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THE ADMINISTRATION'S NATIONAL MONEY LAUNDERING STRATEGY FOR 2001

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

THE EXAMINATION OF THE ADMINISTRATION'S NATIONAL STRATEGY TO COMBAT DOMESTIC AND INTERNATIONAL MONEY LAUNDERING

SEPTEMBER 26, 2001

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THE ADMINISTRATION'S NATIONAL MONEY LAUNDERING STRATEGY FOR 2001

WEDNESDAY, SEPTEMBER 26, 2001

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 9:05 a.m., in room SD–538 of the Dirksen Senate Office Building, Senator Paul S. Sarbanes (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN PAUL S. SARBANES

Chairman SARBANES. The hearing will come to order.

I want to welcome our colleagues that are here with us this morning. They represent, of course, a bipartisan element in the Congress who have taken a long interest and advocated significant legislative initiatives to counter money laundering.

This morning's hearing will focus on the Federal Government's effort to fight money laundering—what has been done, what must be done. Its starting point will be the National Money Laundering Strategy for 2001. We will be hearing from the Administration. That is mandated by the Money Laundering and Financial Crimes Act of 1998.

First, we will hear from our Congressional colleagues. They will be followed by Jimmy Gurulé, the Under Secretary of Treasury for Enforcement; Michael Chertoff, the Assistant Attorney General for the Criminal Division of the Department of Justice. They will be followed by Former Deputy Secretary of the Treasury, Stuart Eizenstat. And then we will conclude with a panel at the end of the hearing: William Wechsler, Former Advisor to the Treasury on money laundering; Jonathan Winer, Former Deputy Assistant Secretary of State for International Law Enforcement; and Former IRS Special Agent, Alvin James.

We meet in the shadow of the terrorist attacks of September 11. It is obviously more urgent now than ever to develop and put in place the array of tools necessary to trace and interdict the funds on which terrorists like Osama bin Laden rely to pay for their operations. This effort cannot be carried out without major investments of time and planning. Obviously, they have a well developed network of financial means to pay the bills. Our response to terrorism must include national and international programs to checkmate it that are every bit as complex and sophisticated as the practice of terrorism itself.

I think September 11 has sharpened our focus on the ways that vulnerabilities in regulatory and enforcement procedures in our fi-

nancial system can be exploited, although I might note that this hearing on terrorism had been scheduled before those events occurred, and in fact, was to take place the very next day. The IMF estimates that the global volume of laundered money to be between 2 to 5 percent of global GDP. In other words, between $600 billion and $1.5 trillion. Money laundering uses the investment banking and payment system mechanisms of our existing financial system. It fuels organized crime. It creates a transmission belt for money spirited out of national treasuries in numerous countries by corrupt officials. And it is a terrorist source of financial oxygen.

The United States has long taken the initiative in efforts to stop the laundering of proceeds from crime and corruption, beginning with the passage in 1970 of the Bank Secrecy Act. That Act requires banks to report suspicious activities and large currency transactions. But despite the progress we have made, especially over the last 15 years, money laundering has become more difficult to detect. Globalization, which eliminates barriers to free capital movements and relies on advanced technology, makes it possible to move money virtually instantly between any two points on the globe. These changed circumstances have left normal banking practices and traditionally tolerated offshore banking facilities open to grave abuse.

Recent investigations by Senator Levin's Permanent Subcommittee on Investigations have revealed that correspondent banking facilities and private banking services offered by U.S. banks can contribute to international money laundering by impeding financial transparency and hiding foreign client identity and activity. The committee's extensive reports described how crime syndicates, corrupt foreign dictators, and narcotics traffickers use these practices and exploit loopholes in current U.S. law. Thus, criminals and terrorists achieve hidden access to the U.S. financial system, moving under the radar screen of U.S. law enforcement officials and financial supervisors.

The Administration, as we all know, has now issued an Executive Order a couple of days ago freezing the assets of 27 groups and individuals. This is certainly a step in the right direction. But in the judgment of most experts, it is not enough and we need to move forward with these multilateral efforts to deal with the money laundering situation.

It is long past time to cut the financial lifelines which facilitate terrorist operations by closing the loopholes in our financial system. Over the past week, both *The Washington Post* and *The New York Times* have argued forcefully for tougher and broader laws. In fact, *The Washington Post* urged in an editorial on Saturday:

> The existing requirements that banks report suspicious activity to regulators should be extended to other types of financial institutions, such as stock brokers, insurers, and even casinos. The reports that allies of last week's hijackers may have bought financial auctions to profit from the carnage underscores the suspicion that a bank-only focus is too narrow. Broader reporting requirements already are enforced in Europe. The United States should now follow.

And 2 days ago, *The New York Times* called on the Administration and the Congress to revive "international efforts to pressure countries . . . to adopt and enforce stricter rules. These need to be accompanied by strong sanctions against doing business with financial institutions based in these nations."

This is obviously the time to move forward decisively to address a situation that has plagued us for years and which today poses an unprecedented challenge.

I very much look forward to hearing our witnesses this morning, and I yield to the Ranking Minority Member of the Committee, Senator Gramm.

STATEMENT OF SENATOR PHIL GRAMM

Senator GRAMM. Mr. Chairman, thank you very much, I appreciate these hearings.

Let me say that I am very pleased with the actions of the Bush Administration to this point. I have had extensive discussions with the Secretary of the Treasury and with the Under Secretary of the Treasury, and I am very pleased that they are working to put together an effective program, and to coordinate their efforts with us, and that they are committed to due process of law.

I think it is very important that we recognize that you can do almost anything that you need to do to deal with problems of money laundering, but you can do it the right way or you can do it the wrong way. I do not intend to be involved in doing it the wrong way.

And let me just give a couple of examples to try to explain the concerns I have. If we go out and freeze assets, which we have every obligation to do when we believe that those assets have been used to harm Americans and they represent a clear and present danger to our people, when we do that, we have to establish a process where people have the right to challenge that action.

So if a guy named Bobby bin Loden from Iraan, Texas, has his assets frozen, he should have an opportunity on a timely basis to come forward and say, "I am from Iraan, Texas. My name's Loden. You made a mistake here." And in fact, if a mistake has been made, if this person's business has been harmed, then that person has to be compensated.

The second example I would like to use is related to unchecked authority. The Secretary of the Treasury, in any money laundering bill, is given extraordinary power. I believe that power is needed to take action, and I do not want to do anything to impede the ability of the Secretary to take action. But it is very important that in taking that action, the rule of law be followed.

For example, if the Secretary of the Treasury determines that a country, say France, is not adequately participating in our money-laundering effort, and he decides to take action to deny the ability of American banks to operate in France, I would have to say that I prefer Bush's proposal, which would deny the ability of French banks to operate in the United States, because it is fairer and I think it would be a more effective inducement.

But whatever course of action he decides, it seems to me that he has to come forward with findings in taking that action that are potentially rebuttable in court. And if there are security concerns in those findings, at least he should have to go before a circuit judge in private and present those findings. I cannot imagine that we would give anyone in a free society the authority to take actions that would destroy tens of millions of dollars of someone else's property without requiring some system of checks and balances.

So let me say that I think the most important thing we can do in this area is to enhance enforcement. I think that has been the primary approach of the Bush Administration. It is an approach that I support. I want to be certain that we have every power that is needed to do the job. But every power has to include with it due process of law that protects the right of innocent people who may be caught up by a mistake in this process. And I think any action that is taken should be taken through regulation and not by order, so that people have an opportunity to be heard and comment on proposals before they become final.

We can do everything that we want to do within the rule of law, within the establishment of due process, and with checks and balances to protect ourselves from abuse. The question is doing it right or doing it wrong. I am determined to see we do it right—I believe we can, and I am confident we will.

Chairman SARBANES. Thank you very much, Senator Gramm.

I say to my colleagues, we are going to take the testimony of our colleagues because I know they have other conflicting engagements this morning—Senator Levin, for one, has his responsibilities as Chairman of the Armed Services Committee—and then we will come back and take statements from the Members of the Committee as we go on to the next panel.

Senator Levin, we would be happy to hear from you. And just let me note that Senator Levin has played an instrumental role in exposing how criminals have used the U.S. financial system.

As the Ranking Member of the Permanent Subcommittee on Investigations, he has published two comprehensive reports on how correspondent and private banking activities make U.S. banks vulnerable to money laundering and he has introduced a very important piece of legislation—The Money Laundering Abatement Act of 2001. The work of the Subcommittee was very thorough, very comprehensive, very carefully done, and we are very appreciative that Senator Levin is with us this morning.

STATEMENT OF CARL LEVIN
A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Mr. Chairman, Senator Gramm, Members of the Committee, thank you for holding these hearings, for your leadership in going after money laundering, which is very much a part of the terrorist effort to terrorize us and the world.

Tightening money laundering laws would strike an important blow against terrorism, and we are all determined to take those steps. One of the steps is set forth in a bill which I introduced, along with my principal Republican cosponsor, Senator Grassley. Senator Sarbanes, thank you for your cosponsorship. It is also cosponsored by Senators Kyl, DeWine, Bill Nelson and Durbin.

As you said, Mr. Chairman, we know already that the September 11 terrorists have used our banks, our financial institutions, to accomplish their ends. They have used checks, credit cards, wire transfers involving our banks. There is even pictures of two of the terrorists using an ATM. And there are reports of large unpaid credit card bills as well.

Terrorists, drug traffickers, and other criminals can get money into our banks and into our banking system through the use of for-

eign banks. And that is the correspondent banking issue which the Chairman has referred to and which we have addressed in a series of hearings that we have had and in a series of reports, and in the bill which we have introduced.

As a matter of fact, terrorists and criminals can even create foreign banks for the purpose of getting money into our banks through the correspondent banking system. This has been going on with terrorists, including bin Laden, and criminals for years. We just simply have to do something about it.

I just want to use one example of where a correspondent bank was used by bin Laden. This testimony came out recently at the criminal trial in New York where bin Laden's associates were testifying, and they testified to the following. That an associate of bin Laden testified that he had received $250,000 by a wire transfer from a bank called the Al Shamal Islamic Bank, which is in the Sudan. This was in the early 1990's.

The Al Islamic Shamal Bank, according to the State Department, is owned or partly owed by bin Laden and it is apparently still true that bin Laden owns an interest in that Sudanese bank, or at least was true as of March 16, 2000, when a respected international newsletter on intelligence called the Indigo Publication, said that bin Laden remains the leading shareholder of that bank.

Now testimony at this trial, which was a trial relating to the terrorist bombings in Kenya and Tanzania.

Chairman SARBANES. The bombings of our embassies.

Senator LEVIN. Of our embassies. Thank you. Showed that this $250,000 came through or from the bank that was owned by bin Laden in the Sudan to this bank in Texas. There was a correspondent relationship, either directly or indirectly, to that bank from the bank in Sudan. The associate bought an airplane with the $250,000 and flew it to bin Laden and delivered the keys to that plane him. That was done through the wire transfer to an American bank of $250,000.

Now in the mid-1990's, Sudan was placed on the list of countries that our banks could not do business with. That occurred after this transfer. But the question then arises, well, if they cannot transfer money directly to an American bank through a wire transfer, through a correspondent account, is there a way to do it indirectly? And I am afraid the answer is yes.

But before I show you how they can do indirectly what we have stopped them from doing directly, I want to just say that as of today, the website of that Sudanese bank shows that they still have correspondent banking relations with western banks, including American banks. Now, we think the American bank accounts are either closed or no longer operative. But the website of this bank, the Al Shamal Bank, you can see it on your own computers, still shows that European banks, Southeast Asian banks, North American banks, including American banks, still have correspondent relations with the bank, which as late as April 2000, was said by a reputable newsletter relating to intelligence activities, that bin Laden had an ownership interest in.

We are trying to find out, by the way, whether in fact these banks—there are a lot of reputable banks on that list—have an open account with the Al Shamal Bank. We are trying to determine

that as we speak. But the website of the Al Shamal Bank shows that that correspondent relationship continues to exist to this day. Finally, I want to go back to the direct and indirect issue.

If we could put that first chart back on about how bin Laden used banks, not just could used, but actually did access the one bank on the left, but then on the right shows how, when that was stopped in the mid-1990's, when the OFAC list was created by the Treasury Department, which prohibited our banks basically from dealing with Sudanese banks and banks in other countries such as Sudan, what the Al Shamal Bank now can do, and does do, according to its website, instead of having a direct correspondent relationship with an American bank and opening an account in an American bank instead opens an account in a foreign bank. And then that foreign bank has a correspondent account in a U.S. bank.

Now that process, it seems to me, has also got to be very much tightened. And we do it in our bill in a number of ways. I think because of the time constraints of the Committee, I will not go into the ways in which we constrain it in any depth, other than to say this. Our bill will prohibit an American bank from having a correspondent relationship at all with what is called a shell bank. That is a bank that has no physical presence anywhere. It is licensed by a country, but has no physical presence anywhere.

We would prohibit a correspondent relationship with that bank. We very much tightened the rules as to a correspondent relationship between an American bank and two other types of banks. One is an off-shore bank, which is not allowed to do business in the country where it is registered, has a physical presence somewhere, but the country that registers it says, we are not going to let you do business with our citizens. And so we very much tighten that up. We would require that they disclose to the American bank who their customers are. And the same thing would be true under our bill with banks in jurisdictions that are so-called suspect jurisdictions because they have no very strong banking regulations.

There is a third area which Senator Kerry's bill gets to in a very important way. And that is where he would give in his bill, which I cosponsor, the Treasury Department the right, and he will describe his own bill, but I want to show you how it complements. These bills work together. In fact, I will leave that to Senator Kerry, other than to say that these bills work together to complement each other.

Finally, let me just say this. There are a number of bills that are outstanding here, a number of efforts that are being made. They complement each other.

We received a letter from the U.S. Department of Justice which is very supportive of our bill. We also received a letter from my own Attorney General in Michigan, Jennifer Granholm, very strongly supporting our bill. But there are significant loopholes in the correspondent banking area. These loopholes have to be closed if we are going to truly wage a comprehensive war on terrorism.

I want to thank you again, Mr. Chairman, for giving us the opportunity to testify.

Chairman SARBANES. Well, thank you very much. And we want to thank you for the very careful, comprehensive hearings that your Permanent Subcommittee on Investigations undertook.

Next, we will hear from Senator John Kerry, who has been at the forefront of Congressional efforts to deal with domestic and international money laundering.

Earlier this year, Senator Kerry reintroduce the International Counter Money Laundering and Foreign Anti-Corruption Act of 2001, which, as Senator Levin pointed out, gives the Secretary of the Treasury authority to impose new special measures against foreign jurisdictions and entities that are of primary money laundering concern to the United States.

Senator Kerry, we know you have been working this issue for a considerable amount of time. We would be happy to hear from you.

STATEMENT OF JOHN F. KERRY
A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you very, very much. Thank you for having these critical hearings and thank you for the opportunity to testify today. And to all the Members of the Committee, I am honored to be in front of you.

I thank Senator Levin for his leadership in the Permanent Subcommittee. I think he did a terrific job just now of helping to show the linkages here and why this is so important.

I would like to sort of build a little bit on what he said, if I may. There are a lot of tools, Mr. Chairman, in this new war. I would ask unanimous consent to put my entire text in the record.

Chairman SARBANES. The full statement will be included in the record.

Senator KERRY. Let me just chat about a few of the most important points, if I may.

We have declared a new war on terrorism. And it is appropriate, because it is new, it is going to be unlike anything that we have ever engaged in. And unlike other wars where our technological superiority was the difference, Kosovo, for instance, where we did not lose a person. We could bomb for days and achieve our goal. Or Haiti, where our overpowering numbers, or Panama, where our overpowering numbers, or even Vietnam, where troops and helicopters made a difference. Here, the single most important weapon is going to be information. It is intelligence. And it is perhaps the area in which we are our weakest today, sadly.

But coupled with intelligence is this management, if you will, of the source of the power of these terrorist organizations, their capacity to survive, to buy airplanes, to buy explosives, to pay people's living expenses, to move them around the world, to literally harbor and succor them.

And I think, Mr. Chairman, that for years now, what we have known is that this war is really more law enforcement than traditional military enterprise. It has to be multilateral. It has to raise the standards on the planet, if you will, in order to be able to cooperate adequately to do this.

We currently have some 36 jurisdictions that the OECD still cites as being renegades, I guess is the best way to describe them, with respect to their policies for accountability, for transparency, movement of money, even tax policy.

Now, Senator Gramm and others have in the past been wary, and I recognize that wariness, of having the United States impose

its will because somebody else might have a different tax structure. I want to emphasize—that is not the rationale. It is not the differential in a tax rate that would motivate us to say that those places ought to be more accountable. It is the lack of transparency, the lack of accountability, the different treatment between foreign and domestic individuals, and the way they attract capital.

And I would just direct the attention of the Committee to its own memorandum of the staff in preparation for this hearing, in which they properly say: Money laundering poses an ongoing threat to the United States. The economic costs associated with money laundering include increased risks to bank soundness with potentially large fiscal liabilities, reduced ability of a country to attract foreign investment, increased volatility of international capital flows and exchange rates, the distortion of the allocation of resources, distribution of wealth, and it can be costly to detect and eradicate.

Most importantly, Mr. Chairman, it is literally the lifeblood of all criminal enterprises that these revenues generate. And all of these are interconnected.

For instance, in Afghanistan, Osama bin Laden and the Al Qaeda has been involved in drug trafficking, as the Taliban has been. Now some point to the fact that the Taliban has tried to reduce the drug trafficking, principally because the Northern Alliance and the Al Qaeda were sort of undercutting them, and so they came in to move in on it. But three quarters of the world's opium has been coming out of there.

So you have a linkage. It is a linkage also, I might add, to much of the proliferation issues, the movement of arms, arms trafficking, illicitly. So if you are going to be serious about fighting a war on terrorism, which we obviously should and must be, the first order of priority is to implement an extraordinary diplomatic effort to raise the international standards of accountability and transparency and exchange of information.

Now I agree with Senator Gramm, there must be a due process component here. And indeed, the Office of Foreign Asset Control, OFAC, had an incident with Columbia, one individual, and they moved rapidly to make certain that they addressed it and that there was no unfairness in the application of any of these standards. Should it be de jure? Most likely. We should have it either by regulation or by legislation, a structure so that we guarantee it.

But I have to also say, Mr. Chairman, over the 14 years or more that I have been involved in this, I have witnessed a remarkable reluctance by the financial community, the banking institutions, to participate. I have traveled to England, met with a board of governors there, others, talking about various jurisdictions under their control, where you have known remarkable exchange of money laundering efforts, havens.

These havens, I might add to everybody, put all of our legitimate businesses at remarkable disadvantage and they are an incentive for tax evasion, for every legitimate government on the face of the planet that is struggling with the question of revenues. These renegades offer an alternative to our capacity to do what we do without unfairly distributing the burden of taxes. And so, we have an enormous interest in pressing this as a matter of governance, as well as a matter of fairness.

I think it is time to get tough. Fair but tough. We have the strongest market in the world. People must access our market to be meaningful players. And we must use the access to our market, whether it is the Chip system in New York, where we clear checks, or the partition placing in the marketplace itself, as the leverage for the behavior of these countries.

And I would say to my colleagues, since the OECD has publicized the names of many of these renegades, a large number of them have already moved to change their laws because they understand what the implications are. And as a consequence of what happened on September 11, this is the best opportunity we have had ever to try to do this.

Now many of you may remember the BCCI Bank which tried to illegally enter our system. Osama bin Laden had a number of accounts at BCCI. And we have learned, we did not know it at the time. It was collateral to what we were doing in trying to protect the laws of our banking structure.

But we have learned since through law enforcement and intelligence that when we shut it down, we dealt him a very serious economic blow because of the size of those accounts and his dependency on that flow that Senator Levin has already described for his money. So it is critical that we empower the Secretary of State and I might add, the Secretary of Treasury, we have to go beyond what the Bush Administration has done.

I support what they have done. I am glad they did what they did this week. But as former Assistant Secretary of State, Jonathan Winer, will show you in a while on a huge chart, the number of Osama bin Laden linkages is mind-boggling. And when you see this chart and measure the 27 that we have now named versus all of those that we know in the public domain exist, this is a first step that does not amount to the kind of war we need to be engaged in.

Now, I know that there are sensitivities and reasons for why we want to try to take a few days to pull that together. But all of us need to recognize that we have to be prepared to go further.

So, Mr. Chairman, in summary, the bill that we are hoping will be embraced in the context of these larger efforts empowers the Secretary of the Treasury to designate these primary money laundering concerns, and after the designation, to take one of several steps to move on the kind of corresponding banking situations Senator Levin has described—to require identification of those who use the foreign banks' payable-through account with a domestic financial institution, to require the identification of those who use the foreign banks' correspondent account with a domestic financial institution, to restrict or prohibit the opening or maintaining of certain corresponding account for foreign financial institutions.

But most importantly, ultimately, we have to empower the Secretary of the Treasury with due process to prevent any country, government, or financial institution that harbors or continues to not adhere to the higher standards of banking behavior from taking part in the upside benefits of the United States of America's marketplace strength. And that is the way we have to play this if we are going to really conduct a war on terrorism.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you very much, Senator Kerry.

Senator Grassley has played a very pivotal role in increasing awareness about money laundering. Senator Grassley served as co-chair of the Senate Caucus on Narcotics Control and authored the Senate version of the Money Laundering and Financial Crimes Strategy Act of 1998.

That Act mandates the development of a national strategy on money laundering and requires submission of this strategy to the Congress. In fact, our next panel from the Administration will actually be responding to the provision of the legislation that Senator Grassley authored.

He is also the cosponsor of the bills that both Senator Levin and Senator Kerry have introduced in this Congress, and Chuck, we are pleased to have you here. We would be happy to hear from you.

STATEMENT OF CHARLES E. GRASSLEY
A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you, Chairman Sarbanes, and my colleagues. And I am glad to be here with the authors of this legislation and to support their efforts.

If this were pre-September 11, I would probably be here just to talk about money laundering as it dealt with drug trafficking and our efforts to stop that. But, with the happenings of September 11, it takes on a whole new side and obviously, we get to the point where efforts to stop money laundering becomes also an essential tool of going after terrorists that have been so well described by my colleagues here at the table with me.

Our focus needs to be not only on the specific assets of terrorists, but also on identifying their methods and eliminating their sources of funding. The events of 2 weeks ago, it is because of that that we are now faced with another group of thugs. We used to refer just to drug thugs. But now the terrorists that are able to launder illegal proceeds to pay for their activities, must be included. For them, money, access to it and to the mechanisms for placing it in the legitimate economy are the equivalents of their war industries. And to strike at them, we must strike at their ability to wage war. That reality has increased the importance to what we are here talking about today. Two weeks ago, we might have said, passing these bills was an important thing to do. It seems to me, passing these bills now is an imperative.

These bills, of course, are not new. The elements in them have received careful consideration over the last several years because of money laundering, particularly as related to drug trafficking. These bills are not full of hastily assembled items. They contain needed changes and add important tools to our arsenal. We also need to work with the banking and the financial services industry to ensure that we act smart as we go quickly down this road. We also need to see that they are on board. This is not a burden that government here or elsewhere can carry alone. We need to combine all of our strengths and our capabilities. But circumstances demand meaningful action now and these bills give useful, important tools of adding them to our toolkit.

So even though we are here talking about legislation, I think we are here to plead with bankers everywhere who are in as much harm's way of terrorists as anybody else in America. Normally in

government, we respect bankers' relationships with each other. This has been a very cozy community, and I do not say that in a denigrating way. This community has certain sensitivities in the banking community—respect for each other's relationships with clients, kind of the lack of transparency that my colleague has already talked about, maintaining privacy, respect for secrecy. Well, in normal times, I think we would also back up and respect that.

But these are not normal times, Mr. Chairman. I think it is time to put these sensitivities that we have respected within the banking community, to put them aside. And in a sense, we are here not just to legislate, we are here to plead to have the ultimate of cooperation of the United States bankers and international bankers in this effort to defeat terrorism.

Without this cooperation, without even ideas from them, without even their coming to government and saying, you are overlooking something here by not going at it this way. This is the sort of mobilization of the private sector as well as the public sector if we are going to defeat terrorism.

Chairman SARBANES. Well, Senator Grassley, thank you very much. I think that was an extremely thoughtful statement and I want to pick up on just two points in it.

First of all, the legislation we are considering has been well developed. As you point out, it is not hasty. In fact, Senator Kerry's legislation was reported out by the House Banking Committee in the last Congress on a vote of 33 to 1 that came out of the Committee deliberation.

Senator Levin's legislation, as I indicated earlier, reflects a long process of very thorough and careful hearings. In fact, I think your reports stand about this high [indicating], if I am not mistaken, coming out of that Committee.

Senator LEVIN. Almost as tall as my newest grandchild, as a matter of fact, Mr. Chairman.

[Laughter.]

Chairman SARBANES. Fair enough. And Senator Grassley, I think your observation about the participation and cooperation of the private sector is very important. They can be extremely helpful. They know what these practices are.

And the kind of just resistance to any action at all I think has to be jettisoned now and there has to be a different attitude that says, well, we have to have legislation. We have to tighten up this system and strengthen it. We are here to provide some ideas and to help move this forward. I appreciate those comments very much.

I am going to forego any questions to forward the agenda here this morning. Do any of my colleagues have any questions of our colleagues?

Senator STABENOW. Mr. Chairman? If I might just ask—

Chairman SARBANES. Well, let me yield to Senator Shelby first.

Senator STABENOW. I was only going to say, Mr. Chairman I have to preside at 10 a.m.

Senator SHELBY. I will yield to her, Mr. Chairman.

COMMENTS OF SENATOR DEBBIE STABENOW

Senator STABENOW. Thank you. I do not really have a question. I just wanted to thank you for holding the hearing and indicate my

strong support for these efforts, and apologize in advance for having to leave the Committee to preside over the Senate.

