in March 2002. In the United States, a financial investigation can take years before investigators understand the intricate financial transactions involved.

Before the second trip, the agent spearheading the effort for the FBI reviewed the OFAC designation package for al-Barakaat and noticed some discrepancies between it and the evidence obtained on the first UAE trip. His review left him with a number of significant factual questions concerning what he thought to be uncorroborated allegations of al-Barakaat's ties to al Qaeda and AIAI. For example, the designation package described Jumale as an associate of Usama Bin Ladin from the original Afghanistan jihad, who was expelled from Saudi Arabia and then moved to Sudan, and who currently lives in Kenya. However, the documentation obtained from the first UAE trip, including Jumale's passport, did not support that intelligence. In addition, a number of EBI accounts that had been frozen did not appear, from the records obtained and analyzed, to be associated with al-Barakaat at all. Overall, the agent believed that much of the evidence for al-Barakaat's terrorist ties rested on unsubstantiated and uncorroborated statements of domestic FBI sources.

The second U.S. delegation to the UAE enjoyed a level of cooperation similar to that of the first. The UAE Central Bank placed 15 people at the investigative team's beck and call. The UAE government did everything the U.S. team requested, including working all night at times to make copies of documents. Jumale was interviewed by U.S. federal agents twice, the first time for ten hours. The U.S. investigative team interviewed 23 individuals (including Jumale), other top al-Barakaat personnel, its outside accountant, and various UAE banking officials. They also reviewed approximately 2 million pages of records, including the actual EBI bank records.

To review some records, the U.S. government team worked where the records were maintained: in un-air-conditioned warehouses in the desert, in stifling 135-degree heat. The agents found that the bank maintained the same kind of records as one would find in the United States and that they were relatively complete, well-organized, and well-preserved. In fact, it appeared to the agent that the records extended far into the past; UAE banks apparently did not systematically destroy older records, as U.S. financial institutions commonly do. Constraints of time and resources prevented the agents from conducting a comprehensive audit of all the records. Instead, they focused on key persons and entities, looked for suspicious transactions, and selected certain dates as representative samples for detailed analysis. On this second trip, the U.S. team brought copies of about 10,000 pages back to the United States for further analysis. Additionally, the FBI was able to make mirror images of data from dozens of the al-Barakaat and EBI computers for further analysis.

No Direct Evidence That al-Barakaat Funded Terrorism

The FBI agent who led the second U.S. delegation said diligent investigation in the UAE revealed no "smoking gun" evidence—either testimonial or documentary—showing that al-Barakaat was funding AIAI or al Qaeda. In fact, the U.S. team could find no direct

evidence at all of any real link between al-Barakaat and terrorism of any type. The two major claims, that Bin Ladin was an early investor in al-Barakaat and that al-Barakaat diverted a certain portion of the money through its system to AIAI or al Qaeda, could not be verified. Jumale and all the al-Barakaat witnesses denied any ties to al Qaeda or AIAI, and none of the financial evidence the investigators examined directly contradicted these claims. Moreover, some of the claims made by the early intelligence, such as the assertion that Jumale and Bin Ladin were in Afghanistan together, proved to be wrong. In additional, it appeared that the volume of money was significantly overstated. Secretary O'Neill, in his announcement of the al-Barakaat action, had estimated that al-Barakaat had skimmed $25 million per year and redirected it toward terrorist operations. The agents found that the profits for all of al-Barakaat (from which this money would have to come) totaled only about $700,000 per year, and could not conclude whether *any* of that money had been skimmed.

Although the U.S. team could not find evidence of terrorist financing, they did identify several inexplicable anomalies in the evidence. For example, the team's review of documents revealed several suspicious transactions that Jumale could not adequately explain. Specifically, two NGOs made a number of unusually large deposits into the account of a Kuwaiti charity official over which Jumale had power of attorney. The funds were then moved out of the account in cash. When asked to explain the transactions, Jumale claimed that the money was deposited for use in Somalia. After the deposit, the charity would direct Jumale to send cash from those accounts to Somalia for charitable or religious purposes, such as building a mosque. Because the funds were sent as cash, no other records existed.

The FBI thought this explanation suspicious, as it was inconsistent with Jumale's normal business practices. Although the cash nature of the transactions may have been necessitated by the state of the financial system in Somalia—given the absence of financial institutions there, sending cash may have been the best way to build a mosque—al-Barakaat had a bank in Somalia to which the funds for charitable use could have been sent. However, the agents could draw only suspicions and no conclusions from these transactions. The money transfers might have involved terrorism, they might have represented the proceeds of another kind of crime, or they might have been nothing at all. There was just no way to tell.

At the conclusion of the trip, the agent spearheading the FBI portion of the trip drafted a memorandum, to be distributed to the UAE officials, describing the conclusion the team had reached:

> It has been alleged that the Barakaat Group of Companies were assisting, sponsoring, or providing financial, material, or other services in support of known terrorist organizations. Media and U.S. law enforcement reports have linked al-Barakaat companies and its principle manager, Ahmed Nur Ali Jumale, to Usama bin Ladin and bin Ladin's efforts to fund terrorist activities. *However, this information is generally not firsthand information or it has not been*

> *corroborated by documentary or other circumstantial evidence that supports the allegation.* For example, it has been reported that it is common knowledge in the United States–based Somali community that Al Barakaat is a money laundering operation backed by bin Ladin. It has also been reported that bin Ladin provided Mr. Jumale the initial financing to start the Al Barakaat businesses. *At this time, these items of information have not been substantiated through investigative means.* (emphasis added)

Thus, notwithstanding the unprecedented cooperation by the UAE, significant FBI interviews of the principal players involved in al-Barakaat (including its founder), and complete and unfettered access to al-Barakaat's financial records, the FBI could not substantiate any links between al-Barakaat and terrorism.

OFAC analysts hotly contest this conclusion, and insist that their designation was based on solid intelligence. The FBI's conclusions, they argue, reflect a profound misunderstanding of the case, and ignore certain pieces of intelligence.[71] At the very least, the OFAC officials contend, there is credible evidence that al-Barakaat was a money-laundering group, responsible for millions in U.S. currency being laundered through the United States, to an account in the UAE, and then out to suspect third-party countries. Additionally, they point to documents yet to be translated, as well as records from the hard drives of al-Barakaat, in the FBI's possession and yet to be analyzed. At this writing, neither the FBI nor OFAC is attempting to continue to investigate this case.

Delisting Designated Entities and Concluding the Case

Other countries who had joined in the international designation of al-Barakaat were voicing real concern by early 2002. Their concern stemmed in part from a difference in how each country set up its terror-financing designation scheme. In the United States, for example, the power to designate derives from the executive's power to wage war against foreign enemies. As a result, the executive may rely on less evidence than is required in a criminal or even civil trial. The judicial review that is afforded a designation is extremely deferential to the executive's judgment. In other countries, a designation is viewed as a judicial or quasi-judicial act, in which the accused is afforded a right to answer the charges and the standard of evidence is at least as high as would be needed to sustain a civil lawsuit.

In January 2002, three Swedish citizens of Somali origin who were listed in the original al-Barakaat designation petitioned OFAC and the United Nations for removal from the list. Sweden, although not a member of the UN Security Council, sought to have the Council adopt a criminal evidentiary standard prior to placing anyone on the sanctions list. The Canadians, similarly, moved to take one of its own citizens off the UN list. All

[71] Intelligence community sources have informed Commission staff that the intelligence sources for much of the reporting regarding al-Barakaat's connection to al Qaeda have since been terminated by the relevant agency as intelligence sources, based on concerns of fabrication.

of the UN designations to that point had come at the suggestion of the United States, and the Swedish proposal could have required the removal of either most or all of the names on the list. The State Department sent demarches to all Security Council member nations, urging "in the strongest terms" that they oppose Swedish effort.

Meanwhile, in Minneapolis, Abdullahi Farah and Garad Nor were trying to resolve their cases and working toward getting their money unfrozen. They hired a lawyer, who made both men available for interviews with the U.S. Attorney's Office and federal agents concerning their involvement in al-Barakaat.[72] The lawyer contacted OFAC to try to resolve the case; for months the calls were unreturned and neither of his clients was told of the evidentiary basis of the freezing actions. Finally, in April 2002, Farah and Nor filed suit against the government, alleging that the OFAC action deprived them of their constitutional rights.

In response to the lawsuits and the concerns of our allies, and in order to forestall more drastic action, the United States moved to develop a delisting process for those who claimed that they were designated incorrectly. At the time, there was no procedure to delist, either at the United Nations or at OFAC. Ultimately, the Policy Coordinating Committee decided on a set of standards to use. Treasury Under Secretary Jimmy Gurule went to the UN in the spring of 2002 and presented a whitepaper on delisting, which included a requirement for an attestation that the individual had severed the link with the tainted organization and a commitment not to associate with terrorist-related entities again. The goal was to force behavior changes and to have an orderly process based on principles, as opposed to requests for delistings based on the "inconvenience" or dislike of the designations regime.

The OFAC analysts were then required to go back and justify their designations of the three Swedes and the U.S. al-Barakaat entities and individuals. For the original listing, the analysts were required to show only that the individual entities were part of the overall al-Barakaat operation, which they could do through commercial directories such as the Dun & Bradstreet registry, as well as the list that had been seized in Norway. In the spring and summer of 2002, however, the analysts were tasked to show that each al-Barakaat individual was involved in the funding of terrorism, rather than that he or she simply belonged to an entity that, overall, supported terrorism. There was no such evidence, although OFAC analysts complained of not having sufficient access to classified information, as well as being denied information held by the FBI.[73]

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[72] Farah was interviewed, but the US Attorney's Office never arranged to interview Nor.

[73] The analysts were hampered in the fact that they did not have access to the records seized in the November raids. While those records were seized under OFAC authority, it was limited only to seizing and retaining them. In order to exploit them for evidentiary purposes, the FBI was able to execute a search warrant, which was then served on OFAC as custodian of the records. Those records were imaged and made available to the criminal agents and the U.S. Attorney's Office. According to the OFAC analysts, the FBI, perhaps burned by what they considered a premature designation, never shared a copy of the seized records with them.

On August 27, 2002, OFAC removed the U.S.-based money remitters in Minneapolis and Columbus, Ohio, as well as two of the three[74] Somali Swedes, from its list of designated entities. Abdullahi Farah, the Minneapolis money remitter, signed an affidavit stating that he had severed all ties with al-Barakaat, and received his money back. Throughout the litigation, Nor had maintained that he was unassociated with al-Barakaat, and signed an affidavit to that effect. He, too, received his money back.

The federal agents working on the al-Barakaat criminal investigation in Minneapolis spent hundreds of hours reviewing financial records and interviewing witnesses. Despite this effort, their attempt to make a criminal case simply had no traction. Ultimately, prosecutors were unable to file charges against any of the al-Barakaat participants, with the exception of one of the customers in Minneapolis who was charged with low-level welfare fraud. The FBI supervisor on the criminal case, deciding that their efforts could be better spent elsewhere, closed their investigation.

[74] The third was found to have made false statements to the investigating agents and on his application for removal from the list.

Chapter 6

The Illinois Charities Case Study

Two Illinois-based charities, the Global Relief Foundation (GRF) and the Benevolence International Foundation (BIF), were publicly accused by the federal government shortly after 9/11 of providing financial support to al Qaeda and international terrorism. The FBI had already been investigating both GRF and BIF for several years, but only after 9/11 did the government move to shut down these organizations and stop their flow of funds overseas.[75]

Introduction

GRF, a nonprofit organization ostensibly devoted to providing humanitarian aid to the needy, with operations in 25 countries around the world, raised millions of dollars in the United States in support of its mission. U.S. investigators have long believed that GRF was devoting a significant percentage of the funds it raised to support Islamic extremist causes and jihadists with substantial links to international terrorist groups, including al Qaeda, and the FBI had a very active investigation under way by the time of 9/11. BIF, a nonprofit organization with offices in at least 10 countries around the world, raised millions of dollars in the United States, much of which it distributed throughout the world for purposes of humanitarian aid. As in the case of GRF, the U.S. government believed BIF had substantial connections to terrorist groups, including al Qaeda, and was sending a substantial percentage of its funds to support the international jihadist movement. BIF was also the subject of an active investigation by 9/11.

After 9/11, the Office of Foreign Assets Control (OFAC) froze both charities' assets, effectively putting them out of business. The FBI opened a criminal investigation of both charities, ultimately resulting in the conviction of the leader of BIF for non-terrorism-related charges. The Immigration and Naturalization Service (INS) detained and ultimately deported a major GRF fund-raiser. No criminal charges have been filed against GRF or its personnel, as of this writing.

The cases of BIF and GRF illustrate the U.S. government's approach to terrorist fund-raising in the United States before 9/11 and how that approach dramatically changed after the terrorist attacks, moving from a strategy of merely investigating and monitoring terrorist financing to one of active disruption through criminal prosecution and the use of its powers under the International Emergency Economic Powers Act (IEEPA) to block the assets of suspect entities in the United States. Although effective in shutting down its

[75] This chapter is based on interviews with many participants, including FBI agents and supervisors, OFAC personnel, representatives of BIF and GRF, as well as other witnesses, extensive review of contemporaneous documents, both classified and unclassified, from a variety of agencies, and the court filings and judicial opinions from litigation concerning BIF and GRF.

targets, this aggressive approach raises potential civil liberties concerns. The BIF and GRF investigations also highlight two fundamental issues that span all aspects of the government's efforts to combat al Qaeda financing: the difference between seeing "links" to terrorists and proving the funding of terrorists, and the problem of defining the threshold of information necessary to take disruptive action.

FBI Investigations of BIF and GRF before 9/11

Contrary to a common misconception, the FBI did not ignore terrorist financing before 9/11. The intelligence side of the FBI gathered extensive information on terrorist fund-raising in the United States, although the Bureau lacked any strategy for disrupting the activity. In various field offices around the country, street agents actively investigated groups and individuals, including GRF and BIF, suspected of raising funds for al Qaeda or other extremist groups. Working in the face of many obstacles, including what agents believed to be a dysfunctional FISA (Foreign Intelligence Surveillance Act) process, these agents aggressively gathered information and tried to coordinate with other field offices, the intelligence community, and even foreign governments. The FBI lacked a headquarters unit that focused on terrorist financing before 9/11, however, and also lacked a coherent national approach to tackling the problem. As Assistant Director, Counterterrorism John Pistole testified, "there did not exist within the FBI a mechanism to ensure appropriate focus on terrorist finance issues and provide the necessary expertise and overall coordination to comprehensively address these matters."[76]

Origins of GRF

GRF was incorporated in Bridgeview, Illinois, in 1992. According to the U.S. government, GRF's founders had previously been affiliated with the Mektab al Khidmat (MAK) or "Human Services Office," cofounded by Abdullah Azzam and Usama Bin Ladin in the 1980s to recruit and support mujahideen to fight against the Soviets in Afghanistan. MAK funneled money and fighters to the mujahideen and set up a network of recruiting offices around the world, including in the United States. The U.S. government has called MAK the "precursor organization to al Qaeda."[77] One offshoot of MAK in the United States, the Al Khifa Refugee Center in Brooklyn, facilitated the movement of jihadist fighters in and out of Afghanistan. After the defeat of the Soviets, MAK and Al Kifah continued the mission of supporting jihadist fighters throughout the world. According to the U.S. government, a number of the persons convicted in the first World Trade Center bombing were associated with the Al Khifa Refugee Center, as was Sheikh Omar Abdel Rahman, the "Blind Sheikh," who is now serving a life sentence for his role in the foiled plan to bomb New York City tunnels and landmarks. President

[76] J. Pistole, July 31, 2003, Prepared Testimony, Senate Governmental Affairs Committee.
[77] Treasury Department Statement Regarding the Designation of the Global Relief Foundation, October 18, 2002 (Treasury GRF Statement).

George W. Bush designated MAK/Al Khifa a specially designated global terrorist in the original annex to Executive Order 13224 on September 23, 2001.

GRF described itself as a nongovernmental organization (NGO) that provided humanitarian relief aid to Muslims through overseas offices around the world, especially in strife-torn regions such as Bosnia, Kashmir, Afghanistan, Lebanon, and Chechnya. GRF began operating with $700,000 in cash. By 2000, it reported more than $5 million in annual contributions. According to its Internal Revenue Service (IRS) filings, GRF sent 90 percent of its donations abroad between 1994 and 2000.[78] GRF's numerous offices overseas received their own contributions in addition to what they received from the U.S. operation.

The FBI investigation of GRF before 9/11

GRF came to the attention of the FBI's Chicago Division in the mid-1990s, because of GRF's affiliation with Al Khifa and other unsubstantiated allegations about GRF's potential involvement in terrorist activity. After lying dormant for some time, the GRF investigation was assigned to two agents, who began to discover evidence of what they viewed as suspicious conduct. The Chicago office opened a formal full field investigation (FFI)[79] in late 1997, largely on the strength of a series of telephone calls between GRF personnel and others with terrorist affiliations, as well as information from the intelligence community that GRF personnel had undertaken suspicious travel to Afghanistan and Pakistan. The Chicago agents stepped up the investigation of GRF, including physical surveillance, review of GRF's trash, and attempts to get telephone records through a legal request known as a National Security Letter (NSL). Among other things, the trash revealed copies of GRF's newsletter, "Al-Thilal" ("The Shadow"), which openly advocated a militant interpretation of Islam and armed jihad.

The NSLs yielded very useful information, but the process for their internal approval frustrated the Chicago agents, who said that the tremendous delays in getting NSLs authorized by FBI headquarters was the biggest obstacle they had to overcome in their pre-9/11 investigation of GRF. It routinely took six months to a year to get NSLs approved for routine documents, such as telephone or bank records. The Chicago agents believed their contact at the FBI headquarters in the Radical Fundamentalist Unit was very good at his job, but was overwhelmed with work, which caused a major bottleneck in getting the NSLs.

The Chicago agents received substantial information about GRF from foreign government agencies. They worked directly through the relevant FBI legal attaché, or Legat (an FBI agent posted overseas who acts as a liaison with foreign officials), to get foreign information. The process could be very slow and somewhat uncertain, but it often

[78] For example, GRF sent $3.2 million overseas in 1999; and $3.7 million overseas in 2000.

[79] Approval to open an FFI requires some predication that the investigation is being conducted for legitimate intelligence purposes. Agents, using limited investigative techniques can open a preliminary investigation (PI) for a limited time to gather evidence to determine whether a FFI is warranted.

yielded helpful information. One European country where GRF had a substantial office provided the most useful information in the early stages of the investigation.

By mid-1998, the Chicago agents had evidence that led them to conclude that GRF was doing much more than providing humanitarian aid. The Chicago office summarized its views in an August 3, 1998, memorandum: "The FBI believes that GRF, through its Bridgeview headquarters and satellite offices around the globe, is actively involved in supplying and raising funds for international terrorism and Islamic militant movements overseas." At the time, the FBI suspected the executive director of being a supporter or member of the Egyptian extremist group Al Gama'a Al Islamiyya (AGAI), which was affiliated with the Blind Sheikh.

The Chicago office submitted a FISA application for GRF in mid-1998; it was not approved until mid-1999. According to the Chicago agents, the application posed no significant problems, although it appeared that the fact that domestic charities were involved may have slowed the process. In any event, it took a year for the application to be approved and authorized. After receiving FISA approval, the agents initiated electronic surveillance, which allowed them to expand the investigation.

By late 1999, the Chicago case agents were comfortable in their conclusion that GRF was a jihadist organization and that its executive director had connections to both AGIA and what they called the "Islamic Army organization of international terrorist financier Usama Bin Ladin."[80] They believed that multiple sources of evidence supported these conclusions. In the agents' view, the phone records they had obtained proved a compelling, although indirect, link between GRF's executive director and Usama Bin Ladin. In reviewing intelligence information and the executive director's phone records, they concluded that the executive director called a phone used by a mujahideen leader who was a close associate of Usama Bin Ladin. Phone records also connected GRF, through its office in Brussels, Belgium, with Bin Ladin's former personal secretary, Wadi al Hage, who is now serving a life sentence in the United States for his role in the 1998 embassy bombings.

The Chicago FBI agents were able to get critical information about the persons associated with international phone numbers because they had a working relationship with the CIA before 9/11. The Chicago agents said the quality of this relationship varied depending on the CIA representatives, who tended to be replaced frequently. Although the relationship was not always smooth, it did succeed in providing important information.

The Chicago agents also conducted "trash covers," virtually every week for years, which provided key intelligence on GRF. In this technique, the agents secretly entered GRF's dumpster late at night and took out its trash for review. Among other things, GRF threw away pictures of communication gear it had shipped overseas, including sophisticated military-style handheld radios that the agents believed were far beyond what relief workers would ever need, but valuable to set up a military communications network. After 9/11, they learned this communication gear was shipped to Chechnya. They also

[80] January 20, 1999, FBI Document.

found in GRF's trash pro-jihad books and literature, including the writings of Abdullah Azzam.

The Chicago agents summarized their view of GRF to a foreign government service in a January 6, 2000, memorandum:

> Although the majority of GRF funding goes toward legitimate relief operations, a significant percentage is diverted to fund extremist causes. Among the terrorist groups known to have links to the GRF are the Algerian Armed Islamic Group, the Egyptian Islamic Jihad, Gama'at Al Islamyia, and the Kashmiri Harakat Al-Jihad El-Islam, as well as the Al Qaeda organization of Usama Bin Laden. . . . In the past, GRF support to terrorists and other transnational mujahideen fighters has taken the form of purchase and shipment of large quantities of sophisticated communications equipment, provision of humanitarian cover documentation to suspected terrorists and fund-raising for terrorist groups under the cover of humanitarian relief.[81]

By 9/11, the Chicago agents believed that they had uncovered enough information to conclude that GRF was raising substantial funds in the United States to support international jihad. Bank records obtained through NSLs revealed large transfers of funds to the GRF overseas offices. The agents believed GRF distributed the bulk of funds as humanitarian relief, but also supported armed militants in the strife-torn regions where it was active.