But I am hopeful I will be back before the hearing is concluded. Thank you.

Chairman SARBANES. Thank you very much, Senator Stabenow.

Senator Shelby.

COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, thank you.

I want to thank my colleagues for their work. I have a few questions and maybe you answered them in your detailed statements. How do you get into the extraterritorial way that we would enforce this? This is very important if we are going to do it, and I think it has to be done. I agree with all of you and I commend all three. How do you do the extraterritorial reach. Carl? John?

Senator LEVIN. In a couple of ways. First, you can require our bank——

Senator SHELBY. It is central to this, is not it?

Senator LEVIN. It is an important issue. First, you can require our banks under the circumstances that we set forth to require that, where there is a correspondent account under the circumstances described with a bank abroad, that that bank disclose its banking customers to our bank so that we have disclosure, various types of disclosure under different circumstances. But, nonetheless, disclosure of who that foreign bank's banking customers are under our circumstances.

Second, we allow for the freezing of assets. There is no reason why a correspondent bank account should not be subject to the same freeze of assets—if I used the word seizure, I meant freeze—the same freezing of assets as an American individual's accounts can be frozen. Where there is probable cause that a crime has been committed, then we allow the freezing of assets.

Senator SHELBY. Due process.

Senator LEVIN. Due process. We have due process very carefully laid out. Senator Gramm is surely right. You want to have due process and a right to appeal a freezing of an account. But right now, we do not permit the freezing of a correspondent account of the assets in that account except under almost impossible proofs. You have to prove that the bank itself was involved in the criminal activity. It is not enough to prove that the criminal's money is in that corresponding account.

Senator SHELBY. Apparently, we do not have the tools to do the job.

Senator LEVIN. And we need that tool, too, to freeze assets in the correspondent account.

Finally, through service or process and jurisdiction over foreign banks that have correspondent accounts, we can have longer reach for our courts.

Those are three ways in which we can accomplish the goal you set forth.

Senator SHELBY. Senator Kerry.

Senator KERRY. I would add to that that much of what we are seeking to do is not in fact extraterritorial. Obviously, there are limits on our capacity to order a bank in another country over

which you have no—there is no long-arm reach, and so forth, statute otherwise which would have any validity. But the powerful tool here is the control over our own marketplace. That is essentially what Senator Levin was describing.

We are not extraterritorial in requiring them to adhere to a standard of behavior if they want to be in our country, or if they want to be a corresponding bank with our banks. The behavior that you are really controlling is our marketplace, our banks, and access thereto. On those components which reach into extraterritoriality, for instance, in the order President Bush issued on Monday, that works for those countries like Italy or Germany where they have the same laws we do with respect to freezing. But Spain does not.

So if you have a foreign bank and you say you are going to freeze the assets and the assets in fact are partly in Spain, you cannot do that unless they change their law or come to some other international agreement. That is why the multilateral component of this is so critical. And to some degree, I would disagree with the early indicators of the Bush Administration. They seem to be wanting to be more unilateral in their approach, not as multilateral as we have been in the last 10 years.

And I think that may have changed, incidentally, in the last week or so. But my hope is it will change because there is a huge multilateral component to this that will require ratcheting up the diplomatic effort very significantly in order to get countries to change their laws. So, again, you are not forcing them, but you are leveraging them to the greatest degree possible through legitimate means in our marketplace and our laws.

Senator SHELBY. To get them to raise the international standards, right?

Senator KERRY. Raise the international standard, or to live by our standard if they want to participate in our marketplace. And that is a powerful incentive, incidentally.

Senator SHELBY. How do you separate the legitimate banking going on from what we would deem to be illegitimate? In other words, do you review this? Somebody reviews these transfers?

Senator KERRY. First of all, you have your so-called SAR reports.

Senator SHELBY. We have that, I know.

Senator KERRY. And you build on that. Second, I mentioned information earlier.

Senator SHELBY. Do you think that is enough by itself, John?

Senator KERRY. Of course not. Absolutely not. Most of them sit there. People do not know how to interpret them. Second, we do not have enough people.

Go up to the financial assets control—how many people are up there now? Two? Three? I think we may have 3 or 4 people up there, something like that, maximum. We do not have enough. We have not put the computer capacity up to speed, the personnel capacity, et cetera, do a lot of this. But let me go one step further.

This is where the law enforcement component, intelligence component, and what Senator Grassley was saying, the participation of the bankers themselves. The international banking standard under the Basel Convention is ostensibly, know your customer. Well, an awful lot of bankers do know their customers. And there has been a sad history of not sharing what they know about that customer,

where they know it is illicit and dangerous activity, with the rest of the world. That is the behavior that has to change.

And so, if the flow of information is such, you will distinguish, and if you have the adequate due process protections, law enforcement has to have reasonable cause. There has to be a reasonable standard here.

The Secretary of the Treasury under our bill has to do this in consultation with the Secretary of State, Defense, NSA, et cetera. So it seems to me that while nothing is perfect, what we have today is in fact an empowerment of the criminal enterprises, an empowerment of terrorism, and we have to begin to move in the other direction in order to take back the control, mindful of the need to be thoughtful about the due process components.

Senator SHELBY. Thank you.

Thank you, Mr. Chairman.

Chairman SARBANES. Are there any other questions?

Senator GRAMM. Let me just make the following point.

We had 157,000 reports last year of questionable activities from banks. We do not have the resources to process those now. And the most immediate effect that can be had is providing the resources to go through those 157,000 suspicious activity reports and try to ferret out what is suspicious and what represents a threat.

I would say, in response to Richard's point, the good thing that the Administration has done, and it is unilateral, but it sends a very clear signal, is that if you want to do banking in the United States, you are going to have to meet these standards. And that I think is the kind of signal that you need to send up front if you expect to raise international standards.

And as I looked at the actions that the Bush Administration took, that action was the strongest in terms of sending the right signal. We cannot make banks in other countries do what we want them to do. But we can set standards if they want to do business in the United States. If you want to be in the banking business, you have to do business in the United States. So, I think that is the right approach. That was the focal point of what they did, and I think that that was the right thing.

Senator LEVIN. If I could just add, that is the basis of our bills as well.

Senator SHELBY. That is right. Your bills actually both target in a way that has not been done in the past. So you are not caught up in the morass of hundreds of thousands of reports. In fact, the Kerry bill provides a procedure to identify special measures against foreign jurisdictions or entities. So you identify, in a sense, the bad actors. They are subjected to a very detailed scrutiny, and I think that makes a lot of sense.

Senator KERRY. Can I just add one quick thing?

Chairman SARBANES. Certainly.

Senator KERRY. The question of this leverage is something we honestly have been pushing for for some period of time and regrettably, have not had a sense of urgency about doing. So, I hope that we will really follow through on it. But may I say to all of my colleagues on this Committee, I want to underscore this informational component of it and the sharing of it and the structure by which we do it.

It is not caught up in this bill. But the fellow, Rochman, who was involved in the bombing of the Trade Center in 1993, was on the watchlist in Saudi Arabia, in Egypt. And when he came over here, there was just a complete wall between the watchlist, the intelligence community, and the law enforcement community. So nobody watched him and nobody tracked him. I am told that several of the people involved in this most recent attack fall into that same kind of barrier between intelligence and law enforcement.

Again, I repeat for all of us, this capacity to begin to improve our gathering of information, the movement of the information, the analysis of the information, and the personnel components of that, are the front line of this war. And we need to do it.

Chairman SARBANES. Gentlemen, thank you very much, and we look forward to consulting closely with you in the days—I want to underscore that—in the days ahead, because this is a matter of import and of some emergency. We appreciate your testimony.

Senator CORZINE. Mr. Chairman, may I ask one question with regard to whether private banking standards are addressed in your bills as much as the commercial banking and financial institutions that are generally the subject, at least as I have read them?

So much of access of the system comes through the investment process. Institutions such as hedge funds are left out of regulatory structures and easy for funds to access. I would like to hear whether your bills address these kinds of other intermediaries, as opposed to clearly identifiable financial institutions.

Chairman SARBANES. Go ahead.

Senator LEVIN. Could I just respond briefly to that?

Chairman SARBANES. Yes.

Senator LEVIN. We do address the private banking situations in our bill and require enhanced know-your-customer rules in the private banking area based on the hearings that we had into the abuses of private banking which were extensive hearings.

On to the latter part of your question, we actually have hearings that we are going to be getting into in that area. They are not yet covered in the bill, but the hearings that are scheduled by my Permanent Subcommittee on Investigations will get into that area.

Chairman SARBANES. Thank you.

Senator SCHUMER. Mr. Chairman.

Chairman SARBANES. Senator Schumer.

Senator SCHUMER. I just had one quick question as well. I put in a bill with the late Senator Coverdale and Congressman Leach very similar to yours, Senator. But here is the thing that plagues us, Carl. How do you deal with other countries, and John touched on this, that do not cooperate, which tend to be large countries?

That chart you had, which is the Sudan bank, we can cut them out of America, but if we cannot cut them out of other major countries that have sophisticated banking systems, and those systems deal with our banks, then, for all practical purposes, we have not accomplished much.

And that is the fundamental dilemma that I have been wrestling with this issue. Could either of you—I know we talk about pressure. But shouldn't we consider something further than pressure?

Senator KERRY. Yes.

Senator SCHUMER. Which is to say, if a large country with a sophisticated banking system continues to deal with the banks in one of these small countries that we know are just designed to hide money, that they will have to face penalties in dealing with our banking system, because even the French or the Germans or the British or the Japanese, which have huge banking systems, have to be part of our system.

Otherwise, what I am worried about is they will just—they are very clever and very nimble and these terrorists, as well as other kinds of money launderers, will rejigger things and make their base of operations another country that has a sophisticated banking system, but does not have the rules and laws that we have.

Senator KERRY. Senator Schumer, that is a very good question and it is one that has been asked by the financial community for a number of years. In fact, one of the arguments that you heard against moving was, well, if you get too strict, they will move offshore and then you wind up diminishing your capacity. But I think we have moved in the last 10 years, beginning, I might add, with President Bush in 1989, and moving forward since then, there has been a significant effort on the international front.

You are going to hear from former Assistant Secretary of State Jonathan Winer, who negotiated a lot of these efforts internationally. Others have been involved in this. The OECD is pressing this issue now. We have urged the G–7, G–8, even G–16, to become the focus of this effort. If you have the developed world, essentially, joining together in this effort and they seem to be, as a consequence of what happened on September 11, then you really begin to create a new structure. And so that is why I said a moment ago, it has to be multilateral with a major ratcheting up of the diplomatic effort simultaneously. We cannot do all of this alone.

Senator LEVIN. And if I could just add one word. We have to also be consistent. There is a very strong international effort in the area of tax evasion, which we have lagged behind. So when we do that, we are sending a mixed signal about the importance of the international community being involved in correcting some of these.

Senator SCHUMER. But am I wrong to think that if even one or two major countries resist this pressure, that we then have a gaping loophole here?

Senator LEVIN. There would still be access to our market, which the Chairman has pointed out, and others, that they still want, and that access is going to be restricted.

Senator SCHUMER. Well, that is the point. We might have to say to a major country, if you do not do this, all your banks cannot deal with us unless you join up with this. And I do not know whether we say that through diplomacy. But when they resist, where do we go from there? That is the question that has plagued me about this for the longest time.

Senator KERRY. But, Senator Schumer, there is a level of reasonableness in these standards. It is very difficult for a nation that is a member of the WTO, that is at the United Nations, Security Council, elsewhere, participating in global affairs, to legitimately resist the diminimus standards of accountability, transparency, exchange here, that most of the developed countries are utilizing anyway in one form or another. There are not huge differences here,

frankly. There just are not. There may be nuances of particular law or particular protection or access or rapidity with which somebody has access to redress in the court system or something. Sure. But the fundamentals that criminals should not be using the financial marketplace with impunity, to be able to wage war against that very marketplace. And what we are seeing in response, I think the United Arab Emirates, the Saudi break of relations with the Taliban, the current movement of countries to agree that they have to become part of this effort, is because they recognize they are threatened.

Every country is threatened by a terrorist organization that has access to these financial services without accountability. And they all recognize it is in their interest and in the interest of governance and security to move in this direction. I think the weight of history as well as the weight of reasonableness is on our side.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman SARBANES. I do not want to close out any of my colleagues. This is a very knowledgeable and informative panel. And while a short while ago I was trying to move it along so we could move ahead, I do not want any of my colleagues who have questions not to have the opportunity to put them. If there are, we will do that. In fact, I will go to the regular order and move through and recognize people for their 5 minutes if they wish to ask any questions.

Senator LEVIN. Could I leave expressing the hope that money laundering provisions be included in any anti-terrorism bill? That is going to be an important test and it is coming up soon.

Chairman SARBANES. Well, that is why I said earlier that we look for your counsel over the next few days, yes.

Thank you all very much. You have been extremely helpful.

Senator LEVIN. Thank you.

Senator KERRY. Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you.

Chairman SARBANES. Thank you.

If the next panel would come up and take their seats, I will now recognize the Members of the Committee for any brief statements they may wish to make.

Senator Johnson.

COMMENTS OF SENATOR TIM JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman. I will be very brief and submit a full statement for the record.

I simply want to commend you for rescheduling this important hearing so quickly. As we all know, anti-money laundering tactics will play a critical role in our war against terrorism. And I would like to note that the Chairman had the foresight to schedule a hearing on this topic well before the attacks of 2 weeks ago.

Senator Sarbanes identified early on that our National Money Laundering Strategy is a critical weapon in our arsenal against terrorists, drug lords, organized crime syndicates, and others, and I am pleased that this Committee will play a critical role in our Nation's anti-money laundering efforts.

I would also like to thank President Bush for taking decisive action this week to move forward with at least the first step in a si-

lent war on the financial assets of those who so cowardly attacked America 2 weeks ago.

Mr. Chairman, I do believe that the challenges to deal with money laundering will be one of the critical pieces in our overall strategy against terrorism and I would like to commend our colleagues for bringing forward legislation. I look forward to reviewing the President's plan.

And as our colleague and friend, Senator Levin of Michigan, noted, we cannot have a war on terrorism without also have a significant component dealing with the choking off of financial resources available to these terrorists.

Again, thank you Mr. Chairman for rescheduling this hearing. I look forward to the testimony and working with my colleagues across the aisle on a bipartisan effort to make our significant contribution through this Committee to the war on terrorism.

Chairman SARBANES. Very good.

Senator Shelby.

Senator SHELBY. I would just ask, Mr. Chairman, that my entire statement be made part of the record. I am looking forward to hearing from the Justice Department and the Treasury.

Chairman SARBANES. Good. Your full statement will be included in the record.

Senator Reed.

COMMENTS OF SENATOR JACK REED

Senator REED. Well, thank you, Mr. Chairman. I also want to commend you for holding this hearing. It is incredibly important. We face a daunting challenge to counteract terrorists who have attacked our country. There are many different responses that we will have to undertake—intelligence gathering, military operations. But not the least of these is disrupting the financing of these terrorist networks.

And to that end, this hearing is extremely important. I look forward to the witnesses today and also to prompt action on legislation to provide the tools that our Government needs to counteract money laundering and terrorist financing throughout the world.

And I thank you, Mr. Chairman.

Chairman SARBANES. Very good.

Senator Allard.

COMMENTS OF SENATOR WAYNE ALLARD

Senator ALLARD. Thank you, Mr. Chairman. I also have an opening statement I would like to make a part of the record.

Chairman SARBANES. The full statement will be included in the record.

Senator ALLARD. I just want to congratulate you on the hearing. It is timely and something that we need to work on.

I do think that we need to figure out a way to evaluate a measured response. In other words, as we pass these rules, regulations, requirements, and reporting, measure in some way how effective they really are. I think that is an important concept.

Chairman SARBANES. Good. Thank you very much.

As Senator Schumer observed earlier, he and Senator Coverdale, our late and very highly regarded colleague, had joined together in

introducing the Foreign Money Laundering Deterrence and Anti-Corruption Act in 1999. That bill had a number of very important provisions in it. Some of the aspects of that have already been discussed, and I will not take the time now to review the items.

Senator Schumer, we would be happy to hear from you.

STATEMENT OF SENATOR CHARLES S. SCHUMER

Senator SCHUMER. Well, thank you, Chairman Sarbanes. And I want to thank you for your leadership and your ongoing interest in this issue.

I think as was mentioned, this hearing was scheduled and your interest predated what happened here. And of course, now we are going to move very quickly because of what happened. Let me just make a couple of points.

First, the timing of this hearing is so important because these kinds of well-organized, well-funded terrorist attacks are at the heart of this seemingly intractable problem of money laundering. The funds they use that are either proceeds from or investments in illicit activities seem to filter through the international banking system like water. Jurisdictions that provide total opacity for the owners of these accounts and by statute refuse to cooperate with international law enforcement are the spigot.

There are countries that set up banking systems that then go on the web to brag that no one will find out who you are, where your money comes from, and where it is going to. A Yahoo search produces over 30,000 websites that provide corporate structures and bank accounts that allow for the transfer of funds to places like—I cannot even pronounce some of them—Vaunatu and Naru in the South Pacific, and St. Vincent and Anguila in the Caribbean. And Treasury's FinCEN, the Financial Crimes Enforcement Network, estimates that $4.8 trillion in hidden assets in these jurisdictions is concealed to cover up some crime.

That is a pretty powerful statement, and this is not just terrorism, obviously, but money laundering, tax evasion, and so many other things. And the domestic laws of these jurisdictions make it a crime—listen to this—a crime to divulge any information about the banks' officers, depositors, transfers, or any financial activity relating to banks to law enforcement, without exception.

Our law enforcement people go there, try to find out what is going on, and the bank officer or the bank cannot tell under penalty of law. In these countries, they have made it a business.

Anguila, for instance, charges $60,000 to open a bank, $20,000 a year to keep it there, and then you are completely on your own, except, as Senator Levin's charts show, you have complete access to our system. And I would like to just switch the focus a little bit.

I think it is going to be very hard to get total global cooperation on this. It has been the history in the past that we make effort after effort and then you just get a couple of bad apples that spoil the bunch. But if we can get rid of the opacity, if we can make this transparent and we can trace the money, even if it is going to flow, we can make a huge difference in finding out these people and their sources, et cetera.

And that is an important point to make, that in our new electronic world, money just flows. But what stopped us is the terror-

ists and others, money launderers, drug runners, find the places where no law enforcement can go and find out what goes on.

If we want to stop the actual transfers of money, we should consider—I am not advocating it yet because it is a major step and I agree with Senator Kerry that the diplomatic efforts have to be first—but we should even consider penalties on big countries that do not help cooperate. We are at that stage.

So, Mr. Chairman, once again, I thank you. I look forward to participating in your efforts to put together a strong bill. I want to thank our witnesses, present and past, for testifying.

Chairman SARBANES. Senator Bayh.

STATEMENT OF SENATOR EVAN BAYH

Senator BAYH. Thank you, Mr. Chairman, for your foresight on this issue and for the emphasis you have placed upon it.

Let us make no mistake about it. Our attempts to dry up the funding for these terrorist organizations literally will take weapons out of the hands of those who wish to do us harm.

Our attempts to combat money laundering, Mr. Chairman, are the financial equivalent of launching smart bombs, Smart weapons, against the terrorists and those who aid and abet them. So, I want to thank you for your leadership in gathering us here today.

Since September 11, the outlines of Osama bin Laden's financial network have become clearer. He has relied upon electronic banking, ties to a number of charities in the Middle East and elsewhere.

But many experts feel that the most likely source of the funds used to perpetrate the attacks on the United States were derived either from small wire transfers or from an informal banking system known as Hawalas. This system is used to transfer large amounts of money from one country to another without the cash ever crossing national boundaries.

Mr. Chairman, in today's edition of one of the large national daily newspapers, the Hawala banking system was described as follows. It relies on something older than money itself—a person's word. Nothing could be more discreet. There is no need to smuggle large amounts of cash from one country to another or to fill out bank forms that can draw unwanted attention. No need, in fact, for any detailed bank records whatsoever. A person simply hands over cash at one end and is paid out at the other end, leaving virtually no paper trail to follow.

This is an area of inquiry, Mr. Chairman, I think would warrant some of the Committee's time and attention with your blessing, of course. It is beyond the purview of many of our existing laws. In 1993, however, Congress did act, requiring both regulation reporting of Hawalas. Both the past and the previous Administration, however, have delayed the implementation of the regulations. The previous Administration, until later in 1999, and the current Administration until June 30 of 2002. These regulations, Mr. Chairman, and an extension upon them could be important tools in the hands of law enforcement in drying up the funds available to terrorist organizations such as Al Qaeda.

So, Mr. Chairman, I want to thank you again for holding these hearings and would respectfully suggest we look at several actions, some of which were touched upon by our previous panelists.

First, as I mentioned, we need to look closely at the activities of the Hawalas to see how they are regulated in other jurisdictions. They happen to be illegal in Pakistan, for example. To separate those that are legitimate from those that are not, and to do what we can to close down the illegitimate ones or their activities in this country. As Senator Kerry mentioned, to prohibit banks who do business with terrorists from doing business in this country. As Senator Schumer suggested, it is time to get serious about this, to take a more hard-nosed approach. I could not agree more, Senator, with your suggestion.

We also need to look at stopping commercial enterprises from doing business with commercial enterprises owned and operated by known terrorist organizations. Osama bin Laden has invested significantly in some commercial enterprises. They should not escape our attention, either. And we should ensure that aid that is given by our country to those overseas is accounted for and goes to those for whom it is intended and not to diver it.

And Mr. Chairman, I would finally suggest that we look at the possibility of enlisting the aid of the World Bank and the International Monetary Fund in the war against money laundering and in some ways perhaps tie assistance from those organizations to the cooperation of countries in this battle.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you very much, Senator Bayh.

Senator Corzine.

STATEMENT OF SENATOR JON S. CORZINE

Senator CORZINE. Yes. I have a complete statement that I would ask be put in the record.

Chairman SARBANES. The full statement will be included in the record.

Senator CORZINE. I congratulate you on your foresight here as well, Mr. Chairman.

This is a subject that needs an extraordinarily comprehensive view of. The kinds of things that Senator Schumer talked about in regard to global cooperation are certainly key. But the need to make sure that we do not limit our sightline to financial institutions and regulated institutions is just as important as dealing only with financial institutions. So much of the access into the system comes from ways that are not necessarily opening a bank account and transferring money. Much of this is done in cash.

The efforts that Congresswoman Roukema was going to talk about, smuggling of cash, the commercial transactions that Senator Bayh talked about, and frankly, unregulated money managers' access to the system without the identity of those who own the accounts, tend to be ways that are very easy for the process to get started. And being a State that has a casino, there are enormous amounts of ability to access systems in additional commercial transactions. So, I hope that we do not get a sense that we are somehow solving the problem if we limit this to financial institutions and just simple, straight-forward financial transactions.

Thank you.

Chairman SARBANES. Our panel now consists of the recently confirmed Under Secretary of the Treasury for Enforcement, Jimmy

Gurulé, and Michael Chertoff, the Assistant Attorney General for the Criminal Division. In their respective capacities in the Treasury Department and in the Justice Department, they are responsible for developing and implementing the Bush Administration's national money laundering strategies.

Now, to be very clear about this, the formulation of the National Money Laundering Strategy was underway before these events took place. In other words, pursuant to the Grassley legislation that I mentioned earlier. And the Administration has come in with that report. But it did not come after the events of September 11. It was being developed prior to the events, just as this hearing on money laundering had been scheduled before the events of September 11. So, we are very pleased to have the Administration here and, gentlemen, we are looking forward to hearing from you.

I do not know if you have worked out an arrangement between yourselves. Mr. Gurulé, are you to go first?

STATEMENT OF JIMMY GURULÉ
UNDER SECRETARY FOR ENFORCEMENT
U.S. DEPARTMENT OF THE TREASURY

Mr. GURULÉ. Yes, Mr. Chairman. Thank you.

Mr. Chairman, Senator Gramm, and other distinguished Members of the Committee, I appreciate the opportunity to share with you the Treasury Department's ongoing commitment to the fight against money laundering. In light of the tragic events of September 11, I am more convinced than ever of the importance and necessity of a comprehensive money laundering strategy. I know that the Members feel the same way and I look forward to sharing with you some of the key aspects of President Bush's plan to combat domestic and international money laundering.

Let me begin by saying that criminal acts of violence, such as the horrific terrorist acts of September 11, need more than just cunning leadership and dedicated followers to be successful. Such undertakings also require extensive financial funding. Let me be clear—the Treasury Department is committed to identifying the sources of funding used to underwrite attacks of this nature and will take whatever action is necessary to shut them down. Although the complexities of money laundering have long been associated with concealing the true nature of funds that are generated by drug cartels, and other criminal activity, the tragedies of September 11 also underscore the need for aggressive and vigilant anti-money laundering efforts which target the movement of funds into this country for the purpose of criminal activity—especially funds earmarked for terror. In response to this need, the implementation of the 2001 National Money Laundering Strategy includes several specific steps to dismantle and disrupt the financing of terrorist activities.

I would like to take a few moments to summarize the key provisions of the National Money Laundering Strategy, but at the same time highlight some of the steps consistent with that blueprint that the Bush Administration has undertaken since September 11. On Monday, President Bush stated, "We will direct every resource at our command to win the war against terrorists, every means of di-

plomacy, every tool of intelligence, every instrument of law enforcement, every financial influence."

We will starve the terrorists of funding. I am here to tell you that this is the mandate of the Treasury Department—to starve the terrorists of funding. This is the mandate of the Office of Enforcement at Treasury. To accomplish that goal, the Enforcement Office has implemented the Foreign Terrorist Asset Tracking Center. The goal of the Center, or FTAT is the acronym that has been used, is three-fold.