On January 10, 2001, the Chicago agents wrote that "GRF is a highly organized fundraising machine, which raises millions of dollars annually" and that GRF's "operations have extended all over the globe."[82] The executive director, in his capacity as head of the organization, "has been and continues to be a supporter of worldwide Islamic extremist activity" and he "has past and present links and associations with a wide variety of international Muslim extremists," including al Qaeda and Usama Bin Ladin. The agents did not believe GRF was part of the formal al Qaeda network. Instead, they believed it "free-lanced" to support jihadists around the world, including in Europe, Bangladesh, India, and Pakistan. They also knew GRF was underwriting substantial humanitarian aid, which they thought was critical to its pro-jihad mission.[83]

The Chicago agents believed GRF had two types of donors during this period. People not in the know thought they were giving money for humanitarian relief. Others clearly knew the purpose of their donations: When the agents later obtained donors' checks, they saw that some donors had actually written pro-jihad statements on their memo lines.

The money trail generally stopped at the U.S. border, and the agents could never trace it directly to jihadists or terrorists. Before 9/11, they had no means to get foreign bank

[81] January 6, 2000 FBI Document.
[82] January 10, 2001 FBI Document.
[83] January 10, 2001 FBI Document.

records. A formal request for records, called a mutual legal assistance treaty (MLAT) request, was impossible because the FBI did not have an open criminal investigation—the GRF inquiry was an intelligence investigation. The agents did ask one European country for help, but were told that that country's restrictive laws prohibited electronic surveillance and obtaining bank records. The Chicago agents wanted to travel to Europe to meet with officials who had investigated GRF, but the Chicago FBI office denied permission because of budgetary constraints.

The Chicago investigation of GRF in turn led to an investigation by the Detroit FBI agents of GRF subjects within its jurisdiction. In early 2000, Chicago informed Detroit that GRF's executive director had been calling two Michigan residents. One of these subjects was considered GRF's spiritual leader and the other, Rabih Haddad, was a major GRF fund-raiser. A Detroit agent went to Chicago and reviewed the extensive investigative file. Upon his return, the agent prepared a request to open FFIs on the two subjects; it was approved in late March 2000. The evidence gathered in Chicago made clear to the Detroit agent that the GRF investigation was potentially "pretty big."[84]

The Detroit agents, however, believed themselves to be stymied by the inability to get FISA coverage. At the same time that the case agent opened the FFIs, he sought FISA coverage of those two subjects. None of these FISA applications was approved until after 9/11, some 18 months later. The Detroit agent was never given even an ostensible reason for the holdup. On the contrary, FBI headquarters told the agent that the applications looked good. These applications were being actively reviewed by both OIPR and FBI headquarters. Still, nothing ever happened. When he called FBI headquarters to check on the status of his applications, the Detroit agent was told only "we're [the FBI] working on it." The Detroit agent was very frustrated and upset by the delay, which he believes caused him to miss a great opportunity to gather critical intelligence and substantially limited the Detroit investigation of GRF before 9/11.

Resource limitations also limited Detroit's role before 9/11. Though many counterterrorism investigations might have been undertaken, Detroit had only 12 agents on these cases; and because each agent was working multiple cases, no case could receive the attention it needed. Because of the lack of FISA coverage, resource limitations, and the apparent focus GRF's activities in Chicago, the Detroit investigation was largely a satellite to the Chicago investigation before 9/11.

The Chicago agents thought that FBI headquarters provided support for their GRF investigation before 9/11, approving the FISA application, for example, and providing analytical support. In addition, one of the analysts at headquarters saw relevant material in a case file from another field office and very helpfully brought it to Chicago's attention. From the Detroit perspective, however, headquarters was interested in the GRF investigation but was swamped with work and itself understaffed.

[84] Commission Staff Interview.

No realistic opportunities for disruption before 9/11

The Chicago agents saw no way to make a criminal case against GRF before 9/11, even though the agents thought they had considerable evidence that GRF was a major fund-raising operation for international jihad. The two lead agents thought about and even discussed the possibility of mounting a criminal case, but dismissed it. They had much smoke but no real fire—they had no direct evidence of serious criminal activity. They could not trace the millions of dollars GRF sent overseas to any specific jihadist or terrorist organization, although they had their suspicions. Even the electronic surveillance coverage yielded no evidence that would conclusively prove a criminal offense.

The Chicago agents worked with the INS to pick up several GRF employees on immigration overstays, with the goal of seeing if they would cooperate with the FBI against their employer. This effort proved fruitless, however. They considered doing the same with Rabih Haddad, the Detroit subject and major GRF fund-raiser, but decided it made more sense to continue investigating him; the Detroit agents agreed.[85] The Chicago agents thought that the executive director himself was also technically out of status—he had requested a certain status adjustment from the INS but not yet received it—though an arrest in such a situation would be unusual. In any event, they did not ask the INS to arrest him, preferring to continue to monitor him.

The very concept of a criminal international terrorism case was foreign to the Chicago agents, and they did not think that the U.S. Attorney's Office had sufficient expertise in such cases. In addition, the agents believed that the rules regarding "the wall" between intelligence and criminal cases prevented the case agents from even discussing intelligence information with the U.S. Attorney's Office. Other than in New York, there were few criminal international terrorist (IT) investigations or cases in process. The Chicago office was undertaking only two criminal IT investigations, neither of which focused on al Qaeda suspects. According to the agent who supervised the GRF and BIF cases before 9/11, the case agents had always wanted to open a criminal case, despite the wall; but they thought that doing so would have hurt their ability to get and maintain FISA coverage because of their perception of the Department of Justice's restrictive interpretations of the wall restrictions, which they understood had impaired the Chicago office's ability to get FISA warrants approved in the past. As result, Chicago agents were cautious about pursuing criminal matters pertaining to ongoing intelligence investigations.

The lead Detroit investigator also saw no prospect of a criminal case before 9/11. He said that while working the case as an intelligence investigation he always kept in the back of his mind that possibility, but he knew that he had nowhere near the type of evidence required for criminal prosecution; he had his own concerns about the wall as well. In any event, neither Detroit nor Chicago, which had the lead in formulating an overall strategy, had sufficient evidence to move forward with criminal charges.

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[85] The Chicago and Detroit agents each attributed to the other the decision to refrain from detaining Haddad, but both agree they concurred with the decision made by the other, without objection.

The Chicago investigation of GRF suffered a major blow in late spring or early summer 2001 when the FISA warrants were not extended. The Chicago agents were now in the same position as those in Detroit—deprived of electronic surveillance, their most potent intelligence-gathering tool.

GRF's status on 9/11

The FBI's investigation over the several years before 9/11 led the investigating agents to believe GRF was an organization dedicated to supporting international jihad and was raising substantial funds in the United States toward that goal. The FBI agents developed what they thought was a good understanding of GRF's activities, despite significant obstacles imposed by a dysfunctional process for obtaining NSLs and FISA warrants. Although the FBI did the bulk of the work investigating GRF, the investigation benefited from contributions by the intelligence community and by foreign law enforcement sources, both of which substantially aided the FBI's understanding of the GRF's overseas activities. Despite the considerable body of knowledge they had, the FBI agents believed they lacked the evidence necessary to bring a criminal prosecution against GRF or its principals. In any event, the perceived restrictions imposed by the wall made such a prosecution extremely difficult, at best, and initiating a criminal investigation could have put the FISA warrants at risk. As a result, the FBI was left with nothing to do but continue to gather intelligence on GRF's activities in the United States. This task was made far more difficult by the inability to renew the FISA warrants in Chicago or obtain FISA coverage in Detroit. The agents did not have any plan to disrupt what they believed to be a major jihadist fund-raising operation, or any endgame for their investigation.

The origin of BIF

BIF was incorporated in Illinois in March 1992 and received tax-exempt status in March 1993. Its origins can be traced to Saudi Arabia, where in 1987 Sheikh Adel Abdul Jalil Batterjee founded Lajnat Al-Birr Al-Islami (LBI), a Jeddah-based NGO. LBI provided support to the mujahideen fighting the Soviets in Afghanistan, as well as humanitarian aid to refugees of the war in Afghanistan. Batterjee, from a merchant family in Saudi Arabia, was affiliated with a group of wealthy donors from the Persian Gulf region known as the "Golden Chain," which provided support to mujahideen, including mujahideen under the leadership of Usama Bin Ladin. The U.S. government has alleged that BIF was incorporated in the United States to attract more donations and deflect scrutiny from LBI.

At BIF's founding in 1992, its three directors were Batterjee and two other Saudis. In March 1993, Batterjee and the two other Saudis were replaced by three new directors, including Enaam Arnaout, who became BIF's executive director, managing its day-to-day operations and reporting to Batterjee. The U.S. government contends the change was made after Batterjee came under scrutiny in Saudi Arabia for financially supporting jihad

outside of approved channels. Despite his formal removal, Batterjee continued to play a major role in running BIF and was in frequent contact with Arnaout from his home in Saudi Arabia. The government contends that Arnaout was a longtime jihadist supporter, with personal ties to Usama Bin Ladin dating back to the 1980s. He allegedly provided military and logistical support to the mujahideen in the late 1980s and early 1990s, as an employee of LBI and another Saudi NGO, the Muslim World League. In doing so, he allegedly worked closely with Usama Bin Ladin and other mujahideen who later became significant members or supporters of al Qaeda. According to INS data compiled by the FBI, Arnaout, a native Syrian, lived in Hama, Syria, from his birth in 1962 until 1981, when he went to study in Saudi Arabia. In 1989, Arnaout married an American citizen he met in Peshawar, and he became a naturalized U.S. citizen in March 1994.

BIF publicly described itself as an "organization devoted to relieving the suffering of Muslims around the world." According to its IRS filings, it received more than $15 million in donations between 1995 and 2000.

The FBI investigation of BIF

The FBI started its investigation of BIF in 1998 as a result of a conference that a Chicago agent attended in Washington, D.C., where he learned of foreign intelligence reports indicating that Arnaout was involved in providing logistical support for jihadists. The FBI in Chicago opened an FFI in February 1999, focusing on Arnaout as the key player. The GRF case agents also served as the lead case agents on BIF investigation. Much like the early GRF investigation, BIF investigation featured surveillance and digging through garbage. The FBI also sought to develop sources. The trash covers were fruitful, as BIF "threw out everything"—including telephone bills and detailed and elaborate reports on its activities, which Arnaout demanded from his subordinates on a daily basis. The FBI began to run down some of the names and numbers appearing in the trash. In addition, on April 21, 1999, the agents recovered from BIF's trash a newspaper article on bioterrorism, in which someone had highlighted sections relating to the United States' lack of preparedness for a biological attack.

When it opened the FFI, the FBI in Chicago knew of Adel Batterjee but had little understanding of who he was. They later obtained records showing Batterjee was contributing funds to BIF. In the summer of 1999, they sent what the Bureau calls a lead—relaying information and requesting action—to Saudi Arabia, through the Legat, for information on Batterjee. As of 9/11 they still had received no response.

Chicago submitted a FISA request in April 2000, but it was not approved until after 9/11. Notwithstanding evidence that BIF had significant links to Usama Bin Ladin and was sending significant amounts of money overseas, the Chicago agents could not get an inside look at the organization that a FISA could provide. As we will later show, after 9/11 it was simply too late.

After opening the FFI, FBI Chicago obtained NSLs for phone and bank records. The bank records gave a good indication of the scope of BIF's fund-raising activities. According to contemporaneous documents, the FBI believed based on its yet to be completed investigation that BIF was receiving approximately forty to sixty thousand dollars a week, and that between 1997 and 1998, BIF sent more than $2.5 million to its overseas offices in Bosnia, Azerbaijan, Pakistan, and Tajikistan.

FBI Chicago had cultivated a good human source who provided useful information on BIF, though never any smoking guns. The Chicago agents had a much closer relationship with the CIA on BIF than they did on GRF, because they cooperated on certain international matters in the BIF investigation. They regularly met with the CIA concerning BIF, received some useful information, and shared much of their information. For example, the Chicago agents learned from the CIA important information about BIF's founding and the sources of its funding. Still, the CIA and the FBI did not have a perfect relationship, and the CIA held back some information. The Chicago agents believed the CIA wanted to shield certain information from the FBI because of fears of revealing sources and methods in any potential criminal litigation in the United States.

The Chicago agents obtained all the bank account numbers for the BIF's overseas offices, which BIF had typed up and later thrown out in the trash. They provided this information to the intelligence community, which they hoped could trace the money overseas. They never heard anything back about such a trace, however.

The BIF investigation revealed the difficulties in securing foreign cooperation in terrorism investigations. FBI Chicago submitted a lead to a European ally, through the Legat, for information about European intelligence reports concerning a BIF official's purported involvement in the kidnapping of Americans in Kashmir. The U.S. ally never even acknowledged the request, let alone replied. The FBI did not submit MLAT requests for foreign records because, again, it had no criminal case.

The FBI's New York Field Office, which ran the primary FBI investigation of Bin Ladin, was a key source of information for Chicago. But the New York agents were overwhelmed with work, and did not always coordinate well with their Chicago counterparts. Although the New York agents were aware of the BIF/GRF investigations, they sent out their own leads relevant to these investigations, annoying the Chicago agents. The agents in New York did not have time to share information proactively, although those in Chicago were welcome to look through New York's files for relevant information—which they did, gaining helpful information.[86]

GRF's bank filed a money-laundering Suspicious Activity Report with the Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding BIF's large transfers of money to the Republic of Georgia. It was apparently concerned that BIF was involved with Russian organized crime. The Chicago agents said they did not make any requests of FinCEN before 9/11, explaining that FinCEN would not have been useful to

[86] According to the BIF's attorney, the bank actually closed the BIF's accounts just before 9/11, forcing BIF to find another bank in the Chicago area, which it was able to do.

them because it could not help them trace the money once it got overseas. They knew that BIF was sending big money overseas, and even knew the account numbers and office directors of the BIF overseas offices that were receiving the money. Their problem was tracing the money once it got there, and the believed FinCEN could provide no help in this regard because, like the FBI agents, it had no access to the relevant foreign records.

Inability to bring a criminal case to disrupt BIF

Overall, BIF investigation was in the same position as the GRF investigation on 9/11: the agents believed BIF had substantial ties to al Qaeda, was supporting jihad, and was sending a great deal of money overseas, but they could not trace the money directly to its ultimate destination overseas. Although they had access to considerable information, the agents believed they still could not come close to proving a criminal case against Arnaout or BIF. The BIF investigation was actually in worse shape because, unlike in the GRF investigation, the agents could not get approval for electronic surveillance. The agents tried to understand what was going on overseas, and a European agency had invited the Chicago agents to a meeting to share information. The agents tried to go but, as had happened with the GRF investigation, the Chicago FBI could not afford to send them. The misunderstanding of the wall also created the same problems in the BIF investigation as it did in that of the GRF. For all of these reasons, the FBI could not take any action against BIF, despite what the agents considered extensive knowledge of BIF's malfeasance.

Like the GRF investigation, the BIF investigation lacked an endgame. Believing themselves unable to initiate a criminal investigation and lacking any other means to disrupt what they thought to be a major jihadist fund-raising operation with substantial links to Bin Ladin and al Qaeda, the Chicago agents saw no options other than continued monitoring of BIF's activities. In this respect, the BIF and GRF investigations typified the FBI's pre-9/11 approach to terrorist financing. The FBI had numerous terrorist-financing investigations under way, but the vast majority of them were pursued as intelligence-gathering exercises by FBI intelligence agents, with little or no thought of disrupting the fund-raising through criminal prosecution or otherwise.

Post-9/11 Developments

FBI investigations of BIF and GRF after 9/11

Everything changed almost immediately after 9/11 with respect to the BIF and GRF investigations. Major obstacles to the investigation dropped away, more resources became available, and the issue of terrorist financing gained new prominence among national policymakers in Washington.

As a result, the course of the BIF and GRF investigations dramatically changed and led to a series of events unimaginable on 9/10: the long-delayed FISA warrants were

instantaneously approved; the FBI opened a major criminal investigation of GRF and BIF; FBI agents raided the Illinois headquarters of both organizations in an unprecedented overt FISA search; OFAC—an entity entirely unknown to the FBI case agents before 9/11—froze the assets of GRF and BIF; NATO troops kicked in doors of the charities' overseas offices and carted away all their contents; and Bosnian criminal investigators raided BIF's office in Bosnia, seizing a treasure trove of documents directly concerning BIF's relationship with Bin Ladin that dated to the origins of al Qaeda.

In the immediate wake of 9/11, the Chicago FISA warrant for GRF was reinstated, and that for BIF was finally approved. The previously moribund FISA applications from Detroit for GRF were approved as well, as the agent was informed by an emergency call from FBI headquarters.

But after the events of 9/11, electronic surveillance was not very useful, even though the FBI assigned a significant number of translators to the cases. The agents believed that the GRF subjects feared electronic monitoring in the wake of the attacks; they were extremely cautious about their communications. The GRF FISA warrants proved unproductive. On the other hand, electronic surveillance of BIF yielded some useful information, including the fact that Arnaout was passing messages to Batterjee. In addition to electronic surveillance, the agents continued other investigative techniques, including trash covers and physical surveillance.

Coincidentally, the U.S. Attorney for Chicago, Patrick Fitzgerald, on the job for only a couple of weeks, had extensive experience as a terrorism prosecutor and immediately became involved in the investigation of BIF and GRF.[87] Fitzgerald was very interested in prosecuting the cases criminally and, at his urging, the FBI opened a criminal investigation of BIF and GRF in October 2001. The intelligence cases continued as well, and the electronic surveillance continued. Because the wall between criminal and intelligence matters still existed, they decided to have separate case agents for the criminal and intelligence investigations. The lead intelligence case agents moved to the criminal case, and two new agents were assigned to the intelligence cases. The new intelligence agents were responsible for passing information over the wall to the criminal agents.

Fitzgerald immersed himself in the case and took a major role. He directed the FBI to interview al Qaeda cooperators from the New York cases, who provided considerable information on BIF and some on GRF as well. One cooperator, an admitted former al Qaeda member and Bin Ladin associate, said that BIF engaged in financial transactions for al Qaeda in the early 1990s. He also described how al Qaeda would take cash from charitable NGOs, which would then cover the transactions with false paperwork. After

[87] Fitzgerald took office pursuant to an interim appointment on September 1, 2001; he was formally appointed and confirmed by the Senate in October. Fitzgerald had extensive experience prosecuting terrorism cases as an Assistant U.S. Attorney in New York, where he prosecuted the Landmarks and Embassy Bombings cases and served nearly six years as co-chief of the Organized Crime and Terrorism Section.

opening the criminal case, the agents also were able to issue grand jury subpoenas for additional phone and bank records.

OFAC involvement and the shutdown of BIF and GRF

While the Chicago agents and prosecutors were starting to think about bringing criminal cases against BIF and GRF, policymakers in Washington were thinking about disrupting al Qaeda financing using whatever tools they had. BIF and GRF came to the attention of OFAC, which began to consider them for possible designation as a supporter of al Qaeda. To this end, OFAC dispatched two analysts to Chicago in early December 2001 to review the FBI files and begin putting together the evidentiary packages that would support designations.

These plans were dramatically accelerated when CIA analysts, drawing on intelligence gathered in an unrelated FBI investigation, expressed concerns that GRF could be involved in a plot to attack the United States with weapons of mass destruction (WMD). Neither the Chicago agents nor the FBI headquarters analysts, who had extensive knowledge of GRF, were consulted on this analysis, which a Chicago FBI supervisor characterized as baseless. The WMD fears led to a plan to enter and search the overseas offices of GRF and BIF to obtain swabbings and other evidence related to possible WMD deployment. BIF was included because the two charities were thought to be related. Although the WMD allegations were never corroborated, the events of 9/11 led to an understandably cautious approach in dealing with potential threats of mass casualties.

At the same time, OFAC received word from the General Counsel of Treasury, who was coordinating the interagency effort against terrorist financing, that it needed to designate BIF and GRF immediately. OFAC had not yet developed the evidence necessary for a designation under IEEPA. As a result, OFAC relied on a provision of IEEPA clarified by the Patriot Act, which provides that OFAC could freeze the assets belonging to a suspected terrorist supporter "during the pendency of an investigation." Only a single piece of paper, signed by the director of OFAC, was required.[88] OFAC announced this action on December 14, 2001, thereby effectively shutting down both charities in the United States while gaining additional time to develop the evidentiary packages necessary for permanent designations. This extraordinary power enabled the government to stop the charities' operations without any formal determination of wrongdoing.

The raids on a number of overseas offices also occurred on December 14, 2001, conducted, in various locations, by NATO troops and U.S. government personnel. NATO troops raided two GRF offices, and NATO publicly stated that GRF "is allegedly involved in planning attacks against targets in the U.S.A. and Europe."[89] At the same time, Albanian National Police, accompanied by an FBI agent, raided the GRF office in Tirana and the home of a GRF employee, seizing $20,000 and taking swabbings for residue of WMD.

[88] According to OFAC, in practice, an interagency group discusses and agrees to any designation.
[89] Shenon, "A Nation Challenged: The Money Trail", New York Times, Dec. 18, 2001.

The original plan did not call for searches or takedowns of the GRF and BIF offices in Illinois. Rather, the FBI was to use its FISA warrants to monitor the charities' reaction to the overseas searches. This plan went awry when word of the impending action apparently leaked to GRF. FBI personnel learned that some of the targets of the investigations may be destroying documents.[90] As a result, the FBI decided to do an unprecedented "overt" FISA search of both GRF and BIF offices, which was hastily assembled and conducted. Following a chaotic process, the government agents searched both BIF and GRF offices in Illinois on December 14, 2001, carting away substantial evidence. The agents also searched the residence of GRF executive director and Arnaout.

On December 14, 2001, the INS detained GRF fund-raiser Rabih Haddad, one of the subjects of the Detroit investigation, on the basis that he was out of his allowed immigration status, having overstayed a student visa issued in 1998. Following bond hearings that were closed to the press, public, and Haddad's family, an immigration judge denied bail and ordered Haddad detained.[91]

While officials and investigators around the world moved to eliminate the perceived WMD threat and shut down the operations of BIF and GRF, investigators working on the 9/11 attacks sought to understand a curious connection between hijackers Nawaf al Hazmi and Khalid al Mihdhar and a GRF fund-raiser. On 9/11, the FBI learned that two days before, hijackers Hazmi and Mihdhar had dropped off bags at an Islamic prayer center in Maryland. The bags, to which the hijackers had affixed a note stating "[a] gift for the brothers," contained fruit, clothing, flight logs, and various other materials. The FBI launched an investigation to determine if the imam of the prayer center played any roles in the attacks. The investigators quickly determined in addition to his other responsibilities, the imam worked part-time raising money for GRF, at the direction of its executive director in Illinois. The FBI investigated his involvement with 9/11 for one and a half years. It ultimately concluded that he had no role in supporting the 9/11 attacks, although the investigating agents considered him to be a supporter of and fund-raiser for the international jihadist movement.