The first goal is to map the financial infrastructure of all terrorist organizations worldwide. So while at the moment we are certainly focusing on Al Qaeda and Osama bin Laden, it is not limited to this particular organization or organizations, but is more broad in its scope. Second, it is intended to shut down the source of fundraising of these organizations. And third, curtail their ability to move money through the international banking system, including the U.S. domestic banking system. Its approach is preventative, proactive, and strategic.

It relies upon interagency cooperation and with respect to the tracking center, we have undertaken efforts to work closely with the Department of Justice, specifically the FBI and all of the Treasury's law enforcement agencies, including the IRS, criminal investigations, the Secret Service, Customs, as well as Defense and the Financial Crimes Enforcement Network.

In addition, the Department of the Treasury has undertaken substantial efforts with respect to international cooperation. Everyone here certainly appreciates that the challenge before us with respect to anti-terrorism efforts is global in nature. And therefore, the law enforcement response must be in kind global.

With respect to Treasury's efforts, we are undertaking efforts not only to block assets in domestic banks that are related to the 27 terrorist entities that were identified pursuant to the Executive Order signed by President Bush on Monday of this week, but we are also looking to cooperate with respect to blocking those funds located in foreign bank accounts. And with respect to that effort, we are seizing upon recent gestures by our allies who have offered their cooperation and condolences with respect to the terrorist events in New York City and in Washington, DC.

We are seeking to seize upon that momentum, to cause them to not only express their goodwill, their support, but to take concrete action with respect to assets, bank accounts that are attributable to these terrorist organizations and entities. And we believe that we are making some substantial progress in that direction.

In addition, we are working aggressively with our partners in the Financial Action Task Force, or FATF. As you know, the Treasury Department leads the U.S. delegation with respect to FATF. Again, we work closely with the Department of Justice in that effort. We have currently reached out to our counterparts in FATF to ensure that we focus on revising the 40 recommendations that serve as the measuring stick which FATF measures whether a country is cooperating with respect to implementing a strong anti-money laundering regime. And we are looking to focus those efforts on terrorist activities and prohibit banks from maintaining accounts where the money is attributable or traceable to terrorist organizations.

With respect to the 2001 National Money Laundering Strategy, let me briefly comment on the key provisions of that strategy.

When it comes to law enforcement efforts, the strategy seeks to focus and concentrate finite and limited Federal law enforcement's resources on major money laundering operations. We seek to focus on the financial operations that are underwriting the activities of international drug cartels, international terrorist organizations, as well as organizations that traffic in firearms. We are seeking to focus our efforts where they will have the greatest impact. And we believe the greatest impact will be felt, will be realized with respect to these large-scale money laundering operations. To that end, we are going to be enhancing, seeking to enhance our efforts with respect to the use of the criminal and civil forfeiture laws.

We believe that it is important that any strategy with respect to money laundering not only focuses on the trail of the money, but also seeks to seize those monies, forfeit those monies to the United States. So, we will see an enhanced effort with respect to utilization, enforcement of our Federal asset forfeiture laws.

We will be relying in large part to implement the strategy on the HIFCA's, the High-Intensity Money Laundering and Related Financial Crimes Areas. These are kind of super money laundering task forces that will be used to focus on these large-scale money laundering operations. The strategy designates two additional HIFCAs in addition to the four HIFCAs that existed prior. Those two new HIFCAs are located in San Francisco and Chicago. These HIFCAs are interagency in nature. I had an opportunity to have several conversations with Mr. Chertoff with respect to the operation of these HIFCAs and how the Department of Treasury law enforcement agencies can work closely hand-in-hand, close coordination, with the Department of Justice.

Chairman SARBANES. Why not put the location of the other four on the record?

Mr. GURULÉ. Thank you, Mr. Chairman The other four HIFCAs include a HIFCA in New York, New Jersey—this is often referred to as the El Dorado Task Force. It is the largest Federal money laundering task force in the country. Also, there is a HIFCA in Puerto Rico, and in Los Angeles. Last, a HIFCA that focuses more on a system of money laundering, and that is a HIFCA that is focusing on the black market peso exchange system of financial money laundering. So these HIFCAs are central to our law enforcement anti-money laundering efforts.

A second key provision with respect to the strategy and a way in which it departs dramatically from prior strategies is the emphasis being placed on accountability. Secretary O'Neill strongly believes that we in law enforcement must be able to measure results. He is looking for results, not simply Federal law enforcement activity.

It is not enough that we are actively engaged in investigating money laundering operations. It is not enough that we have enhanced the number of HIFCAs across the country. He is looking for results. He is looking at the bottom line.

At the end of the day, he wants me to be able to report to him which strategies have proven to be most effective and why. And if

the strategy is not working, then it should be discarded and we should be focusing our law enforcement efforts on other strategies.

With respect to this emphasis on accountability, we are going to be putting in place a reporting system that will track the money of money laundering cases, number of arrests and convictions with respect to those cases, a reporting system that is going to be focusing on money laundering related forfeitures, so that we can track from year to year the dollar amount of money that is going into the Department of Justice forfeiture account, as well as the Treasury asset forfeiture account.

But we are not simply going to be focusing on numbers. We are going to be looking at the types of investigations that we develop and we pursue, to see whether these types of investigations are having an impact on money laundering activities in this country. We are going to be looking at the complexity of the size of these operations as well.

And then, last, we are going to be looking to see whether our strategy has an impact, a positive impact, with respect to the cost of laundering money. As you know, the efforts with respect to laundering funds, the individuals who participate in these efforts charge a commission. They charge a fee for their activities, for their talents, their nefarious and illicit talents.

We think if we are making an impact, that the commission price will go up because it is riskier for them to undertake this type of efforts and they are running the risk of being prosecuted and incarcerated for lengthy prison terms. So we are intending to track those numbers as well with respect to the fees charged.

Next, preventative efforts.

We certainly understand that the banking industry has to be an important partner in this effort. We need to work more closely with the banking and financial industry to assist in this national and global effort. We are looking at ways in which we can strengthen that partnership. We can work more closely with the financial banking system. At the same time, we are seeking to expand the SAR's to the money-service businesses, as Senator Bayh referred to, as well as broker-dealers and casinos. Also, we need to ensure that the information that we are receiving at the Treasury and that FinCEN is analyzing is valuable information.

With respect to the CTR's, we know that approximately 12 million CTR's are filed every year. Our sense is that at least 30 percent of those CTR's have little or no value to law enforcement. And because they have no value to law enforcement, they should not be reported to the Treasury Department. So, we are seeking to work with the banking industry with respect to statutory exemptions that have been put in place that exempt the filing of certain currency transaction reports to ensure compliance.

Chairman SARBANES. I want to be very clear on that point. As I understand it, under existing law, there is a waiver, an exemption procedure, that can be invoked which would not require the filing of those reports. Is that correct?

Mr. GURULÉ. That is correct.

Chairman SARBANES. That existing provision in law is not being utilized. Is that correct?

Mr. GURULÉ. In my opinion, it is not being fully utilized.

Chairman SARBANES. It is your intention to work with the private sector to have a better understanding of that.

Mr. GURULÉ. Yes. And I have already undertaken efforts in that direction, Mr. Chairman.

Chairman SARBANES. All right. Anything else, Mr. Gurulé.

Mr. GURULÉ. With respect to legislation, let me speak briefly.

The Department of Justice has been working on a legislation initiative, anti-money laundering legislative initiative. I have had an opportunity to speak at length with Mr. Chertoff with respect to that effort. I have had an opportunity to review the legislation that they are proposing. I believe that it is a good piece of legislation and the Treasury Department supports that effort.

With respect to the Kerry bill, I am very pleased to hear Senator Kerry's comments with respect to a due process provision because the Treasury Department likewise believes that that is essential. And so, we welcome the opportunity to engage in discussions with respect to crafting what the due process or what processes do under these circumstances. But at the same time, I understand your direction, Chairman Sarbanes, that this effort must be done on a fast track. As you stated, we are dealing with days with respect to any new legislation. We are anxious to meet with the Senator's staff, your staff, to carve out that addition, if you will, to the Kerry bill.

Chairman SARBANES. Well, we intend to have a very intense consultation, both amongst Members, certainly on the Committee, but including the Members who have taken initiatives and have proposals, and with the Administration, with both the Department of the Treasury and the Department of Justice, with an eye to formulating a piece of legislation that draws the best out of all of that process, takes into account important questions that have been raised and tries to, if possible, reach a consensus on an effective and directed piece of legislation. And we welcome your statement and we look forward to working very closely with you. But as you say, this is on and should be on a fast track.

There are things happening elsewhere in the Congress, too. And to be part of that process, we have to move with some vigor and some energy here, and we obviously intend to do just that.

Mr. GURULÉ. And last, let me also commend Senator Levin for his leadership with respect to this very important issue. I have had an opportunity to review the Levin bill. There are several provisions in the Levin bill that I think we can support, again, and I look forward to working with your staff and Senator Levin's staff on those issues.

In conclusion, the Treasury Department has language with respect to some legislative initiatives on money laundering that we would like to have added to the Kerry bill. We do have that language and we can bring that up to you as early as tomorrow.

So thank you for the opportunity and I look forward to responding to any questions that you might have.

Chairman SARBANES. Very good. Thank you for your statement.

Assistant Attorney General Chertoff.

STATEMENT OF MICHAEL CHERTOFF
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

Mr. CHERTOFF. Thank you, Mr. Chairman.

Chairman SARBANES. I just have to add, it is nice to have you back before the Committee in a different capacity, if I may note, from previous appearances.

Senator SHELBY. Mr. Chairman, if you would like. A lot of us liked you in that other capacity.

[Laughter.]

Mr. CHERTOFF. Well, it is nice to be back. But times change and things on the front burner become different. And we obviously have something very hot on the front burner.

Mr. Chairman, Senator Gramm, and distinguished Members of the Committee, I am delighted to be here in support of the 2001 National Money Laundering Strategy that was recently released. And also, I am particularly delighted to be here in the wake of a legislative proposal which we have submitted, which addresses I think the urgent need for reform in the money laundering area.

I am going to be very brief. I am going to touch on just some of the highlights and then I will be delighted to answer questions. I would request that my full statement be made part of the record.

Chairman SARBANES. It will be included in the record.

Mr. CHERTOFF. We are obviously sitting here in the wake of a terrible event 2 weeks ago which has kept all of us busy in a variety of different settings. But it is very timely that we are addressing money laundering because it is a key element in the strategy toward combatting not only terrorism, but also other serious forms of international crime.

In the wake of this event, we know one thing. We know that if terror operates in cells, the lifeblood of those cells is money. They cannot exist, survive, and flourish if they cannot fund their activities. So it becomes critical that we strike at that funding.

The mandate from the President is very clear—we have to prevent terrorism. We have to disrupt it. And we have to incapacitate those who practice it. As part of that effort, all the agencies of the Federal Government are working together currently to examine the information and evidence that we can collect on the financial activities of terrorists and to pursue those terrorists and their supporters and economic aiders and abetters anywhere we can find them. So in taking that approach, it becomes very critical that we look at the tools we have in our toolbox to strike at those economic supporters. And money laundering seems to us to be the most vital way in which we can approach that.

We have a lot of laws which were great laws when they were passed 10 or 15 years ago, but have not kept pace with the times. And I might add that when we talk about money laundering and the targets of our money laundering effort, we talk not only about terrorists, but also we talk about international organized crime, international drug dealing, international corruption, not only because these are bad in themselves, but also because, we cannot differentiate between terrorism, organized crime, and drug dealing.

These groups do not hold themselves independently. They work with one another. Terrorists get engaged in drug activity. They

have relationships with organized crime. So that we cannot simply lock the barn door for the horse that just got out. We have to go and lock all the other barn doors that are out there.

The legislative proposal which the Department has put forward, I think in many respects, is, if not identical, very similar to portions of Senator Levin's bill, focuses on a number of both large and small efforts to fix and improve the money laundering laws. And let me review just a few of them.

First, under the proposed approach we would take, laundering of the proceeds of foreign crimes, an increased number of foreign crimes, would become a crime in this country. Simply put, we do not want to be a safe haven for the ill-gotten gains of corrupt international bribe-takers or for terrorists who commit violent acts abroad. We have to expand our law so that we can attack those who would launder the proceeds of foreign crimes in this country.

At the same time, we need to have the authority to enforce foreign court judgments against terrorists in this country, both because we do not want their money here, and to show our foreign partners that we will work with them in attacking terrorism.

Second, correspondent banks. Some of the greatest experts in the world on the impact of correspondent banking have testified in the earlier panel. I think we need to respond to the dangers that they have identified. We need to be able to say to correspondent banks that they cannot raise an innocent owner defense to protect the assets of foreign terrorists that are being held in foreign correspondent bank accounts in U.S. banks. And the legislation that we would propose would attack that.

We need to be able to say to foreign correspondent banks that if they want to have bank accounts with U.S. banks, they have to appoint people who will respond to subpoenas and to American process so that we can get the information that we need to track down and prosecute those who launder terrorist bank accounts and terrorist monies.

Finally, we need to deal with the movement of cash outside the formal banking system. Where there is bulk transfer of money in interstate or foreign commerce, we need to be able to make that a criminal offense.

That is part of our proposal. And at the same time, we need to strengthen the criminal laws against smuggling cash illegally into our own country.

These parts of the package and the other parts put together a comprehensive approach to deal with money laundering. And I might say that we do not have pride of authorship. Many of the proposals here have been proposed by Members of this body and Members of the House of Representatives. They have been looked at for years. I think the consensus is they are sound and effective.

Mr. Chairman, we very much look forward to working with the Committee, other Members of the Senate, Members of the House, in moving within days to put together an effective package that we can get into law and we can begin to enforce.

Chairman SARBANES. Thank you very much. As I indicated, it is our intention to work very closely with you in that endeavor.

Senator Gramm.

Senator GRAMM. Well, let me thank both of you for your excellent testimony.

Mr. Gurulé, I would like to ask you a question. I have had an opportunity to talk to the Secretary. I first simply want to say that I appreciate the approach that has been taken by the Administration. I think the actions that you have taken thus far have been excellent. And I am especially appreciative of the Secretary's sensitivity to the fact that, while we want to grab terrorists by the throat and not let them go to get a better grip, we are defending basic rights in this country. We have been successful with a system that is based on the rule of law.

I would like to ask you specifically about the Secretary's discretionary power. Quite frankly, the factor that was an impediment last year in the adoption of this bill really boiled down to one issue: the unilateral power of the Secretary of the Treasury to take action without any necessity of issuing any findings, without any accountability on the Secretary's part, even though that action might have profound consequences to people in the private sector. One of the options that I proposed then and that I will be supporting now is the following.

If the Secretary determines—and let me go back to my example about France. If the Secretary determined that we were not getting proper cooperation from France, then the Secretary would have the power either to impose a penalty on French banks operating in the United States, which would be my preference because the problem is with the French government and not with our own Government, but he would also have the power, under the Kerry bill, to force American banks in France, in essence, to close their doors.

Now, I have felt that when you are talking about such powers, first of all, it is obvious that we need them. But the question is, what should be the system of checks and balances?

And I would like to just throw out two things that I would appreciate the Treasury examining to determine whether you have a better way. It seems to me that if the Secretary of the Treasury is going to make a unilateral decision to force American banks to shut down their operations in another country, the Secretary should be required to issue findings which are potentially rebuttable in court. There should be some system whereby the findings of the Secretary in making the decision are made public, or if they cannot be made public because of security concerns, perhaps we should require the Secretary or the Secretary's designee to appear before a Federal judge to present this evidence so that there is some review, rather than giving one person this massive unilateral power with no checks and balances or, as you have said, with no accountability.

I would like to get your reaction to that.

Mr. GURULÉ. Well, as you know, the Kerry bill, before any special measures are ordered by the Secretary of the Treasury, would require the Secretary of the Treasury to find a primary money laundering concern. That is a term of art under the Kerry bill. And that primary money laundering concern would be with respect to a particular correspondent account.

However, in addition, the Kerry bill would require the Secretary to do so in consultation with several Federal agencies, or heads of agencies, including the Attorney General, the Secretary of State,

the Chairman of the Fed, the Secretary of Commerce, and the U.S. Trade Representative. So there is a consultative process that is required under the Kerry bill. So it is not simply a single individual taking action unilaterally.

With respect to the due process concern, I do believe that fundamental fairness requires that an affected bank be afforded an opportunity, first of all, notice, and then an opportunity for comment. In the event that maybe what appears to be suspicious on the surface, there is a legitimate explanation. I think that there should be an opportunity for the bank to come in. And it could be after the fact. I am not suggesting that the notice and comment must in every case be——

Chairman SARBANES. It would have to be after the fact, otherwise, they could move the money.

Mr. GURULÉ. I understand.

Chairman SARBANES. I understand that the President, when he issued his Executive Order, did it at midnight and then had the press conference the next morning. And he did that in order to avoid the possibility that the money would just move.

Mr. GURULÉ. I agree. I agree. The Kerry bill gives the Secretary certain discretion. I think it is important that the Secretary have the ability to exercise that discretion in an expeditious way to avoid exactly the problem that you have highlighted.

After there is an imposition of the special measures that are set forth in the bill, again, I think that fundamental fairness requires that the bank have an opportunity to come in and make its case to the Secretary that the transactions are legitimate transactions. There is no money laundering involved, if in fact that is the case. I think the real question comes down to, what process is due? What should that procedure look like? And I am prepared to meet and engage in discussions on that precise issue.

Chairman SARBANES. I just want to note that Senator Gramm's use of France was completely hypothetical or by way of illustration.

Senator GRAMM. Completely.

[Laughter.]

Chairman SARBANES. Because in fact, the French——

Senator GRAMM. I decided to use it twice because having already made people in France mad, I did not want to add another country.

[Laughter.]

I used Hong Kong last time and then I thought, well, gosh, I may be going back there some day. I prefer to speak in examples rather than beating around the bush theoretically.

Chairman SARBANES. I understand that, but you know about sensitivities, Gallic sensitivities in particular. In all fairness, I do want to read from the FATF mutual evaluations that were made.

The initiatives of France and its 2 year presidency of FATF have contributed considerably to the success achieved so far. By adopting measures often more binding than those contained in the FATF recommendations and by introducing a system of compulsory reporting of suspicious transactions for all financial and nonfinancial professions, France has created a real model for money laundering control. And then they say it was done fairly recently and this was the first round back in the mid-1990's, so they do not go through on how effectively it has been enforced.

I just wanted to get that on the record and make sure that—because we need all the friends we can get, and those that are working at it, we want to acknowledge that they are working at it.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Since money laundering is an integral part of our overall counter-terrorism strategy, what role is envisioned for Governor Ridge with his new position as the leader of homeland operations? Or has any role been even thought about yet? Either Mr. Gurulé or Mr. Chertoff.

Mr. GURULÉ. It is a good question. I think the specific, precise role has not yet been defined. It is my understanding that this office will be used to coordinate anti-terrorism activities and that would certainly include anti-money laundering efforts. And so, exactly how that is going to take place, what the command structure is going to be with respect to Treasury anti-money laundering efforts is, at least for me, unknown.

But I do believe that we need to do, and can do, a better job of coordinating and targeting our efforts. And I certainly welcome the opportunity to work closely with Governor Ridge to that end.

Senator REED. That just raises the obvious point that this is a multifacet responsibility. The FBI, the Secret Service, the Treasury Department, and I could think of, and you could both think of probably 20 other institutions and agencies. And the task I think is not only to get the framework right, but to make sure that we have some point of thorough integration. I would hope, as you go forward, you would think about that and let us know what we have to do to provide you that type of organizational integration.

Let me just touch on another topic, and Senator Schumer alluded to it, the notion not just simply of money laundering, but of excessive bank secrecy in some parts of the world that inhibit investigations. I just wonder, are you thinking about ways in which, through due legal process, we can get access to financial information in other countries? I guess by way of comparison, to what extent do we open up our institutions to that type of legal process?

Mr. GURULÉ. Well, with respect to getting access to information, account information in particular, in foreign banks, we are presently working closely, diligently, with our foreign counterparts, the G–7 financial ministers and our other allies, with respect to the 27 entities that were named by President Bush on Monday. And every indication is that that cooperation has been robust and quite positive. So, I am certainly encouraged. We just need to continue and building on that momentum.

In addition, FATF, the Financial Action Task Force, is another vehicle that we have used at the Treasury Department to enhance cooperation to ensure that foreign countries have in place a strong anti-money laundering regime, to ensure that countries that have bank secrecy laws repeal those laws, so that there can be greater transparency, and to ensure that the countries have money laundering laws on the books that prohibit money laundering.

There are still some countries today that do not have such domestic legislation. And FATF has proven to be a very effective multilateral agency, organization, and effort to ensure that those steps are being taken.

Mr. CHERTOFF. I would like to add that one additional approach we want to take, which is embodied in this legislative proposal is to make foreign banks that maintain correspondent accounts with U.S. banks, designate someone who will respond to subpoenas and furnish information. So that the price of entry into the international banking system, if you want to deal with the United States, is a willingness to furnish information when we need it.

Senator REED. Thank you very much.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you, Senator Reed.

Senator Shelby.

Senator SHELBY. Mr. Chairman, thank you.

Mr. Chertoff, I first want to congratulate you in this open forum here for President Bush and Secretary Ashcroft's selecting you to head the criminal division.

Mr. CHERTOFF. Thank you.

Senator SHELBY. You bring a lot of experience. You are no stranger to the Banking Committee. We enjoyed when you were Special Counsel here and enjoyed working with you.

I have read your testimony which has been made part of the record and I just want to quote from that. You say, "In this environment, law enforcement is challenged, and the criminals often hold the advantage. Criminals are able to adapt to changing circumstances quickly." Of course, you are including terrorists as criminals. And they are big ones. They pay no heed to the requirements of laws and regulations and recognize no sovereign's orders. Further, these criminal groups have learned to be adaptable and innovative, and as we succeed in a new enforcement effort or implement a new regulatory regime, they quickly alter their methods and modes of operations to adopt to the new circumstances. Will this change if we adopt substantially the proposals that are before us? And second, will these proposals protect the due process rights of our citizens?

Mr. CHERTOFF. I think the answer to both questions is yes. I cannot predict.

Senator SHELBY. I know that.

Mr. CHERTOFF. And I would be foolish to say that these proposals are going to solve the problem.

Senator SHELBY. By themselves.

Mr. CHERTOFF. But they can certainly move a considerable direction in giving us the tools we need to diminish the problem. And one of the features of this set of attacks we had 2 weeks ago is the diabolical way in which terrorists used our own technology and our own advanced society against us. They turned our aircraft into bombs. They use our financial system, our global system, as a way of fueling their own criminal activities.

But we have an ability to turn that on them as well. If they need to use our global economic system, we can police that system and start to dry up the streams of money that they rely upon. So, I think we can go a considerable distance with this legislation, and it is legislation which respects the rule of law and due process.

The Department of Justice package operates within the acceptable framework of criminal laws that we are all familiar with and

that the courts have upheld. We are modernizing and improving, but we are not overturning.

Senator SHELBY. I believe the Assistant Secretary mentioned other countries passing laws to make money laundering and other things like it illegal. But these laws by themselves, Mr. Secretary, will not mean anything unless you have enforcement, will it?

Mr. GURULÉ. Absolutely. You are absolutely correct, Senator.

With respect to the FATF and the 40 recommendations that are used to determine whether or not those countries are being cooperative in our international anti-money laundering efforts, one of those recommendations focuses not only on whether the country has laws, but also if they are effectively implementing and enforcing those laws.

That is something that the FATF organization is monitoring and monitoring on a regular basis. And if the answer is no, we have a law, but it is not being enforced, then that country would not be in compliance and could be listed on that basis as a noncooperating country and territory. On the shame list, if you will, of countries.

Senator SHELBY. Thank you, Mr. Chairman.

Chairman SARBANES. Senator Bayh.

Senator BAYH. Thank you, Mr. Chairman. And thank you to the panel for being here.

I would like to ask, again, with regard to the regulations that would have been put into effect in the 1993 law requiring informal enterprises like Hawalas, casinos, broker-dealers, to report transactions over $3,000, that was scheduled to go into effect earlier this summer. It has been delayed until, as I understand it, June 30 of next year? Why the delay and who is objecting?

Mr. GURULÉ. Let me speak first to the strategy and why in the strategy the date was moved back to June 30. But then let me also kind of bring things up to date with respect to changes that have been made to move that date up.

With respect to the MSB's, the money expanding the suspicious activity reports, the money service businesses, this is going to affect approximately 200,000 businesses in this country alone. These are 200,000 businesses that under this regulation would be required to submit suspicious activity reports. It is a huge number, number one.

Second, it is going to affect small corner "ma and pa" businesses that perhaps issue money orders. And therefore, the level of education and expertise is not that we have seen with respect to the banking industry.

Therefore, with respect to those two concerns, FinCEN has been actively involved in an education campaign with these affected businesses so that they understand what is required under the SAR's when the SAR's go into effect because we want to make sure that they are being responsive, that they are submitting the right kind of information to the Treasury, information that is going to be valuable to law enforcement.

At the same time, the thinking was that this additional time would give FinCEN the time needed to really gear up for receiving the volume of reports that we think are going to be submitted under this regulation. That, by the way, when the strategy came out, was prior to September 11.

The world is different. As a result of the events of September 11, we have decided to move the date back to the original date, which is the registration date for these money service businesses, being December 31 of this year. So, we are looking at roughly approximately 3 months for these companies, these 200,000 businesses registering.

Senator BAYH. I would encourage you in that area, Mr. Gurulé. Obviously, some are sophisticated enough to know how to comply. Some, as you say, of the "ma and pas" may not. Because some may not, this is a critical enough area, it should not keep us from moving forward in the areas of those who are.

Mr. GURULÉ. I agree.

Senator BAYH. What about NGO's, and this is to either one of you? There have been reports about the charities, charitable activities helping to fund Al Qaeda. What are we doing to crack down on that—either Mr. Chertoff or Mr. Gurulé—in the legislation that we are contemplating, or in the Administration's approach?

Mr. CHERTOFF. We have in this legislation—I should add also, in the package of anti-terrorism proposals which has been submitted—proposals to take money laundering and make it clearer and more broadly applicable to those organizations which assist terrorism or terrorist organizations, as designated by the President.

So clearly again, the money laundering piece is an important piece, although I should add that we already have laws on the books that make it illegal to be assisting terrorist organizations. What we need to do, and what we are doing, is pursuing those organizations vigorously and aggressively, to use the existing laws and hopefully any additional laws, in order to shut them down.

Senator BAYH. Thank you. My time is about up. I appreciate your presence, both of you.

Chairman SARBANES. Thank you very much, Senator Bayh.

Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

I would like to follow up a little bit on the volume that we are talking about here. The suspicious account reports, you say we have about 200,000.

Mr. GURULÉ. Approximately 200,000 businesses will be affected.

Senator ALLARD. Okay, it is 200,000 businesses. But how many reports are we talking about?

Mr. GURULÉ. Well, at present, we are receiving approximately 150,000 a year under the current system.

Senator ALLARD. That is the 157,000 that Senator Gramm referred to in his opening comments.

Mr. GURULÉ. Right.

Senator ALLARD. Okay. The cash transaction reports.

Senator GRAMM. Seventy-seven million.

Senator ALLARD. That 77 million is the kind of figure I am looking at. Would you agree with that?

Mr. GURULÉ. The currency transaction reports are approximately 12 million a year. It is a very large number, certainly.

Senator ALLARD. Yes.

Mr. GURULÉ. And it is that number that I am concerned with with respect to, a significant percentage not being all that valuable to law enforcement.

Senator ALLARD. What is your solution? Are you suggesting that maybe—the threshold is 10,000. Are you suggesting that maybe we need to raise that threshold?

Mr. GURULÉ. The solution that we are proposing and that is set forth under the strategy is to work with the banking industry to see if we can achieve greater compliance with exemptions to the filing of the CTR's. FinCEN, through work that they have done, research that they have done, estimate that approximately 30 percent of the 12 million CTR's that we receive have no value to law enforcement. So if we could just get compliance, if we could achieve greater compliance with the statutory exemptions, we could reduce that number significantly.

Senator ALLARD. And you need to bring me up a little bit on these exemptions. What kind of exemptions are we talking about?

Mr. GURULÉ. For example, let us say that we have a K-Mart that is making bank deposits every day that are in excess of $10,000. There is no good reason to believe that K-Mart or any—and again, I do not want to——

Chairman SARBANES. It is just a hypothetical.

Mr. GURULÉ. Hypothetical. Exactly. I just want to qualify that. Thank you.

[Laughter.]

But any commercial business such as that, that transaction is suspicious or would be beneficial to law enforcement with respect to money laundering investigations and therefore, it should not be reported. My intent is to work closely, again in partnership with the banking community, to see if we could achieve greater compliance, or at least seek to identify what the obstacles are to compliance with these exemptions.

Senator ALLARD. So, you would do a background check on a business or perhaps individuals that frequently have to get involved with cash transaction reports. You would exempt them. Then those that are occasional, that come through that you do not have that information on, would not. Is that basically the way that that would work?

Mr. GURULÉ. In fact, the exemptions that I am referring to are actually statutory exemptions passed by Congress. Those are the exemptions that are not being fully complied with by the banking industry. I do not know this for a fact—but I suspect that the reason is that the banking systems, the banks have set up a system for reporting. And perhaps it is just easier to report every transaction over $10,000, rather than segregate out certain transactions that would fall under the exemption. So we need to work together.

Senator ALLARD. But I could see where maybe the information would not be available to a bank. And so, in order to cover themselves, they would just require it as a bank.

Is there ready access to this information from a bank, where they can get this kind of assurance that this business is legitimate and that it would fall under the exemption?

Mr. GURULÉ. I think that, certainly, we need to enhance our efforts to work with the bank to make sure that they have a good understanding or better understanding of what they need to report. But with the CTR's, except for the exemptions, it is mandatory. There is no discretion. With the SAR's, that is discretion. If they

have reason to believe that the particular transaction is suspicious and tied to criminal activity, then they have the discretion.

Senator ALLARD. There is no exemption with the CTR. That was not clear. So all CTR's, cash transaction reports, anything over $10,000 has to be reported. There is no exemptions on that.

Mr. GURULÉ. I probably confused the issue. With the CTR's, there is a mandatory reporting requirement, except for the statutory exemptions.

Senator ALLARD. Okay.

Mr. GURULÉ. With the SAR's, those are ones that the judgment call has to be made by the particular industry.

Senator ALLARD. Yes, that is the way I perceived it worked. Okay. Very good. Thank you.

Mr. Chairman, I see my time has expired. Thank you.

Chairman SARBANES. Good. Mr. Gurulé, I thought that was a very rational, common sense response to the questions. My own view is that we should not change the statutory level because it just would provide another target for people to play off of. But as long as you have sufficient discretion or exemption authority to deal with those instances in which it is serving no reasonable purpose—because then, you could always swing back if you discover that there is some abuse taking place.

You can take a company which says, well we consistently because of our business want to transfer $15,000 or $20,000, or whatever it is. And I guess, conceivably, you give them an exemption. But then, all of a sudden, it might start spiking up because there is some game being played within the company ranks somewhere or something of that sort. I think it is very important that you come at it in this rational, common sense way that you outlined in your answer.

Senator Miller.

COMMENTS OF SENATOR ZELL MILLER

Senator MILLER. Mr. Chairman, I would like to yield my time to my colleague, Senator Corzine, because, quite frankly, I think his questions might be better than the ones that I have before me, given his experience.

Chairman SARBANES. Well, I will let you yield your time without concurring in the premise of the yield.

[Laughter.]

Senator CORZINE. The Chairman is very wise.

[Laughter.]

I have a couple of questions with regard to Swiss banking laws and the privacy of their accounts.

First, do we feel that we have the full cooperation and access at the kind of transparency that would break through what really sounds, in my experience, to be prohibited by Swiss banks, a number of the things that we are asking for in this legislation and what would be necessary to actually intervene in this?

Second, I have this concern about unregulated entities. And one of the most important ones of those are money management firms that are outside of both the SEC and most countries' regulatory structures, often labelled generically. I am not trying to undermine their credibility, but hedge funds in general are without any kind

of supervision, particularly with respect to deposit activity. And whether you have looked at that and whether there are elements of that that make sense.

Then there has been much discussion about people profiteering off of the anticipated September 11 events. Is there anything that you would want to comment on? But more importantly, have we put in place checks into our trading and transaction systems that in a way would provide foresight with regard to the kinds of actions that might take place?

This happens to be one of those standard practices of the SEC to be reviewing these audit trails, if you could track those to certain individuals ahead of time that might have looked like—I guess there might be some element of profiling there. But I do think that it is an element that needs to be talked about.

So those are generally my questions.

Mr. CHERTOFF. Let me try to address some of the questions, Senator Corzine. And my colleague will probably have something to say about others.

First, I know because we are from the same State, and I know where your hometown is, that you must have felt personally what happened 2 weeks ago. And I know that is something which all of us, when we discuss proposals, we are oftentimes reminded of the very personal dimension to this. Let me deal first with the issue of the question about whether people profited by knowing in advance about these acts.

I do not think it is a secret that the press has reported that there were allegations or indications, not necessarily here, but overseas, that people may have shorted or engaged in other transactions in stock at a time which is suggestive of advanced knowledge. Of course, we have laws against insider trading. Still more important, anybody who had advanced knowledge of a terrorist act would be a prime suspect for being a part of a terrorist conspiracy. That is an issue which we are looking at very aggressively. It involves not only U.S. entities or U.S. stocks, but it involves foreign stocks.

As you know, the SEC does track unusual trading. This is an area where we have to coordinate with overseas regulatory entities in making sure that both in general and specifically as it relates to these issues, we are in a position to identify groups that may have traded in advance. If we can do that, then to pursue them.

Senator CORZINE. The same leverage that you would use in financial transactions with normal commercial banks and/or depository institutions needs to be used, I suspect.

Mr. CHERTOFF. Exactly.

Senator CORZINE. I hope the legislation takes that into account.

Mr. CHERTOFF. Our legislation, I think, deals broadly with financial institutions.

But having said that and, again, saying we have no pride of authorship, if there is a way to better define the subject area or make it clearer, so that we are absolutely confident that we are addressing even unregulated money managers, I think it is important that we do that.

It is my understanding, for example, that in certain parts of the world, including parts of the Middle East, because of various objections to the earning of money through interest, money managers

often use various kinds of derivatives as a way of profiting from activity. And those are normally perfectly legal. But, of course, if one is trying to profit off of a terrorist act, we need to be able to look at transactions in various kinds of derivatives and forward contracts, and we want to make sure that we are doing that.

So, I think the legislation covers the waterfront. But if there is any doubt about that, we would be more than happy to work with you and the Committee to make sure that we are plugging in the loopholes.

Senator CORZINE. About the Swiss banking issues.

Mr. GURULÉ. With respect to Switzerland, I would say this. It is certainly my understanding that they have been cooperating. I say this from the perspective again of FATF and looking to the 40 recommendations, the guidelines by which the international community measures a country's cooperation on money laundering. They are certainly in compliance with those recommendations. Beyond that, I would not want to comment.

Mr. CHERTOFF. I would only add that I think in general, over recent years, Switzerland has become one of our most significant partners in pursuing asset forfeiture and sharing for criminal activities. I think there are other countries where we do need to do a lot of work, though.

Chairman SARBANES. Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman.

I apologize to the witnesses. I was watching you on the closed circuit TV. These days, being a Senator from New York, it is overwhelming. So I had to try to do two things at once. Let me just follow up where I left off before.

When we talk about going after terrorists and the nations that harbor them, we cannot just be talking about going after those states that give physical shelter to bin Laden. We are also talking about those who assist in sheltering his assets. Some do it knowingly. Many do it unwittingly. The effect is the same. So I am curious about the Administration's view about going after jurisdictions that have enabled bin Laden and other terrorists to finance their campaigns of terror. Would the Administration consider sanctions against countries that do not cooperate with international law enforcement? In other words, countries who say, when you go and our FBI, or whomever, goes to a bank and says, we want to know the money that came in and the money that came out here. And the country says, you cannot do that, which some countries allow us to now and some do not, depending on the country. Would we consider sanctions against countries that do not cooperate?

The bills that Senators Levin, Kerry, Grassley, and myself have mainly go after the banking institutions. But then your worry is, they set up another one and it starts all over again. I am beginning to feel that going after some of these countries is the most important. Is the Administration planning to lead an international effort to cut off jurisdictions that do not cooperate with law enforcement?

I have had conversations with some large New York banks that do a lot of the correspondent banking. And they have admitted openly that cutting off noncompetitive jurisdictions will not affect their major banking institutions, because these tend to be smaller

countries, et cetera. Would you gentlemen want to comment on that?

Mr. GURULÉ. Let me quote a statement that President Bush made last Thursday. He stated, "If you do business with terrorists, if you support or sponsor them, you will not do business with the United States." He made that statement.

Senator SCHUMER. Was that aimed at countries? Was that aimed at banking institutions? It is a very powerful statement. I am glad he made it.

Mr. GURULÉ. I think that it was intended to have breadth, not be restricted.

With respect to the implementation of that statement, putting some teeth behind it, the Administration's international efforts include a focus on United Nations Security Resolution 1333, that prohibits terrorists financing, fund-raising, and such. We are moving on that front with respect to getting that resolution passed within the United States and then using that as an international cudgel, if you will, against countries that permit this type of fund-raising and financing activity.

In addition, we are moving on another front with respect to the international convention against the suppression of international terrorist financing. We are supporting that and moving forward with respect to that. That is an international convention that has been signed, but has not yet been ratified.

Senator SCHUMER. What does it do? It seems to me that the terrorists are not going to make their monies available they are going to try to be very much sub rosa on this.

Mr. GURULÉ. I think what it does, though, is it requires cooperation. It requires that foreign states have legislation that punishes and criminalizes fund-raising of this kind. It requires the enforcement of that legislation. It requires stiff penalties. And it gives us an international forum to advance this.

Senator SCHUMER. I would like to ask some specific questions, with the indulgence of the Chair.

Would we take the lead in cutting off any financial institution in these countries that doesn't go along with what we need in terms of openness and allowing our law enforcement to find where transactions go?

Mr. GURULÉ. I think with respect to our U.S. banking system, the answer is absolutely yes.

Senator SCHUMER. Okay. Second question. Good. That is good.

Now what happens if—the question, I do not know if you were in the audience, that I posed to Senators Levin and Kerry, who have just done great work on this.

We know Country X is a bad-apple country and their whole banking system is founded on opacity—you know, come bank here. Nobody will find out. We cut them off. Then they go to an ally of ours and start doing business there. And once they are in a large ally country with a sophisticated banking system, the money can flow to the United States through that third country, through that intermediate country.

What would you consider we do in those situations to the intermediate country if they do not go along? And as you know, history has shown that after a year or two, sometimes months, these coun-

tries revert back to saying, hey, we can make some money here. We can have a relationship. Maybe we will get contracts and things like this. What are we going to do to those intermediate countries?

Mr. GURULÉ. Well, with respect to the Executive Order that went into effect on Monday, if we had evidence that this third-party country, if you will, was maintaining, or its banks were maintaining assets that are traceable to international terrorist organizations, then those assets could be blocked. And the bank that is maintaining those accounts could be blocked from doing business with the U.S. banks, would be denied access to the U.S. banks.

Senator SCHUMER. Okay. So let us say that the Sudan bank, this little bank in Senator Levin's example, does business with a large French bank. Would we consider saying to that French bank, you cannot do business in the United States if they do not have the same rules as we do about that Sudanese bank?

Mr. GURULÉ. I think we would seek the cooperation of our allies to assist us with respect to cutting off those funds.

Senator SCHUMER. Understood. But the allies say, we agree with you on these three points, but not on these three, and we are going to do the first three, but not the second three. And our law enforcement, Mr. Chertoff here over in the Justice Department tells you that we need those second three points. What would we do?

Mr. GURULÉ. It is very difficult for me to speculate through all of these different hypotheticals and scenarios.

Senator SCHUMER. Okay. My only point is, if we really want to get serious about the finances, as the President has made clear on so many others, we are going to have to get pretty tough. And that may take some belt-tightening in ways for all of us.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you, Senator Schumer.

There is a vote on. I think we have concluded with this panel. We will take a brief recess in order to go and vote. And then we will return and we will have Ambassador Eizenstat at the table as our witness.

Mr. Gurulé, Mr. Chertoff, thank you very much for your testimony, and even more, for the proffer of working closely now with the Committee as we shape this legislation. Obviously, we are on a very fast track to do that. I think we can appropriately deal with some of the questions that were raised here today about being careful and prudent as we deal with this matter.

But on the other hand, a lot of very good work has been done. The Department of Justice has done work in terms of what they have come forward with. Treasury has done work in terms of where they are. Senators Levin and Kerry, I think, have done excellent pieces of work in terms of their legislation. And as Senator Grassley pointed out, their legislation is not hastily put together or ill-considered. It evolved over a very sustained period of time. The Kerry bill actually was reported out by the House Committee 33 to 1. The Levin bill reflects a very extended work program by his Permanent Subcommittee on Investigations.

I think we have really a lot of material that has been brought to a very high level in terms of being close to being finalized. And I think it is now a question of working together to put that all together in a sensible framework and moving it ahead and giving our

law enforcement people the tools that they really need in order to come to grips with this problem. Now it is quite true, then it is carrying it out, it is implementing it, and that is your burden.

But on the other hand, your chances of implementing are better if you are working within a framework that is comprehensive, rational, interrelated, and that should be our objective in terms of what we provide to you.

That does not preclude trying to weed out some things that are now being done that are not helpful and do not serve a purpose. But the fact that you may need to do that is no argument for not extending out to cover the sort of activities that Senator Corzine was underscoring, the need to be brought in under the umbrella.

We thank you very much for your testimony and we look forward to working very closely with you.

The Committee will take a brief recess and then we will return and we will hear from Ambassador Eizenstat.

[Recess.]

Chairman SARBANES. The hearing will resume.

It is our intention now to hear from Ambassador Eizenstat. Then following that, we will go to the panel that was scheduled. And so, we intend to go straight through as far as we have to into the lunch period in order to try to conclude. I know some of our witnesses need to travel and we want to try to accommodate that also.

I want to thank Stu Eizenstat for coming today and being willing to testify. He has had a very distinguished record in public service, now a partner at Covington & Burling. But he was the Deputy Secretary of the Treasury in the previous Administration, was in fact the lead official on the anti-money laundering initiatives. He has previously served as Under Secretary of Commerce, Under Secretary of State, Ambassador to the European Union.

I simply want to express my very deep appreciation to him for his willingness to take the time and to make the commitment in order to come and be with us today and let us have the benefit of his thinking and his knowledge on this very important issue.

Stu, thank you again for coming.

STATEMENT OF STUART E. EIZENSTAT
FORMER DEPUTY SECRETARY
U.S. DEPARTMENT OF THE TREASURY

Mr. EIZENSTAT. Mr. Chairman, thank you for inviting me and thank you for your leadership on this issue and for holding the hearing and for your leadership on S. 398.

Stopping money laundering and the syndicates it finances is critical to the fight against narcotics trafficking, organized crime, and corruption, and now we know that it is also critical to the personal safety of our citizens.

Money laundering is the financial side of crime and money launderers are the criminals' investment bankers. As you yourself noted today, Mr. Chairman, the IMF has estimated that the amount of money laundered annually is between $600 billion and $1.5 trillion, or 2 to 5 percent of the world's annual gross domestic product. And it is also estimated that about a third of that amount, up to perhaps half a trillion dollars annually, passes through U.S. financial institutions at least once on its clandestine journey.

Money laundering also affects the vitality of our goods as the Black Market Peso Exchange Program indicates, and undermines the credibility and safety of our whole global financial system upon which our prosperity depends.

Now, we are brought face to face with another aspect of the criminal financial system and its use by the merchants of terror. Terrorists must have money to pay for weapons, travel, training and even benefits for the family members of suicide bombers. Terrorists raise funds in many ways, through commissions of crime, through payment from state sponsors, and through fund-raising of what are said to be humanitarian organizations. More on that in a second.

But however raised, the funds must be transmitted across borders, marshaled, and spent—with the application of new layers of camouflage at each step. The fight to curtail money laundering has been a product of bipartisan consensus. President Reagan signed a law which for the first time outlawed money laundering as such. In 1989, President Bush led the way by creating the Financial Action Task Force and then FinCEN a year later. President Clinton launched a coordinated 5 year effort reflected in two national money laundering strategies. I would like to talk about just for a second some of our efforts.

The President issued two Executive Orders targeting terrorist groups in 1995 and 1998. The Executive Order on August 22, 1998, added bin Laden and Al Qaeda to those other terrorist organizations, permitting the freezing of their assets if they could be found.

Rick Newcombe, the longtime and excellent leader of OFAC in Treasury, who reported to me on two occasions, along with Will Wechsler, who we brought over from the NSC to head money laundering, in July 1999 and in January 2000, led delegations with the National Security Council to four gulf states—Saudi Arabia, Kuwait, Bahrain and UAE.

The purpose was, Mr. Chairman, to look for charitable organizations and banks who might be involved in money laundering. We felt that as a result of those two trips, that in particular, Kuwait and Bahrain were helpful in trying to identify those wayward organizations. In addition, in July 1999, in implementing the 1998 Executive Order, $250 million in Taliban money was found in the United States. There was suspicion that Al Qaeda and bin Laden were using charitable organizations, and those were being investigated during our Administration.

I am very pleased that President Bush has now added three pan-Islamic funding organizations which may have been used for terrorists. We were certainly on the same track. So, indeed, this is a bipartisan issue.

I have described the major components of our approach in my written statement and I hope those will continue to be employed by this Administration.

For example, the Financial Action Task Force (FATF) published a broad listing for the first time of those countries that do not meet international financial standards, what we call the "name and shame" list. We also helped build the Egmont group of financial intelligence units. And at home, we issued guidance in the last weeks of our Administration to financial institutions, alerting them to

special scrutiny in dealing with foreign officials, their relatives and close friends, as well as preparing the legislation which you have talked about today. And I want to applaud Senator Kerry, Senator Grassley, and yourself for this important step in introducing legislation that passed 33 to 1, as you pointed out, in the House Committee under Chairman Leach last year.

The fact is we have too few tools to protect the financial system from international money laundering. At one end of the spectrum, Mr. Chairman, Senator Corzine, the Secretary can issue Treasury advisories, as we did in the summer of 2000, to encourage U.S. financial institutions to pay special attention to targeted transactions involving certain jurisdictions.

On the other end of the spectrum, we have the IEEPA powers that the President invoked and that President Clinton had done again in 1995 and 1998. Following a Presidential finding of national security emergency, you can have a full scale set of sanctions and blocking orders.

The problem is, although President Bush's order was absolutely appropriate, there is nothing in between the advisories, on the one hand, and IEEPA on the other. And there are many situations when advisories are not enough and when IEEPA may be inappropriate, situations in which we might not want to block all transactions, or in which our concern centers on underregulated foreign financial institutions or holes in foreign counter-money laundering efforts. A more flexible tool is needed. We do not have one available now. That is what your legislation and Senator Kerry's would do.

The key to the operation of S. 398 is that a determination by the Secretary of Treasury, after consultation with other senior Government officials, that a specific foreign jurisdiction, financial institution operating outside the United States or class of international transactions, is a primary money laundering concern.

And may I say, although Senator Gramm is not here, regarding his concern about judicial review, it is important to recognize that any action taken under S. 398, that finding would be a determination that would be fully reviewable under the Administrative Procedures Act by a court. This is not, after all, a forfeiture process. But even the determination could be challenged under the Administrative Procedures Act.

So the trigger authorizing the Secretary to act imposes several types of special reporting, recordkeeping, and customer identification requirements linked to the object of primary concern or, in extreme cases, to impose conditions upon or prohibit the opening of certain correspondent accounts.

The bill is carefully tailored to actions against real abuse. It is graduated, targeted, and discretionary. Graduated, so the Secretary can act in a manner proportional to the threat; targeted, so he can focus on his or her response, on particular facts and circumstances; and discretionary, so that Treasury can integrate any possible action in the bilateral and multilateral diplomatic efforts, to persuade offending jurisdictions to change their practices, so invocation of the authority would be unnecessary. I also want to deal with the privacy issue.

It is incorrect that this would compromise in any significant way the privacy of American citizens. The focus of the legislation is not

on American citizens. It is on foreign jurisdictions, foreign financial institutions, or classes of transactions with or involving jurisdictions outside the United States.

They involve the abuse of U.S. banks facing especially identified primary money laundering concern. The legislation is drawn so as not to add unnecessary burdens to financial institutions.

We also hoped last year to see the passage of legislation which the Justice Department had long sought, to make crimes against foreign governments, like misappropriation of public funds, fraud and official bribery, arms trafficking and certain crimes of violence, specified unlawful activities for purposes of money laundering. Unless this change is made, Mr. Chairman, and Senator Corzine, a rapacious foreign dictator, a corrupt foreign dictator can bring his funds to the United States and hide them without fear of detection or prosecution in many cases. And I think it is important to recognize that there really is a confluence of official foreign corruption and money laundering. The two go hand in hand and we have to deal with both.

I am pleased that S. 1371, introduced by Senator Levin and cosponsored by yourself, Mr. Chairman, Senator Grassley, Senators Kyl, Nelson, and DeWine, include the necessary change and important related changes to our forfeiture laws.

I hope that the program outlined in the National Money Laundering Strategy of 2001, this Administration's first, does not shortchange appropriate legislative and regulatory efforts to shore up weaknesses in our financial mechanism that money launderers can exploit.

We need the kind of enforcement that is at the center of the Administration's strategy. But we also need the kind of structural changes that your legislation would provide. The acid test for me is whether the Administration will support passage of S. 398. Again, as you have emphasized and as I mentioned, it had strong bipartisan support in the House Banking Committee last year.

Permit me to add one additional word about money laundering and terrorism. My written statement contains a number of recommendations on steps to fight terrorism that the Administration can take to follow up Monday's forceful action by the President. This includes greater efforts to penetrate underground banking practices, the Hawala system, greater efforts in particular in the Persian Gulf, to go after phony charitable organizations that serve as conduits for terrorism and for Osama bin Laden's organization, and guidance to U.S. financial institutions in identifying bank accounts, beneficial ownership accounts, so that they have a better idea of the beneficial owners with whom they are dealing.

We cannot overstate our chances of immediate success because our adversaries are good at hiding funds, they use nontraditional underground systems that are outside sophisticated financial channels, and they often operate on meager budgets. However the fact that clues are not easy to find and have to be pieced together must not deter us.

To sum up, the rapid growth of international commerce along with advances in technology are making it easier for criminals and foreign jurisdictions to launder money through foreign institutions in the United States and, hence, to finance the expansion of the

global criminal economy and the growth of organized criminal groups and international terrorists as substate threats to our security. That is why it is essential for this Committee to act to shore up our national defense against money laundering.

Thank you, Mr. Chairman, for this opportunity to testify.

Chairman SARBANES. Well, thank you very much, Ambassador Eizenstat. And I also want to express our appreciation for this very well-developed and comprehensive statement. And obviously, the entire statement will be included in the record.

At the outset of this hearing, of course, we heard from Senator Kerry, who introduced S. 398, and Senator Levin, who introduced S. 1371. And I thought that we had a very appropriate comment by Senator Grassley, who was at the witness table with them, that both of these pieces of legislation represented a well-considered, carefully thought-through approach that had been developed over a rather sustained period of time. Neither represents a sort of hasty, quickly put together legislative proposal.