BIF and GRF challenge the government's actions

The charities aggressively denied any connection to terrorism and condemned the raids and assets freeze. GRF's lawyer immediately called the government's action "a terrible, terrible, terrible tragic mistake," and stated, "If they're investigating terrorism, they're not going to find anything here." Another GRF spokesman said the government seized

[90] Press leaks plagued almost every OFAC blocking action that took place in the United States. The process had extremely poor operational security. In a number of instances, agents arrived at locations to execute blocking orders and seize businesses only to find television news camera crews waiting for them.
[91] *See Detroit Free Press v. Ashcroft et al*, 303 F.3d 681 (6th Cir. 2002) (setting out background). The hearing was closed pursuant to a September 21 directive from the chief immigration judge that immigration judges close immigration proceedings in certain "special interest" cases defined by the chief judge.

resources that GRF used to "prevent the slow starvation and gruesome death in parts of the Muslim world that rely on such badly needed aid."[92]

On January 28, 2002, GRF sued the Secretaries of Treasury and State, the Attorney General, and the Directors of OFAC and the FBI in federal court in Chicago. GRF requested that the government "unfreeze" its assets and return the items it seized during the December 14 searches. Two weeks later, GRF filed a motion for a preliminary injunction, contending that the government's blocking of its assets and records violated the law and Constitution.[93] BIF filed a similar suit on January 30, 2002, and a similar motion on March 26, 2002. BIF's complaint proclaimed its activities "entirely lawful," and contended that since its founding in 1992 it "has provided tens of millions of dollars worth of humanitarian aid in a dozen countries around the world, as well in the United States."[94]

Upon filing the complaint, BIF's lawyer said, "The government's actions threaten to destroy our essential constitutional liberties. If we no longer live in a society where we are secure from unreasonable searches and from the taking of liberty and property without any form of due process, then the terrorists will have succeeded in an even greater degree of destruction than the devastation of Sept. 11."[95] Despite the blocking of its assets, BIF and GRF could retain counsel because OFAC granted them "licenses" to do so. A license is written authorization from OFAC to spend money in ways otherwise prohibited by the blocking order, such as the release of blocked funds to pay for legal services.

BIF also sought a license to dispense the bulk of the funds blocked by the government, which totaled $700,000–800,000, to fund its overseas charitable causes, including a tuberculosis hospital for children in Tajikistan and the Charity Women's Hospital in Makhachkala, Daghestan. BIF supported its request with evidence of its charitable work, including affidavits from nurses in the hospital attesting to the importance of BIF's donations. According to BIF's counsel, the organization wanted to give away $500,000 of the blocked funds rather than let legal bills consume the money, and it even offered to have FBI agents accompany the funds overseas to their charitable destination. OFAC did not grant the license due to concerns that even funds sent to seemingly legitimate charities can be at least partially diverted to terrorist activities and OFAC's extremely limited ability to monitor the use of funds overseas. OFAC did license BIF and GRF to sustain some operations—retaining some employees and paying utilities, taxes and U.S. creditors—but most of the employees had to be let go, and the charities could neither raise new funds nor distribute existing funds overseas.[96]

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[92] Deanna Bellandi, "Two Chicago-area Muslim Charity Groups Raided by Federal Agents; Assets Frozen," Associated Press, Dec. 15, 2001.

[93] *See, Global Relief Foundation, Inc. v. O'Neill et al.*, 207 F. Supp. 2d 779 at 787 (N.D. Ill. 2002), *affirmed* 315 F.3d 748 (7th Cir. 2002) (quoting complaint).

[94] *Benevolence International Foundation Inc. v. Ashcroft*, (N.D. Ill.), Complaint.

[95] Laurie Cohen, "2nd Muslim Charity Sues U.S. Officials on Terrorism," Chicago Tribune, Jan. 31, 2002, p. 1.

[96] Ultimately, the charities' legal bills consumed most of the frozen money, which angered donors who had intended their donations be used for humanitarian relief. See, e.g., Gregory Vistica, "Frozen Assets Going

Supporters of GRF fund-raiser Rabih Haddad, who was detained on immigration violations, rallied to his defense. Pointing out that Haddad had condemned the 9/11 attacks and contending he was a moderate and respected religious leader in the Detroit community, they considered his detention in solitary confinement on what appeared to be a minor visa violation as a prime example of discrimination against Muslims and an overzealous government response to 9/11, in violation of basic civil rights. For example, a sympathetic story in a London paper quoted U.S. Representative John Conyers: "The treatment of Rabih Haddad by the Immigration and Naturalization Service over the past several weeks has highlighted everything that is abusive and unconstitutional about our government's scapegoating of immigrants in the wake of the September 11 terrorist attack."[97]

Efforts to develop criminal cases against BIF and GRF

After the preliminary designations and searches of December 14, 2001, the FBI and U.S. Attorney's Office in Chicago focused their attention on developing a criminal case. To do so, they initially faced major logistical challenges. The Illinois searches yielded an enormous amount of information, including hundreds of tapes and videos that had to be translated and reviewed, and many computer hard drives. According to the legal requirements imposed by FISA, all of this information had to be reviewed for "minimization." Since the evidence was seized under intelligence authorities, the Justice Department could use only that evidence relevant to an intelligence investigation or a crime such as terrorism. The logistical difficulties were compounded by the charities' civil litigation, the blocking order and OFAC's continued need for access to the materials so that it could build a case for permanent designations. The latter issue caused considerable frustration and confusion, as there were no rules about exactly what information in the FBI files OFAC could lawfully see. In addition, the lead case agents, who had been intelligence agents, lacked any significant federal criminal investigative experience, let alone experience in preparing a complex, document-intensive financial investigation for prosecution.

The criminal investigation of BIF received a huge boost in March 2002. The Chicago agents, who had been working with Bosnian officials on the case, provided the Bosnians with enough evidence to gain legal authority to conduct a criminal search of BIF's offices there. An FBI agent accompanied the Bosnians on the search to ensure a proper chain of custody necessary for the admission of anything found into a U.S. criminal proceeding. This search yielded compelling evidence of links between BIF's leaders, including Arnaout, and Usama Bin Ladin and other al Qaeda leaders, going back to the 1980s. The material seized included many documents never before seen by U.S. officials, such as the actual minutes of al Qaeda meetings, the al Qaeda oath, al Qaeda organizational charts,

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to Legal Bills," *Washington Post*, Nov. 1, 2003, p. A6. According to OFAC, when BIF exhausted the pool of blocked BIF funds, OFAC also issued licenses authorizing BIF to establish and maintain a legal defense fund in which to accept donations to offset its legal expenses.

[97] Andrew Gumbel, "The Disappeared," The Independent, Feb. 26, 2002.

and the "Golden Chain" list of wealthy donors to the Afghan mujahideen, as well as letters between Arnaout and Bin Ladin, dating to the late 1980s. It was an enormous break.

The Bosnian documents helped kick BIF investigation into high gear. Meanwhile, the GRF investigation temporarily took a back seat. On April 30, 2002, Arnaout and BIF were charged with two counts of perjury; the charge was based on a declaration that Arnaout had filed in the civil case against OFAC, in which he asserted that BIF never supported persons engaged in violence or military operations. Arnaout was taken into custody and denied bail. In September, the court dismissed the charges because established Supreme Court precedent held that the particular criminal statute under which he was charged did not apply to the out-of-court statements in Arnaout's declaration.[98] The government filed a criminal obstruction of justice case against Arnaout that same day, on the basis of the same false declaration. BIF was not charged again.

The government came back with a more substantive indictment of Arnaout in October 2002, directly alleging that BIF supported al Qaeda.[99] The indictment alleged that Arnaout operated BIF as a criminal enterprise that for decades used charitable contributions to support al Qaeda, the Chechen mujahideen, and armed violence in Bosnia. The government modified the allegations against Arnaout in a superseding and then a second superseding indictment, the latter of which was filed on January 22, 2003. It charged Arnaout with one count each of racketeering conspiracy under RICO (the Racketeer Influenced and Corrupt Organization Act), conspiracy to provide material support to terrorists, providing material support to terrorists, conspiracy to launder money, and wire fraud and two counts of mail fraud.

Attorney General John Ashcroft personally came to Chicago to announce the filing of the October indictment in a high-profile press conference. His public statements emphasized BIF's alleged support for al Qaeda and recounted much of the historic evidence linking Arnaout to Bin Ladin, including a recitation of the most significant al Qaeda documents seized at the BIF's office in Bosnia. Condemning BIF and Arnaout, the Attorney General declared, "There is no moral distinction between those who carry out terrorist attacks and those who knowingly finance those attacks."[100] BIF's lawyer believed that the Attorney General's inflammatory comments about al Qaeda and Bin Ladin compromised Arnaout's right to a fair trial before an impartial jury and characterized the press conference as "astounding" and "egregious." The trial judge also took notice, later referring to the extensive publicity the case received "in the wake of the Attorney General's remarkable press conference announcing this indictment."[101]

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[98] *United States v. Benevolence International*, 02 CR 414, 2002 U.S. Dist. Lexis 17223 (Sept. 13, 2002) (court opinion and order).
[99] *United States v. Arnaout*, Second Superseding Indictment at ¶ 3 (same language in initial indictment).
[100] Attorney General Remarks, Chicago, October 9, 2004 (www.usdog.gov/ag/speeches/2002/100902agremarksbifindictment.html, accessed Apr; 1, 2004).
[101] *United States v. Arnaout*, 02 CR 892 (Jan. 28, 2003) (unpublished court order).

The indictment itself contained almost no specific allegations that BIF funded al Qaeda.[102] Instead, the charges focused primarily on BIF's diversion of charitable donations to fund Chechen and Bosnian fighters. At the same time, the indictment highlighted Arnaout's historical relationship with Bin Ladin and BIF's links to certain al Qaeda leaders, including BIF's origins with LBI, the Saudi entity Batterjee created in 1987 in large part to support mujahideen then fighting the Soviets in Afghanistan, and the handoff of nominal control of BIF from Batterjee to Arnaout. The indictment described Arnaout's history of supporting armed jihad, including Arnaout's having worked in the 1980s for the Mektab al Khidmat[103] and LBI to support various mujahideen—among them, those under the command of Usama Bin Ladin.[104]

The indictment charged Arnaout with racketeering conspiracy under RICO, alleging that Arnaout, Batterjee, and others operated BIF as a criminal enterprise and used the cover of a legitimate Islamic charity to support armed jihadist combatants. The government contended that BIF fraudulently solicited and obtained donations by falsely representing that the funds would be used solely for humanitarian purposes, while concealing that some of the donated funds were used to support armed fighters engaged in violence overseas. Through these illicit diversions, the indictment alleged, BIF provided a variety of military supplies, including boots, uniforms, and communications equipment, as well as an X-ray machine to fighters in Bosnia-Herzegovina and Chechnya. The indictment alleged that the conspirators engaged in various acts to conceal their support of armed militants and BIF's relationship to al Qaeda and other extremists.

The indictment also alleged that Arnaout and others provided material support to "persons, groups and organizations engaged in violent activities—including al Qaeda[.]"[105] The charge contains no specific claims about providing funds to al Qaeda, although it alleges that in 1998 Arnaout facilitated the travel of a key al Qaeda member into Bosnia-Herzegovina and that a leading al Qaeda member served as a BIF official in Chechnya.[106] An additional count in the indictment charged Arnaout with providing material support to persons engaged in violent activity by supplying 2,900 pairs of steel-reinforced anti-mine boots to Chechen fighters. The remaining counts charged Arnaout with money laundering and fraud in connection with BIF's activities.

The government indictment drew heavily on the documents seized from the BIF office in Bosnia that directly linked BIF and Arnaout to the formative period of al Qaeda. These links included (1) notes summarizing meetings during which al Qaeda was founded in Afghanistan in August 1988, and which specify the attendance of Usama Bin Ladin at the

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[102] The government did not charge BIF with providing material support to a designated foreign terrorist organization (FTO) in violation of 18 USC 2339, which would seem like a logical charge had the government been able to prove that the BIF funded al Qaeda after it was designated an FTO in 1999.

[103] As discussed above, the Mekhtab al Khidemat was an organization primarily operated by Sheik Abdullah Azzam and Usama Bin Ladin to provide logistical support to the mujahideen in Afghanistan.

[104] Of course, Arnaout's defenders point out that supporting bin Ladin in the 1980s when he was fighting in a cause supported by the United States is hardly evidence of supporting terrorism.

[105] Second Superseding Indictment, count 2.

[106] See discussion later in this chapter regarding OFAC designation of the BIF for more detail on the key al Qaeda operative whose travel the BIF allegedly facilitated.

original oath of allegiance (*bayat*) that prospective members made to al Qaeda; (2) a list of wealthy mujahideen sponsors from Saudi Arabia, including references to Bin Ladin and Batterjee; (3) various documents showing Arnaout's substantial role in procuring weapons for the mujahideen in the 1980s or early 1990s; and (4) a 1988 newspaper article showing a picture of Arnaout and Bin Ladin.[107]

Arnaout initially pled not guilty to all charges and mounted a vigorous legal defense. OFAC refused to license BIF to use its blocked assets to pay for Arnaout's criminal defense on the grounds that BIF's funds could not be used by Arnaout in his individual capacity. Although Arnaout personally was not designated and could use whatever funds he had to defend himself, the OFAC refusal impaired Arnaout's ability to pay his counsel and caused considerable bitterness among his supporters.

OFAC Designations

Following its blocking of BIF's and GRF's assets pending investigation, OFAC continued to try to develop the evidentiary case it believed necessary to make permanent designations. Meanwhile, the charities' finances were effectively frozen, with the exception of the licenses discussed above. At least one senior Treasury official was concerned about the potential length of a temporary blocking order. On April 12, 2002, roughly four months after the blocking order was issued, the Treasury General Counsel wrote to other senior Treasury officials that "common fairness and principles of equity counsel that we impose a reasonable end date on the duration of such orders."[108] On October 18, 2002, OFAC designated GRF a specially designated global terrorist (SDGT) pursuant to Executive Order 13224, thereby freezing its assets and blocking transactions with it. As a result, four days later, the United Nations listed GRF as an organization belonging to or associated with al Qaeda. BIF met the same fate, as a result of OFAC action on November 19 and UN action on November 21.

The OFAC designations of BIF and GRF relied on the material gathered by the FBI during its pre-9/11 investigations and, in the case of the former, on the materials obtained in the March 2002 search of BIF's Bosnian offices. In its official Statement of the Case that provides support for the designation, OFAC traced BIF's founding by Batterjee and "the close relationship between Arnaout and Usama bin Ladin, dating from the mid-

[107]The government later put together this evidence and much more in an evidentiary proffer it submitted to the court in advance of trial.

[108] Treasury Memorandum, April 12, 2002. The memo proposed a six-month limit for discussion purposes, and offered a "clear recommendation" that temporary blocking orders be pursued with "due diligence and an anticipated end date." In May and June 2002, OFAC provided GRF and BIF, respectively, with notice of its intent to designate them and provided them with time to respond. The lengthy duration of the temporary designations resulted in part from extensions of time requested by BIF and GRF. These requests were necessary, at least in part, because OFAC continually added additional documents to the administrative record, and BIF and GRF wanted time to review and respond to them before any permanent designation was issued. In addition, BIF and GRF were only slowly getting access to their own records, which the government had seized, and they wanted additional time to use these records in their defense.

1980s and continuing at least until the early 1990s."[109] OFAC drew links between BIF and Bin Ladin by noting (1) in 1998, BIF provided direct logistical support for an al Qaeda member and Bin Ladin lieutenant, Mamdouh Mahmud Salim, to travel to Bosnia-Herzegovina;[110] (2) telephone records linked BIF to Mohammed Loay Bayazid, who had been implicated in al Qaeda's effort to obtain enriched uranium; (3) in the early 1990s, BIF produced videotapes that eulogized dead fighters, including two al Qaeda members; and (4) in the late 1990s, a member of al Qaeda's Shura Council served as an officer in BIF's Chechnya office. OFAC cited a number of ways in which BIF's activities differed from its ostensible purpose (e.g., it altered its books to make support for an injured Bosnian fighter appear as aid to an orphan), the purchase of equipment for Chechen fighters, and the newspaper article the FBI agents had found in the trash, in which someone had highlighted the weaknesses in the U.S. defenses against bioterrorism.

As for GRF, OFAC's internal documents supporting the designation spelled out its ties to al Qaeda leaders, including (1) evidence that GRF provided $20,000 to a suspected al Qaeda fund-raiser in November 2001; (2) the phone contacts between GRF's executive director and the mujahideen leader associated with al Qaeda leadership; (3) the phone contacts linking GRF to Wadi al Hage, UBL's personal secretary, who was convicted in the United States for his role in the 1998 embassy bombings; and (4) funds that GRF received from Mohammed Galeb Kalaje Zouaydi, a suspected al Qaeda financier in Europe who was arrested in Spain in 2002.

OFAC's unclassified Statement of the Case laid out the extensive evidence indicating GRF's role in supporting jihad. This evidence included the pictures of sophisticated communications equipment the FBI had found in the trash, photographs of jihadists both alive and dead, and documents establishing GRF's enthusiastic support for armed jihad. For example, a GRF pamphlet from 1995 stated, "God equated martyrdom through JIHAD with supplying funds for the JIHAD effort. All contributions should be mailed to: GRF." Another GRF publication stated that charitable funds "are disbursed for equipping the raiders, for the purchase of ammunition and food, and for [the mujahideen's] transportation so that they can raise God the Almighty's word[;] . . . it is likely the most important . . . disbursement of Zakat in our times is on the jihad for God's cause[.]"[111]

OFAC's assertions and the resulting UN actions publicly designated BIF and GRF as supporters of al Qaeda and effectively shut down these operations around the world.

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[109] OFAC BIF Statement of the Case.

[110] Salim was later indicted for conspiracy to kill U.S. nationals, an overt act that included the 1998 embassy bombings. While in custody, he assaulted a corrections officer, inflicting grievous and permanent injury. Testimony in the 2001 embassy bombing trial also implicated Salim in al Qaeda's efforts to develop WMD.

[111] OFAC GRF Statement of the Case.

BIF and GRF Challenges to OFAC's Actions

GRF failed in its efforts to challenge OFAC's initial asset blocking in court. On June 11, 2002, the court denied GRF's claim for an injunction requiring the government to "unfreeze" its assets and return its property. The court held that GRF was not entitled to an injunction because it had failed to establish a reasonable likelihood of success on its claims that the U.S. government had violated its constitutional rights or the laws of the United States.[112] GRF's appeal was denied, and the U.S. Supreme Court refused to consider the case.[113] Although its legal challenge to the preliminary designation failed, GRF has continued to litigate the issue of whether sufficient evidence existed to justify its designation as an SDGT. As of this writing, that litigation is pending in federal district court in Chicago.

BIF's challenge to having its assets blocked pending investigation was stayed until the criminal case was resolved, and eventually it was dismissed. BIF elected not to challenge OFAC's designation of it as an SDGT. By that time, BIF was focused on the criminal issues, and, in any event, it was clear that BIF was dead as an organization.

Counsel for BIF and GRF expressed great frustration with the OFAC process, including the blocking of assets without any adversarial process adjudicating culpability, their view that the process lacked defined standards, their perception of OFAC's unresponsiveness to attorney inquiries and licensing requests, the use of classified evidence unavailable to the defense, and OFAC's reliance on evidence that would not be admissible in a judicial proceeding. For example, BIF's counsel was stunned to see that the administrative record supporting BIF's designation included newspaper articles and other rank hearsay. To BIF and GRF's counsel, experienced lawyers steeped in the federal courts' rules of evidence and due process, the OFAC designation process seemed manifestly unfair. In response, OFAC points out that the courts have upheld the process and standards it uses in designations, as well as the use of classified information, news articles and other hearsay in support of the designations. OFAC further maintains that its administrative record fully supports the designations of BIF and GRF.

Vigorous Defense in the Criminal Case

Before his plea, Arnaout vigorously litigated the criminal charges against him. As the case moved closer to trial, the government submitted a lengthy statement of facts setting forth the historical evidence tying Arnaout to Bin Ladin and al Qaeda. This proffer, which included multiple voluminous appendixes, drew heavily on the documents seized in Bosnia. The government did not provide specific evidence that BIF funded al Qaeda.

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[112] *Global Relief Foundation v. O'Neill et al.*, 207 F. Supp. 2d 779, 809 (N.D. Ill. 2002).
[113] *Global Relief Foundation v. O'Neill et al*, 748 (7th Cir. 2002), *cert denied*, 124 S. Ct. 531 (2003).

Rather, it relied heavily on evidence that predated both BIF's creation and Bin Ladin's having become an avowed enemy of the United States.

Through his counsel, Arnaout asked the court to exclude all evidence related to al Qaeda, Bin Ladin, or other terrorist groups. To Arnaout, the government's case essentially boiled down to diverting charitable funds to support Chechen and Bosnian fighters, and had nothing to do with bin Ladin, terrorism, or al Qaeda. The proffer demonstrated, he contended, that "the United States intends to try Enaam Arnaout not for acts he committed in violation of United States laws, but rather for associations he had over a decade ago, before he relocated to this country, with people who were at the time America's allies but who are now its enemies."[114] The court reserved ruling on the evidence until trial, but in a ruling ominous to the government held that Arnaout "persuasively argues that a significant amount of the government's . . . proffer contains materials that are not relevant to him nor probative of the charges in the indictment(s), but rather are highly prejudicial matters suggesting guilt by association."[115]

Conviction and Sentence

On the morning that trial was to commence, Arnaout pled guilty to one count of racketeering conspiracy for fraudulent diversion of charitable donations to promote overseas combatants. He admitted that BIF solicited donations by representing the money would be used to provide humanitarian relief to needy civilians, while concealing "from donors, potential donors, and federal and state governments in the United States that a material portion of the donations received by BIF based on BIF's misleading representations was being used to support fighters overseas."[116] The supplies Arnaout admitted that he and others agreed to provide included boots for fighters in Chechnya, boots, tents, uniforms for soldiers in Bosnia-Herzegovina, and uniforms for a provisional but unrecognized government in Chechnya. The court later determined that the amount of funds diverted from humanitarian relief to support these fighters totaled $315,624.[117] Arnaout never admitted to supporting al Qaeda or any other terrorist group. To the contrary, as the presiding federal district court judge pointed out, "In its written plea agreement, the government agreed to dismiss sensational and highly publicized charges of providing material support to terrorists and terrorist organizations."[118]

The court sentenced Arnaout to more than 11 years in prison, but flatly rejected the government's request that it apply the sentencing enhancement for crimes of terrorism, which would have mandated a 20-year prison sentence. The court said plainly, "Arnaout does not stand convicted of a terrorism offense. Nor does the record reflect that he

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[114] Defendant's Motion *in Limine* to Exclude Evidence of Historical Events (January 13, 2003).
[115] Order, Jan. 30, 2003. Separately, the court rejected the government's proffer as insufficient to satisfy the hearsay exception for co-conspirator statements. *U.S. v. Arnaout*, 2003 U.S. Dist. Lexis 1635 at *1 (Feb. 4, 2003). This order made it more difficult and riskier for the government to offer such statements at trial.
[116] Plea Agreement at 4.
[117] *U.S. v. Arnaout*, 282 F. Supp. 2d 838, 840 (N.D. Ill. 2003).
[118] *United States v. Arnaout*, 282 F. Supp. 2d at 843.

attempted, participated in, or conspired to commit any act of terrorism."[119] Moreover, the court held that the offense to which Arnaout pled guilty, racketeering conspiracy, was not a crime of terrorism as defined by law. The court further held that applying the enhancement would be improper because the "government has not established that the Bosnian and Chechen recipients of BIF aid were engaged in a federal crime of terrorism, nor that Arnaout intended the donated boots, uniforms, blankets, tents, x-ray machine, ambulances, nylon and walkie-talkies to be used to promote a federal crime of terrorism."[120] The court did increase Arnaout's prison time on the grounds that he diverted humanitarian aid from the destitute population BIF was aiding to armed fighters. Both the government and Arnaout appealed the sentence. Arnaout challenged the court's enhancement of his sentence for diverting funds from needy civilians, and the government challenged the refusal to apply the terrorism enhancement. A decision is pending.

Although Arnaout pled guilty to a serious felony and received a long prison sentence, many people in the Islamic and Arab communities concluded that Arnaout had been vindicated of any charge of supporting terrorism. They interpreted the judge's refusal to apply the terrorism sentencing enhancement as a major defeat for the government. As Al Jazeera told its online readers, "The U.S. government had hoped for a high profile 'terrorism' conviction, but the judge said the case had not been made."[121] The charge Arnaout pled to, although undeniably serious, fell far short of what the judge derisively called "sensational and highly publicized" charges of supporting terrorists, which the Attorney General himself had announced with great fanfare. A BIF lawyer believes that Arnaout's case, along with the shutdown of BIF, hurt and angered the Muslim community in the Chicago area. She fears that the bad feelings left by the case substantially reduce the likelihood of cooperation with law enforcement in the future.

Senior FBI agents in the Chicago office, who devote substantial effort to community outreach, agreed that the plea and the court's refusal to sentence Arnaout as a terrorism offender led many in Chicago's large Islamic community to see him as vindicated and to believe the government unjustly targeted him for prosecution—"picking on a poor guy" who is standing up for Muslims, as one agent described it.[122] These agents, as well as the case agents, agree that accepting a plea to a serious RICO (Racketeer Influenced and Corrupt Organization Act) charge was the right decision, but believe a trial would have allowed the government to lay out all its evidence against Arnaout in open court. They believe the community then would have seen what the agents saw—that Arnaout and BIF were supporting terrorism.

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[119] *Id.*
[120] *Id.* at 845.
[121] Http://english.aljazeera.net (accessed Dec. 31, 2003).
[122] Commission Staff Interview.

Status of the GRF Criminal Case

The government's criminal investigation of GRF included the review of the voluminous documents and computer records seized from the GRF office and interviews with GRF personnel. Despite this effort, the government has to date filed no criminal charges against GRF or its leadership, and any such charges appear increasingly unlikely. GRF steadfastly denies any wrongdoing and its supporters view the government's failure to follow the OFAC blocking with a criminal indictment as a vindication of the organization. GRF's counsel contends that GRF never provided a single dollar to fund terrorism and that the government's evidence of suspicious links with terrorists all have innocuous explanations. He asserts GRF is an entirely innocent victim of the government's attempt to take some actions to respond to public panic caused by 9/11.

The government never proved a criminal case against GRF fund-raiser Haddad. Instead, Haddad was deported to his native Lebanon in July 2003 after an immigration judge found him ineligible for asylum because he was a security danger to the United States, a decision which was affirmed by the Board of Immigration Appeals. The decision to deport him rather than continue the criminal investigation was made in Washington, without consultation with the Detroit case agent who had investigated Haddad. Despite the findings of the immigration judge, Haddad's deportation generated considerable sympathy for him and condemnation of an alleged violation of his civil rights by the U.S. government. The government contends that ample evidence demonstrated that Haddad had significant terrorist ties and was a substantial threat to the United States.[123]

Lessons of BIF/GRF

The agents and officials in these cases faced one of the most important and difficult issues in the fight against al Qaeda and jihadist fund-raising: there is a difference between troubling "links" to terrorists and compelling evidence of supporting terrorists. This gives rise to a further issue: how much information does the government need before it can take action against a potential terrorist fund-raiser?

Law enforcement officials had concluded that both BIF and GRF had substantial and very troubling links to al Qaeda and the international jihadist movement. Government agents had little doubt that the leadership of these organizations endorsed the ideology of armed jihad and, in many cases, supported an extremist and jihadist ideology. Both of these organizations raised large amounts of money in the United States, which they sent overseas, often to or through people with jihadist connections. When the money went overseas, it became virtually untraceable, since it could be converted to cash and sent

[123]It is not our purpose to assess Haddad's culpability, but we recognize the decision not to criminally prosecute him does not amount to an exoneration. A decision about whether to prosecute an individual can turn on a number of factors other than his guilt, including whether unclassified evidence is available to use in court against him.

anywhere in the world. Moreover, BIF, at least, was plainly funding armed jihadist fighters.

But there is another side to the story. Despite these troubling links, the investigation of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda—at least after al Qaeda was designated a foreign terrorist organization in 1999. Indeed, despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best terrorist prosecutors has not been able to make any criminal case against GRF and resolved the investigation of BIF without a conviction for support of terrorism. Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government's destruction of these charities reflects bias and injustice with no measurable gain to national security.

The cases of BIF and GRF reveal how fundamentally 9/11 changed law enforcement and the approach of the U.S. government to those suspected of financing terrorists. In the past, suspicions of terrorist connections often resulted in further investigation but not action. The FBI watched jihadist sympathizers send millions of dollars overseas because they did not have a sense of urgency about disrupting the fund-raising and, in any event, had no practical way to do so. The 9/11 attacks changed everything. Suddenly, letting money potentially earmarked for al Qaeda leave the United States became another potential mass casualty attack. The government after 9/11 had both the will and the tools to stop the money flow. Thus, the government targeted and destroyed BIF and GRF in a way that was inconceivable on September 10.

But the question remains, was the destruction of BIF and GRF a success? Did it enhance the security of the United States or was it a feckless act that violated civil rights with no real gain in security? A senior government official who led the government's efforts against terrorist financing from 9/11 until late 2003 believed the efforts against the charities were less than a full success and, in fact, were a disappointment because neither charity was publicly proved to support terrorism. The former head of the FBI's Terrorist Financing Operations Section believes that strong intelligence indicated GRF and BIF were funding terrorism and, although the evidence for a strong criminal terrorism case may have been lacking, the government succeeded in disrupting terrorist fund-raising mechanisms. At the same time, he believes the cases have not been successful from a public relations perspective because there have been no terrorism-related convictions.

BIF and GRF still contend they never supported terrorism, and decry the government's conduct as counterproductive and abusive. A BIF lawyer said she understands the government's desire to take decisive action after 9/11 but thinks in moving against BIF the government overreached, lost sight of what the evidence showed, sought to graft irrelevant, dated al Qaeda allegations onto a simple fraud case, and ignored the rules of fairness and procedural safeguards that make our system the best in the world. In her view, the U.S. government "needs to be better than that," especially in times of crisis when our values are put to the test.

Our purpose is not to try to resolve the question of whether BIF or GRF actually provided funds to terrorists. We can, however, come to some understanding about whether the government action against them was justified. Reviewing the materials, classified and unclassified, available to the government makes it clear that their concerns about BIF and GRF were not baseless. There may not have been a smoking gun proving that these entities funded terrorism, but the evidence of their links to terrorists and jihadists is significant. Despite the charities' humanitarian work, responsible U.S. officials understandably were concerned about these organizations sending millions of dollars overseas, given their demonstrable jihadist and terrorist ties. Moreover, Arnaout has admitted to fraudulent conduct, which in and of itself constitutes a serious felony, even though it does not prove he funded al Qaeda.

At the same time, the government's treatment of BIF and GRF raises substantial civil liberty concerns. IEEPA's provision allowing blocking "during the pendency of an investigation" is a powerful weapon with potentially dangerous applications when applied to domestic institutions. This provision lets the government shut down an organization without any formal determination of wrongdoing. It requires a single piece of paper, signed by a midlevel government official. Although in practice a number of agencies typically review and agree to the action, there is no formal administrative process, let alone any adjudication of guilt. Although this provision is necessary in rare emergencies when the government must shut down a terrorist financier before OFAC can marshal evidence to support a formal designation, serious consideration should be given to placing a strict and short limit on the duration of such a temporary blocking. A "temporary" designation lasting 10 or 11 months, as in the BIF and GRF cases, becomes hard to justify.

Using IEEPA at all against U.S. citizens and their organizations raises potentially troubling civil liberties issues, although to date the courts have rejected the constitutional challenges to IEEPA in this context.[124] As the Illinois charities cases demonstrate, IEEPA allows the freezing of an organization's assets and its designation as an SDGT before any adjudication of culpability by a court. The administrative record needed to justify a designation can include newspaper articles and other hearsay normally deemed too unreliable for a court of law. A designated entity can challenge the designation in court, but its chances of success are limited. The legal standard for overturning the designation is favorable to the government, and the government can rely on classified evidence that it shows to the judge but not defense counsel, depriving the designated entity of the usual right to confront the evidence against it. Still, because of the difficulties of prosecuting complex terrorist-financing cases the government may at times face the very difficult choice of designating a U.S. person or doing nothing while dollars flow overseas to potential terrorists.[125]

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[124] As noted above, the GRF challenge to IEEPA's constitutionality failed in court. *See also Holy Land Found. For Relief and Dev. v. Ashcroft*, 219 F. Supp. 2d 57 (D.D.C. 2002) (upholding use of IEEPA against purported charity accused of funding terrorism).

[125] The IEEPA process gives the designated person fewer rights than in the somewhat analogous circumstance of civil forfeiture, in which the government seeks to take (as opposed to freeze) property that

Finally, we need to keep BIF and GRF in mind as we evaluate the efforts (or lack of efforts) of our allies as they respond to intelligence concerning persons allegedly financing terrorism. Several former government officials have criticized the Saudi government for its failure to prosecute individuals for financing terrorism. As one put it, Saudi Arabia needs a "Martha Stewart"—a high-profile donor whose prosecution can serve as deterrent to others. Much of the frustration with the Saudis results from their apparent lack of will to prosecute criminally those persons who U.S. intelligence indicates are raising money for al Qaeda. Although willing to take other actions based on the intelligence—such as removing someone from a sensitive position or shutting down a charity—the Saudis have failed to impose criminal punishment on any high-profile donor. BIF and GRF should remind us that terrorist links and evidence of terrorist funding are far different things. Saudi Arabia and other countries certainly have at times been recalcitrant in seeking to hold known terrorist fund-raisers accountable for their actions. But in criticizing them, we should remember that in BIF and GRF, the total political will, prosecutorial and investigative talent, and resources of the U.S. government have so far failed to secure a single terrorist-related conviction.

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it claims was derived from or used to commit specific crimes or unlawful acts. In seeking forfeiture where no crime is charged, the government must file a civil lawsuit and bear the burden of proof by a preponderance of the evidence (the standard used in most civil cases) that the property in question is forfeitable. The defendant gets the same type of discovery of the evidence available to any other litigant, such as taking sworn depositions and obtaining documents. Moreover, the defendant has the right to avoid forfeiture by demonstrating that he is an innocent owner, that is, he obtained or possessed the property in question without knowing its illegal character or nature.

Chapter 7

Al Haramain Case Study

The al Haramain Islamic Foundation (al Haramain or HIF) is one of the most important and prominent Saudi charities.[126] Al Haramain has been on the radar screen of the U.S. government as a potential terrorist-financing problem since the mid- to late 1990s, when the U.S. government started to develop evidence that certain employees and branch offices might be supporting al Qaeda and related terrorist groups.[127]

The U.S. government, however, never moved against al Haramain or pushed the Saudi government to do so until after 9/11. Terrorist financing simply was not a priority in its bilateral relationship with the Saudis before 9/11. Even when discussing terrorist financing with the Saudis, the U.S. government was more concerned about issues other than Saudi charities and al Haramain.[128] Meanwhile, the Saudis were content to leave the issue unexplored.

After the 9/11 attacks, a more focused U.S. government sought to work with the Saudis to stem the flow of funds from al Haramain to al Qaeda and related terrorist groups. Progress was initially slow; though some U.S.-Saudi cooperation on al Haramain occurred within the first six months after 9/11, it was not until the spring of 2003 that the U.S. government and the Saudi government began to make real strides in working together to thwart al Haramain.

Background

Al Haramain, a Saudi Arabia–based nonprofit organization established in the early 1990s, has been described by several former U.S. government officials as the "United Way" of Saudi Arabia. It exists to promote Wahhabi Islam by funding religious education, mosques, and humanitarian projects around the world.[129]

At its peak, al Haramain had a presence in at least 50 countries. Al Haramain's main headquarters are in Riyadh, Saudi Arabia, but it maintains branch offices in a number of

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[126] See chapter 1 for the scope of this analysis.

[127] This chapter is derived from a review of internal government document and interviews with government policy makers. It was especially aided by the commission staff's ability to access and review NSC subgroup minutes of meetings, as well as internal memoranda from the NSC, State, Treasury and the intelligence community.

[128] Our investigation has focused on al Haramain in the context of al Qaeda financing. Although much of our analysis may apply to the financing of other terrorist groups, we have made no systematic effort to investigate any of those groups, and we recognize that the financing of other terrorist groups may present the U.S. and Saudi governments with problems or opportunities not existing in the context of al Qaeda.

[129] The Web site uses the term *salafi*, which is the preferred term of Saudi practitioners of Wahhabism. Some argue that Wahhabism is a virulent form of religious extremism, while others have a more benign view of it. See chapter 2 for more information.

countries to facilitate the distribution of charitable funds. Some of these offices are staffed by Saudi citizens; others are managed by the nationals of the countries involved. Estimates of its budget range from $30 to $80 million. It claims to have constructed more than 1,299 mosques, it funds imams and others to work in the mosques, and it sponsors more than 3,000 "callers to Islam" for tours of duty in different locations "to teach the people good and to warn them from wrongs." HIF provides meals and assistance to Muslims around the world, distributes books and pamphlets, pays for potable water projects, sets up and equips medical facilities, and operates more than 20 orphanages.

Although both the Saudi government and al Haramain say that it is a private organization, al Haramain has considerable ties to the Saudi government. Two government ministers have supervisory roles (nominal or otherwise) over al Haramain, and there is some evidence that low-level Saudi officials had substantial influence over various HIF offices outside of Saudi Arabia. The Saudi government has also historically provided financial support to al Haramain, although that may have diminished in recent years.

Charity and charitable organizations, like al Haramain, are extremely important to Saudi society. As discussed in more detail in chapter 2, religious and civic duty and government and religious functions in Saudi Arabia are intertwined. This dynamic creates complications for the Saudi government as it seeks to stem the flow of funds from Saudi Arabia to al Qaeda and related terrorist groups, and difficulties for the U.S. government as it seeks to engage the Saudis on terrorist financing.

Before 9/11

After the East Africa bombings in the summer of 1998, the U.S. government began to give more attention to terrorist financing. The National Security Council established a subgroup of the Counterterrorism Security Group to focus the U.S. government's efforts on terrorist financing.[130] As a result of this focus, and the consequent discovery that al Qaeda was not financed from Bin Ladin's personal wealth, the NSC became increasingly interested in Saudi charities and Bin Ladin's use of charities to fund terrorism.[131]

By no later than 1996, the U.S. intelligence community began to gather intelligence that certain branches of HIF were involved in financing terrorism. Later, the U.S. intelligence community began to draw links among HIF, the 1998 East Africa bombings, jihad actions in the Balkans, Chechnya, and Azerbaijan, and support for al Qaeda generally. The United States shared some of its information with the Saudis in an effort to spur action, including evidence that al Haramain officials and employees in East Africa may have been involved in the planning of the 1998 embassy bombings. The United States sought information and reports from the Saudis on employees of al Haramain around the globe and their connections to Bin Ladin, but received no substantive responses.

[130] Terrorist financing was also a component of the larger strategic plan Richard Clarke developed after the embassy bombings.
[131] The U.S. government's efforts to understand al Qaeda financing, and its engagement with Saudi Arabia, are described in chapter 3.

The Saudis took little initiative with respect to their charities. They did not make tough decisions or undertake difficult investigations of Saudi institutions to ensure that they were not being used by terrorists and their supporters. Although the Saudis did institute "Guidelines for Preventing Money Laundering" in 1995 and "Regulations on Charitable Organizations and Institutions" in 1990, these were very loose rules whose enforcement was doubtful. Moreover, the regulations covered only domestic charities, through the Ministry of Labor and Social Affairs, and exempted all charities set up by royal decree.

There may have been a number of reasons for Saudi inaction. Certainly, as we have discussed elsewhere (see chapter 2), the prominence of religion-based charities in Saudi culture may have made the Saudis reluctant to entertain the idea that charities might be involved in clandestine activities. Some in the United States suspected that the Saudis were complicit or at least turned a blind eye to the problem posed by charities during this period, although others vehemently disagreed.

Ultimately, however, the U.S. government simply did not ask much of the Saudis on terrorist financing, and the Saudis were content to do little. We did not provide sufficient information for the Saudis to act against charities like al Haramain, did not push the Saudis to undertake investigations of charities like al Haramain, and did not request real cooperation from the Saudis on intelligence or law enforcement matters relating to charities like al Haramain.

Other areas of U.S. policy involving the Saudis took precedence over terrorist-financing issues such as those concerning al Haramain. The U.S. government wanted the Saudis to support the Middle East peace process, ensure the steady flow of oil, cut off support to the Taliban, continue various mutually beneficial economic arrangements, and assist in the containment of Iraq. Given these other interests, stopping the money flow to terrorists was not a top priority in the U.S.-Saudi relationship.

Saudi policy was formulated at a very high level in the U.S. government. During the late 1990s, the U.S.-Saudi relationship was handled primarily by the U.S. government's most senior officials, including the secretaries of key departments (collectively referred to as the "Principals"), and often even by the President alone. This situation reflected the significance of the U.S. interests involved, considerable Saudi ties to senior U.S. officials, and U.S. willingness to accede to the strong Saudi preference for bypassing the U.S. bureaucracy. One former NSC official noted that before 9/11, lower-level officials in both governments generally handled terrorist financing, especially given the weakness of the intelligence on terrorist financing and the issue's low priority. The officials with knowledge about it were not the ones interacting with the Saudis, and those who were interacting with the Saudis did not push the issue of terrorist financing because their concerns were different.

Moreover, the U.S. government had too little unilateral intelligence on HIF and on al Qaeda's funding mechanisms generally to press the Saudis. The Principals did not want to confront the Saudis with suspicions; they wanted firm evidence. One NSC official

indicated that there was some intelligence regarding charities, but it did not rise to the level of being actionable against any specific charity. As he said, "One individual could be dirty, but it would be difficult to justify closing down a charity on that basis." Occasionally the U.S. government provided select pieces of information out of context, but this method lessened the impact of the intelligence.

After 9/11

As we described in chapter 3, the 9/11 attacks generated a sudden and high-level interest in terrorist financing. Attention invariably turned to Saudi Arabia. The U.S. and Saudi governments initially agreed on a joint strategy, represented by the mutual U.S.-Saudi action against two branches of al Haramain in March 2002 designating them as financiers of terror.[132] But it was not until the spring of 2003 that the U.S. government developed a coherent strategy on engaging the Saudis on terrorist financing and specified a senior White House official to deal with the Saudi government on these issues. These elements enabled the U.S. government to capitalize on a new Saudi commitment to countering the financing of terrorism after the Riyadh bombings on May 12, 2003.

From 9/11 to March 2002: The U.S. government's initial efforts to organize the interagency process and engage the Saudis

Two things occurred immediately after 9/11: first, the U.S. government formed what turned out to be a generally effective interagency coordinating committee on terrorist financing; second, this group began discussing possible action to take against al Haramain.

Immediately after 9/11, the U.S. government, for the first time, developed a generally effective mechanism to coordinate agencies' approach to terrorist finance. Initially, an ad hoc gathering of agency representatives met under the auspices of the NSC to discuss and coordinate terrorist-financing issues. In March 2002, this ad hoc group was formalized by the NSC as the Policy Coordinating Committee (PCC), chaired by the Treasury Department with representatives from eight agencies with relevant subagencies. The PCC was designed to recommend to the President policy initiatives and actions aimed at destroying the financial infrastructure of terrorism.

After 9/11, there was constant discussion at the PCC about how to engage the Saudi government on terrorist financing. The U.S. government had new, aggressive legal authorities under Executive Order 13224 and UN Security Council Resolution 1373 (see chapter 5). The major issue was whether to use these coercive tools unilaterally or take a more diplomatic approach in engaging Saudi Arabia and their charities. On the one hand, using these tools against al Haramain, one of the most important Saudi charities, could be

[132] For an explanation of the IEEPA and UNSC process, see chapter 5, concerning al-Barakaat.

counterproductive without Saudi support.[133] On the other hand, using these strong tools could send an unequivocal message that the U.S. government and the international community were serious about fighting terrorist financing.