As you note, S. 398 actually came out of the House Committee with a 33 to 1 vote. Regrettably, it did not move beyond that. My question to you I guess is, do you see these bills as being compatible in a way that they can be combined along with other suggestions? We have both the Treasury and the Department of Justice who have some proposals of their own as well, and of course, our effort here will be to bring these together, meld them. Do you see these two bills as compatible and therefore, subject to combination?

Mr. EIZENSTAT. Yes, sir, I believe they can be combined. The core provisions of the two bills deal with the same set of issues. Namely, the misuse of correspondent and payable through accounts, the lack of financial transparency involving non-U.S. customers of U.S. financial institutions and the need for enhanced due diligence in certain high-risk accounts.

The primary difference between the two bills, Mr. Chairman, is that S. 398 keys action to a specific finding by the Secretary of "money laundering concern," where S. 1371 takes a broader approach mandating general rules on the same subject.

For example, S. 1371 requires U.S. banks to identify each foreign person having a direct or beneficial ownership interest in a U.S. account, while, again, S. 398 would key special rules to a particular finding of money laundering concern. But I think that they can be melded together. Many of the provisions of both are very positive.

For example, S. 1371's provision about private banking and enhanced due diligence for private banking and correspondent account recordkeeping could easily be incorporated into the S. 398 structure. In addition, S. 1371 makes a useful expansion of the number of predicate crimes that form the basis of money laundering expenses, such as, as I mentioned, acts against foreign governments like official foreign corruption.

There are important changes in S. 1371 that could be melded into S. 398, such as the changes in the forfeiture laws, long-arm jurisdiction against foreign money launderers, and criminally prosecuting those who knowingly make false statements regarding the identity of their customers. So, I think that, while there obviously are differences, these could be melded and combined into an even more powerful bill.

Chairman SARBANES. Good. I appreciate that. I know you are now in the private sector, and your time and commitment are not unlimited. But I hope we can draw on you for your advice and counsel as we try to deal with this problem.

Mr. EIZENSTAT. I would be glad to work with you and Steve and others on that.

Chairman SARBANES. I appreciate that very much.

We have discussed, and I see Senator Corzine had to depart because this is a matter that he is focused on. *The Washington Post,* in an editorial, said, "The existing requirement that banks report suspicious activity to regulators should be extended to other types of financial institutions, such as stock brokers, insurers, and even casinos." What is your reaction to that recommendation?

Mr. EIZENSTAT. Well, I agree with that. In fact, we did extend this to casinos and on the broker-dealers, as was mentioned earlier, there is a decision to do that.

The regulations did not come out. I wish they had come out a little earlier. There were a variety of reasons for that, including the fact that we had to try to implement the Gramm–Leach–Bliley Act that shifted certain responsibilities from Treasury to the SEC, and there were a lot of complications in doing that. But I would hope that the Administration by the end of the year would be able to have the regulations to permit the extension of this so that we have a level playing field for our banks and we have casinos and broker-dealers covered.

Chairman SARBANES. I would like to draw you out a little bit on the privacy issue because I was asked by a member of the press on the way back to this hearing about the privacy question.

My response was that, actually, we are seeking to gain financial information about foreigners that Americans are already exposed to under our current framework. This does not represent any further intrusion into the financial privacy as it now exists for American citizens. It is actually, to the extent that it does anything, it gets at foreigners who go free from some of these transparency reporting requirements. Would you agree with that statement?

Mr. EIZENSTAT. I agree fully, and may I add just a few other things on the privacy issue because it is one of the things as we were drafting the legislation that did pass the House Banking Committee last year so overwhelmingly. We spent an enormous amount of time trying to balance the privacy issues against effective law enforcement.

First of all, no one has a privacy right to commit crime. And the Supreme Court has made it clear a number of times, the crucial opinion being authored by Justice, now Chief Justice, Rehnquist, that the whole Bank Secrecy Act is itself completely constitutional. And that is in a way an effort to try and get at the names of people who may be doing untoward things.

Moreover, the Supreme Court has made clear that bank records are not within a constitutional zone of privacy. But that is not the full answer. For one thing, the very specificity of the statute that you have drawn is a protection against privacy.

Second, any required records are subject to the general privacy protections imposed by law, including Gramm–Leach–Bliley, and subject to recognized exceptions for law enforcement.

And third, the very legislation expands the nondisclosure rules of suspicious activity reports to make it plain that government officials, as well as bankers, can violate the law by improperly disclosing information from those reports. So all of these provide ample protection against privacy invasions.

Chairman SARBANES. Obviously, this has to be an international effort. I wonder if you could comment a bit about the international arrangements that currently exist or could be strengthened to deal with this. And in particular, there seems to be an assumption on the part of some that our efforts to deal with money laundering exceed or go beyond that being done by other countries.

But I am told that, actually, there are a number of countries who have a more rigorous statutory framework for dealing with money laundering than the United States, and that in some of these international fora in which we are working at this problem, we are not necessarily the leaders in trying to address this matter.

Mr. EIZENSTAT. Mr. Chairman, that is a very important point. We would like to think of ourselves as the world's only superpower and the leader in a whole range of things.

The fact is that in the attack on money laundering, we are not as advanced as a number of members of an organization set up under the Bush Administration, called the Financial Action Task Force. This now has some 29 members and many of those have tougher rules on money laundering than do we.

The important advance that we made is that for the first time, and this was under the leadership of people like Will Wechsler and Jody Meyers and others in Treasury, we identified 15 countries that did not meet basic international money laundering standards. They did not outlaw money laundering. They had no financial intelligence units. They did not share any information.

I am frankly proud of the fact that we did not pull any punches. We included Israel. We included Panama. We included Russia on that list, as well as places like Nairu. So this was just not an easy list to compile. We called it like we saw it. And the important thing about that list is that now about half of those countries have acted rapidly to pass new legislation to establish functioning financial intelligence units like the one that Jim Sloane so ably leads here, the FinCEN.

A number of those countries have gotten off the list, like Panama and a number of others. I hope Israel will get off shortly. And this Administration, to its credit, in June, added another six countries and in September, another two, including Ukraine.

This we call the Name and Shame List. It really focused a spotlight on those countries and has gotten them to act. But if we want to continue to be a leader in the Financial Action Task Force, we have to demonstrate that we are at the forefront of being tough on money laundering and that is why, again, S. 398 and S. 1371 are so important.

Without those, a lot of our leadership is rhetorical, frankly, and not backed up by the kind of tough actions that I think are necessary. So the process has worked.

And I heard an earlier question about Switzerland. The fact is that the Swiss have really turned over a new leaf. I negotiated with them on the Holocaust issues for several years and it was

very tough and very difficult. They have recognized that if they are going to be leaders in the international financial community, they have to have transparency.

They are members of FATF. They have tough rules. They are complying. They are sharing information. So, we cannot point the finger at a lot of countries—they can almost point the finger at us.

Chairman SARBANES. Some have argued, or at least put forward, the proposition that, in light of the President's Executive Order of September 24, that that sort of takes care of the situation and we do not need any further legislation. Could you address that?

Mr. EIZENSTAT. Yes, sir. If anything, the President's actions, which again are highly welcomed and should be applauded, if anything, underscore the need for the legislation, the reason being that it is true the President can act in the dramatic fashion that he did under IEEPA. But we used to call that the atomic bomb. You take that when you are going after Osama bin Laden.

The only other authority that we have under the Treasury Department or anywhere else in Government are these very mild advisories. There is nothing in between. And there will be many instances in dealing with money laundering—foreign jurisdictions, types of transactions, and foreign countries—when using the, in a sense, nuclear weapon of IEEPA, as appropriate as it was for President Bush to use here, would be inappropriate to use. So we want to give the Treasury the full range of powers in between the advisories, on the one hand, and IEEPA on the other.

So, again, to me, if anything, the use of IEEPA in this circumstance, as dire and unique as it was, dramatizes and underscores the need for more flexible ranges of powers to deal with other perhaps less dramatic, but still terribly important, money laundering problems.

Chairman SARBANES. Well, thank you very much. This has been extremely helpful testimony and we obviously appreciate the initiatives which you undertook when you were in the Government to address this issue.

We very much appreciate your willingness to be available for us to call on you for counsel in the days ahead, as I think you heard in our earlier discussions, we proceed to shape the legislation.

Mr. EIZENSTAT. I have gotten more and more used to pro bono work, Mr. Chairman, so why not here.

Chairman SARBANES. Thank you very much, Stu.

If the next panel would come forward.

[Pause.]

Our concluding panel consists of William Wechsler, who served as a Special Advisor to the Secretary and the Deputy Secretary of the Treasury, where he led the Department's day-to-day programs and policy initiatives to combat money laundering between 1999 and 2001. Prior to that, he had served as the National Security Council staff member, where he chaired the interagency working group seeking to disrupt Osama bin Laden's financial network.

Jonathan Winer is a leading authority on domestic and international money laundering initiatives, a former U.S. Deputy Assistant Secretary of the Treasury for Transnational Law Enforcement, one of the architects of U.S. international policy and enforcement.

He also led the Senate's investigation of BCCI in the late 1980's and early 1990's.

And Alvin James, who has had extensive experience in investigating money laundering schemes, particularly the Columbian Black Market Peso Exchange. Mr. James has served as the Senior Money Laundering Policy Advisor to the Financial Crimes Enforcement Network and is a Special Agent in the IRS Criminal Investigation Division, serving as an undercover agent specializing in international money laundering efforts.

Gentlemen, we are very pleased you all are here. I regret, in a sense, the lateness of the hour, but we have had a very full morning, I think, as you have observed. And we would be happy to take your testimony.

We will include the full statements in the record, if you care to compress them or abridge them.

Mr. Wechsler, we will just move right across the panel. So, Mr. Wechsler?

STATEMENT OF WILLIAM F. WECHSLER
FORMER SPECIAL ADVISER
U.S. DEPARTMENT OF THE TREASURY

Mr. WECHSLER. Yes, Mr. Chairman, I will be brief, since you have my full testimony.

What I do want to take is just a little bit of time to describe the nature of the Al Qaeda financial network, what has been done, what can we do against it specifically, and then a couple of statements on the general issue of money laundering, not to repeat all the fine and excellent statements that Former Deputy Secretary Eizenstat just gave.

Unlike most terrorist leaders, Osama bin Laden did not become famous for leading a terrorist cell or having military victories. This is key to understanding the problem. He became famous for building a financial architecture that supported the Mujadin fighting in Afghanistan against the Russians. It is this financial architecture that continued with him when he turned to terrorism, and it is this financial architecture that is at the heart of how Al Qaeda today gets its finances.

The other key thing to understand is that the general impression that is out there in the media that this is a product of one rich person sort of writing checks out of his own personal account is false. If that were the problem, it would be much, much easier to solve.

What it is, as has been alluded to earlier today, is a complicated system of charitable donations, of individual donors, of legitimate businesses, of criminal enterprises, of banks, of cash smugglers, and so forth, all of which eventually give money to do terrible acts, as we saw on September 11. Most important for the United States is what then you do about this problem.

The key thing that was done happened in 1998. And in that time, the strategy changed from a law enforcementcentric strategy to a more strategic strategy that was designed to take down and disrupt the financial network and the key notes. As Former Deputy Secretary Eizenstat just said, President Clinton at the time invoked IEEPA law, as President Bush did on Monday.

It is very nice if sometimes funds are actually found in the United States and they are blocked, as several hundred million were blocked in the United States that belonged to the Taliban. But there is a common misperception out there that is the goal of all these activities.

It is not the goal of the activities. It is nice when it happens. The goal of the activities is to use the leverage that you have, use the Sword of Damocles that the United States holds hanging over the heads of foreign persons, foreign companies, foreign financial institutions, the threat of being cut off from the U.S. economy and the U.S. financial system, to try to get them quietly sometimes, behind the scenes often, try to get them to give you information and to take certain actions that previously they would not be willing to do.

This was a strategy that we had after 1998. This is a strategy that President Bush is continuing as of Monday. It is a strategy that can work. We had some very good successes. We stopped, for instance, the Afghan National Airline, Aeriana Airlines, which was a key mechanism that Osama bin Laden and the Al Qaeda network used to move funds, material, and personnel back and forth in Afghanistan. We shut it down around the world, not just in the United States, but also other airports did not want to risk the notion that they would be cut off from U.S. air travel. So, they decided, quite logically, to cut themselves off from Aeriana. That is the power of this.

The problem is that we were not always successful. Sometimes there is lack of political will in other countries that we go to. Sometimes when we go to the other countries, they cannot even get the information that we want them to get because they lack the appropriate regulatory regime.

That, amongst other reasons, is why it is so important to quickly address, as I know you are, Mr. Chairman, the legislation that passed through the House Banking Committee last year and is on your table this year, because it would allow, as Deputy Secretary Eizenstat said, a number of intermediary steps.

Most importantly, particularly for the war against terrorism, it would allow you to focus them not just on the country at large, but also on the particular financial institution, and the level of proof that you would need to take action.

Under IEEPA, you have to be able to show publicly, with open source information, not just intelligence, that there is a terrorist nexus going through this bank.

Under the legislation in front of you, you would be able to take action if you can show that there is a primary money laundering concern going on there. This could have to do with the regulatory environment. This could have to do with a pattern of practices. This is easier to do without the use of intelligence and therefore, would give us much more leverage.

Thank you very much.

Chairman SARBANES. Thank you very much.

Mr. Winer.

STATEMENT OF JONATHAN WINER
FORMER DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL LAW ENFORCEMENT
U.S. DEPARTMENT OF THE TREASURY

Mr. WINER. Thank you.

Mr. Chairman, before you is a chart which displays what is probably a small portion of Osama bin Laden's financial network. Every one of the more than 100 boxes on this chart reflects a publicly reported alleged financial link of bin Laden and related terrorists organizations involving more than 20 countries, in the Americas, Asia, Africa, Europe and the Middle East. Public information demonstrates terrorist funds moving through Islamic charities, travel agents, construction businesses, fisheries, import-export businesses, stock markets, chemical companies, and a significant number of banks. All of this is public record and is far from complete. There simply is not room on a single chart, or even four of them, to include everything connected to bin Laden-related terrorist groups as has been publicly reported in open source material.

A few of these entities are now defunct, as a result of law enforcement and other operations. Others may have only marginal ties to terrorist finance. These charts illustrate why responding to this multifaceted network will require sustained, tenacious cooperation by many, many governments.

The actions announced by the Bush Administration on Monday represent potentially significant steps. If followed by further action, and international cooperation, they could begin to have consequences. But that will only be true if every component of the financial services sector internationally, not just banks and certainly not just U.S. banks or foreign banks with offices in the United States, are all subject to similar rules and regulations. An anti-terrorist finance regime must be globalized, standardized, harmonized, and it must be multisectoral to have impact. While there are many steps that should be taken, I wish to focus on seven areas for action. My written testimony provides more details them.

First, register and regulate Money Services Businesses, including Hawala institutions, as the Congress directed the Executive Branch to do since 1993. Our failure to complete this process has created a substantial vulnerability by which terrorists can anonymously obtain cash below the radar of our financial services regulatory system. This is the Department of the Treasury's job. It should be completed without further delay, so that nonbank money services businesses in the United States are subject to obligations at least as tough as those already required of banks. To be effective, these laws must then be vigorously enforced. We should use Federal law enforcement injunctive powers to shut down and freeze all Hawala assets for firms that do not register. If the Department of Justice does not think it has that power, it should urgently ask the Congress for it, though I believe the power exists already pretty much in 31 USC 5320.

Second, increase the international pressure on countries that have yet to put into place financial regulatory enforcement regimes that facilitate accountability and the tracking of assets. We have begun doing this already, but we need to push harder and faster. Financial regulation and enforcement cannot stop at borders, when

terrorist finances do not. Financial regulations and enforcement must be evenly promulgated and evenly enforced on a global basis.

Third, the United States needs to accelerate efforts to ensure that every nation signs up to the U.N. Terrorist Finance Convention, that every country criminalizes terrorist finance, that every country freezes and seizes terrorist funds and the assets of organizations that support terrorism.

Fourth, the United States must do more to build our own terrorist finance database from existing cases. This means not merely going through and scouring the records associated with every terrorist prosecution, but we need to do that with cases that abut or adjoin terrorist activity and involve other terrorist activity. The Bush Administration has announced it has now begun this task. Adequate resources, substantial resources need to be devoted to it and devoted to it immediately.

Fifth, the Congress should support Presidential use of economic war powers to broaden the reach of U.S. sanctions policy in true national security emergencies, as the President announced he would do on Monday. Unilateral action, however, is inherently insufficient. We must obtain the support of key partners, including the G–8 and the European Union. If the European Union agrees to put into place the same sanctions we are putting into place, all the European accessor states, the wannabes, including countries like Cyprus, have to put in the same laws, the same protections, the same rules. That is tremendously important. You push the OAS, and then you begin to get all of Latin America in, and you push from there.

Sixth, the United States needs to secure domestic and international action against entities that have wittingly or unwittingly provided support to terrorists. These include a number of Islamic charities, some of which are prominent and otherwise do many good works. We will need to work with other governments, including many in the Middle East, to cleanse charities that have supported terrorism unwittingly and to protect them from abuses by terrorists. Other charities, who have systematically supported terrorism, should be closed down, with their assets seized and made available to assist terrorism's victims. Mr. Chairman, my chart shows 17 charities that have been publicly listed in one or another press accounts, trials, whatever, over the last few years. Most of them are not yet on any list anywhere, other than in the public record and perhaps that public list needs to be expanded.

Seventh, we need to strengthen international regulatory cooperation in our securities markets and close regulatory gaps, so that no terrorist who engages in the obscene act of market manipulation in connection with an attack ever gets away with it. Countries whose bank secrecy laws, anonymous trusts, and untraceable business companies are used by terrorists need to understand there will be consequences if they do not quickly change their laws and practices to help the world, every country, trace and seize terrorist finances.

In summary, cutting off terrorist finance is like cutting off the heads of the hydra. Every time we chop off one head, more will grow back in its place. To survive, we must kill the entire beast, and that means more than a single bin Laden, or any one part of his or related terrorist finance networks.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you very much.

Mr. James.

STATEMENT OF ALVIN C. JAMES, JR.
FORMER SPECIAL AGENT
CRIMINAL INVESTIGATION, INTERNAL REVENUE SERVICE
U.S. DEPARTMENT OF THE TREASURY

Mr. JAMES. Thank you, Mr. Chairman. I am honored to be here before you today to speak to you on an issue that affects the national security of our country.

I am currently the practice leader of the Anti-Money Laundering Solutions group at Ernst & Young. Prior to that, I spent 27 years in Federal law enforcement where I culminated my career at the Financial Crimes Enforcement Network. It was at FinCEN that a DEA colleague, Greg Passic, and I collaborated on developing a model that explained what is generally recognized as the largest money laundering system in the Western Hemisphere—the Colombia Black Market Peso Exchange—commonly referred to as BMPE.

The BMPE presents two fundamental dangers to our country—it facilitates the Colombian drug trade by purchasing and laundering billions of dollars each year of Colombian wholesale drug proceeds. In turn, it makes these funds available to anyone, including terrorists, seeking a source of discreet, untraceable U.S. dollars.

Mr. Chairman, I have submitted a written statement for the record that centers on the Black Market Peso Exchange as a global money laundering system. I would like to take this opportunity to address the use of the BMPE and other underground financial systems by criminals, particularly international terrorists.

We know that, like all criminals, terrorists need secrecy to succeed. Terrorists do not need a separate and distinct system of laundering or concealing money for terrorist activity. They use systems that are readily available in their homelands that leave no paper trail and are discreet, cheap and reliable. By tapping into existing systems, such as BMPE and Hawala, the terrorist network can conceal their financial activity from law enforcement.

Hawala and BMPE are parallel payment systems that use brokers who buy money as a commodity and then transfer it internationally by accepting funds in one country and paying them out from a pool of money available in another country.

The money is placed in the traditional financial systems by the brokers, but the source of the money and the true identify of the owner or client of the broker is completely unknown to the financial system and therefore, completely without a paper trail. This system is attractive to terrorist groups and those who move the money they need to support their activity.

Law enforcement has evidence that the BMPE has been used by Middle Eastern terrorist organizations in the past and is more available and attractive to them now than ever. Correspondent banking is the vehicle that is allowing these underground systems to broaden their access to U.S. financial systems from anywhere in the world. I believe the legislation referenced here earlier this morning will be an important step toward closing that unguarded back door to the U.S. financial system.

Mr. Chairman, I believe if we are to stop terrorist money movement, we must disrupt and dismantle systems like the BMPE that make drug money available to terrorists not only in the Middle East, but also throughout the world. I further believe that U.S. law enforcement has the ability to take on this vital task. But it must overcome two challenges before it can succeed.

The first challenge is coordination: Money laundering is like a balloon—if you squeeze it one place, it will just get bigger some place else. Unless we attack these money laundering systems with a coordinated plan to squeeze in all directions at once, we will not pop the balloon. Overlapping money laundering jurisdictions frustrate our ability to coordinate our attack. Law enforcement is a competitive business and to date, these agencies have not been able to effectively cooperate with one another in a global assault on these systems. Asset forfeiture funds that return monies to the seizing agency exacerbate this competition between agencies.

A second problem involves the natural focus of law enforcement on the prosecution of individuals. The BMPE is a financial system with an infrastructure and as such, is not dependent on any one individual or group of individuals. Therefore, a plan that is directed primarily toward arresting and prosecuting the drug traffickers, the money launderers and the terrorists who use this system will not by itself stop the system.

The final challenge I see before law enforcement is to place the goal of disruption and dismantlement of the system on an equal footing with prosecuting the individuals who use it.

Mr. Chairman, in conclusion, I would like to restate that our Government has the ability, the authority, and the knowledge to take action now against the BMPE and similar systems used by terrorists to launder funds.

I firmly believe that unless a high-level position is designated to have the sole ownership of this problem and the responsibility to solve it, we will continue to have impact on these systems, but fail to stop the process, as we have failed to do for the last 20 years.

I hope that the Cabinet-level Homeland Security post will be used as such a position. Without this or a similar overarching position to marshal and direct the tools and abilities we have available, I fear that we will continue to fail to take these underground and unregulated financial systems out of the reach of international terrorists and other criminal elements who thrive on discreet and untraceable funds.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you all very much for some very helpful statements.

I wonder if someone could develop a little bit how the Hawala system works.

Mr. JAMES. I will be glad to take a first shot at it. As was mentioned earlier this morning, this system is hundreds of years old. And it really operates through a network of brokers that are in place throughout the financial centers of the world, and in the Middle Eastern area that has the people that need to use the system.

A good example of how it might work is that a person in the Middle East might need to pay a bill, say in London, that is due for goods that they have imported from London to the Middle East. So

that person in the Middle East would go to a Hawala broker with the equivalent value of the debt owed in whatever the currency of that area. He would basically make a deposit with that broker.

The broker would then contact his counterpart in London and he would tell that counterpart to draw on a pool of money already there and send a payment to whoever the exporter was that was owed the debt. Those two brokers then would square up their accounts as they went along. Usually, the account would be squared up because someone in London would owe money to someone in the Middle East. So, they would go to the broker on their side and they would bring in pounds sterling and say, I want this amount of money transferred to an individual in the Middle East to pay my debt. The brokers would then work the transaction the other way and in that way, eventually square up their books. The important thing about this system is that no money moves internationally. There is no international wire transfer.

The two individuals who handle the transaction know each other, trust each other. The individuals who do business with them know them, trust them. No records are kept. And although these pools of money may be kept in the financial systems of the various countries that they are working in, the financial institutions have no idea whose money this really is and on whose behalf deposits are being made and moved around. This is a complex system, but that is my stab at a simple answer.

Chairman SARBANES. How do they even up their accounts? Your example sort of posited a two-way street that would roughly balance out. And so, therefore, the broker in the United States who provides dollars on the direction from elsewhere money provided would then turn around and works a deal the other way. But suppose it does not balance out? How do they even up their accounts?

Mr. WINER. Mr. Chairman, if I may on that point. They have ties to the official banking system. They will have a cash-intense business, whether it is a grocery store or a hotel or a restaurant or a casino, or whatever, and they will move money through that and they will reconcile through wire transfers like anybody else with whatever they need to do pushed into their legitimate business. So the legitimate funds hide the underground funds when necessary for reconciliation.

Mr. JAMES. I would also add just for one second, that I have described the most common way that Hawala works, which is two quasi-independent brokers doing business with one another.

Another way that these underground systems can operate, and Hawala does at times, Black Market Peso does quite often, is that the operatives in the United States are actually minions of the broker in Colombia or Venezuela or wherever. So, in that case, they do not really need to balance up because it is all operatives of the same guy. He just has two parallel accounts, one in each country. The Hawala can also work that way, but usually does not.

Mr. WECHSLER. And the other key element is, the word Hawala is a Hindi word which means in trust. The people that are involved in the system have been doing it because their families have been involved in this for generations. You just cannot show up one day and say, I am a Hawala broker and I want to join this business. It does not work like that. It is a more connected network.

So unlike we would think in the western sense where you need to balance the books everyday or every week, unbalanced books might go on for a while because at the end of the day, you know that your fifth cousin is good for it. It might be a while before these kinds of balancing networks that my two colleagues here have described might actually take place.

Chairman SARBANES. Now, I take it that there are people functioning as Hawalas who just do a normal range of legitimate activities. Is that correct?

Mr. JAMES. Yes, sir.

Mr. WECHSLER. There is nothing inherently illegitimate about it. It has been going on for hundreds of years. I am sure that the Hawala system, like any other banking system, the predominate number of people in it use it legitimately.

In some places of the world, it is the only banking system. It unfortunately provides a lot of real advantages for people who are interested in covering dirty money, though, and that is where the real concern comes in.

Mr. WINER. The State Department for a number of years has identified underground alternative remittance systems, including Hawala, which is South Asian-based, the Iron Triangle of Hawala is Dubai, Pakistan, and India, and the Hundi system, which is an old Chinese system which is similar, sometimes called chop houses or flying money houses, as a mechanism by which drug traffickers, international criminals, and terrorists can launder their money, because the money does not have to cross borders and it can be completely anonymous.