After considering the options for designating al Haramain, the PCC decided to try to engage the Saudis constructively on this charity. The United States wanted many things from the Saudis: information about the hijackers, action against al Qaeda cells training and operating in Saudi Arabia, intelligence sharing, and access to detained individuals. Terrorist financing was not the only element of the U.S.-Saudi counterterrorism relationship, nor the only objective of U.S. counterterrorism policy. The concern was that if the U.S. government pressed the Saudis on al Haramain, the Saudis' cooperation with the United States on counterterrorism issues or other issues would be jeopardized.

Moreover, as was the case before 9/11, the intelligence was simply not strong enough against the HIF headquarters to push the Saudi government to take aggressive action against the whole organization. As an early 2002 strategy paper emphasized, the United States needed to gather more solid, credible evidence on al Haramain, which could be released to the Saudi government as a way to ensure continued Saudi cooperation. Although the intelligence community expressed repeated concerns that al Haramain was deeply corrupted, others argued that there was little actionable intelligence on the charity. The intelligence presented to the policymakers was either dated, spoke to fund-raising for "extremism" or "fundamentalism" and not for terrorism, or lacked specificity. Indeed, because of the lack of specific intelligence, the U.S. government was in "asking mode" on al Haramain when interacting with the Saudis.

There was also the sense that the Saudi government would prefer to cooperate quietly with the U.S. government for internal political reasons. Perhaps they did not want to create the impression that charities were under attack. U.S. officials agreed to pursue quiet cooperation as long as the U.S. government saw concrete results. Although the United States saw no concrete results until 2003, it stuck with its plan to engage the Saudis quietly on terrorist-financing matters.

This cooperative approach was in evidence in the first interactions between U.S. and Saudi officials on al Haramain. In late November 2001, Assistant Secretary of State William Burns traveled to the Kingdom and shared U.S. concerns about terrorist financing with his Saudi interlocutors.[134] Al Haramain was not a subject of the questions but was listed in the talking points for the trip as an entity of concern.

Then, on January 17, 2002, Assistant Secretary Burns and Ambassador Robert Jordan provided the Saudi Crown Prince Abdullah and Foreign Minister Prince Saud al Faisal with a proposal for a joint U.S.-Saudi freeze of the accounts of eight Saudi entities and

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[133] Within weeks after 9/11, the United States used its new powers of designation to freeze the assets of a prominent Saudi citizen, Yasin al Qadi. Apparently this unilateral action had created backlash in the Saudi government.

[134] An OFAC team received a one page response in Arabic from Saudi Arabia to these concerns in January 2002. This response was never supplemented by the Saudi government.

individuals, including the al Haramain offices in Bosnia and Somalia. In their discussions, the governments focused their attention on the U.S. proposal relating to the two al Haramain branch offices.

In Saudi Arabia at the end of January, Richard Newcomb, the director of Treasury's Office of Foreign Assets Control (OFAC), also raised the possibility with his Saudi interlocutors of joint designations. His talking points included two pages of classified intelligence on al Haramain (and other charities) to provide the Saudis. The Saudis agreed to "look into" the U.S. concerns on al Haramain. In addition to proposing joint designations, the U.S. delegation expressed "concern" over several other HIF branches, including those in Pakistan and Kenya (both designated in January 2004), and requested information from the Saudis.

On February 5, 2002, the Saudi government issued an official statement acknowledging "reports" of abuses by individuals affiliated with foreign offices of HIF and committed publicly to take actions to prevent such abuse. However, the Saudis were slow to respond to the U.S. proposal on the two al Haramain offices. The issue was taken up by senior levels in the U.S. government. For example, Treasury Secretary Paul O'Neill raised the proposal on his March 2002 trip to Saudi Arabia.

Eventually, the Saudi government agreed to the joint designation of the two al Haramain offices, although it did not agree to designate the other six entities or individuals originally proposed. On March 11, 2002, the U.S. and Saudi governments designated the Somali and Bosnian offices of al Haramain, freezing their assets and prohibiting transactions with them. Two days later the United Nations added the two branch offices to its list of sanctioned entities under UNSCR 1267 and subsequent related resolutions.

From March 2002 to January 2003: The U.S. loses traction

In early 2002, senior-level government officials started developing a new U.S. strategy toward Saudi Arabia on counterterrorism generally; terrorist financing would necessarily play a part. Because the strategy was so politically sensitive, the task of developing it was given to a small group within the NSC. As a result, PCC efforts to deal with the Saudis on terrorist financing were placed on hold for most of 2002, while the NSC drafted the strategy with a small team of agency representatives.

During that time, the U.S. government engaged the Saudis only sporadically on HIF. Although in the spring of 2002 the U.S. government requested specific information from Saudi Arabia on HIF associates, no action was to take place until the larger Saudi strategy on counterterrorism had been finalized.

During the summer and fall of 2002, the U.S. government received information that the Bosnian and Somali offices of al Haramain, whose assets were supposed to have been frozen and offices shut down, had reopened or were still active in some fashion. In September 2002, the U.S. government decided to approach the Saudi government about

the reopenings of the Bosnian and Somali branches of HIF. The topic was raised at a senior level by U.S. government officials in Washington and through official visits to the region in the fall of 2002. The Saudis indicated they were unaware of the reopenings but said they would work with the U.S. government on the issue.

During 2002, the Saudis repeatedly said they would be prepared to act against al Haramain if the U.S. government provided them with more information, especially about specific branch offices and individuals. Some thought that this was perhaps simply lip service. For instance, in October 2002 Under Secretary of State Alan Larson raised with the Crown Prince strong concerns about the activities of several al Haramain offices. The Crown Prince responded that he was ready to act on any specific information the United States could provide. Some viewed Saudi requests for information from the United States as somewhat disingenuous given Saudi Arabia's ability to gather information on HIF and its supporters. Others were not so sure the Saudis had that ability. Perhaps even a tit-for-tat dynamic was at work: the U.S. government did not share intelligence that the Saudis thought we had, and which in many cases we did have, so the Saudi government feigned ignorance in order not to share its intelligence with the United States.

In December 2002, the Deputies Committee (DC), which consists of deputy secretaries of key departments and generally oversaw the activities of the PCC, approved the 12-step program for reinvigorating U.S. policy toward Saudi Arabia on counterterrorism overall. Much of the Saudi strategy dealt with terrorist financing. The steps included naming a senior interlocutor on terrorist finance, sharing more concrete and actionable intelligence with the Saudis, providing expertise in money laundering and investigative techniques, encouraging more public discussion of the business risks generated by opaque financial structures, pressuring Saudi nongovernmental organizations (NGOs) to adopt better oversight practices, and encouraging better use of the media to combat terrorist financing.

Concurrently with the approval of the Saudi strategy, the DC formally pushed forward a "nonpaper"[135] on al Haramain. Its goal was to compile U.S. government information on HIF, urge the Saudis to take specific actions, and set time frames for such actions. Agencies were tasked and the nonpaper was finalized by January 2003. Attention from the DC gave the nonpaper sufficient strategic importance for agencies to devote resources to developing it and motivated the approval of the release of information.

Two relatively new appointees, State Department Coordinator for Combating Terrorism Cofer Black and Special Assistant to the President and Senior Director on Combating Terrorism at the NSC Rand Beers, presented the nonpaper on al Haramain to Saudi officials during a previously planned trip on counterterrorism at the end of January 2003. At last, the U.S. government was providing the Saudis with the information that they had long requested and that the U.S. government had previously failed to supply. The mood was optimistic. A Department of State memo from January 2003 referring to al Haramain and other cases of concern suggested that "there is every indication that the Saudis are

[135] A "nonpaper" is generally understood to be an official but not definitive statement on an issue by a U.S. government agency.

ready to work with us on these specific cases now that we have specific information for them to act upon."

The nonpaper set out al Haramain's ties to terrorism, with details on various individuals, branch offices, and methods of transferring funds. The nonpaper suggested that many al Haramain field offices and representatives operating throughout the world, as well as its headquarters in Saudi Arabia, appeared to be providing important support to al Qaeda. The nonpaper recited prior U.S. requests for information from the Saudis and specific points of intelligence the United States had shared with the Saudis since 1998, and it noted that the United States had shared with the Saudis very little information between 9/11 and its delivery.[136] The nonpaper contained substantial information, including details on the role of the HIF headquarters in supporting terrorist organizations. Reflecting the new U.S. strategy, the U.S government was more direct and forceful in its message and gave the Saudi government concrete challenges to meet.

While the nonpaper represented a new and effective tactic, its delivery illustrated a shortcoming in the U.S. government's approach to Saudi Arabia on terrorist financing: Cofer Black and Rand Beers were new faces for the Saudis on this issue, and their portfolios were much broader than the fight against terrorist financing. The U.S. government had used a number of messengers, and there was no single person sending the Saudi government a clear message; each individual spoke about terrorist financing and HIF in the context of his or her predetermined and wide-ranging agenda; each individual spoke to different interlocutors with differing responsibilities and chains of command; and despite the sensitivity of the issue, not all the officials were senior. A U.S. official on the PCC said that Saudi representatives complained that junior U.S. officials were, in essence, bothering them. This failure to focus U.S. engagement of the Saudis was most apparent during our efforts to raise the reopenings of the Bosnian and Somali offices with Saudi officials. Within a six-week period in the fall of 2002, about five emissaries from the United States approached the Saudi government. Our efforts suffered from the diffusion of the message and, in the words of one senior U.S. official, the U.S. government allowed itself to be "gamed" by the Saudis because it failed to speak with one voice.

Moreover, it was acknowledged that the Saudis would be more likely to follow the leadership of the U.S. government on this subject if a senior White House official served as the interlocutor on terrorist financing to the Saudi government. In fact, the Saudis requested such an appointment in the fall of 2002. The U.S. government agreed the idea was a good one, but could not settle on an appropriate individual for the role until more than six months later. This failure to appoint a senior White House official in a timely fashion arguably caused a crucial delay in U.S. efforts to engage the Saudis on terrorist financing and al Haramain. One U.S. terrorist-financing official said the Saudis did not take terrorist financing seriously until this appointment was made. They looked at U.S. actions and concluded that terrorist financing was not as important to the United States as other issues.

[136] At that time, most of the intelligence on HIF released to the Saudis since 9/11 related to the Bosnian and Somali offices of HIF, in connection with the U.S.-Saudi joint designation of these offices in March 2002.

From 9/11 to May 2003: A lack of real cooperation from the Saudis

After 9/11, Saudi government officials appeared to be in denial that vast sums of money were flowing from Saudi Arabia to al Qaeda and related terrorist groups, or that the government had any responsibility in connection with these money flows. Some in the U.S. government thought that it simply never occurred to the Saudi government that a charity could be a conduit for terrorist financing. As well, some argued that charities' record keeping and the Saudi government's controls were insufficient for the Saudi government to know of al Haramain's links to terrorist organizations.

Even after the Saudi government froze the assets of the Bosnian office in March 2002, one senior Saudi government official denied in the press that the al Haramain office in Sarajevo was engaged in illicit activities. He claimed that the U.S. government had apologized to HIF for designating the wrong office. Another senior Saudi official characterized any terrorist financing out of the Kingdom as involving isolated cases and government controls as sufficient to prevent further problems; a third described HIF's clandestine activities as outside activities. We know these descriptions were inaccurate, as the U.S. and Saudi governments continued to take action against al Haramain and its employees.

Despite having frozen the accounts of entities and individuals listed by the United Nations under UNSCR 1373, the Saudis did little else initially. They insisted that their then 12-year-old charities law would suffice, as would their then 7-year-old anti-money-laundering statute. Foreign operations of charities were not regulated until 2002, when the Ministry of Islamic Affairs was put in charge of overseeing them. In the summer of 2002, the Saudis claimed that all out-of-country charitable activities had to be reported to the Foreign Ministry, but later in the year a representative of the Foreign Ministry said he knew of no such regulation. They claimed that they were reviewing all domestic charities in 2002 but took no actions and did not inform the U.S. government of any findings, even while clandestine activity continued. They repeated promises throughout 2002 to establish a High Commission that would oversee all charitable activities, and then claimed to have created such an entity in December 2002. By late fall of 2002 the Saudi government said it was moving to regulate charities further, but the U.S. government had not seen any documentation to that effect as of spring of 2003.

The Saudis responded to the increase in U.S. pressure, exemplified by the delivery of the al Haramain nonpaper in early 2003, by articulating additional counterterrorism policies. The measures were to include Ministry of Islamic Affairs preclearance of transfers of charitable funds overseas, host government approval of all incoming charitable funds from Saudi Arabia, and monitoring of charities' bank accounts through audits, expenditure reports, and site visits. Also in the spring of 2003, the Saudi Arabia Monetary Authority (SAMA) was said to have instituted a major technical training program for judges and investigators on terrorist financing and money laundering.

On al Haramain, the Saudi press reported in February 2003 that the Saudi government was planning to restructure the charity. The Saudi government had also reportedly initiated an investigation of al Haramain and was examining the personal accounts of senior officers. However, the Saudis resisted taking action against a top HIF executive despite U.S. requests. In April 2003, the Saudi government said that a new Board of Directors would be appointed for al Haramain, no new offices would be permitted, no third-country nationals would be hired, all overseas offices were to have their own local lawyers and accountants, and a licensing procedure would be implemented. Again, there was a sense that the Saudis wished to take such actions quietly. On May 8, 2003, the U.S. embassy in Riyadh reported that the Saudi government would close ten al Haramain branch offices pending review of their finances. This claim was reiterated several times by Saudi or HIF officials over the summer of 2003.

Although these measures were all steps in the right direction, the Saudi government generally failed to carry out a number of the actions pledged. For instance, they did not close the branch offices of HIF as promised. As well, the Saudi government remained cautious about speaking publicly about counterterrorism issues and ramping up its reforms. Some in the U.S. government thought that public statements by the Saudi government could have gone a long way toward deterring Saudi financial support for terrorists. Admittedly, the Saudis were, and still are, cautious about how any reforms and close cooperative efforts with the United States are perceived in the Kingdom.

Underlying the Saudi government's reluctance to act against charities funneling money to terrorists lay several issues.[137] First, at the time the Saudi government did not view al Qaeda as a domestic threat. The Saudis simply may not have believed that al Qaeda would attack it, despite the known hatred of al Qaeda and Bin Ladin for the Saudi regime. The signs were there, however, and even the U.S. government had warned the Saudis of possible upcoming attacks in the Kingdom.

Second, the Saudi government's efforts on terrorist financing were domestically unpalatable. It had been content for many years to delegate all religious activities, including those of charities, to the religious establishment and was reluctant to challenge that group. Since the Saudi government did not view al Qaeda as a domestic threat at that time, it could not justify the potential domestic rancor that would have resulted from a strong program against terrorism financing. The challenge was to find a way to increase oversight over charities, mosques, and religious donations without endangering the country's stability. Of course, by failing to reassert some measure of control over the religious establishment, the House of Saud was just as likely to endanger its stability.

[137] In addition to the points stated below, some with the U.S. government have speculated that the Saudi government resisted investigating al Haramain and other charities for fear that such investigations might unearth information implicating, or at least unflattering to, senior members of the Saudi government in the clandestine activities of the charity. The Commission staff has found no evidence that the Saudi government as an institution or as individual senior officials individually funded al Qaeda.

Third, the Saudi government did not have the technical capabilities to stem the flow of funds to terrorists from charities in Saudi Arabia. The Mubahith lacked the necessary investigative expertise to track financial crimes. In addition, as described in an internal OFAC document from April 2002, "The SAG [Saudi Arabian government] does not have the legal or operational structures in place at this time to effectively implement the U.N. resolutions relating to the prevention and suppression of the financing of terrorist acts."[138] Although the Saudis claimed to be developing procedures to track all donations to and from charities in October 2002, by January 2004 they were described as just starting to have such capabilities. Moreover, tighter control over money flows can be achieved only if the banks in Saudi Arabia are capable of monitoring and freezing funds. In 2002, the U.S. intelligence community was highly skeptical that Saudi banks had the necessary technical abilities.

The U.S. government was willing, and made several offers, to provide the Saudis with the necessary training. In 2002, the Saudis were described as "reluctant to host trainers from U.S. agencies on issues related to terrorist financing. This reluctance is partly cultural—an attitude that training implies a lack of equality between the parties." The U.S. government sent a Financial Services Assessment Team (FSAT) to Saudi Arabia in April 2002 to learn about Saudi financial systems and structures and ascertain opportunities for U.S. assistance and training, but the Saudis failed to schedule several key meetings during this trip.

May 2003: Turning a corner

On May 12, 2003, al Qaeda operatives detonated three explosions in an expatriate community in Riyadh, killing Westerners and Saudi Arabians. Since then, the Saudi government has taken a number of significant, concrete steps to stem the flow of funding from the Kingdom to terrorists. The Saudi government, in one of its more important actions after the bombings, removed collection boxes in mosques, as well as in shopping malls, and prohibited cash contributions at mosques. This action was important because terrorist groups and their supporters have been able to siphon funds from mosque donations. Its sensitivity cannot be overestimated. U.S. Ambassador to Saudi Arabia Jordan described the removal of the collection boxes as a "cataclysmic event." It was a real action that the Saudi public has both seen and been affected by; it has forced everyone to think about terrorist financing.

On May 24, 2003, the Saudi government followed up with comprehensive new restrictions on the financial activities of Saudi charities. These included a requirement that charitable accounts can be opened only in Saudi riyals; enhanced customer identification requirements for charitable accounts; a requirement that charities must consolidate all banking activity into one principal account, with subaccounts permitted for branches but for deposits only, with all withdrawals and transfers serviced through the main account; a prohibition on cash disbursements from charitable accounts, with

[138] Department of the Treasury, "Note to File," undated, but probably October 2002.

payments allowed by check payable to the first beneficiary and deposited into a Saudi bank; a prohibition on the use of ATM and credit cards by charities; and a prohibition on transfers from charitable accounts outside of Saudi Arabia.

Also, after the May 12 bombings the Saudis initiated action to capture or otherwise deal with known al Qaeda operatives, financial facilitators, and financiers in Saudi Arabia. Early in this campaign, the Saudis killed a key al Qaeda leader and financial facilitator known as "Swift Sword" in a firefight. The arrests and deaths of financial facilitators such as Swift Sword have been a blow to al Qaeda and have hampered its fund-raising efforts in the Kingdom.

The May 12 bombings caused the Saudis to become more receptive to disrupting al Qaeda financing than ever before; the Saudis appeared ready to take seriously the cooperative aspect of "quiet cooperation." At the same time, the U.S. government finally developed a coherent approach to working with the Saudis on combating terrorist financing. The United States had an agenda, the Saudi strategy, and was able to engage the Saudis more forcefully on the issues than it could have otherwise. Most importantly, the U.S. government raised the terrorist-financing dialogue to the highest levels. Fran Fragos Townsend, then deputy assistant to the President and deputy national security advisor for combating terrorism, was designated the senior White House liaison on terrorist financing, and President Bush has publicly stated his confidence in her.

The U.S. government was therefore in a position to test the Saudis' new focus on terrorist financing. Townsend traveled to Saudi Arabia in early August 2003 and again in September 2003. One product of the early high-level meetings was the establishment of the joint task force on terrorist financing, described below.

Despite the positive atmosphere of the August meetings, one area of continuing concern was that the ten al Haramain branches the Saudi government had committed to closing in May 2003, before the bombings, were apparently still operating. There was apparently some question as to whether the al Haramain head office really had control over its branch offices and therefore whether closing the branch offices was the responsibility of the Saudi government or the host governments. Some in the U.S. government believe this discussion to be specious, since resources regularly flow from the head office to the branches. They argue, plausibly, that even if the Saudi government itself cannot control the flows of funds, it can pressure the headquarters to cut off these resources to the branches or pressure the heads of governments of the countries where the branch offices are located to close those offices.

In the fall of 2003, the Saudi government passed new anti-money-laundering and terrorist-financing legislation. This law updated the 1995 anti-money-laundering law and improved reporting and record-keeping requirements, created new interagency coordination mechanisms, and established a financial intelligence unit to collect and analyze suspicious financial transactions. Also that fall, the Saudi government permitted a team of assessors from the Financial Action Task Force (FATF) and the Gulf Cooperation Council to visit the Kingdom to evaluate its anti-money-laundering and

terrorist-financing laws and regulations. Finally, in September 2003 the Saudi government questioned the executive director of HIF, Abd al-Rahman Bin Aqil.

The joint task force on terrorist financing started operations in the fall of 2003 as well. The task force consists of staff from both the United States and Saudi Arabia. The task force seeks to identify and financially investigate persons and entities suspected of providing financial support to terrorist groups. The U.S. government offered the Saudis training in conducting financial investigations, and the Saudis "readily accepted." This training focused on the value of tracking financial transactions in an investigation and provided practical case studies. The Saudi trainees were dedicated and enthusiastic, although very much in need of training. One FBI official said, "I cannot overemphasize the importance of this initiative and the efforts on the part of both our countries to make it work."[139]

In November 2003, another bombing in Riyadh further jolted the Saudi government to take action on terrorist-financing issues and cooperate with the U.S. government. One U.S. government assessment described the impact of the 2003 Riyadh bombings on the Saudis, in conjunction with the May 12 bombings, as "galvanizing Riyadh into launching a sustained crackdown against al-Qaida's presence in the Kingdom and spurring an unprecedented level of cooperation with the United States." Similarly, it noted that "the attack of 9 November [2003], which resulted in the deaths of a number of Muslims and Arabs during the holy month of Ramadan, transformed Saudi public acceptance of the widespread nature of the threat in the Kingdom."[140] As a result, the Saudi government may have more latitude to act against terrorist financing than ever before.

Similarly, FBI officials have ranked Saudi cooperation on terrorist-financing issues as "good" since the May 12 and November 8, 2003, Riyadh bombings. The Saudis have aggressively interrogated people in their custody about financial matters, including questions posed by the U.S. government, and have provided actionable intelligence to the U.S. government. A senior CIA counterterrorism official agreed that there had been progress in our cooperation with the Saudis. He described it as "not perfect" but a big improvement from the difficult days before 9/11. In a sign of the level of U.S. confidence in the Saudi effort, the U.S. government is now releasing very sensitive intelligence to the Saudis.

By late fall of 2003, Saudis confirmed that since 9/11 they had taken several significant steps to modify their rules and regulations to stem the flow of funds to terrorists. In addition to the new charities regulations, the removal of zakat boxes, and the task force, as described above, the Saudi government said it had established the High Commission to oversee all charities, contributions, and donations; required all charities to undergo audits and institute control mechanisms to monitor how and where funds are dispersed; directed all Saudi charities to suspend activities outside Saudi Arabia; and investigated numerous

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[139] Testimony of Thomas J. Harrington, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, before the House International Relations Subcommittee on the Middle East and Central Asia, March 24, 2004.
[140] Department of State, *Patterns of Global Terrorism 2003*, April 2004, p. 67.

banks accounts suspected of having links to terrorism and frozen more than 40 such accounts. The Saudi government has apparently also regulated hawalas through a mandatory licensing requirement and legal, economic, and supervisory measures and sought to decrease demand for unlicensed hawalas.

With respect to al Haramain, the Saudi and U.S. governments took further action at the end of 2003 and into 2004. On December 22, 2003, the U.S. and Saudi governments designated Vazir, an NGO in Bosnia, and its representative a terrorist supporter. It was determined that Vazir was simply another name for the previously designated al Haramain office in Bosnia. Then, in January 2004 the United States and Saudi Arabia jointly designated four additional branches of al Haramain, in Indonesia, Kenya, Tanzania, and Pakistan. The two governments held an unprecedented joint press conference in Washington to announce the designation. The names of these branches were subsequently submitted to the United Nations, which instituted an international freeze on their assets. Also, in January 2004 Executive Director Aqil was removed from his position. One public explanation was that the firing related to recent incidents involving HIF's operations in Bosnia.

On February 19, 2004, federal law enforcement took action against both the al Haramain branch in Ashland, Oregon, and the imam of the HIF mosque in Springfield, Missouri. The FBI and the IRS conducted searches of the Ashland offices of HIF as part of an investigation into alleged money laundering and income tax and currency reporting violations. Treasury took the additional step of freezing, during the pendency of an investigation, the accounts of the branch in Oregon and the mosque in Missouri.

The Saudis continue to make changes to their charities laws and regulations. Rules implementing the anti-money-laundering and terrorist-financing law were issued in February 2004. Also in February 2004, FATF issued its report indicating that Saudi Arabia was in compliance or near-compliance with international standards for almost every indicator of effective instruments to combat money laundering and terrorist financing.

On February 29, 2004, the Saudi government announced that it had approved the creation of the Saudi National Commission for Relief and Charity Work Abroad to take over all aspects of overseas aid operations and assume responsibility for the distribution of charitable donations from Saudi Arabia. Although the U.S. government had no details about this commission as of the end of March 2004, one former U.S. government counter-terrorist-financing official said that such an entity could, in theory, replace charities such as al Haramain by subsuming all of HIF's activities into its own. Al Haramain was said to be in the process of restructuring its administration and revising its financial regulations. Al Haramain was planning to refocus its charity work on Saudi Arabia, according to a statement by its new director, Sheikh Dabbas al Dabbas.

Continuing the pressure on al Haramain, the U.S. and Saudi governments jointly designated five additional branches of al Haramain (Afghanistan, Albania, Bangladesh, Ethiopia, and the Netherlands) on June 2, 2004. The United States also designated former

Executive Director Aqil. These names were subsequently submitted to the United Nations for an international freeze on their assets.

Lessons Learned

The U.S. government's efforts to address issues raised by al Haramain before and after 9/11 teach some critical lessons. First, to cause the Saudi government to move against terrorist financiers, the U.S. government has to acquire and release to the Saudis specific intelligence that will enable them to take the necessary action. Thus, the U.S. government was able to get the Saudis to take concrete actions against al Haramain, and charities generally, after it released the nonpaper containing specific intelligence about al Haramain and its employees to the Saudis in January 2003. Previously, the U.S. government appears, for the most part, to have tried to encourage the Saudis to act on the basis of little more than U.S. suspicions or assurances that the United States had intelligence it could not release.

Second, counter-terrorist-financing efforts are an essential part of the overall set of counterterrorist activities and must be fully integrated into the broader U.S. counterterrorism strategy toward Saudi Arabia. Without such integration, those working on terrorist financing might not be aware of other bilateral counterterrorism issues. The U.S. government might then have the appearance of sending mixed or inconsistent messages on counterterrorism to the Saudis. Once the broader Saudi strategy was approved, the U.S. government was able to develop a consistent message across counterterrorism issues. It could push the Saudis more forcefully on terrorist-financing issues, including al Haramain, by, for example, delivering the nonpaper in January 2003. In direct response to the nonpaper, the Saudi government announced its decision to close ten branch offices of al Haramain.

Third, U.S. counter-terrorist-financing strategy must be presented to the Saudi government by a high-level U.S. government representative. The perils of not speaking through a single high-level interlocutor were clear in the case of the reopenings of the Bosnian and Somali offices of al Haramain, as discussed above, when, as one key terrorist-financing official believed, the Saudis "gamed" us. It was not until the appointment of a senior White House official that the U.S engagement of the Saudi government on terrorist financing yielded its most concrete results. A PCC participant said the Saudis did not take terrorist financing seriously until Townsend was appointed. She has been able to apply consistent pressure, over a period of time, with the full backing of the White House.

Fourth, the U.S. government needs a distinct interagency coordinating committee focused on terrorist financing to ensure that terrorist-financing issues are not lost in the overall counterterrorism effort. The PCC proved to be generally effective in focusing the U.S. government on terrorist financing and retaining the momentum of the immediate post-9/11 period. It enabled different branches of the U.S. government to vet the information on al Haramain and assess the options. It ensured that al Haramain–related issues were

not lost in the larger counterterrorism picture but were assessed periodically with the full attention of the interagency representatives.

At the same time, the coordinating committee must be fully integrated with the overall counterterrorism effort so that terrorist financing can be made part of the high-level diplomacy necessary to win the cooperation of key allies like Saudi Arabia. One way to achieve this goal is give the NSC the lead on the PCC, as is currently the case. The NSC is better able than any individual agency to integrate terrorist financing into counterterrorism through its leadership of the Counterterrorism Security Group; the NSC is better able to see how the different terrorist-financing tools fit together; the NSC is better able to task agencies and force agencies to reallocate resources; NSC leadership is more efficient because it has the authority to resolve more issues rather than forcing them up to the DC level; the NSC has the best access to information, especially regarding covert action; and the NSC is not operational and is therefore more neutral. Throughout the interagency process on al Haramain, NSC leadership of the PCC might have been useful to expedite the process and clarify the U.S. position.

The concept of a "terrorist-financing czar" has been proposed at times; while perhaps it could have been useful before 9/11, it would serve little purpose today and could detract from the U.S. government's current efforts and recent successes. Terrorist financing is already on the agenda of senior officials, so there is no need for a czar to draw attention to the issue. Each of the relevant agencies has established new sections on terrorist financing or augmented existing groups to work on terrorist-financing issues. Further elevating the issue might overemphasize it or, at the very least, detract from current progress in the larger counterterrorism fight. Action against terrorist financing is only one tool in the fight against terrorism and must be integrated into counterterrorism policy and operations. A czar would undermine this goal. Such a position would also dilute the power of a unified message and the benefits of a single messenger on all terrorism-related issues that the leadership of the NSC seeks to provide.

Challenges Ahead

Much remains to be done to address terrorist-financing issues in Saudi Arabia and the activities of Saudi charities, such as al Haramain, around the globe. Saudi Arabia has worked hard to institute an improved legal and regulatory regime. It remains to be seen if the new laws and regulations will be fully implemented and enforced, and if further necessary legal and regulatory changes will be made. The Saudis still have not established the National Commission as they promised in February 2004 and have not demonstrated that they are willing and able to serve as the conduit for all external Saudi donations in lieu of Saudi charities.[141] Moreover, it is imperative that the Saudi government develop its capabilities to monitor cash flows; otherwise, it will not be able to assess a given entity's or individual's compliance with the new laws and regulations. The Saudi government's acceptance of training from the United States and other

[141] The impact of the Saudi government's June 2004 announcement of the formation of such a commission remains to be seen.

countries would demonstrate its willingness to assure that gains in expertise and capabilities are ongoing.

It remains to be seen whether the Saudi government will be willing to make politically and religiously difficult decisions. The action it has taken in 2004 against several al Haramain branch offices is unquestionably significant. Although the government has frozen the assets of branches of al Haramain, it has not used its leverage with the head office to ensure that no funds flow to the designated branches.[142] Similarly, the Saudis have yet to hold prominent individuals—like the former head of al Haramain, for instance—accountable for terrorist financing. Such actions would send a signal both to potential targets and to the Saudi public that the Saudi government is serious about stemming the flow of funds to terrorists and their supporters.

We are optimistic that the U.S. and Saudi governments are on the right track in their mutual efforts on terrorist financing. Neither country can afford to lessen the intensity of its current approach. The Saudi government has come far in recognizing the extent of its terrorist-financing problem. We cannot underplay, however, the reluctance of the Saudi government to make the necessary changes between 9/11 and late spring of 2003. It remains to be seen whether it has truly internalized its responsibility for the problem. A critical part of the U.S. strategy to combat terrorist financing will be monitoring, encouraging, and nurturing Saudi cooperation while simultaneously recognizing that terrorist financing is only one of a number of crucial issues on which the U.S. and Saudi governments need each other.

[142] Again, the impact of the Saudi government's June 2004 announcement dissolving al Haramain remains to be seen.

Appendix A: The Financing of the 9/11 Plot

This appendix provides additional detail on the funding of the 9/11 plot itself and how the Commission staff investigated the plot financing.

Staff Investigation of the 9/11 Plot

The staff's investigation of the 9/11 plot built on the extensive investigations conducted by the U.S. government, particularly the FBI. The government thoroughly examined the plot's financial transactions, and the Commission staff had neither the need nor the resources to duplicate that work. Rather, the staff independently assessed the earlier investigation. We had access to the actual evidence of the plotters' financial transactions, including U.S. and foreign bank account statements, fund transfer records, and other financial records. We also had access to the FBI's extensive work product, including analyses, financial spreadsheets and timelines, and relevant summaries of interviews with witnesses, such as bank tellers, money exchange operators and others with knowledge of the conspirators' financial dealings. We were briefed by and formally interviewed the FBI agents who led the plot-financing investigation, sometimes more than once.

In addition to the FBI, we met with key people from other agencies, including the CIA and the Financial Crimes Enforcement Network (FinCEN), who had relevant knowledge about the plot financing. Commission staff also interviewed law enforcement officials from other countries who had investigated the 9/11 plot, reviewed investigative materials from other countries, and interviewed relevant private-sector witnesses. Finally, the staff regularly received relevant reports on the interrogations of the plot participants now in custody.

Financing of the Plot

To plan and conduct their attack, the 9/11 plotters spent somewhere between $400,000 and $500,000, the vast majority of which was provided by al Qaeda. Although the origin of the funds remains unknown, extensive investigation has revealed quite a bit about the financial transactions that supported the 9/11 plot. The hijackers and their financial facilitators used the anonymity provided by the huge international and domestic financial system to move and store their money through a series of unremarkable transactions. The existing mechanisms to prevent abuse of the financial system did not fail. They were never designed to detect or disrupt transactions of the type that financed 9/11.

Financing of the hijackers before they arrived in the United States

Al Qaeda absorbed costs related to the plot before the hijackers arrived in the United States, although our knowledge of the funding during this period remains somewhat murky. According to plot leader Khalid Sheikh Muhammad (KSM), the Hamburg cell members (Muhamad Atta, Marwan al Shehhi, Ziad Jarrah, and Ramzi Binalshibh) each received $5,000 to pay for their return from Afghanistan to Germany in late 1999 or early 2000, after they had been selected to join the plot, and the three Hamburg pilots also received additional funds for travel from Germany to the United States. Once the nonpilot muscle hijackers received their training, each received $2,000 to travel to Saudi Arabia to obtain new passports and visas, and ultimately $10,000 to facilitate travel to the United States, according to KSM.[143]

We have found no evidence that the Hamburg cell members received funds from al Qaeda earlier than late 1999. Before then, they appear to have supported themselves. For example, Shehhi was being paid by the UAE military, which was sponsoring his studies in Germany. He continued to receive a salary through December 23, 2000. The funds were deposited into his bank account in the United Arab Emirates and then wired by his brother, who held power of attorney over the account, to his account at Dresdner Bank in Germany (although there is no evidence that al-Shehhi's brother knew about or supported the plot).[144] Binalshibh was employed intermittently in Germany until November 1999. Jarrah apparently relied on his family for support. Indeed, Binalshibh said that Jarrah always seemed to have plenty of money in Germany because his parents gave it to him.

Notwithstanding persistent press reports to the contrary, there is no evidence that the Spanish al Qaeda cell, led by Barkat Yarkas and including al Qaeda European financier Mohammed Galeb Kalaje Zouaydi, provided any funding to support 9/11 or the Hamburg plotters. Zouaydi may have provided funds to Mamoun Darkazanli, who knew the Hamburg plotters as a result of being a member of the Hamburg Muslim community, but there is no evidence that he provided money to the plot participants or that any of his funds were used to support the plot.

Mounir Motassadeq, the Hamburg friend of the hijackers, held power of attorney over Shehhi's Dresdner Bank account, from November 24, 1999, until at least January 2001. Motassadeq told the German investigators that he held the power of attorney to handle routine payments—for rent, tuition, and the like—for Shehhi when he traveled to his homeland. On one occasion he transferred DM 5,000 from Shehhi's account to Binalshibh's account while they were both out of town. Motassadeq's role in managing Shehhi's account was part of the conduct that led to his conviction in Germany for complicity in 9/11, a conviction that was subsequently reversed.

Al Qaeda also paid for the training camps at which the 9/11 hijackers were selected and trained. We have not considered this expense as part of the plot costs, because the camps

[143] Another person, who operated a safehouse in Pakistan through which the hijackers transited, independently recalled that an al Qaeda courier provided at least one hijacker with $10,000 at KSM's direction.

[144] Al-Shehhi's last payment, received in December 2000, does not appear to have been moved to his account in Germany.

existed independently of the plot. The marginal cost of training the hijackers is a plot cost, but any estimate of it would be little more than a guess.

Financing of hijackers in the United States

The best available evidence indicates that approximately $300,000 was deposited into the hijackers' bank accounts in the United States by a variety of means. Just prior to the flights, the hijackers returned about $26,000 to one of their al Qaeda facilitators and attempted to return another $10,000, which was intercepted by the FBI after 9/11. Their primary expenses consisted of tuition for flight training, living expenses (room, board and meals, vehicles, insurance, etc.), and travel (for casing flights, meetings, and the September 11 flights themselves). The FBI believes that the funds in the bank accounts held by the hijackers were sufficient to cover their expenses.[145] The FBI, therefore, believes it has identified all sources of funding. Our investigation has revealed nothing to suggest the contrary, although it is possible that the $300,000 estimate omits some cash that the hijackers brought into the United States and spent without depositing into a bank account or otherwise creating a record.[146]

Al Qaeda funded the hijackers in the United States by three primary and unexceptional means: (1) wire or bank-to-bank transfers from overseas to the United States, (2) the physical transportation of cash or traveler's checks into the United States, and (3) the use of debit or credit cards to access funds held in foreign financial institutions. Once here, all the hijackers used the U.S. banking system to store their funds and facilitate their transactions.

The hijackers received assistance in financing their activities from two facilitators based in the United Arab Emirates: Ali Abdul Aziz Ali, a.k.a. Ammar al Baluchi (Ali), and Mustafa al Hawsawi. To a lesser extent, Binalshibh helped fund the plot from Germany.

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[145] FBI Assistant Director, Counterterrorism Division, John S. Pistole, stated during a congressional hearing last fall that "the 9/11 hijackers utilized slightly over $300,000 through formal banking channels to facilitate their time in the U.S. We assess they used another $200-$300,000 in cash to pay for living expenses . . ." Senate Committee on Banking, Housing, and Urban Affairs, September 25, 2003, FDCH Political Transcripts at page 5. His statement concerning additional cash was apparently made in error. The FBI personnel most familiar with the 9-11 investigation have uniformly disagreed with it, and the FBI has never conducted any financial analysis that supports it. Although some FBI personnel involved in the early days of the investigation after 9/11 believed the hijackers had substantially more cash than that which was deposited in their accounts, the FBI view after more thorough investigation is to the contrary.

[146] We will never know the exact amount of funds the hijackers deposited into their accounts, as they made transactions which made it difficult to trace the money. For example, at times they made substantial cash withdrawals, followed by substantial cash deposits. It is impossible to tell if the deposit reflected new funds or merely the return of funds previously withdrawn but not spent. Nor is a complete analysis of their expenditures possible. They conducted many transactions in cash. Although the FBI has obtained evidence of many these transactions, there surely were many others of which no record exists. Additionally, gaps remain in our understanding of what exactly the hijackers did in U.S., so it is possible that they spent funds on activities of which we have no knowledge. Because the hijackers' activities and expenses are not fully known, we cannot say with certainty that every dollar has been accounted for. We believe, however, that the identified funding was sufficient to cover their known expenses and the other expenses they surely incurred in connection with their known activities.

Wire transfers

Upon their arrival in the United States, the hijackers received a total of approximately $130,000 from overseas facilitators via wire or bank-to-bank transfers. Most of the transfers originated from the Persian Gulf financial center of Dubai, UAE, and were sent by plot facilitator Ali. Ali is the nephew of KSM, the plot's leader, and his sister is married to convicted terrorist Ramzi Yousef. He lived in the UAE for several years before the September 11 attacks, working for a computer wholesaler in a free trade zone in Dubai. According to Ali, KSM gave him the assignment and provided him with some of the necessary funds at a meeting in Pakistan in early 2000. KSM provided the bulk of the money later in 2000 via a courier.[147] Although Ali had two bank accounts in the UAE, he kept most of the funds for the hijackers in a laundry bag at home.[148]

Ali transferred a total of $119,500 to the hijackers in the United States in six transactions between April 16, 2000, and September 17, 2000. Nawaf al Hazmi and Khalid al Mihdhar, the first hijackers to arrive, received the first wire transfer. On April 16, 2000, Ali, using the name "Mr. Ali," wired $5,000 from the Wall Street Exchange Centre in Dubai to an account at the Union Bank of California. The funds flowed through a correspondent account at the Royal Bank of Canada. Ali brought the $5,000 to the Exchange Center in cash. The Wall Street Exchange Center required identification, and it made a copy of Ali's work ID, along with his cell phone number and work address—all of which helped the FBI identify him and his subsequent aliases after 9/11. Ali wired the money to the account of a San Diego resident whom Hazmi met at a mosque and had solicited to receive the transaction on his behalf.[149]

Ali wire transferred a total of $114,500 to the plot leaders Shehhi and Atta after their arrival in the United States. Ali did not return to the Wall Street Exchange Centre. Instead, using a variety of aliases, he sent the money from the UAE Exchange Centre in Dubai, where no identification was required. On June 29, 2000, Ali, using an alias, sent a $5,000 wire transfer to a Western Union facility in New York where Shehhi picked it up. Over the next several months, Ali sent four bank-to-bank transfers directly to a checking account jointly held by Shehhi and Atta at SunTrust Bank in Florida: $10,000 on July 18, $9,500 on August 5, $20,000 on August 29, and $70,000 on September 17. On three of these occasions he used an alias; once he went by "Mr. Ali." In each case, Ali brought cash in UAE dirhams, which were then changed into dollars; the transaction receipts reflect the conversion. All of the bank-to-bank transactions flowed through the UAE Exchange's correspondent account at Citibank. Although Ali made the last five

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[147] Ali also said KSM gave him money at various other face to face meetings and also wired him money. He used these funds both to support the hijackers and to buy things for KSM. He also occasionally fronted his own money in support of the hijackers, to be reimbursed by KSM. As a result, he could not be sure exactly where he got every dollar he spent.

[148] Ali's bank records show his accounts never contained sufficient funds to account for the money he sent to the United States, lending credence to his claim he kept the money in a laundry bag at home.

[149]. The person who received the funds came forward shortly after 9/11 to explain that he may have unwittingly aided two men who turned out to be hijackers. The FBI interviewed him extensively and satisfied itself that he did not knowingly aid the hijackers.

transactions using various aliases, he provided enough personal information to enable the FBI to unravel the aliases after 9/11.[150]

In any event, aliases were not the key to Ali's security. Instead, he relied on the anonymity provided by bustling financial center of Dubai and the vast international monetary system. His employment as computer wholesaler provided perfect cover. Ali said he sent the final $70,000 in one large transfer because Shehhi had called and asked him to "send him everything." According to Ali, KSM was displeased when he later learned of the transfer because he thought the size of the transaction would alert the security services. The amount did not worry Ali, however, because he knew that Dubai computer companies frequently transferred such amounts of money. Ali said he experienced no problem with this transfer, or any transfer in aid of the hijackers.[151]

Binalshibh also played a role in financing the plot by wiring, in four transfers, more than $10,000 from Germany to the United States. On June 13, 2000, Binalshibh sent $2,708.33 from Hamburg to Shehhi in New York via a Traveler's Express/Moneygram transfer. On June 21, 2000, he sent $1,803.19 from Hamburg to Shehhi in New York by the same means. Binalshibh also sent two Western Union transfers from Hamburg to Shehhi in Florida, wiring $1,760.15 and $4,118.14 on July 25 and September 25, 2000, respectively. Binalshibh apparently funded these transfers by withdrawing money from Shehhi's account at Dresdner Bank.

In addition, Binalshibh, using an alias, sent $14,000, in two installments, to Zacarias Moussaoui in early August 2001. Binalshibh received the money for these transfers from Hawsawi, wired in two installments on July 30 and July 31.[152]

As it turned out, none of the wire transfers associated with the plot—from Dubai or Germany—raised any significant suspicion or concern. They were essentially invisible in the billions of dollars in wire transfers that take place every day throughout the world.

Physical importation of cash and traveler's checks

The hijackers also brought into the United States a substantial amount of cash and traveler's checks, beginning with the first hijackers to come to the United States, Mihdhar and Hazmi. Following their January 15, 2000, arrival in Los Angeles, they opened an account at Bank of America in San Diego with a $9,900 deposit on February 4, 2000. They likely brought in more cash they deposited, as they surely had to pay for goods and services in the period between their arrival in Los Angeles and the opening of their Bank

[150] The FBI effort was made possible by unprecedented cooperation from the UAE, which provided copies of the paperwork Ali used and allowed the FBI to interview witnesses. Later Ali confirmed he sent the wire transfers.