You go in, you put your cash on the table, you pay the broker's fee, you arrange for the secret code at the other end in the other country, you wait until that is paid. When you get the word that it has been paid, you pay it over to the broker in this country. As a result, this has been identified as a tremendous vulnerability all over the world by the State Department going back at least 6, 7, 8 years.

Hong Kong, when it decided it had to create a modern anti-money laundering system, found that it could not enforce any anti-money laundering laws unless it required the registration of every Hawala broker in Hong Kong. That registration requirement came into effect last year and it is one of the most important steps that Hong Kong took.

It is a step the Congress commanded the Administration to take in 1993, in Annunzio–Wylie, but which has yet to be put into effect as of today. Once you put it into effect, you can go after people who do not register and you can work your way up the chain, you can seize assets, and you can shut down that vulnerability.

Chairman SARBANES. Where does the bin Laden Hawala representative here get his pool of cash to respond to the directive that this cash should be furnished, let us say, to bin Laden's operatives who are here undercover?

Mr. WINER. Remittances from good, honest, honorable people.

Suppose that I am originally from Pakistan, for example, and I have made a lot of money in the United States working incredibly hard, 60 hours a day. I have taken care of my family and now I want to take care of my mother and father who are still back in

Pakistan. If I send the money through the formal banking system, they may have to deal with corrupt officials. They may have to deal with different types of taxes or other problems. They are not used to it. They do not have bank accounts.

Mr. WECHSLER. Or it might not exist in their city.

Mr. WINER. They might not even have bank accounts or a bank. So, you go to the Hawala with your cash and you say, I want it delivered to such and such city in Pakistan. Can you do that?

The Hawala broker goes to the back room, uses his e-mail system—it used to be faxes. Before that it was phones. Before that it was mail. Before that it was mules and camels. But today it is e-mail. He e-mails a person in that city. He says, yes, we have money in that city. I can do it. He then arranges for it. Now the currency is in the United States and the mother and the father have gotten their remittances to take care of them.

Honest people at that point doing honest transactions, but it is totally anonymous. That anonymous money is now available to be used when an agent of bin Laden goes to that Pakistani or Dubai broker or anywhere else where the system is in place and says, here is $100,000. I want this $100,000, or the equivalent thereof, to be made available to a fellow in Vera Beach who is going to use the password pilot. The person in Vera Beach uses the password pilot and now has currency, the same currency provided by good people for good purposes to take care of their parents.

Mr. JAMES. Actually——

Chairman SARBANES. What does Hawala—excuse me. Go ahead.

Mr. JAMES. Well, I was just going to add to that that he probably will not even get it in currency. The Hawala broker will arrange a transfer right to a bank account he already has set up, probably with a credit card available to it. They can go either way.

Mr. WINER. That is one place where there is minor disagreement in the currency for terrorists that becomes operational security.

And so, they can provide that currency both ways. In the case of remittances, currency often is preferred. That is one of the differences between the black market in the Americas and the way Hawala has worked in some of the cases in South Asia.

Chairman SARBANES. What does the Hawala broker here do with the money that has been given to him by the honest worker, which was then remitted in the country from which the worker came to his family, so that we have the transaction?

The Hawala broker here then has presumably cash or a check from this honest worker. So, he has this money, what does he do with that money in the interim?

Mr. JAMES. Well, that is part of what Jonathan and I were just talking about. He can either hold it in cash, put it in a little black box under his bed, if you will, or he can put it in a financial institution, in an account that he controls.

Chairman SARBANES. He may put it into the financial system.

Mr. JAMES. Oh, yes, sir.

Chairman SARBANES. Do they generally do that, or do they generally hold it in cash? Do you know?

Mr. WINER. It is a mix, sir. We do not know nearly as much about the system as we need to. But people in the U.S. Government, particularly at FinCEN, who have spent the most time inves-

tigating this, together with my colleague to my left, Mr. James and Mr. Passic, people who have really spent a lot of time with this, have found constant intermingling between the underground alternative remittance economy and the official economy, which is why they often have other businesses in addition to being Hawalas.

Mr. WECHSLER. We should also not overstate at all, notwithstanding the very good work that a few dedicated people, particularly at FinCEN have done on this, on understanding the system, should not overstate by any way the knowledge that the Federal Government has about the extent and the uses of Hawala in the United States.

In my opinion, as a general matter, U.S. law enforcement has done a very poor job over the years of understanding this system, of getting inside the system, of figuring out who uses the system. And that is something that needs to change quickly.

Mr. WINER. I concur.

Mr. JAMES. I would agree with that. I would add that one of the gaping holes in our knowledge of how this Hawala system works is their use of a second international network of gold brokers, buyers and sellers of gold, that also interplay with the Hawala system. And we do not know exactly how that works.

But we know that they use gold as a hedge and they may also call up a gold broker in a different country where they do not have funds, but they have a relationship with a series of gold brokers and use that to move the money. There are experts at FinCEN who have information on that, but we have not studied it fully at all.

Mr. WINER. I would like to add one quick comment to that, which is that there is a brain drain in the Federal Government which takes place a lot of times because of salaries, benefits, changes in policy, whatever.

The best expert that I know in the United States Government on these alternative systems, who used to be with the Financial Enforcement Center, does not work for the Government anymore. I found out recently that he left around the same time that I left. And that brain drain problem and the lack of focused, concentrated effort over an extended period of time and adequate resources further impairs our ability to do good work in this area because when somebody gets good, they tend to get snapped up at a substantially higher salary in the private sector. Literally, the best person I know, Patrick Jost, who was at FinCEN, is now in the private sector. I do not know what capacity exists since his departure.

Chairman SARBANES. We are going to draw to a close, but I wanted to ask about the chart to my left, your right, Jonathan.

Mr. WINER. Yes, sir.

Chairman SARBANES. I have been looking at the copy. These are helpful charts, but they are very hard to read, particularly at a distance. That chart which shows the charitable organizations box and all the different charities that are feeding into it, now how have you been able to determine that these are front organizations that are moving money into the bin Laden operation?

Mr. WINER. This chart is not based on classified or secret government information. It is based on the following kinds of sources. It is based on statements made at trials, in the 1993 bombing trial, for example, the first World Trade Center attack trial, where a

number of these came up, and statements that came out in the course of investigations. It is based on scandals, such as where people in other governments have been tied to terrorist activity.

For example, in the Philippines, the International Economic Relief Organization ran into a scandal where the minister of tourism in the Philippines was associated with it while it was supporting Abu Sahaf, an organization which bin Laden has been supporting, which was named by President Bush on his list on Monday.

Mr. WECHSLER. Osama bin Laden's brother-in-law.

Mr. WINER. His brother-in-law was the financier there.

Every one of these represents either a scandal that has emerged, or very significant allegations, or material that has come out in law enforcement cases. This was designed to be representative, to provide the flavor of the multifaceted network that is out there. Now some of these charities that are listed here as front organizations have been so identified in public records. Other charities are primarily or substantially legitimate enterprises doing good works whose funds have been diverted, taken advantage of, or used for terrorist purposes, according to one account or another over time.

The point of showing so many of them, and there are 17 charities on this chart and there are about as many banks and about as many industry and service companies, is that dealing with this requires a multinational effort on many sectors simultaneously.

The holes and sieves in our existing money laundering enforcement system are very substantial. And they are particularly substantial in the Middle East, where no country that I know of in the Middle East has ever brought a money laundering prosecution. Only a couple of them even have comprehensive money laundering laws, and none did a few years ago.

The United States has put very heavy pressure, for example, on Cyprus, as has the European Union, because Cyprus used to be a major center for terrorist finance. The Cypriots, who want to be in the European Union, responded by changing all their laws, very aggressively moving to create comprehensive protections.

The next thing that the United States and the United Kingdom found out, was that Cyprus was being used by Slobadon Milosovich to move his money. They went back to the Cypriots. The Cypriots said we have a great system. It is the best system in the world. We do not have any of that money. But then after that, Milosovich's money was no longer in Cyprus. That tends to be the pattern. We have had the same kinds of sets of initiatives with Lebanon, with Israel, with the United Arab Emirates, and quite recently, with Nigeria and Egypt. This process has to be accelerated and it has to be comprehensive. And these countries need to put transparency in place in their systems. There is a history in these countries because a lot of the money comes from the top down, of not wanting necessarily to have really good oversight mechanism that would allow you to trace assets. This demonstrates why it is essential that every part of the world begin to have that.

Chairman SARBANES. What about the industry service sectors? What does that represent?

Mr. WINER. It represents legitimate businesses and front companies both, through which the terrorists associated with bin Laden's financed terrorist activities and hid terrorist activities. If you are

in the gum arabic business, which are ingredient in most tonics or sodas and any number of other candies and consumables, that is a great business to generate legitimate revenues. You can then use those legitimate revenues to support illicit activity.

Same with the fishery, anchovy business. If you have a construction business, that pretty much speaks for itself. Drug trafficking organizations have often gone into construction as a way to launder their money. They did that in Colombia, Venezuela and Panama, at the height of the reinvestment of drug money in the Americas. So these are relatively standard mechanisms used to launder money and to conflate and integrate illicit funds with licit funds.

Chairman SARBANES. Now, Mr. Wechsler, you talked about the international effort. You were very much involved in helping to put that together. Ambassador Eizenstat made reference to it. I gather there has been some significant progress through working through these international groups and getting countries to upgrade their regimes. Mr. Winer just made reference to the improvements in Cyprus as a consequence of the interaction with the European Union, and so forth. So what is your view of the progress that is being made in that area?

Mr. WECHSLER. Well, the world took a real turn last year when it really, as Former Deputy Secretary Eizenstat explained, when the Financial Action Task Force went after these countries. A lot of progress has been made. But there are two real questions that are outstanding.

Chairman SARBANES. Actually, we need to stay abreast of it because, as he pointed out, there was one view that was prevailing about Switzerland and how they were performing. And now, we have a very different view prevailing about Switzerland.

Mr. WECHSLER. That is exactly right, sir.

Chairman SARBANES. And I gather, you mentioned Cyprus. But they have also apparently markedly changed their system.

Mr. WINER. Yes, sir.

Chairman SARBANES. So we need to stay current in terms of who is trying to come into the community of nations and who remains outside of it. Would you agree with that observation?

Mr. WECHSLER. I would absolutely agree with that observation.

Two things to look at. The first is, a little over a year ago, the G–7 finance ministers, when Secretary Summers met with his colleagues, they made explicit threats about what would happen to these countries that were outside the international standards, if they stayed outside too long. And explicitly, they threatened to cut off from, not just the U.S. financial system, but also the entire G–7 financial system. The last time the finance ministers met, that threat was toned back to issue stronger advisories warning. And the deadline was extended, mostly to allow Russia more time to pass a money laundering law, which they have, although they have done nothing thus far on implementation of that law. So if I could suggest, a role for the Congress would be really to stay abreast of this and make sure that adequate pressure is still being put on.

The second thing is there was a parallel effort to go after tax havens because tax evasion is of course a crime, just like other crimes. All too often, criminals can disguise their money as just the proceeds of tax evasion, not the proceeds of other types of crimes.

And there are some countries, not the United States, but there are some countries that treat this as a difference. Switzerland, as you mentioned, has done very good on money laundering recently, but still refuses to cooperate on all tax evasion cases. They do not believe it is a crime. This is, unfortunately, one of Treasury Secretary O'Neill's first decisions, was to really withdraw in many ways the United States from the international efforts to combat tax evasion, and they have really suffered as an effect.

Chairman SARBANES. He has come back into it some.

Mr. WECHSLER. Well, he got the rest of the world to agree to change it the way that he wanted to change it. And the main way that he wanted to change it was to take off the table the threat of sanctions. And if there is no threat of sanctions—some countries will improve because they do not like bad publicity. But at the end of the day, there are going to be some countries that will weigh the costs and benefits and say, it is better for them to take tax evasion money. If sanctions are off the table, or off the table at least in the foreseeable future, that is a real problem.

Chairman SARBANES. Let us see how it develops. I know that Secretary Summers was very intensely interested in this issue and very willing to take some very strong positions. Obviously, this is something that we will need to monitor closely.

Well, gentlemen, thank you very much. Sorry.

Mr. WINER. Mr. Chairman, there is one issue which arose earlier which I would like to have a brief opportunity to address.

Chairman SARBANES. Sure.

Mr. WINER. Which is the issue of due process. I believe it is true that there is already an established right of review of Treasury Secretary administrative decisions in this area. So a due process system is already in place. The key relevant case is a case called *Paradissiotis* v. *Rubin,* 171 Fed. 3rd 983, 1999. This was a challenge to a decision by the Office of Foreign Asset Control at Treasury to freeze an individual's assets. And this said the review in district and appeals court is appropriate with administrative action. So for those people who are concerned about that, I think the Federal courts have already answered that question.

I am happy to share that case name and cite with the Committee. Thank you, sir.

Chairman SARBANES. Well, that is helpful and we will certainly look into that because the due process question is one that we will have to address or deal with as we formulate this legislation.

Is there anything you gentlemen would like to add?

Mr. JAMES. No, thank you, Mr. Chairman.

Mr. WECHSLER. No, thank you.

Chairman SARBANES. We thank you all very much for coming and for the contributions you have made.

The hearing stands adjourned.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR PAUL S. SARBANES

I want to begin by welcoming Senators Levin, Kerry, and Grassley, as well as Representatives LaFalce, Leach, and Roukema to our hearing. They along with a bipartisan group of Members of Congress, including Senator Schumer and Representative Velazquez, have long advocated aggressive legislative initiatives to counter money laundering.

This morning's hearing focuses on the Federal Government's efforts to fight money laundering—what has been done, and what must be done. Its starting point is the National Money Laundering Strategy for 2001, mandated by the Money Laundering and Financial Crimes Act of 1998.

We will first hear from our Congressional colleagues. They will be followed by Jimmy Gurulé, Under Secretary of Treasury for Enforcement and Michael Chertoff, Assistant Attorney General for the Criminal Division of the Department of Justice. Next we will hear from Ambassador Stuart Eizenstat, Former Deputy Secretary of the Treasury. He will be followed by William Wechsler, Former Clinton Administration National Security Council staff member and Treasury Money Laundering Advisor; Jonathan Winer, Former Deputy Assistant Secretary of State for International Law Enforcement; and Former Treasury Special Agent Alvin James.

We meet, of course, in the shadow of the terrorist attacks of September 11. It is more urgent now than ever before for us to develop and put in place the array of tools necessary to trace and interdict the funds on which terrorists like Osama bin Laden rely to pay for their operations. Make no mistake—the terrorist campaign confronting us is not a penny-ante proposition. It cannot be carried out without major investments of time, planning, training, and practice—and the financial means to pay the bills. Our response to terrorism must include national and international programs to checkmate terrorism that are as complex and sophisticated as the practice of terrorism itself.

September 11 has sharpened our focus on the ways that vulnerabilities in regulatory and enforcement procedures in our financial system can be exploited to support terrorism. We have long known, however, the toll that money laundering takes on world economic activities. The IMF estimates the global volume of laundered money to be 2 to 5 percent of global GDP annually—that is, between $600 billion and $1.5 trillion. Money laundering combines the investment banking and payment system mechanisms of the criminal financial system; it fuels organized crime; it creates the transmission belt for money spirited out of national treasuries in numerous countries by corrupt officials. It is the terrorists' source of financial oxygen.

The United States has long taken the initiative in efforts to stop the laundering of proceeds from crime and corruption, beginning with the passage in 1970 of the Bank Secrecy Act. That Act requires banks to report suspicious activities and large currency transactions. But despite the progress we have made, especially during the last 15 years, money laundering has become more difficult to detect. Globalization, which eliminates barriers to free capital movement and relies on advanced technology, makes it possible to move money virtually instantly between any two points on the globe. These changed circumstances have left normal banking practices and traditionally tolerated offshore banking facilities open to grave abuse.

Recent investigations by Senator Levin's Permanent Subcommittee on Investigations have revealed that correspondent banking facilities and private banking services offered by U.S. banks can contribute to international money laundering by impeding financial transparency and hiding foreign client identity and activity. The Committee's reports also described how crime syndicates, corrupt foreign dictators, and narcotics traffickers use these practices and exploit loopholes in current U.S. law. Thus criminals and terrorists achieve hidden, but direct, access to the U.S. financial system, moving under the radar screen of U.S. law enforcement officials and financial supervisors.

The Administration has yet to clarify fully its views on money laundering. In the wake of the September 11 attacks the Administration has asserted the need to track down the financial circuits that support terrorism, and the President's Executive Order of September 24 freezes the assets of 27 groups and individuals. This is certainly a step in the right direction. In the past, however, Administration officials have expressed skepticism about anti-money laundering laws already on the books, and about at least some aspects of U.S. involvement in multilateral efforts aimed at offshore bank secrecy havens.

It is time to cut the financial lifelines which facilitate terrorist operations by reducing the vulnerabilities and closing the loopholes in our financial system. I note with great interest that within the past week both *The Washington Post* and *The New York Times* have argued forcefully for tougher and broader laws. In an editorial on Saturday, September 22, *The Post* urged that current reporting requirements be

extended beyond banks "to other types of financial institutions, such as stockbrokers, insurers, and casinos. The reports that allies of last week's hijackers may have bought financial options to profit from the carnage underscore the suspicion that a bank-only focus is too narrow." And 2 days ago *The New York Times* called upon the Administration and the Congress to revive "international efforts begun during the Clinton Administration to pressure countries . . . to adopt and enforce stricter rules. These need to be accompanied by strong sanctions against doing business with financial institutions based in these nations."

This is the time to move forward decisively, to address a confused and hazy situation that has plagued us for years, and today poses an unprecedented challenge.

I look forward to hearing from our witnesses.

PREPARED STATEMENT OF SENATOR RICHARD C. SHELBY

I recognize that Chairman Sarbanes scheduled a hearing on money laundering long before the tragic events of September 11. However, since that day, many have discussed the need to rush money laundering legislation through the Congress to address ongoing terrorist activities. While addressing money laundering is a very important matter, I think we need to be very careful as we proceed.

In order to be effective, it is very important that we clearly establish what area of concern we are trying to address. By definition, money laundering involves the process by which "dirty" money obtained from criminal activity is funneled through various conduits until it appears to be "clean" proceeds of legal activities. Targeting money laundering, therefore, is a means to combat criminal activity such as the drug trade, illegal gambling, and other forms of organized crime that generate considerable amounts of cash.

In general, it appears that financial gains are very rarely made or are difficult to discern as a result of terrorist activity. From what we currently know, terrorists do not routinely employ traditional money laundering methods. The vast proportion of financing for terrorist activities is provided by networking relatively small amounts of "clean" money to terrorist cells that use it to achieve their cowardly ends. Yesterday's *Wall Street Journal* pointed this out, noting:

> . . . Instead of laundering money from illegitimate enterprises such as drug trafficking, bin Laden, and other suspected sponsors of terrorism do the opposite: They take money from legitimate businesses and charitable organizations and . . . use it for terrorist activities.

The article very aptly described this kind of financing as "reverse money laundering."

I raise this issue because I want to make sure that recent events do not confuse our efforts. We must deal with terrorism with the tools best able to combat it; we must address organized crime with the tools best able to combat it. While in some cases the same tools may prove effective on both fronts, we need to be able to recognize the wide range of criminal activities and adopt measures that can most effectively defeat them.

I look forward to hearing from today's witnesses.

PREPARED STATEMENT OF SENATOR TIM JOHNSON

Mr. Chairman, let me begin by commending you for rescheduling this very important hearing so quickly. As we all know, anti-money laundering tactics will play a critical role in our war against terrorism, and I would like to note for the record that Senator Sarbanes had the foresight to schedule a hearing on this topic well before the attacks of 2 weeks ago.

Chairman Sarbanes identified early on that our National Money Laundering Strategy is a critical weapon in our arsenal against terrorists, drug lords, organized crime syndicates, and others. I am proud to be a Member of this Committee, which plays a critical role in our Nation's anti-money laundering efforts. I also would like to thank President Bush for taking decisive action this week to move forward with what is at least the first step in a "silent" war on the financial assets of those who so cowardly attacked America 2 weeks ago.

Over the past 2 weeks, we have all learned the power and strength of a united front. Americans have come together against a common enemy, and I am confident that we will prevail in achieving justice. We in Congress are working in a bipartisan fashion to make sure that our Nation's law enforcement personnel have the weapons

they need to win the war on terrorism, whether these weapons are F–16 fighter jets, computer capability, or access to financial activity that bears further investigation.

I look forward to hearing from today's witnesses. The President has just released his National Money Laundering Strategy, which sets out the Administration's plan to choke off the lifeblood of terrorists and other groups that use the American and global financial system to further their destructive ends. Together, we need to determine whether our current laws provide law enforcement with sufficient ammunition to defeat the enemy.

Of course, even with the best laws, we must work together to promote strong enforcement of these laws. Clearly, our efforts will be much more fruitful if the spirit of cooperation that has helped Congress respond quickly to our national tragedy spreads to the law enforcement community.

We must continue to encourage U.S. law enforcement agencies to cooperate in their anti-money laundering efforts. The Treasury, the FBI, the CIA, and other national, State, and local enforcement agencies can be particularly effective when they share vital information and work together toward a common goal.

We also need to work with our banking regulatory agencies to review which procedures and examinations required under current law are effective. And we need to take care that any new legislation provides those agencies with sufficient regulatory flexibility to respond to constantly changing money laundering strategies. And we need to pay special attention not just to mainstream financial institutions, but also to money services businesses (MSB). MSB's are notoriously difficult to monitor, but are a critical component of any successful national anti-money laundering strategy.

We also need to call on the financial services sector to continue their cooperation with law enforcement to root out terrorists and others who abuse our financial institutions. We need to craft laws that banks can implement without undue burden or intrusion into customer privacy. At the same time, we ask our financial institutions to be patient and do all they can to help this Nation in its war against terrorism.

Finally, we must encourage international cooperation and information sharing that allows the freedom-loving global community to shut down financial systems that support these cowardly acts of terrorism. Cooperation must extend beyond our borders to be effective.

The Senate Banking Committee has an important opportunity to help wage our silent war on terrorism, and I am pleased to be part of that.

PREPARED STATEMENT OF SENATOR WAYNE ALLARD

I would like to thank Chairman Sarbanes for holding this hearing. I know that money laundering has been an important issue to him, and that importance was brought into sharp focus by the terrorist attack on September 11. Mr. Chairman, I appreciate the speed and purpose with which you have moved forward.

Money laundering is a significant problem for this Nation. Not only does the financial gain of money laundering provide an incentive for crime, but it is also used to finance further criminal activity. The recent terrorist attacks are an excellent example of why we must focus on eradicating money laundering. Such an operation clearly took a great deal of financial backing, and it is doubtful that the terrorists earned the money through legitimate means. We have to find a way to cut off the financial fuel for these criminals. As we examine this issue, though, we must not forget the civil liberties that have made our Nation the greatest nation on earth. In an effort to combat financial crime we must avoid the temptation to inappropriately infringe on the rights of law abiding citizens.

One example of this is the so-called Know Your Customer regulations proposed by the four Federal banking regulators under the Clinton Administration. These regulations would have forced banks to know the identity of all their customers, know the source of customers' funds, create a profile of normal and expected transactions for each customer, monitor each account for activity that deviated from the profile, and report deviations. I believe these regulations went too far, and I led the effort in this Committee and on the Senate floor to get the Senate on record as unanimously opposing the regulations. The Know Your Customer regulations were subsequently withdrawn. Through thoughtful, careful discussions such as this, I believe that we can find the proper balance between fighting money laundering and respecting civil liberties. I would like to express my willingness to work with my colleagues and the Administration to find the appropriate balance.

I would also like to commend the Administration for their willingness to examine the cost and effectiveness of current money laundering strategies. As we consider possible new legislation it is important that we have a clear understanding of the

current status. I have been a long time supporter of outcome-based management, and I am hopeful that this will be an example of those principles.

I would like to thank the witnesses for being here today, especially since this hearing had to be rescheduled. I know that you all have important points to make, and I look forward to your testimony.

PREPARED STATEMENT OF SENATOR MICHAEL B. ENZI

Thank you, Mr. Chairman.

First of all, I would like to thank all of our witnesses for appearing before the Committee today. They all have extensive knowledge dealing with this issue, and I am sure they will be able to offer us special insights into the hidden world of money laundering. I would also like to thank our colleagues, Senators Grassley, Kerry, and Levin who have all done a lot of work to combat this problem, and Congressman LaFalce and Congresswoman Roukema for their efforts in the House.

With the recent attacks against the United States, a new urgency exists in dealing with money laundering. While we already pour heavy resources into anti-money laundering efforts, our results have not been at the levels we need. Drug cartels, terrorists, and other types of organized crime continue to prosper through complex financial networks that elude the law enforcement community. These funds help provide a foundation for these groups to grow their illegal empires. Until we are able to effectively reduce the funds these groups receive, we will be unable to curtail the violence that follows.

Over the past 30 years, since passage of the Bank Secrecy Act, the Congress has passed a number of good anti-money laundering initiatives. Now, we need to look to see if these measures go far enough. The Financial Crimes Enforcement Network has proven to be an efficient coordinator of our efforts, but when over $2 million of laundered money runs through the U.S. economy each day, it is obvious we have no where near the law enforcement mechanisms we need to combat these problems.

We must give the people on the front lines of this fight the needed tools with which to work. We may need to reevaluate where existing funds are being directed and confirm whether this is the best place for them. We also need to ensure that the proper communication is taking place between law enforcement agencies. We will in no way be able to win this fight without everyone working together. These agencies must have open lines of communication.