[151] Central Banker Sultan bin Nasser al-Suweidi was quoted in the press earlier this year as contending that the UAE reported to U.S. officials Ali's large wire transfer to Al-Shehhi a year before 9/11. *See* Associated Press, *Dubai Banks Remain Focus of Terror Funding Investigation* (Jan. 17, 2004) (printed from WSJ.Com, 2/5/05). We have found no evidence the UAE provided any such notification. We have been told Al-Suweidi later backed off the statement in discussions with the FBI.

[152] Binalshibh and Al-Hawsawi both used aliases for these transactions.

of America account in San Diego, roughly three weeks later. The $16,000 that KSM said he gave Hazmi to support his and Mihdhar's travel and living expenses in the United States is the likely source of their funds.[153]

Shehhi apparently also brought some cash into the United States. He purchased $2,000 in traveler's checks from a New York bank on May 31, 2000, two days after his arrival in New Jersey. He had apparently withdrawn these funds from his Dresdner Bank account before he left Germany. Similarly, on June 28, two days after arriving in the United States, Jarrah opened an account at a bank in Venice, Florida, with a $2,000 cash deposit, apparently funds he had brought into the country.

The 13 muscle hijackers who arrived in the United States between April 23 and June 29, 2001, brought with them cash or traveler's checks for their own expenses and to replenish the funds of the hijackers who had previously arrived. These funds seem to have been provided directly to the muscle hijackers by plot leader KSM when he met with them in Pakistan before they transited the UAE en route to the United States, although their Dubai facilitators may have provided some additional funding.[154] Ali recalled that the hijackers arrived in Dubai with money to purchase plane tickets and traveler's checks, but said he may have provided some of them with additional funds. Hawsawi said he spent approximately $7,000–$9,000 in expenses for the hijackers in the UAE.

Investigation has confirmed that six of the muscle hijackers who arrived in this period purchased traveler's checks totaling $43,980 in the UAE and used them in the United States.[155] Beyond these confirmed funds, the muscle hijackers almost surely brought in more money in cash or traveler's checks that has not been identified. Some of the newly arrived muscle made substantial deposits shortly after entering the United States, and other hijackers made deposits soon after the muscle arrived. For example, Satam al Suqami and Waleed al Shehri arrived in the United States from the UAE on April 23, 2001, and opened a bank account at SunTrust in Fort Lauderdale on May 1 with a deposit of $9,000. It appears likely that Suqami or Shehri brought in cash or purchased traveler's checks in the UAE, although such a purchase has not been identified. Similarly, on June 1, 2001, $3,000 was deposited into Jarrah's SunTrust account and $8,000 was deposited into the Shehhi/Atta joint account. These funds may have been cash or traveler's checks that investigation has not yet identified, purchased and brought into the United States by

[153] There has been substantial speculation that al-Mihdhar and al-Hazmi received the money in Thailand in January 2000, where they traveled with senior Al-Qaeda operative Khallad bin Attash, and where we know Khallad received funds from another al Qaeda operative. It now seems unlikely that the hijackers received funds from Khallad in Thailand in light of KSM's account of providing them with funds and Khallad's own account in which he explained Al-Mihdhar and Al-Hazmi made a spur of the moment decision to go to Bangkok with him after their initial meeting in Malaysia, largely to obtain Thai stamps on their passport, which they hoped would help ease their entry in the United States by making them appear more like tourists. Other evidence corroborates Khallad's account, and it seems more likely the hijackers received operational funds from KSM in Pakistan, as he described, than on a trip they decided to make on the spur of the moment.

[154] As noted above, KSM said he gave each of the muscle hijackers $10,000 to facilitate their travel to the United States.)

[155] 5 The FBI has confirmed purchases by Majed Moqed, Wail Al-Shehri, Ahmed Al-Haznawi, Saeed Al-Ghamdi, Hamza Al-Ghamdi, Ahmed Al-Nami.

one or more of the three additional muscle hijackers—Hamza al Ghamdi, Ahmed al Nami, or Mohand al Shehri—who had entered the United States on May 28, 2001.[156]

Plot facilitators Ali and Hawsawi provided logistical assistance to the muscle hijackers as they transited the UAE en route to the United States, including assistance in purchasing plane tickets and traveler's checks. Phone records indicate that Ali aided the hijackers through May 2001 and that, thereafter, Hawsawi became the primary facilitator. A notebook Al-Hawsawi maintained shows payments he made to or on behalf hijackers transiting the UAE in June.

Ali has confirmed his role in assisting the muscle hijackers while they were in the UAE. KSM provided them with Ali's phone number, and they called him upon their arrival. He assisted them in purchasing airline tickets, traveler's checks, and Western-style clothes; arranged hotels and food; and also taught them Western skills, such as ordering at fast-food restaurants. It is not clear why Hawsawi got involved in the plot. Ali said he requested that KSM send someone to Dubai to assist him with the transiting operatives because he feared the time required to support the hijackers and train them to adapt to Western life would impinge on his day job with the computer company. According to Ali, KSM then directed Hawsawi to help him; but by the time Hawsawi arrived, Ali discovered the hijackers were not staying very long in Dubai and did not demand much of his time. It is hard to imagine that Ali was so concerned about his day job, but no other reason for Hawsawi's involvement is readily apparent.

Hawsawi has acknowledged aiding some of the muscle hijackers in the UAE. In addition, he assisted and provided funds to Mohamed al Kahtani, who was selected as a hijacker and flew to Orlando before being denied access to the United States. Kahtani had $2,800 cash in his possession when he arrived at the airport in Florida.

The hijackers who traveled internationally after arriving in the United States also carried funds back with them. For example, Mihdhar purchased $4,900 in traveler's checks in Saudi Arabia shortly before he returned to the United States on July 4, 2001, after an extended absence. According to Hawsawi's notebook, Hawsawi gave the funds to Mihdhar in the UAE in June 2001 to buy these checks. In some instances, we cannot determine whether the hijackers brought in more cash from overseas travel. For example, in the weeks after Shehhi returned to Florida from a trip to Egypt on May 2, 2001, several large deposits were made into his SunTrust account ($8,600 on May 11 and $3,400 on May 22). It is unclear whether the deposits came from funds Shehhi received overseas, funds brought by the muscle hijackers arriving in late May, or funds previously withdrawn and not spent.

Zacarias Moussaoui brought more money into the United States than any other person associated with the 9/11 attacks. Moussaoui declared $35,000 to Customs when he arrived in the United States from London on February 23, 2001, and he deposited $32,000 into a Norman, Oklahoma, bank three days later.

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[156]. Some hijackers declared funds when they entered the U.S., but others, who we know had funds with them, did not.

Accessing overseas accounts

The hijackers also financed their activities in the United States by accessing funds deposited into overseas accounts. There are two primary examples of this method. Hani Hanjour maintained accounts at the Saudi British Bank in Saudi Arabia and at Citibank in the UAE. While in the United States, he accessed his foreign accounts through an ATM card to finance his activities. Approximately $9,600 was deposited into the Saudi British Bank account, and $8,000 into the Citibank account. Ali said he provided Hanjour with $3,000 to open the Citibank account and deposited another $5,000 into that account while Hanjour was in the United States.[157]

One of the muscle hijackers, Fayez Banihammad, also set up an overseas account to provide funding in the United States. On June 25, 2001, with the aid of Hawsawi, Banihammad opened two accounts at the Standard Chartered Bank in the UAE and deposited about $30,000 in UAE dirhams. According to Hawsawi, Banihammad brought the funds with him to open the accounts when he came to the UAE. Hawsawi was given power of attorney over the accounts on July 18, 2001. The accounts were accessible by an ATM card and a Visa card. Hawsawi received the Visa card from the bank after Banihammad departed for the United States and apparently sent it to Banihammad in the United States by express delivery. After his arrival in the United States on June 27, Banihammad made cash withdrawals with both cards to help fund the plot in the United States, and he used the Visa card to purchase the 9/11 plane tickets for himself and one of the muscle hijackers and to pay his Boston hotel bill on the morning of 9/11. Hawsawi apparently bolstered Banihammad's financing with a deposit of $4,900 on August 20, 2001, into Banihammad's SCB account.

No aid from U.S. persons

No credible evidence exists that the hijackers received any substantial funding from any person in the United States. With one possible minor exception discussed below, the FBI's investigation has not revealed any evidence that any person in the United States knowingly provided any funding to the hijackers. Extensive investigation by Commission staff has revealed nothing to the contrary.

Despite persistent public speculation, there is no evidence that the hijackers who initially settled in San Diego, Mihdhar and Hazmi, received funding from Saudi citizens Omar al Bayoumi and Osama Bassnan, or that Saudi Princess Haifa al Faisal provided any funds to the hijackers either directly or indirectly. A number of internal FBI documents state without reservation that Bayoumi paid rent on behalf of Mihdhar and Hazmi, a claim reflecting the initial view of some FBI agents. More thorough investigation, however, has determined that Bayoumi did not pay rent or provide any funding to the hijackers. On one

[157] Hanjour also received $900 from his brother, who is not believed to be a witting supporter of the plot. The origin of the rest of the funds is unclear, although Hanjour may have received funds when he transited Pakistan in June 2000.

occasion he did obtain a cashier's check to assist Mihdhar and Hazmi pay a security deposit and first month's rent, but the hijackers immediately reimbursed him from their funds.

The one person who evidence indicates may have provided money to a hijacker in the United States was Yazeed al Salmi, a Saudi citizen who came to the United States on a student visa in August 2000; he settled in San Diego, where he came into contact with future hijacker Nawaf al Hazmi. On September 5, 2000, $1,900 was deposited into Hazmi's San Diego Bank of America account from a set of $4,000 in traveler's checks that Salmi had purchased in Riyadh, Saudi Arabia, on July 16, 2000. Little more is known about this transaction. After September 11, Salmi was detained as a material witness because of his contact with Hazmi, and was debriefed extensively by the FBI. He even testified to the grand jury before being deported to Saudi Arabia. Unfortunately, the FBI did not learn that Salmi's traveler's checks wound up in Hazmi's account until after he was deported, and Salmi never informed his interrogators of the matter. In June 2004, Salmi was interviewed regarding the transaction, and claimed not to recall it. There are no other known witnesses to this transaction.

Did Salmi fund Hazmi, knowingly or otherwise? It appears likely that Hazmi did nothing more than facilitate a transaction for Salmi. Indeed, Hazmi's bank records reveal that he withdrew $1,900 in cash the same day he deposited the $1,900 in traveler's checks. This large withdrawal is unusual for Hazmi, as he tended to make much smaller cash withdrawals or use his debit card. Moreover, Salmi did not yet have a bank account in the United States at the time of the transaction, so it is entirely possible that he simply asked Hazmi to do him the favor of cashing the traveler's checks for him.[158]

There is no evidence that Salmi ever provided Hazmi with any other funds. Neither Salmi's account at Bank of America nor Hazmi's account there reflects any other transfers or indicia of transfers. There is no evidence that any other person in San Diego provided Hazmi or any other hijacker with any funds.[159]

No hawalas, self-funding, or state support

The extensive investigation into the financing of the 9/11 plot has revealed no evidence to suggest that the hijackers used hawala or any other informal value transfer mechanism to send money to the United States. Moreover, KSM and the other surviving plot participants have either not mentioned hawalas or explicitly denied they were used. Wire transfers, physical importation of funds, and access of foreign bank accounts were sufficient to support the hijackers; there seems to be no reason al Qaeda would have used

[158] Al-Salmi opened an account at Bank of America on September 11, 2000, according to the account opening document.

[159] In September 2000, Al-Hazmi assisted another San Diego associate with a transaction by writing a check on his behalf. Thus, the associate provided Al-Hazmi with $3000, and Al-Hazmi immediately wrote a check for that amount on behalf of the associate. The transaction was a wash, which resulted in no funding of Al-Hazmi.

hawalas as well. Although al Qaeda frequently used hawalas to transfer funds from the Gulf area to Pakistan and Afghanistan, we have not seen any evidence that al Qaeda employed them in moving money to or from the United States.[160]

The hijackers were apparently not expected to provide their own financing once they arrived in the United States. There is no evidence that any of them held jobs in the United States, with the exception of Nawaf al Hazmi, who worked part-time in a gas station for about a month, earning $6 an hour. As discussed above, Shehhi received a salary from the UAE military though December 23, 2000, but did not do any work for this money. There is no evidence to suggest that any of the hijackers engaged in any type of criminal activity to support themselves. Finally, there no evidence that any government funded the 9/11 plot in whole or part.

Hijackers use of U.S. banks

While in the United States, the hijackers made extensive use of U.S. banks. They chose branches of major international banks, such as Bank of America and SunTrust, and smaller regional banks, such as the Hudson United Bank and Dime Savings Bank in New Jersey. Plot leaders Atta and Shehhi may have chosen SunTrust because their Florida flight school banked there and directed its students to use it as well. The muscle hijackers who later linked up with Atta and Shehhi also opened accounts at SunTrust. There is no information available as to how or why the hijackers chose other banks. The hijackers typically opened checking accounts and Visa debit card accounts at the same time.

All of the hijackers opened accounts in their own name, using passports and other identification documents. Contrary to numerous published reports, there is no evidence the hijackers ever used false Social Security numbers to open any bank accounts. In some cases, a bank employee completed the Social Security number field on the new account application with a hijacker's date of birth or visa control number, but did so on his or her own to complete the form. No hijacker presented or stated a false number.

The hijackers were not experts on the use of the U.S. financial system. For example, the teller who opened the initial Atta-Shehhi joint account at SunTrust in July 2000 said she spent about an hour with them, explaining the process of wiring money. On one occasion in June 2001, the hijackers aroused suspicion at a SunTrust branch in Florida while attempting to cash a check for $2,180. Shehhi presented identification documents with different addresses, and the bank personnel thought the signature on the check did not match his signature on file. The bank manager refused to sign the check and issued an internal alert to other SunTrust branches to watch the account for possible fraud. The internal alert was a routine notice sent in accordance with SunTrust's loss avoidance procedures. SunTrust never considered reporting Shehhi to the government because it had no evidence he had done anything illegal. No one at SunTrust or any other financial institution thought, or had any reason to think, that the hijackers were criminals, let alone

[160] *See* chapter 2 re al Qaeda's use of hawala, generally.

terrorists bent on mass murder, and no financial institution had any reason to report their behavior to the government.

The hijackers' transactions themselves were not extraordinary or remarkable. The hijackers generally followed a pattern of occasional large deposits, which they accessed frequently through relatively small ATM and debit card transactions. They also made cash withdrawals and some occasionally wrote checks. In short, they used their accounts just as did many other bank customers. No one monitoring their transactions alone would have had any basis for concern.

Contrary to persistent media reports, no financial institution filed a Suspicious Activity Report (SAR) in connection with any transaction of any of the 19 hijackers before 9/11, although such SARs were filed after 9/11 when their names became public. The failure to file SARs was not unreasonable. Even in hindsight, there is nothing—including the SunTrust situation described above—to indicate that any SAR should have been filed or the hijackers otherwise reported to law enforcement.

Return of funds to al Qaeda

From September 5 through September 10, 2001, the hijackers consolidated their unused funds and sent them to Hawsawi in the UAE. On September 5, Banihammad wired $8,000 from his account at SunTrust Bank to his Standard Chartered Bank account in the UAE. On September 8 through 10, the hijackers sent four Western Union wire transfers totaling $18,260 to Hawsawi at two different exchange houses in the UAE. In addition, Hazmi and Mihdhar deposited their excess cash into an account held by Mihdhar at First Union Bank in New Jersey, bringing the balance to $9,838.31 on September 10. That same day, Hazmi and Hanjour sent an express mail package containing the debit card linked to Mihdhar's First Union account to a P.O. box in the UAE rented by Hawsawi. After the 9/11 attacks, a receipt for the sending of this package was found in Hazmi's car at Dulles International Airport, and the FBI intercepted the package.

Binalshibh said that when he spoke by phone with Atta in early September 2001, Atta said he wanted to return some leftover funds. At the time, Binalshibh was in Madrid trying to get a flight to Dubai, and had visa and passport problems. He explained his visa and passport issues to Atta and advised him to send the money to someone else. Atta then called Hawsawi to give him the information needed to pick up the wire transfers, as did the other hijackers who wired money to Hawsawi. Binalshibh and Atta also discussed the return of funds.

On September 11, Hawsawi used a blank check that Banihammad had provided him earlier and an ATM card to withdraw from Banihammad's Standard Chartered Bank account the approximately $7,880 in dirhams that Banihammad had wired there. He then deposited about $16,348 in dirhams to his own checking account at Standard Chartered Bank, reflecting the proceeds of the wire transfers he had received. Next, he transferred $41,000 from his checking account to his Standard Chartered Bank Visa card and left

Dubai for Karachi, Pakistan, leaving some funds in the account. On September 13, 2001, KSM used a supplemental Visa card issued for Hawsawi's Standard Chartered Bank account to make six cash withdrawals at ATMs in Karachi totaling about $900.[161] The remaining funds, roughly $40,000, were not withdrawn or transferred before the UAE froze the account after September 11. KSM has since acknowledged withdrawing funds returned by Atta to Hawsawi; he claimed he gave the money to a senior al Qaeda leader, Abu Hafs, in Kandahar. It is not clear if KSM was referring to the approximately $900 he withdrew from the account, or if Hawsawi had provided KSM with additional funds in cash after 9/11.

The hijackers' efforts during their final days to consolidate and return funds to al Qaeda reflect their recognition of the importance of money to the organization. Although some of the hijackers did squander relatively small amounts on superfluous purchases, including pornography, they generally consumed little, and plot leader Atta was especially frugal. Indeed, Binalshibh has explained that frugality was important to Atta because he did not want to waste funds he considered to be blessed and honored.

Funding of Other Plot Participants

In addition to the 19 hijackers, other plot participants received al Qaeda funding for their role in the plot. KSM said that he, Binalshibh, and Hawsawi each received $10,000 (in addition to the funds they provided the hijackers). The details of this funding are not entirely clear, but KSM said he personally used $6,000 of his money to rent a safehouse in Karachi. Ali required no support from al Qaeda, as he already lived and worked in the UAE. By contrast, al Qaeda had to pay for Hawsawi, the other UAE-based plot facilitator, because he traveled and was living there solely to support 9/11 and other al Qaeda operations. Hawsawi incurred substantial expenses on behalf of the plot, covering travel, apartment rental, car rental, and living expenses.

The available evidence does not make clear how Hawsawi received funds for his plot-related activities. He claimed he received $30,000 in cash from Hamza al Qatari—then an al Qaeda financial manager—that Hawsawi brought into the UAE with him. Hawsawi claimed he received no other funds except for approximately $3,000–$4,500 that Banihammad brought to him, which he assumes came from KSM or Qatari. Although Hawsawi claimed that these funds were sufficient for all his activities in the UAE, their total was clearly less than Hawsawi's known expenses in the UAE. These included aiding the 9/11 hijackers, financing his own living expenses, buying supplies for al Qaeda, wiring Binalshibh a total of $16,500, wiring funds to another likely al Qaeda operative in Saudi Arabia, and providing $13,000 to yet another al Qaeda operative who transited the UAE before departing for another operation on September 10, 2001. Moreover, KSM gave a different account of how Hawsawi was funded. In KSM's version, Hawsawi had a budget of $100,000 and KSM provided all the funds, either by courier or by the muscle hijackers as they traversed the UAE after picking up the money from KSM in Pakistan.

[161] The supplemental Visa card had been applied for on August 25, 2001 in the name of an alias used by KSM.

While in the UAE, Hawsawi received two wire transfers totaling about $6,500 from a Sudanese national then living in Saudi Arabia. Both the transfers were sent in August 2001 from the National Commercial Bank in Saudi Arabia to Hawsawi's Standard Chartered Bank account in the UAE. According to information provided by a foreign security agency, the sender claims he was asked to wire the funds by Uthman al Shehri, the brother of hijackers Waleed and Wail al Shehri. The purpose of the transaction remains unknown, and the relevant witnesses are currently beyond the reach of the U.S. government.

Binalshibh said that he met KSM in Karachi in June 2001; there KSM gave him a plane ticket to Malaysia, where he planned to meet with Atta.[162] Binalshibh said he also received $5,000 from Abu Hafs to support his travel in June. He may have received additional funds during this trip. According to Binalshibh, he was living on al Qaeda money when he returned to Germany in June 2001. On September 3, 2001, Hawsawi, using an alias, wired $1,500 from the UAE to Binalshibh, also using an alias, in Hamburg, presumably to pay for his subsequent travel from Germany, which took place on September 5.

Binalshibh also funded his activities in part by controlling Marwan al Shehhi's bank account, which he apparently accessed with an ATM card, and with the assistance of Motassadeq, who held power of attorney over the account. Binalshibh himself said that Shehhi left him "a credit card" when Shehhi departed Hamburg for the United States in mid-2000. For example, Binalshibh withdrew money from Shehhi's account to send $2,200 to the Florida Flight Training Center in August 2000 in apparent anticipation of his own arrival in the United States. Activity in Shehhi's German bank account indicates that Binalshibh was accessing his funds while he was in the United States.

In January 2001 Atta, sent a $1,500 wire transfer via Western Union from Florida to Binalshibh in Hamburg. There is no known explanation for this transaction, which seems especially odd because Binalshibh had access to Shehhi's German account at the time.

Total Cost

We estimate that the total cost of the 9/11 attacks was somewhere between $400,000 and $500,000. The hijackers spent more than $270,000 in the United States, and the costs associated with Moussaoui were at least $50,000. The additional expenses included travel to obtain passports and visas, travel to the United States, expenses incurred by the plot leader and facilitators, and the expenses incurred by would-be hijackers who ultimately did not participate. For many of these expenses, we have only a mixture of fragmentary evidence and unconfirmed reports, and can make only a rough estimate of costs. Adding up all the known and assumed costs leads to a rough range of $400,000 to $500,000. This estimate does not include the cost of running training camps in Afghanistan where the

[162] The meeting in Malaysia ultimately did not take place because Atta was busy awaiting the arrival of the additional hijackers in the U.S.; the meeting took place later in Spain.

hijackers were recruited and trained or the marginal cost of the training itself. For what its worth, the architect of the plot, KSM, put the total cost at approximately $400,000, including the money provided to the hijackers and other facilitators, although apparently excluding Moussaoui. Although we cannot know if this estimate is accurate, it seems to be reasonable, given the information available.

Ultimately, knowing the exact total cost of the plot makes little difference. However calculated, the expense—although substantial—constituted a small fraction of al Qaeda's budget at the time. As we discuss in chapter 2, al Qaeda's annual budget for the relevant period has been estimated to be about $30 million. Even today, with its estimated revenues significantly reduced, al Qaeda could still likely come up with the funds to finance a similar attack.

Origin of the Funds

To date, the U.S. government has not been able to determine the origin of the money used for the 9/11 attacks. As we have discussed above, the compelling evidence appears to trace the bulk of the funds directly back to KSM and, possibly, Qatari, but no further.[163] Available information on this subject has thus far has not been illuminating.[164] According to KSM, Bin Ladin provided 85–95 percent of the funds for the plot from his personal wealth, with the remainder coming from general al Qaeda funds. To the extent KSM intended to refer to wealth Bin Ladin inherited from his family or derived from any business activity, this claim is almost certainly wrong, because Bin Ladin was not personally financing al Qaeda during this time frame.[165] Ultimately the question of the origin of the funds is of little practical significance. Al Qaeda had many avenues of funding. If a particular source of funds dried up, it could have easily tapped a different source or diverted money from a different project to fund an attack that cost $400,000–$500,000 over nearly two years.

We know that a small percentage of the plot funds originated in the bank account of Shehhi, which apparently came from his military salary. Binalshibh drew on these funds to wire approximately $10,000 to Shehhi in the United States, as well as to support his own role in the plot to some degree. Al Qaeda does not necessarily have to completely fund terrorist operatives. Some, like Shehhi, have means and can fund themselves, at least in part, a factor that makes the fight on "terrorist financing" all the more difficult.

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[163] FBI Assistant Director Pistole testified that the FBI had traced the funds back to certain bank accounts in Pakistan, *see* Senate Govt. Affairs Committee, July 31, 2003, but the FBI has clarified that Pistole meant the funds were traced back to KSM in Pakistan. No actual bank accounts there have been identified.

[164] Senior al Qaeda detainee Abu Zubaydeh has commented on the source of the funding; he said that KSM received funds for the 9/11 operation directly from UBL, bypassing al Qaeda Finance Chief, Shayk Said, and suggested that some of the funds came from money that Zubaydeh had provided UBL for use in an operation against Israel. Zubaydeh, however, apparently did not participate in the 9/11 planning, and his statements lack any foundation.

[165] Instead, al Qaeda relied on donations provided by witting donors and diverted from legitimate charitable donations by al Qaeda supporters. *See* chapter 2 (discussing al Qaeda financing). It is also possible KSM meant that Bin Ladin funded the plot with funds he kept under his personal control.

Appendix B: Securities Trading

This appendix describes the staff and U.S. government investigations into the issue of whether anyone with foreknowledge of the 9/11 attacks profited through securities trading, and explains the conclusion in the Commission's final report that extensive government investigation has revealed no evidence of such illicit trading.

Almost since 9/11 itself, there have been consistent reports that massive "insider trading" preceded the attacks, enabling persons apparently affiliated with al Qaeda to reap huge profits. The Commission has found no evidence to support these reports. To the contrary, exhaustive investigation by federal law enforcement, in conjunction with the securities industry, has found no evidence that anyone with advance knowledge of the terrorist attacks profited through securities transactions.

Commission Staff Investigation

Commission staff had unrestricted access to the U.S. government officials who led and conducted the investigation into securities trading in advance of 9/11. In addition to interviewing the key personnel, Commission staff reviewed the nonpublic government reports summarizing the investigative results as well as backup data, including spreadsheets, memoranda and other analyses, and reports of interviews with traders, securities industry participants, and other witnesses. We obtained and reviewed the reports of investigations done by certain major nongovernmental securities industries bodies who share responsibility with the government for monitoring securities trading in U.S. markets, including the New York Stock Exchange and the National Association of Securities Dealers Regulation, and interviewed witnesses from a key private-sector entity. Commission staff also reviewed information provided by foreign securities regulators, interviewed German law enforcement officials, and interviewed U.S. law enforcement personnel regarding their contacts with their foreign counterparts on securities trading.

In addition, Commission staff drew on its review of extensive classified intelligence concerning al Qaeda and how it manages its operations and its finances, as well as debriefings of al Qaeda detainees, including 9/11 plot leader Khalid Sheikh Mohammed and other plot participants. This information proved useful in evaluating how closely held al Qaeda kept the 9/11 operation and the likelihood it would seek to profit from the attacks through securities trading.

The U.S. Government Investigation of Trading in the United States

The Securities and Exchange Commission (SEC) and the FBI, with the involvement of the Department of Justice, conducted the investigation of the allegation that there was

illicit trading in advance of 9/11; numerous other agencies played a supporting role.[166] The SEC's chief of the Office of Market Surveillance initiated an investigation into pre-9/11 trading on September 12, 2001. At a multi-agency meeting on September 17, at FBI headquarters, the SEC agreed to lead the insider trading investigation, keeping the FBI involved as necessary. The Department of Justice assigned a white-collar crime prosecutor from the U.S. Attorney's Office in Brooklyn to work full-time on the investigation; he relocated to Washington, D.C., on September 18.

The SEC undertook a massive investigation, which at various times involved more than 40 staff members from the SEC's Division of Enforcement and Office of International Affairs. The SEC also took the lead on coordinating intensive investigations by the self-regulatory organizations (SROs) that share responsibility for monitoring the U.S. securities markets, including, among others, the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers Regulation, and the Chicago Board Options Exchange. The investigation focused on securities of companies or industries that could have been expected to suffer economically from the terrorist attacks. Thus, the investigators analyzed trading in the following sectors: airlines, insurance, financial services, defense and aerospace, security services, and travel and leisure services, as well as companies with substantial operations in the area of the World Trade Center. The investigation also included broad-based funds that could have been affected by a major shock to the U.S. economy. Ultimately, the investigators analyzed trading in 103 individual companies and 32 index or exchange-traded funds and examined more than 9.5 million securities transactions.

The investigators reviewed any trading activity that resulted in substantial profit from the terrorist attacks. Investments that profited from dropping stock prices drew great scrutiny, including short selling[167] and the purchase of put options.[168] The SEC has long experience in investigating insider trading violations, which can involve the use of these techniques by those who know of an impending event that will make stock prices fall. The investigators also sought to determine who profited from well-timed investments in industries that benefited from the terrorist attacks, such as the stock of defense and security companies, and who timely liquidated substantial holdings in companies likely to suffer from the attacks.

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[166] The SEC is an independent federal agency entrusted with enforcing the federal securities laws. Its Division of Enforcement has extensive experience in investigating insider trading. Because the SEC lacks authority to bring criminal cases, it regularly works jointly with the FBI and DOJ, as it did in this case, on potentially criminal securities law violations.

[167] Short selling is a strategy that profits from a decline in stock price. A short seller borrows stock from a broker dealer and sells it on the open market. At some point in the future, he closes the transaction by buying back the stock and returning it to the lending broker dealer.

[168] A put option is an investment that profits when the underlying stock price falls. A put option contract gives its owner the right to sell the underlying stock at a specified strike price for a certain period of time. If the actual price drops below the strike price, the owner of the put profits because he can buy stock cheaper than the price for which he can sell it. By contrast, a call option contract is an investment that profits when the underlying stock price rises. A call option contract gives its owner the right to buy the underlying stock at a specified strike price for a certain time period. People illicitly trading on inside information often have used options because they allow the trader to leverage an initial investment, so that a relatively small investment can generate huge profits.

The SEC investigators reviewed voluminous trading records to identify accounts that made trades that led to profits as a result of the attacks. The SEC followed up on any such trades by obtaining documents and, where appropriate, interviewing the traders to understand the rationale for the trades. The SEC also referred to the FBI any trade that resulted in substantial profit from the attacks—a much lower threshold for a criminal referral than it would normally employ. Consequently, the FBI conducted its own independent interviews of many of the potentially suspicious traders. The SROs, which have extensive market surveillance departments, played a key role in the SEC investigation by providing information and, in some cases, detailed reports to the commission. In addition, the SEC directly contacted 20 of the largest broker-dealers and asked them to survey their trading desks for any evidence of illicit trading activity. It also asked the Securities Industry Association—the broker-dealer trade group—to canvass its members for the same purpose.

The SEC investigation had built-in redundancies to ensure that any suspicious trading would be caught. For example, the SEC reviewed massive transaction records to detect any suspicious option trading and also obtained reports, known as the Large Option Position Reports and Open Interest Distribution Reports, that identified the holders of substantial amounts of options without regard to when those options were purchased. Similarly, to ensure full coverage, the SEC obtained information from a number of entities that play a role in facilitating short sales. Between these efforts, the work of the SROs, and the outreach to industry, the chief SEC investigator expressed great confidence that the SEC investigation had detected any potentially suspicious trade.

No Evidence of Illicit Trading in the United States

The U.S. government investigation unequivocally concluded that there was no evidence of illicit trading in the U.S. markets with knowledge of the terrorist attacks. The Commission staff, after an independent review of the government investigation, has discovered no reason to doubt this conclusion.

To understand our finding, it is critical to understand the transparency of the U.S. markets. No one can make a securities trade in the U.S. markets without leaving a paper trail that the SEC can easily access through its regulatory powers. Moreover, broker-dealers must maintain certain basic information on their customers. It is, of course, entirely possible to trade through an offshore company, or a series of nominee accounts and shell companies, a strategy that can make the beneficial owner hard to determine. Still, the investigators could always detect the initial trade, even if they could not determine the beneficial owner. Any suspicious profitable trading through such accounts would be starkly visible. The investigators of the 9/11 trades never found any blind alleys caused by shell companies, offshore accounts, or anything else; they were able to investigate the suspicious trades they identified. Every suspicious trade was determined to be part of a legitimate trading strategy totally unrelated to the terrorist attacks.

Many of the public reports concerning insider trading before 9/11 focused on the two airline companies most directly involved: UAL Corp., the parent company of United Airlines, and AMR Corp., the parent company of American Airlines. Specifically, many people have correctly pointed out that unusually high volumes of put options traded in UAL on September 6–7 and in AMR on September 10.[169]

When the markets opened on September 17, AMR fell 40 percent and UAL fell 43 percent. The suspicious options trading before the attacks fueled speculation that al Qaeda had taken advantage of the U.S. markets to make massive profits from its murderous attacks. The allegations had appeal on their face—just as al Qaeda used our sophisticated transportation system to attack us, it appeared to have used our sophisticated markets to finance itself and provide money for more attacks. But we conclude that this scenario simply did not happen.

Although this report will not discuss each of the trades that profited from the 9/11 attacks, some of the larger trades, particularly those cited in the media as troubling, are illustrative and typical both of the nature of the government investigation into the trades and of the innocent nature of the trading. The put trading in AMR and UAL is a case in point: it appeared that somebody made big money by betting UAL and AMR stock prices were going to collapse, yet closer inspection revealed that the transactions were part of an innocuous trading strategy.

The UAL trading on September 6 is a good example. On that day alone, the UAL put option volume was much higher than any surrounding day and exceeded the call option volume by more than 20 times—highly suspicious numbers on their face.[170] The SEC quickly discovered, however, that a single U.S. investment adviser had purchased 95 percent of the UAL put option volume for the day. The investment adviser certainly did not fit the profile of an al Qaeda operative: it was based in the United States, registered with the SEC, and managed several hedge funds with $5.3 billion under management. In interviews by the SEC, both the CEO of the adviser and the trader who executed the trade explained that they—and not any client—made the decision to buy the put as part of a trading strategy based on a bearish view of the airline industry. They held bearish views for a number of reasons, including recently released on-time departure figures, which suggested the airlines were carrying fewer passengers, and recently disclosed news by AMR reflecting poor business fundamentals. In pursuit of this strategy, the adviser sold short a number of airline shares between September 6 and September 10; its transactions included the fortunate purchase of UAL puts. The adviser, however, also bought 115,000 shares of AMR on September 10, believing that their price already reflected the recently released financial information and would not fall any further. Those shares dropped significantly when the markets reopened after the attacks. Looking at the totality of the adviser's circumstances, as opposed to just the purchase of the puts, convinced the SEC that it had absolutely nothing to do with the attacks or al Qaeda. Still, the SEC referred

[169] *See, e.g.,* September 18, 2001 Associated Press Report.

[170] A high ratio of puts to calls means that on that day far more money was being bet that the stock price would fall than that the stock price would rise. Such a ratio is a potential indicator of insider trading—although it can also prove to have entirely innocuous explanations, as in this case.

the trade to the FBI, which also conducted its own investigation and reached the same conclusion.

The AMR put trading on September 10 further reveals how trading that looks highly suspicious at first blush can prove innocuous. The put volume of AMR on September 10 was unusually high and actually exceeded the call volume by a ratio of 6:1—again, highly suspicious on its face. The SEC traced much of the surge in volume to a California investment advice newsletter, distributed by email and fax on Sunday, September 9, which advised its subscribers to purchase a particular type of AMR put options. The SEC interviewed 28 individuals who purchased these types of AMR puts on September 10, and found that 26 of them cited the newsletter as the reason for their transaction. Another 27 purchasers were listed as subscribers of the newsletter. The SEC interviewed the author of the newsletter, a U.S. citizen, who explained his investment strategy analysis, which had nothing to do with foreknowledge of 9/11. Other put option volume on September 10 was traced to similarly innocuous trades.

Another good example concerns a suspicious UAL put trade on September 7, 2001. A single trader bought more than one-third of the total puts purchased that day, establishing a position that proved very profitable after 9/11. Moreover, it turns out that the same trader had a short position in UAL calls—another strategy that would pay off if the price of UAL dropped. Investigation, however, identified the purchaser as a well-established New York hedge fund with $2 billion under management. Setting aside the unlikelihood of al Qaeda having a relationship with a major New York hedge fund, these trades looked facially suspicious. But further examination showed the fund also owned 29,000 shares of UAL stock at the time—all part of a complex, computer-driven trading strategy. As a result of these transactions, the fund actually *lost* $85,000 in value when the market reopened. Had the hedge fund wanted to profit from the attacks, it would not have retained the UAL shares.

These examples were typical. The SEC and the FBI investigated all of the put option purchases in UAL and AMR, drawing on multiple and redundant sources of information to ensure complete coverage. All profitable option trading was investigated and resolved. There was no evidence of illicit trading and no unexplained or mysterious trading. Moreover, there was no evidence that profits from any profitable options trading went uncollected.[171]

The options trading in UAL and AMR was typical of the entire investigation. In all sectors and companies whose trades looked suspicious because of their timing and

[171] The press has reported this claim, and the allegation even found its way into the congressional testimony concerning terrorist financing of a former government official. The government investigation would have detected such traders because the investigators focused on people who purchased profitable positions—regardless of when or whether or when they closed out the position. Moreover, officials at the SEC and the Options Clearing Corporation, a private entity that processes options trading, pointed out that any profitable options positions are automatically exercised upon the expiration date unless the customer explicitly directed otherwise. Any direction not to exercise profitable options is a highly unusual event, which the OCC double-checks by contacting the broker who gave them such instruction. The OCC personnel had no recollection of any such contacts after 9/11.

profitability, including short selling of UAL, AMR, and other airline stocks, close scrutiny revealed absolutely no evidence of foreknowledge. The pattern is repeated over and over. For example, the FBI investigated a trader who bought a substantial position in put options in AIG Insurance Co. shortly before 9/11. Viewed in isolation, the trade looked highly suspicious, especially when AIG stock plummeted after 9/11. The FBI found that the trade had been made by a fund manager to hedge a long position of 4.2 million shares in the AIG common stock. The fund manager owned a significant amount of AIG stock, but the fund had a very low tax basis in the stock (that is, it had been bought long ago and had appreciated significantly over time). Selling even some of it would have created a massive tax liability. Thus, the fund manager chose to hedge his position through a put option purchase. After 9/11, the fund profited substantially from its investment in puts. At the same time, however, it suffered a substantial loss on the common stock, and overall lost money as a result of the attacks.

In sum, the investigation found absolutely no evidence that any trading occurred with foreknowledge of 9/11. The transparency of the U.S. securities markets almost ensures that any such trading would be detectable by investigators. Even if the use of some combination of offshore accounts, shell companies, and false identification obscured the identity of the traders themselves, the unexplained trade would stand out like a giant red flag. The absence of any such flags corroborates the conclusion that there is no evidence any such trading occurred. Indeed, the leaders of both the SEC and FBI investigations into pre-9/11 trading expressed great confidence in this conclusion.

International Investigation

There is also no evidence that any illicit trading occurred overseas. Through its Office of International Affairs, the SEC sought the assistance of numerous foreign countries with active securities markets. The FBI also engaged with foreign law enforcement officials about overseas trading. There are two issues to consider with respect to the international investigation: overseas trading in U.S. securities and trading of foreign securities in overseas markets.

Trading of U.S. securities overseas

The SEC sought the assistance of countries where there was significant trading of U.S. securities. Each of these countries had previously entered into information sharing agreements with the SEC to cooperate in securities investigations, and each willingly cooperated in the 9/11 investigation. According to the SEC, there is generally little trading of U.S. securities overseas, since U.S. securities trade primarily in U.S. markets. Thus, unusual trading in U.S. securities would not have been very hard for foreign regulators to detect. Each country the SEC contacted conducted an investigation and reported back to the SEC that there was no trading in U.S. securities in their jurisdiction that appeared to have been influenced by foreknowledge of the 9/11 attacks.

The foreign investigators also helped investigate suspicious trading in the U.S. from offshore accounts. For example, the SEC investigation revealed that shortly before 9/11 an offshore account had taken a short position in a fund that tracked one of the major U.S. market indices—an investment that profited when the U.S. market declined. After 9/11, the offshore investor closed out the position, reaping $5 million in profit. The SEC's Office of International Affairs solicited help from a European country to investigate further. Although this trade was highly suspicious on its face, the European country's investigation revealed that this investor was an extremely wealthy European national who often speculated by taking short positions in the U.S. market. In fact, the same investor had employed this strategy to lose $8 million in the six months preceding 9/11.

Trading of foreign securities

There is also no evidence that insider trading took place in the stock of any foreign company. The SEC asked its foreign counterparts to investigate trading in securities that trade primarily on foreign markets subject to foreign regulation. Indeed, a number of companies that suffered serious economic losses from the 9/11 attacks were foreign companies, which traded mainly on foreign markets. In particular, the insurance companies with the largest potential losses included Munich Reinsurance Co., Swiss Reinsurance Co., and Allianz AG, all foreign-based companies that primarily traded overseas.[172] In addition to the SEC, the FBI team investigating the financial aspects of the 9/11 plot frequently dealt with foreign law enforcement officials after 9/11 and raised the trading issue.[173] Neither the SEC nor the FBI was informed of any evidence of any illicit trading in advance of 9/11 in any foreign securities.

Shortly after 9/11, Ernst Welteke, president of the German Central Bank, made a number of public statements that insider trading occurred in airline and insurance company stock, and also in gold and oil futures. These preliminary claims were never confirmed. In fact, German officials publicly backtracked fairly soon after Mr. Welteke's statement was issued. On September 27, a spokesman for the German securities regulator, BAWe (Bundesaufsichtsamt für den Wertpapierhandel), declared that while the investigation was continuing, "there is no evidence that anyone who had knowledge of the attacks before they were committed used it to make financial transactions."[174] On December 3, 2001, a spokesman for the BAWe said its investigation had revealed no evidence of illicit

[172] According to the SEC's Chief, Market Surveillance, the countries with the most significant relevant trading of foreign corporations stock were the UK and Germany. The UK quickly and publicly reported it had found no illicit trading. *See e.g.,* J. Moore, The Times, *Bin Ladin did not Deal* (October 17, 2001) (Chairman of Financial Services Authority reported that investigation failed to reveal evidence of irregular share dealings in London in advance of 9/11). Other countries publicly reported similar findings. *See e.g.,* Associated Press Worldstream, *Suspicion dispelled of insider trading in KLM shares before September 11 attacks* (reporting conclusion of Dutch government investigation that sharp drop in share prices of the national airline days before 9/11 were not caused by people who knew of terrorist attacks).

[173] The chief of the FBI team also raised the issue with CIA and asked it to be alert for any intelligence on illicit trading; he received no such reports from the CIA.

[174] Agence France Presse (Sept. 27, 2001).

trading in advance of 9/11 and that the case remained open pending new information. The spokesman said separate investigations by state authorities had also yielded no information and had been closed. [175]

Commission staff interviewed German law enforcement officials who said that exhaustive investigation in Germany revealed no evidence of illicit trading. Moreover, both SEC and FBI officials involved in the trading investigation told the Commission staff that German investigators had privately communicated to them that there was no evidence of illicit trading in Germany before 9/11. The FBI legal attaché in Berlin forwarded a lead to the German BKA (Bundeskriminalamt), which reported back that the trading allegations lacked merit. It appears, then, that Welteke's initial comments were simply ill-considered and unsupported by the evidence.[176]

Other investigation corroborates the conclusion of no illicit trading

Since 9/11, the U.S. government has developed extensive evidence about al Qaeda and the 9/11 attacks. The collected information includes voluminous documents and computers seized in raids in Afghanistan and throughout the world. Moreover, the United States and its allies have captured and interrogated hundreds of al Qaeda operatives and supporters, including the mastermind of the 9/11 plot and the three key plot facilitators. No information has been uncovered indicating that al Qaeda profited by trading securities in advance of 9/11. To the contrary, the evidence—including extensive materials reviewed by Commission staff—all leads to the conclusion that knowledge of the plot was closely held by the top al Qaeda leadership and the key planners. It strains credulity to believe that al Qaeda would have jeopardized its most important and secretive operation or any of its key personnel by trying to profit from securities speculation.

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[175] *See* Australian Financial Review (Dec 3, 2001).

[176] The SEC investigated trading of American Depository Receipts (ADRs) in foreign companies. ADRs are receipts issued by a U.S. bank for the shares of a foreign corporation held by the bank. ADRs publicly trade on U.S. markets. This investigation revealed no illicit trading.