I, for instance, was unaware that suspicious activity transaction reporting indicated that shell companies appear to be incorporated and registered disproportionately in Wyoming when compared with most other States. I intend to work with our State banking officials to see what we can do to minimize any possible illegal activities that could be taking place.

In addition, we cannot place an undue burdens on industry. While we can expect industry to help monitor banking transactions and assist our law enforcement agencies as an integral front line player, we cannot force them to assume unnecessary or repetitive requirements.

Again, thank you Mr. Chairman for holding this hearing, and I look forward to hearing from our witnesses.

PREPARED STATEMENT OF SENATOR JIM BUNNING

I would like to thank you, Mr. Chairman, for holding this very important hearing and I would like to thank our witnesses for testifying today. You should be commended for your interest in this issue, even before the President's actions on Monday made this hearing so timely.

Last week, when Secretary O'Neill was before this Committee testifying, we touched on the subject of money laundering. I am looking forward to hearing what my colleagues, the Senators from Michigan and Massachusetts have to say in their testimony. I am looking forward to learning more about their bills.

I am also looking forward to hearing the Administration's thoughts from Under Secretary Gurulé. I want to follow-up with him on what we touched upon last week. And I want to see what the other distinguished panelists have to say about how these proposals will affect the financial services industry.

This is not the first time we have attempted to tackle this issue. Though no one wants to get in the way of stopping terrorists, drug lords, and other criminals, there has been a lot of fear surrounding the issue. If my colleagues got the mail I did

in 1999, and I think they did, they know there was a lot of animosity toward some of the "know your customer" proposals.

We have to ensure that we balance security with privacy and make sure that we are focusing efforts in the most effective way to combat criminals to choke off their money supply.

We also have to ensure that banks can actually comply with the laws and regulations that we put upon them, especially small banks. The small bankers in my State already know their customers. If there is a criminal enterprise washing its money through a small bank in Kentucky, my bankers will know it and I have faith that they will report it. But obviously we cannot just rely on the honor system. I guess what I would like to get out of this hearing is whether we need more legislation, or we just need to give our regulators the tools to better enforce current legislation.

Unfortunately, because of the despicable actions of September 11, our lives are going to change. The challenge now is balancing freedom and security. This is a challenge the Senate is going to continue to wrestle with for the foreseeable future. We will have to think hard about the implications of this challenge. Every time we take a vote on these issues, we may be harming one at the expense of the other. There will not be many easy answers.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF CARL LEVIN

A U.S. SENATOR FROM THE STATE OF MICHIGAN

Thank you, Mr. Chairman, for the opportunity to testify. I am here this morning to share with you the work of the Permanent Subcommittee on Investigations with respect to international money laundering. Over the past 3 years we have conducted an extensive investigation into the use of U.S. banks for money laundering purposes. We have held 3 sets of hearings and produced 2 extensive reports as well as a 5 volume record on how correspondent banking has been used as a tool for money laundering. To address the problems we have uncovered, in August I introduced—along with Senator Grassley, Chairman Sarbanes, and Senators Kyl, DeWine, Bill Nelson, and Durbin—S. 1371, the Money Laundering Abatement Act. This bill has been referred to this Committee, and I hope to work with the Committee's Members to get it enacted into law.

Tightening our money laundering laws will strike a blow against terrorism, because a consensus has emerged that any effective anti-terrorism campaign must include tracking the money supply that funds terrorism and shutting it down. Disrupting terrorists' financial networks is vital to ending their ability to carry out massive terrorist operations like the September 11 tragedy.

Unlike drug and organized crime operations, terrorist acts sometimes do not generate illegal proceeds that have to be laundered. Terrorists use financial networks to collect funds from both legitimate and illegitimate sources and make them available to carry out terrorist acts. Look at what we know so far about the September 11 terrorists. According to press reports, the 19 terrorists identified by the FBI used cash, checks, credit cards, and wire transfers involving U.S. banks in States such as Florida, New York, and Pennsylvania. We have seen the photograph of 2 terrorists using a U.S. bank's ATM. There are also reports that the 19 terrorists left behind large unpaid credit card bills, in effect using U.S. credit card companies to help finance the September 11 attack. The fact that these terrorists used U.S. financial institutions to accomplish their ends does not mean that any U.S. bank or credit card company did anything wrong; these terrorists may have met every requirement for credentials and credit histories, false though such information may prove to be. But the evidence is clear that terrorists are using our own financial institutions against us, and we need to understand our vulnerabilities and take new measures to protect ourselves from similar abuses down the road.

One of the vulnerabilities that the Permanent Subcommittee on Investigations has concentrated on is how correspondent banking is used for money laundering. Correspondent banking occurs when one bank provides services to another bank to move funds or carry out other financial transactions. For example, if a bank in London has a client who wants U.S. dollars available to him or her in the United States, the London bank needs a correspondent relationship with a U.S. bank willing to make those dollars available in the United States. That means the U.S. bank has to agree to open and manage a correspondent account for the London bank.

We found that U.S. banks often perform an inadequate background review of the foreign banks seeking to open a correspondent account in the United States. Too often the U.S. banks assumed—and we heard this verbatim—that a bank is a bank

is a bank. But that is not the reality. There are good banks and there are bad banks, and we found numerous situations where U.S. banks held accounts for foreign banks engaged in criminal activity or operated with such poor banking practices that they provided an open invitation for criminals to bank with them. Criminals can then use these bad banks to gain access to the U.S. banking system through their U.S. correspondent accounts. We found that current law has many holes in how it treats money laundering through correspondent accounts. So, I designed my bill to close them and tighten anti-money laundering controls over correspondent banking.

Look at what we have recently learned about the Al Qaeda terrorist organization headed by bin Laden. Numerous media reports have described the many corporations and businesses that bin Laden has helped establish and finance over the years. According to a 1996 State Department fact sheet, in 1991, bin Laden helped establish a bank in the Sudan called the Al Shamal Islamic Bank, allegedly providing it with initial capital of $50 million. An article dated March 16, 2000, in the Indigo Publication's *Intelligence Newsletter* states that bin Laden remains the leading shareholder of the bank.

Testimony provided in February 2001 at the trial concerning the 1998 terrorist bombings of the U.S. embassies in Kenya and Tanzania described the Shamal bank's use by bin Laden and Al Qaeda. One bin Laden associate, Jamal Ahmed al-Fadl, who had handled financial transactions for Al Qaeda, testified that Al Qaeda had used a half dozen accounts at the Shamal bank; one account was in the name of bin Laden. He described a 1994 incident in which the Shamal bank was used by Al Qaeda to provide al-Fadl $100,000 in US $100 dollar bills which he was directed to take on a plane to an individual in Jordan, which he did. This testimony shows that, in 1994, the Shamal bank maintained accounts used by bin Laden and Al Qaeda and was supplying bin Laden operatives with funds.

Testimony also demonstrated how a U.S. bank was used by bin Laden to send money from the Shamal bank to a bin Laden associate in Texas using a correspondent account. Essam al Ridi, who worked for bin Laden, testified that he received a $250,000 wire transfer at his bank in Texas that was sent by the Shamal bank, which he then used to purchase a plane for bin Laden and which he later delivered himself to bin Laden. Transactions like this one were the focus of our recent investigation into correspondent banking and money laundering, and that is what I want to focus on this morning—how criminals, including terrorist organizations, can use the correspondent accounts of foreign banks to gain access to the U.S. financial system. The Shamal bank's website currently lists an extensive correspondent network including banks in Europe and the United States. I have a chart that shows some of the correspondent banks listed on the Shamal bank's website. Three of the banks are U.S. banks—Citibank, American Express, and the Arab American Bank which was recently acquired by the National Bank of Egypt. Thankfully all three banks told us that the correspondent accounts they had with the Shamal bank are either closed or have been largely inactive since 1997 or 1998. This followed action taken by the U.S. Government in November 1997 to add Sudan to its official list of countries that support terrorism.

But the Shamal bank's website also lists as correspondents major banks in other countries, including Credit Lyonnais in Switzerland, Commerz Bank in Germany, ING Bank in Indonesia, and Standard Bank in South Africa, each of which also has correspondent accounts with U.S. banks, and that is a problem.

First, we have to ask how the Shamal bank was able to open its correspondent accounts in the United States when U.S. banks are supposed to exercise due diligence about their customers; the bank is located in the Sudan, a country known for lawlessness and weak-to-nonexistent banking regulation and anti-money laundering controls; and the bank is also known to be associated with bin Laden. Under the legislation I have sponsored, U.S. banks would have to exercise enhanced due diligence, that means they would have to take an extra hard look at any bank from the Sudan and could accept a Sudanese bank as a customer only if the U.S. bank were convinced the Sudanese bank was completely above board and had appropriate money laundering controls.

Second, we need to look at the current status of the Shamal bank's correspondent accounts in other countries. We learned in our Subcommittee investigation that bad banks can nest in other foreign banks and obtain access to U.S. banks that way. They can open a correspondent account with a foreign bank that already has a U.S. correspondent account, and then take advantage of the correspondent chain to access the U.S. financial system. This chart shows how bin Laden could be using the Shamal bank to gain access to U.S. banks through the banks' correspondent networks. We talked to four of these correspondent banks in countries other than the United States, and they indicated to us that they still have Shamal bank cor-

respondent accounts that are not frozen. While at least three of these accounts have reportedly experienced little activity and one was reported to law enforcement a few weeks ago, all of these accounts are still open and could be used at any time. That means any customer of the Shamal bank—including a member of bin Laden's organization—could penetrate the U.S. banking system by going through one of these other correspondent accounts.

The Shamal bank is, of course, not the only bank of concern. Testimony in the criminal trial identified several other banks with accounts being used by Al Qaeda. Press reports indicate that Barclays Bank in London has already closed one suspect account, and banks in countries as diverse as Switzerland, the United Arab Emirates, Malaysia, and Hong Kong are checking their records for suspicious activity. Banks in Afghanistan also warrant scrutiny, as indicated by this Bankers Almanac printout which lists 9 banks with offices in Afghanistan, including two with correspondents in the United States and elsewhere. While the U.S. accounts may, again, be inactive, given the absence of Afghan banking and anti-money laundering controls and the elevated status of bin Laden and Al Qaeda in Afghan society, we need to ask how these banks were able to open correspondent accounts in the first place and what steps, if any, its correspondents have taken to ensure terrorist funds were not and are not moving through them.

Another possibility is that bin Laden has set up his own shell banks to handle terrorist activities. Shell banks are unaffiliated with any other bank and have no physical presence in any jurisdiction. They are licensed by a handful of jurisdictions around the world including Nauru, Vanuatu, and Montenegro. This chart shows how shell banks can be used to gain entry to the U.S. banking system. My Subcommittee's investigation found shell banks carry the highest money laundering risks in the banking world because they are inherently unavailable for effective oversight. There is no office where a bank regulator or law enforcement official can go to observe bank operations, review documents, or freeze funds. Essentially no one but the shell bank's owners know what the bank is up to. Our staff report provides four detailed case histories of shell banks that opened U.S. correspondent accounts and used them to move funds related to drug trafficking, bribe money, and financial fraud money. The possibility that terrorists are using such banks to conduct their operations is one that cannot be ignored.

Some good news is that more countries than ever before have passed anti-money laundering laws requiring their financial institutions to know their customers and report suspicious activity. More countries have empowered law enforcement to freeze suspect assets. New technologies can scan millions of financial transactions to link seemingly unrelated transactions and detect suspicious patterns and transactions. Financial intelligence units have been established in over 50 countries with the authority, technology, and resources to identify and investigate suspicious activity. They have formed the Egmont Group and developed international protocols for sharing financial information. New groups, like the six country Gulf Cooperation Council which includes Saudi Arabia and the United Arab Emirates, have joined the fight to stop criminals from exploiting international financial systems.

These developments have better prepared the world to identify and freeze terrorist assets, trace connections from terrorist cells to those directing their activities, deny access to terrorist-affiliated businesses and foundations, and provide valuable evidence of the financing of terrorist acts.

Much more needs to be done. The Administration established a new interagency task force focused exclusively on rooting out terrorist assets and by expanding the country's official list of known terrorists and terrorist-affiliated businesses and foundations. That is a good step. Congress needs to take the next step by strengthening and modernizing our outdated and inadequate anti-money laundering laws. Here are a few key areas where change is needed.

First, Congress needs to stop unscrupulous individuals and foreign banks from gaining entry to the U.S. banking system through U.S. correspondent accounts. As I said earlier, my bill would require U.S. banks to exercise enhanced due diligence when opening accounts for offshore banks, banks in jurisdictions with poor anti-money laundering controls, or for foreign persons with $1 million or more in a private bank account and it would outright prohibit U.S. banks from opening correspondent accounts for foreign shell banks.

Second, Congress needs to eliminate a forfeiture loophole in U.S. law that now makes its almost impossible for U.S. law enforcement to freeze suspect funds in U.S. correspondent accounts opened for foreign banks. Under current law, in order for law enforcement to seize the funds of a criminal with money in a U.S. correspondent account, the law enforcement agency has to prove that the foreign bank with the correspondent account was involved in the criminal activity. That is because the money in the correspondent account is treated as the foreign bank's money and not

the money of the foreign bank's depositors. My bill would change the law to treat money that is attributable to an individual depositor but held in a U.S. correspondent account as the depositor's money and make it subject to the same civil forfeiture rules that apply to depositor's funds in other U.S. bank accounts.

Third, we need to make it easier for prosecutors to prosecute money laundering cases. My bill would provide such basic improvements as simpler pleading requirements, clear long-arm jurisdiction over foreign money launderers acting inside the United States, easier ways to serve legal papers on foreign banks with U.S. accounts, and the assistance of court-appointed Federal receivers to find money laundering assets hidden at home or abroad.

Fourth, we need to make bulk cash smuggling a crime. There is currently no statutory basis for seizing bulk cash from a terrorist transporting it over our borders or on U.S. roads or common carriers, even though seizing cash from terrorists could go a long way to disrupting their operations. Legislation introduced by Congresswoman Roukema addresses this issue, and it deserves our support and enactment into law.

Fifth, we need to increase the number of financial institutions required to report suspicious activity when they see it, particularly stock brokers. Media reports indicate that terrorists may have used stock trades to profit from the September 11 attack. Suspicious activity reports provide vital leads and evidence for law enforcement, and we are the only G–7 country that does not require all of our brokerage firms to file them right now. Past Administrations have promised but failed to issue regulations requiring these reports, in part due to lobbying by financial institutions that do not want to have to spend the time and resources to fill out the paperwork. Well, times have changed and shown all too clearly the high cost of not reporting suspicious activity. The President ought to require these reports by January 1, 2002. If he does not, Congress should.

Sixth, we need to give the Treasury Secretary greater flexibility to take measures against foreign banks and foreign countries believed to be involved in money laundering. Right now, we have only two weapons—blocking a bank's assets or issuing a voluntary advisory urging U.S. banks not to do business with the suspect country or institution. We need more tools, such as options for requiring specific know-your-customer or reporting requirements, as set out in S. 398 introduced by my friends Senator Kerry, Senator Grassley, and others.

New anti-money laundering legislation is an essential companion to the Executive Order issued by the President earlier this week. The Executive Order is an emergency measure; these bills go beyond emergency measures to prevent terrorists and other criminals from gaining entry to the U.S. banking system in the first place. U.S. banks would be barred from opening correspondent accounts for shell banks, and they would be required to do a lot more homework on foreign banks before letting them into the United States. Had our legislation been in place earlier, it is possible the Shamal bank would never have obtained a correspondent account in the United States.

Finally, let us not forget the need to galvanize the international community to join us in our efforts to chase down terrorist assets and deny terrorists access to international financial networks. We need to convince other countries to enact the same anti-money laundering controls we are talking about today.

The conclusion is clear: stronger laws are critical if we are to stop terrorists and other criminals from benefitting from the safety, soundness, efficiency, and profitability of the U.S. banking system. We must deny terrorists access to our banks, to our credit cards, to our stock brokers, and to all of the other modem financial tools we have developed to move money around the world.

I ask unanimous consent to include in the hearing record a letter from the Department of Justice supporting my bill, letters of support from the Drug Enforcement Agency, the Federal Deposit Insurance Corporation, the Attorney Generals for the States of Michigan, Arizona, and Massachusetts, and other materials relevant to my testimony.

PREPARED STATEMENT OF JOHN F. KERRY

A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I would like to take this opportunity to thank you for holding this important hearing on efforts to control the scourge of money laundering. I would also like to take this opportunity to express my appreciation to Senator Charles Grassley, who has been working with me to enact anti-money laundering legislation and Senator Carl Levin who, as Chairman of the Senate Governmental Affairs Sub-

committee on Investigations, has held a series of important hearings which have clearly shown the need to update our money laundering laws.

On September 11, the tragic and dastardly attack on the United States could not have taken place without the movement of the terrorists' assets through the global financial system. These terrible events underscore the need for a concerted anti-terrorism offensive, both internationally and domestically.

Osama bin Laden's terrorist network, known as Al Qaeda, which is believed to be responsible for the attacks on the Pentagon and the World Trade Center, has for years obtained funding by taking advantage of an open system of international financial transactions. With the help of the Taliban in Afghanistan, the Al Qaeda receives funding through the sale of opium. They have stolen or diverted money intended to assist refugees or religious organizations. They have raised money from wealthy Islamic donors. Finally, Osama Bin Laden himself has not only a substantial personal fortune but either owns or controls a vast number of businesses and investments in Saudi Arabia and around the world.

In many cases, the funds that fuel Al Qaeda are moved through an underground system of brokers built on trust, called Hawala, which allow enormous amounts of cash to be moved without any paper trail. Obviously, this method of moving money cannot be controlled by international restrictions. However, the profits that the Al Qaeda receives from the sale of opium do move through the existing international financial systems.

Because this terrorist network obtains funding through a variety of sources, we must develop, in conjunction with our allies, a variety of different initiatives to stop the flow of funds to the Al Qaeda. The United States is currently administering sanctions against the Taliban regime for their part in the drug trade. However, these sanctions have proven inadequate to stop the illegal activities of the Al Qaeda.

If we are to lead the world in the fight against terror, we must ensure that our own laws are worthy of the difficult task ahead. I strongly support the Bush Administration's decision to freeze the financial assets of 27 entities associated with terrorism and I support attempts to enhance the use of Federal criminal and civil asset forfeiture laws. However, if we are to win this war on terrorism, there is more that we need to do. This work has already begun in the European Union, where just last week, they approved stronger measures against money laundering.

Today, too many nations—some small, remote islands—have laws that provide for excessive bank secrecy, anonymous company incorporation, economic citizenship, and other provisions that directly conflict with well-established international anti-money laundering standards. These nations have become money laundering havens for international criminal organizations like the Al Qaeda.

The United States and the European Union have made great strides in the fight against money laundering over the past 12 years. The Financial Action Task Force (FATF), an intergovernmental body, was established at the urging of the United States and President George H.W. Bush in 1989 to develop and promote policies to combat financial crime. The Organization of Economic Cooperation and Development (OECD) began a new crackdown on tax havens by targeting 36 jurisdictions which it said participate in unfair tax competition and undermine other nations' tax bases. The OECD approach does not punish countries just for having low tax rates, instead, it looks for tax systems that have a lack of transparency, a lack of effective exchange of information, and those countries that have different tax rules for foreign customers than for its own citizens. The United States and the European Union have been working together to force jurisdictions that fall short of international standards to update and improve their anti-money laundering laws and to lift the veil of secrecy around tax havens by threatening to limit their access to our financial systems.

Today, the FATF reports that 19 jurisdictions—including Lebanon, Hungary, Nigeria, Russia, and the Philippines—have failed to take adequate measures to combat international money laundering. Since a report naming many of these countries was released last year, many of these countries have already begun to update their anti-money laundering laws.

However, I am concerned that the money laundering strategy recently released by the Bush Administration begins to step away from the bilateral efforts that have proven successful in fighting financial crime and contradict the tough stance rightly taken by President George W. Bush in his recent Executive Order. The new strategy, combined with efforts previously announced by Treasury Secretary O'Neill related to tax havens, seems to support a more unilateral approach toward fighting financial crimes instead of the successful multilateral approach adopted by the OECD and the FATF. I believe this will make it more difficult to track and freeze the assets of international terrorists like bin Laden and expand upon the recent progress we have achieved. I also believe that this is the wrong time to pull back

our efforts to stop money laundering into the United States by increasing the amounts necessary to require a Suspicious Activity Report issued by a financial institution.

It is now time for the United States to do its part to stop international money laundering and stop international criminals from laundering the proceeds of their crimes into the U.S. financial system.

First, I believe the Bush Administration should call an emergency meeting of the G–7 nations and the Financial Action Task Force to implement a more vigorous international strategy to cut off the blood money that these international criminal networks use.

Second, the United States should immediately peruse bilateral and multilateral sanctions against any country that has, through neglect or design, permitted its financial systems to be used by bin Laden or other terrorist groups.

Third, the Congress should pass the International Counter-Money Laundering and Foreign Anti-Corruption Act of 2001, which I introduced along with Senators Grassley, Sarbanes, Levin, and Rockefeller. During the 106th Congress, the House Banking Committee passed this bill with a bipartisan 33–1 vote. The bill will give the Secretary of the Treasury the tools necessary to crack down on international money laundering havens and protect the integrity of the U.S. financial system. The bill provides for actions that will be graduated, discretionary, and targeted, in order to focus actions on international transactions involving criminal proceeds, while allowing legitimate international commerce to continue to flow unimpeded.

I believe that the Congress should enact this legislation this year to help stop the flow of assets and money that fund bin Laden and other terrorist groups. I look forward to working with the Members of this Committee on this important issue.

Thank you.

PREPARED STATEMENT OF CHARLES E. GRASSLEY

A U.S. SENATOR FROM THE STATE OF IOWA

Mr. Chairman, I join my colleagues in thanking you for holding this important hearing and the opportunity you have afforded us of talking on the matter. As you know, because of my work on trying to stop international drug trafficking, I have worked for many years on going after their money. Money is one of the most critical elements in going after the drug thugs. I have joined with Senator Levin and Senator Kerry in sponsoring legislation that is timely and necessary. Our focus needs to be not only on the specific assets of terrorists, but also, on identifying their methods and eliminating their sources of funding.

After the events 2 weeks ago, we now face another group of thugs that rely on being able to launder illegal proceeds to pay for their activities. For them, money, access to it, and to the mechanisms for placing it in the legitimate economy are the equivalent of their war industries. To strike at them, we must strike at their ability to wage war against us. That reality has added increased importance to what we are here today to talk about. Two weeks ago, passing the bills before the Committee today was, in my view, important. Today, passing them is imperative.

Let me add that these bills are not new. The elements in them have received careful consideration over the last several years. They are not full of hastily assembled items. They contain needed changes and add important tools to our arsenal. In the days and weeks ahead we are going to have to examine further things we need to do. I hope that we do that wisely. I trust that we will pay attention to ensuring that we preserve important liberties while denying our enemies the means to hurt us further. We also need to work with the banking and the financial services industry to ensure that we act smart, as well as quickly down the road. That they are on board with what we need to do. This is not a burden that government, here or elsewhere, can carry alone. We need to combine all our strengths and capabilities. But circumstances demand meaningful action now, and these bills give use important tools for our tool kit.

PREPARED STATEMENT OF JOHN J. LAFALCE

A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

The campaign to prevent future terrorist acts against our Nation will not be successful unless we cut off the funds that fuel terrorism. The horrendous attacks of September 11 could not have taken place without the movement of the terrorists'

assets through the global financial system. The events of last week underscore the need for a concerted anti-money laundering offensive, both internationally and domestically. The hearing that the Senate Banking Committee is holding today would be important, if the tragic events of September 11 had never occurred. But, our National crisis brings a new sense of urgency to Congress' consideration of money laundering issues and the National Money Laundering Strategy.

I have been for many years concerned that our counter-money laundering laws are not sufficiently nimble to permit the United States law enforcement community to respond to the malicious inventiveness of a fast-moving and remarkably adaptable class of criminals and murderous terrorists. I believe that our laws need to be changed to provide more flexibility for the law enforcement community, including the Treasury, to combat money laundering, and provide meaningful criminal penalties for all significant money laundering violations.

Before I turn to a discussion of the Administration's new money laundering strategy and new legislation, I want to say that I am encouraged by the actions that the Administration has taken to trace the "financial finger prints" of bin Laden, his Al Qaeda terrorist network, and the entities that support them.

First, the Department of the Treasury announced the creation of an interagency team dedicated to the disruption of terrorist fund raising and the proposed creation of a Foreign Terrorist Asset Tracking Center within the Treasury. Second, on Monday, the President issued an Executive Order that identified international terrorist groups, individuals, and their operatives connected to the attack and froze the assets of these groups in the United States. The order expands on a previous order of President Clinton's. The new order identifies three charities and one business which supply financial support to bin Laden and Al Qaeda. It also permits the Secretary of the Treasury to block any noncooperating foreign financial institution from doing business with U.S. financial institutions and other U.S. firms. This will help the U.S. Government uproot the financial underpinnings of a network that would seek to do grave harm to the United States and its citizens. The Bush Administration appears to be off to a very sound start in its efforts to cut off bin Laden from his funds.

The National Money Laundering Strategy was developed before the September 11 attack, and I believe that parts of it should be reevaluated in light of those tragic events and what our intelligence and law enforcement agencies have learned about the funding of the attack.

While the Strategy sets out strong enforcement goals, including calling for more vigorous enforcement of asset forfeiture statutes in connection with money laundering offenses, the focus of some of the regulatory goals in the Strategy seems somewhat inconsistent with the strong world leadership position that the United States has taken over the past decade in raising international money laundering standards. I am particularly concerned that the Strategy calls for a cost benefit analysis of compliance with the Bank Secrecy Act and a survey of financial institutions for the purposes of possibly expanding the types of currency transactions that are exempt from current Bank Secrecy Act reporting requirements.

I am concerned these activities could result in a relaxation of current BSA reporting requirements and raise questions about our own resolve in the fight against international money laundering. I want to work cooperatively with the Administration to develop a new strategy that addresses the concerns that I have raised.

There are indications that the Administration has begun to rethink the Strategy. I was pleased that Under Secretary Gurulé announced that Treasury has scrapped its plan to delay implementation of regulations requiring money service businesses (for example, money transmitters) to register with the Treasury and to file suspicious activity reports with the Treasury. I believe that these regulations will over time give our law enforcement and intelligence agency important investigative and prosecutorial tools that are needed to control the Halawa system of international money exchange. Many believe the Halawa system to be one of primary channels for the global funding of terrorist activities, including the activities of Al Qaeda.

If we are to lead the worldwide effort to cut off bin Laden and other terrorist groups from the funds needed to carry out their deadly missions, we must ensure that our own laws are adequate for the difficult task at hand. Several Members in the House and Senate have introduced money laundering legislation that deserve serious consideration not only as a part of our response to acts of terrorism, but also as a part of our overall money laundering strategy.

I, along with Senator Kerry, have introduced legislation that strengthens the arsenal of the Government in the fight against money laundering. Senator Sarbanes, Senator Levin, Senator Grassley, and other Senate colleagues are cosponsors of the legislation. Our bill, the International Counter-Money Laundering Act of 2001, provides the Treasury Secretary with the authority and discretion to address a specific

money laundering problem with precision—which cannot be done under current law. This legislation would give the United States increased leverage in dealing with foreign jurisdictions and foreign financial institutions that aid drug kingpins, money launderers, and terrorists.

The existing laws against bulk cash smuggling are inadequate. Currently, the couriers of illicit cash are subject to only minimal jail sentences for failing to file currency reports. I am an original cosponsor of legislation that will make smuggling currency for unlawful purposes a serious criminal offense under Federal law.

Given the events of September 11, I believe that the Administration will want to move quickly to acquire the necessary legislative authority to combat international terrorism and international money laundering. I look forward to working cooperatively with the Administration in the development of sound and effective anti-money laundering legislation.

PREPARED STATEMENT OF JAMES A. LEACH

A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

As you know, a money laundering bill was considered by the House Banking Committee during the last Congress. The approach taken in that bill was one where, with Mr. LaFalce, I put forth an initial model and requested the Treasury and Justice Departments to review the legislation's content. We proceeded to mark-up using the revised comments of the Administration as base text and the legislation passed with broad Committee support.

Law enforcement was in strong support of the legislation but parts of the financial community objected to the degree of regulatory intrusion. "Following the money" is an effective law enforcement tool to track criminals after a crime has been committed. It also serves as a retardant to the capacities of wrongdoers to collect and distribute resources while preparing for a crime. While there is a case that individual and institutional freedoms are fractionally restrained by recordkeeping measures of this nature, there is always a pendulum that swings in our society between freedom and order. When order is challenged, it is sometimes necessary to prudently restrain some freedom of action.

Enforcement of money laundering laws to diminish threats of terrorism and narcotrafficking would seem a relatively modest inconvenience relative to the human costs wreaked on society by international thugs.

To give a free ride to money launderers not only makes justice more difficult to obtain, but it also denies a credible approach to address one of the causes of terrorism: the decadence and corruption that exists in certain parts of the world where extreme inequities in wealth accentuate social divisions. While money laundering may not in itself seem like a great crime, the underlying manner in which resources are marshaled can threaten international order and the freedoms that order is meant to protect.

Particularly in circumstances where civilized values are challenged by terrorist acts, the U.S. Government has an obligation to question the access given to our financial system by outlaw entities and make it very clear that funds from abroad and possibly fundraising at home that supports terrorism, or for that matter narcotrafficking or government corruption, ought to be monitored and, where legally appropriate, confiscated.

In the last Congress, some large banks had an understandable angst about the regulatory burdens related to the recordkeeping necessary to implement money laundering statutes. Ironically, the people that opposed this approach the most yesterday, need protection the most today. The two American institutions most vulnerable to terrorism around the world are our diplomatic and financial outposts. For banks to refuse to join the war on terrorism and narcotrafficking is not only to weaken the fabric of civilized society, but also it is to put in jeopardy the lives of people who are most symbolically intertwined with democratic, market-oriented values that are globalist in nature.

Finally, I would be remise not to point out that in the last Congress the House Banking Committee passed out a second bill which I initiated that also did not become law, one that restrains Internet gambling. The issue of gambling and money laundering are interrelated—albeit, tangentially—because Internet gambling not only weakens our economy, but also serves as a haven for money laundering activities. I would hope that the Senate and House Committees of jurisdiction would take renewed interest in both of these bills this year.

PREPARED STATEMENT OF MARGE ROUKEMA

A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, thank you for allowing me the opportunity to testify before this Committee this morning. I deeply appreciate the courtesy.

Mr. Chairman, for years I have been deeply concerned that we have not done enough to dry up the lifeblood of the illegal drug trade—free flowing cash. Now as our Nation struggles to recover from the vicious and unprovoked attack on our homeland on September 11, our focus has expanded to include terrorism. As our investigators work to "follow the money" to trace financial transactions back to their source it is becoming more and more clear that free flowing cash is also critically important to terrorists as they plan, organize, and execute their murderous plots. Over the years, I have been a strong advocate of better enforcement and stronger laws that will provide law enforcement the tools needed to fight drug dealers, money launders, and terrorists. In the wake of last week's terrorist attacks, this has never been more important.

In the 106th Congress, I worked closely with the Department of Justice and Congressman Bill McCollum who was then a Member of the House Judiciary Committee to craft a comprehensive money laundering proposal to address many of the problems our law enforcement officials currently face. It is my understanding that much of that draft will be included in the legislation that the Administration will soon send to Congress for its immediate attention.

While I strongly support passage of comprehensive money laundering strategy and will continue to work with this Administration to that end. Today, I am here to discuss legislation that I introduced on September 20, H.R. 2922, the Bulk Cash Smuggling Act of 2001. This bill is similar to ones I introduced in both the 105th and 106th Congresses and is strongly supported by the Department of Justice. This legislation takes aim at criminal activities that support terrorists and drug dealers by making currency smuggling a criminal offense.

The transport of large sums of cash in, out, and through the United States is a major problem which is growing everyday. We call this bulk cash smuggling. As the Federal banking regulators and law enforcement officials have made money laundering through insured depository institutions more difficult, money launderers have apparently resorted to the smuggling of large amounts of U.S. cash and currency over the border. It has been reported that over $30 billion a year is smuggled in, out, and through the United States each year by drug dealers, organized crime, and terrorist organizations. This money moves by planes, trains, automobiles, ships, and even by mail.

My colleagues should note that law enforcement authorities suspect that one tactic used by terrorist organizations to avoid having their funds detected in the international financial system is to move cash by courier or though bulk shipments. This may explain how so many of the individuals involved in the September 11 attacks were able to live and train in our country for extended periods of time while leaving few identifiable footprints in the banking system.

The existing laws governing bulk cash smuggling are totally inadequate. Presently, the only law enforcement weapon against bulk cash smuggling is Section 5316 of Title 31, U.S. Code. This statute makes it an offense to transport more than $10,000 in currency or monetary instruments into, or out of, the United States without filing a form with the U.S. Customs Service. Section 5316 has been rendered largely ineffective as a law enforcement tool by a 1998 Supreme Court decision, *United States* v. *Bajakajian,* in which the Court held that violations of Section 5316 constitute mere reporting violations, and do not warrant the confiscation of bulk cash—even if the smuggler has taken elaborate steps to conceal the money from Customs inspectors.

H.R. 2922 will give law enforcement authorities a critical tool in disrupting the channels used by terrorists to finance their activities in the United States. The bill would make it a Federal crime to smuggle cash or currency in excess of $10,000 into or out of the United States. Violations of the law could result in the forfeiture of the terrorists' cash or currency as well as up to 5 years in prison—an individual would be provided the opportunity to show that the money came from a legitimate source in which case there may be little or no forfeiture whatsoever.

Interstate currency couriers are part of the problem. One of the bill's key provisions would make it a crime to transport more than $10,000 in criminal proceeds in interstate commerce, thereby making it more difficult for terrorists to move cash within the United States once they have succeeded in getting it into the country. This measure takes on particular relevance in light of press reports that suspected bin Laden operatives taken into custody since the September 11 attacks have been found with large sums of cash in their possession. By making bulk cash smuggling

a crime—whether it is conducted within the United States or across our borders—we will give law enforcement an effective weapon for separating the terrorists from the funds they need to support their operations in this country.

As Chairwoman of the Financial Institutions Subcommittee in the last Congress, I presided over numerous hearings on the Government's anti-money laundering enforcement efforts, including a field hearing in Newark in May of last year that focused particular attention on the bulk cash smuggling problem. Time and again in those hearings, I heard from Federal and State law enforcement agents and prosecutors that the biggest loophole in the current statutory scheme for combating money laundering is the one that allows criminal organizations to transport the proceeds of their illegal activities without fear of meaningful criminal sanctions.

For this reason, I was very pleased that several weeks before the horrific events of September 11, Attorney General Ashcroft gave a speech in which he identified the criminalization of bulk cash smuggling as one of the Administration's highest legislative priorities in combating money laundering.

Law enforcement officials have said for years that cutting off the money is one of the most effective ways of combating organized crime. Seizing bulk cash shipments will deprive terrorists of at least some of the resources they need to carry out their hideous acts. Choking off the financial lifeblood of terrorists will of course take more than any one specific legislative proposal or law enforcement initiative. It will require a comprehensive approach.

Now I have heard some naysayers complain that some of the provisions in my legislation may cast a net so wide as to ensnarl innocent Americans. The question has been asked, "what about the innocent American who happens to be legally transporting large sums of cash or is discovered carrying his lifesaving around in the trunk of his car?"

My answer is simple—each and every day our dedicated and alert law enforcement officials encounter situations that require their careful investigation. Let us give them the tools they need to conduct those investigations and protect Americans from terrorists and drug dealers.

We need comprehensive reforms to our money laundering laws, and I wholeheartedly support the Administration's efforts to enact those reforms. The provisions included in H.R. 2922 are only part of the solution, but they represent straight forward common sense reforms of our money laundering laws that we can enact right now. For the record, I am attaching a copy of my legislation—H.R. 2922—and a section by section outlining the provisions of the bill. In addition I would be happy to provide the Committee and individual Senators with the Bulk Cash Hearing transcript from my May 2000 hearing at which the Department of Justice, Treasury, and the Customs Department testified in favor of this legislation.

Again, thank you for giving me the opportunity to testify before this Committee and I look forward to working with my colleagues on both sides of the Capitol to see to it that this important legislation gets signed into law before we leave here this year.

PREPARED STATEMENT OF JIMMY GURULÉ

UNDER SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY

SEPTEMBER 26, 2001

Chairman Sarbanes, Senator Gramm, and distinguished Members of the Committee, I appreciate the opportunity to share with you the Treasury Department's ongoing commitment to the fight against money laundering. I appear before you today more convinced than ever of the importance and necessity of a comprehensive money laundering strategy. I know you feel the same way and I look forward to sharing with you some of the key aspects of President Bush's plan to combat domestic and international money laundering.

Let me begin by saying that criminal acts of violence, such as the horrific terrorist attacks of September 11, need more than just cunning leadership and dedicated followers to be successful. Such undertakings also require extensive financial funding as well. Let me be clear—the Treasury Department is committed to identifying the sources of funding used to underwrite attacks of this nature and we will take whatever action is necessary to shut them down. Although the complexities of money laundering have long been associated with concealing the true nature of proceeds generated from the drug cartels, the tragedies of September 11 also underscore the need for aggressive and vigilant anti-money laundering efforts which target the movement of funds into this country for the purpose of criminal activity—especially

funds earmarked for terror. In response to this need, the implementation of the 2001 Money Laundering Strategy includes several specific steps to dismantle and disrupt the financing of terrorist activities.

Recent Steps

As Secretary O'Neill has stated publicly, the Treasury Department's top priority is to dismantle the financial infrastructure of the terrorist groups in question. To that end, we will deploy all of our resources to trace and block the funds of those who engage in these heinous acts of murder, as well as those who harbor them and fund them. Two days ago, President Bush signed a new Executive Order under the International Emergency Economic Powers Act (IEEPA) blocking the assets of, and transactions with, terrorist organizations and certain charitable, humanitarian, and business organizations that finance or support terrorism. To fulfill President Bush's pledge to eliminate safe havens for those who perpetrate acts of terror, we will use every tool at our disposal to pursue and eliminate terrorist fundraising networks.

International Cooperation

Because terrorism is global in nature, international cooperation must be an essential component of any enforcement strategy if it is to be successful. The Treasury Department has already taken steps to capitalize on the spirit of international cooperation and is in the process of working diligently with our counterparts abroad to ensure that accounts under their jurisdiction linked to terrorist organizations will be frozen.

Foreign Terrorist Asset Tracking Center

Another important step that Treasury has taken in light of the September 11 attacks, was to get our new interagency team, the Foreign Terrorist Asset Tracking Center (FTAT) up and running. FTAT is dedicated to identifying the financial infrastructure of terrorist organizations worldwide and to curtail their ability to move money through the international banking system. FTAT represents a preventative, proactive, and strategic approach to using financial data to target and curb terrorist financing worldwide. This team will ultimately be transformed into a permanent Foreign Terrorist Asset Tracking Center in the Treasury Department's Office of Foreign Asset Control (OFAC). This is an extraordinary effort that really illustrates the Treasury Department's creativity in developing new ways to combat terrorism.

In addition, agents and analysts from Treasury's law enforcement bureaus—the U.S. Customs Service, U.S. Secret Service, Internal Revenue Service—Criminal Investigation, and Financial Crimes Enforcement Network, as well as analysts from the intelligence community will be coordinating efforts, and Treasury law enforcement bureaus will continue to coordinate closely with the Department of Justice and Federal Bureau of Investigation on these matters.

These efforts will act in concert with the 2001 National Money Laundering Strategy, which calls for unprecedented levels of intraagency, interagency, and international coordination and cooperation to combat money laundering and related financial crime. With respect to the Strategy, I want to take a few minutes to outline for the Committee some of the key components of the Administration's plan.

The 2001 Money Laundering Strategy

The 2001 National Money Laundering Strategy represents the combined input and approval of more than 20 Federal agencies, bureaus, and offices. It is a comprehensive plan designed to disrupt and to dismantle major money laundering enterprises and prosecute the professional money launderers through aggressive enforcement, measured accountability, preventative efforts, and enhanced intraagency, interagency, and international coordination. By major enterprise, I mean complex, large-scale, large-volume, transnational money laundering schemes perpetrated by professional money launderers. Our policy should focus and will focus on pursuing terrorist funds and these kinds of high-impact and high-profile investigations.

Aggressive Enforcement

The first goal of the 2001 Strategy is to focus law enforcement's efforts on the prosecution of major money laundering systems and terrorist groups moving funds into this country for the sole purpose of conducting criminal activity and wreaking havoc in our society. We recognize that we must concentrate our resources in high-risk areas and target major money laundering organizations. To focus our limited Federal resources, the Strategy calls for the organization, supervision, and training of specialized money laundering task forces located in High Risk Money Laundering and Related Financial Crimes Areas (HIFCA's). In a departure from precedent, the HIFCA's will function primarily in an operational capacity. They will be tasked with coordinating the law enforcement and regulatory assets against corrupt entities en-

gaging in money laundering activities. I am hopeful that the two newest HIFCA's, Chicago and San Francisco, as well as the existing Los Angeles HIFCA, can complement ongoing enforcement efforts to infiltrate and isolate the terrorist financial networks. HIFCA Task Forces will be jointly supervised by the Departments of Treasury and Justice and will be composed of all relevant Federal, State, and local agencies, and will serve as the model of our anti-money laundering efforts.

One aspect of the 2001 Strategy that I am particularly proud of is establishment of an advanced money laundering training program. I believe that such a program is imperative to providing our agents and inspectors with the proper investigative tools to combat the complex and ever-changing money laundering schemes of the criminals. The Federal Law Enforcement Training Center (FLETC) and the Department of Justice's Asset Forfeiture and Money Laundering Section will be spearheading this effort to train our teams to investigate sophisticated money laundering schemes.

An aggressive anti-money laundering attack requires that law enforcement utilize all available statutory authorities to dismantle large-scale criminal enterprises. The 2001 Strategy mandates an emphasis on Federal asset forfeiture laws in conjunction with money laundering investigations and prosecutions to strip criminals of their ill-gotten gains and dismantle criminal organizations by attacking their financial base.

We will also continue our ongoing efforts to uncover the sophisticated schemes devised by professional criminal enterprises and seek to disrupt the financial operations of these illicit organizations. For example, we will continue to partner with the private sector and our international colleagues to combat the Black Market Peso Exchange, the largest trade-based money laundering system in the Western Hemisphere. I would especially like to note the contributions that the governments of Colombia, Venezuela, Panama, and Aruba have made to this effort.

Measured Accountability

Another concept unique to this year's Strategy is the idea of "measured accountability." To raise our standards of performance, we must measure the effectiveness of our efforts. For too long, Federal law enforcement has not been subject to accountability through measured evaluation. Secretary Paul H. O'Neill, in particular, is dedicated to changing business as usual. Therefore, we will seek to create and implement a uniform system that measures the Government's anti-money laundering results. Emphasis will be placed on measured results, rather than the level of law enforcement activity.

We will establish a system to collect reliable information that will provide law enforcement with an accurate picture of its anti-money laundering programs. Once we institutionalize these databases, we can begin to meaningfully evaluate the success of our approaches. Our measurement methods will include an examination of:

- *quantitative factors,* such as the number of money laundering investigations, prosecutions, and convictions, which will provide a numerical snapshot of our efforts from year to year;
- *qualitative factors*—each investigation, prosecution, or conviction will be assigned a weighted value to mirror the case's complexity, importance, and scope of impact;
- *forfeiture and seizure data* related to money laundering activity that will represent a monetary value of our efforts; and
- *the criminal marketplace price of laundering money* that will help determine whether our anti-money laundering efforts are making it more expensive and more difficult for criminals to launder their illicit proceeds.

We will ensure accountability and raise our standards of performance, expectation, and success. Measured evaluation will identify money laundering "hot spots," indicate areas where law enforcement must enhance or prioritize its investigations and prosecutions, and allow law enforcement to articulate measurable goals.

Preventative Efforts

A comprehensive money laundering strategy must also include an effective regulatory regime that denies money launderers easy access to the financial sector. The 2001 Strategy continues previous efforts to expand and implement proposed suspicious activity reporting requirements to financial institutions that are particularly vulnerable to money laundering activity. We will also seek to establish a true partnership with the private sector to create a vigorous anti-money laundering regime and to eliminate vulnerabilities that money launderers seek to exploit. Treasury will encourage the private sector to develop and implement a rigorous set of "best practices and procedures," thus enabling the industry to aid in the protection of the integrity of the U.S. financial system.

Our principal focus will be to ensure that law enforcement fully utilizes reported information. To this end, law enforcement must seek to receive only those reports

that have law enforcement value. In 2000, the Financial Crimes Enforcement Network (FinCEN) received and processed 12,000,000 Currency Transaction Reports (CTR's), 30 percent of which had no meaningful law enforcement value and would not have been filed if existing reporting exemptions had been used. The 2001 Strategy calls on law enforcement to work with the private sector to ensure fuller use of the regulatory reporting exemptions and seeks to expand the exemptions to other low-risk transactions, if appropriate.

Effective utilization also requires that law enforcement evaluate the usefulness of reported currency transactions. The Strategy will require law enforcement agencies that use CTR or Suspicious Activity Report (SAR) information to provide operational feedback to FinCEN. In turn, FinCEN will use the feedback to evaluate or change its database programs to fit the needs of law enforcement.

We will also continue our work to "level the playing field" between banks and nonbank financial institutions. Currently, only those institutions that come under the jurisdiction of the Federal bank supervisory agencies are required to file SAR's. I am in the process of working with my staff and the relevant FinCEN personnel to reevaluate the proposed dates regarding the implementation of the SAR requirements on money services businesses (MSB's). It is the position of the Treasury Department that in light of the horrific events of September 11 that these regulations need to be put into place as soon as prudently possible. We cannot afford to permit terrorists the luxury of moving funds through any avenue of our financial system undetected.

Enhanced Coordination

Last and perhaps most importantly, 2001 Strategy stresses the importance of Federal, State, local, and international coordination by creating structured, interagency, operational task forces that provide supervision and accountability. In addition, there will be new cooperation-based incentives.

As I mentioned earlier, the HIFCA Task Forces will be the driving force that unites Federal, State, and local law enforcement agencies. To ensure coordination, HIFCA Task Forces will prepare a detailed action plan and regularly brief Treasury and Justice officials on the progress of major money laundering investigations as well as the involvement of State and local law enforcement agencies in the HIFCA's. Similarly, the Department of the Treasury will conduct evaluations of existing Financial Crime-Free Communities Support Program (C–FIC) grant recipients to ensure local officials are including HIFCA Task Forces in their efforts. Further, the Strategy strongly encourages U.S. attorneys in each judicial district to create SAR Review Teams, which will incorporate State and local officials whenever possible.

Money laundering is a problem of global dimensions that requires concerted and cooperative action on the part of a broad range of institutions. At the international level, the Strategy seeks to remove all barriers that inhibit international cooperation. Appropriate officials from the Departments of State, Justice, and Treasury will review key existing extradition and mutual legal assistance treaties and recommend that coverage of money laundering offenses be considered an important objective in assessing future treaty negotiations. The Strategy will mandate increased use of the international asset-sharing program, which will provide incentive for international cooperation.

Our participation within the Financial Action Task Force (FATF) also provides a unique opportunity for us to work internationally with other member countries to require that countries in good standing with FATF have rules or regulations in place to address the issue of terrorist fundraising within their borders. The United States will push for FATF to take action to address these new issues of concern.

Because money laundering has the potential to increase risks to the global financial system, Treasury and the other G–7 nations have worked extensively with the International Financial Institutions (IFI's), and, as a result, the IFI's have agreed to take on an enhanced role in the global fight against money laundering. The United States will coordinate with G–7 and FATF members to ensure that the IMF and World Bank incorporate the Forty Recommendations into their operational work and promote the Forty Recommendations as the international standard for combating money laundering consistent with the mission and responsibilities of the IFI's. The United States, its G–7 partners, and other FATF members are urging the IFI's to institute a separate Report on Observance of Standards and Codes (ROSC) module on money laundering. Such a module would provide a comprehensive and articulated assessment of the status and performance of a country's anti-money laundering regime, and we anticipate having the IFI's full cooperation in this effort.

Conclusion

In closing, I leave you today with my personal assurance that during my tenure as Under Secretary (Enforcement), the Department of Treasury will continue to aggressively pursue money launderers with every tool that we have at our disposal. Last week, I had the opportunity to visit Ground Zero at what remains of the World Trade Center and see the devastation firsthand. It was a sight I will never forget and I am here today to make sure that this Committee and the United States Congress know that we will continue to pursue terrorist fundraising networks and other money laundering operations diligently and with passion.

PREPARED STATEMENT OF MICHAEL CHERTOFF

ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

SEPTEMBER 26, 2001

Chairman Sarbanes, Senator Gramm, and distinguished Members of the Committee, I am pleased to appear before the Committee today to discuss the ever-increasingly important issue of money laundering and the Bush Administration's 2001 National Money Laundering Strategy.

As I understand it, today's hearing was originally scheduled for September 12. Any testimony prepared for that day was rendered obsolete by the events of September 11. Tuesday, September 11 marked a turning point in this country's fight against terrorism and all other kinds of unlawful activity. President Bush has announced that we will meet that unspeakable attack on democracy with a full commitment of resources and with a firm resolve to rid the world of terrorism. As the President so eloquently stated, "Whether we bring our enemies to justice or bring justice to our enemies, justice will be done."

We in law enforcement must do everything within our powers to apprehend those persons who have committed and seek to commit terrorist acts, and we must eradicate the forces of terrorism in our country and around the world. As an initial step toward accomplishing this national mission against terrorism, the Attorney General has directed the creation of an Anti-Terrorism Task Force within each judicial district to be made up of prosecutors from the U.S. Attorney's Office, members of the Federal law enforcement agencies, including the FBI, INS, DEA, Customs Service, Marshals Service, Secret Service, IRS, and the ATF, as well as the primary State and local police forces in that district. These task forces will be arms of the national effort to coordinate the collection, analysis, and dissemination of information and to develop the investigative and prosecutive strategy for the country. As an integral part of this national effort, the Department of Justice and FBI have established an interagency Financial Review Group to coordinate the investigation of the financial aspects surrounding the terrorist events of September 11 and beyond. All members of this Committee recognize the importance of understanding financial components of terrorist and criminal organizations. These financial links will be critical to the larger criminal investigation, while also providing a trail to the sources of funding for these heinous crimes. The importance of "following the money," in this instance, as well as in the investigation of all criminal enterprises, cannot be overstated.

The Members of this Committee are also well aware that money laundering constitutes a threat to the safety of our communities, to the integrity of our financial institutions, and to our national security. In order to address this serious threat, we must apply and coordinate all the efforts and available resources of the Federal Government, along with those of our State and local authorities, as well as our foreign counterparts, if we are to be effective in our campaign against domestic and international money launderers. Money laundering techniques are innumerable, diverse, complex, subtle, and secret. The 2001 National Money Laundering Strategy not only sets forth a plan to identify, disrupt, and dismantle major money laundering organizations and the various financial systems they use, but also continues previous efforts to establish and expand effective countermeasures to detect and deter present and emergent money laundering techniques. Under Secretary Gurulé has detailed the principal provisions of the 2001 Strategy. I would like to focus on an area of the Strategy in which we especially need the Congress' help—updating the money laundering laws.

The Need for New Legislation

In his address to the Nation last Friday, President Bush stated:

> We will direct every resource at our command—every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every

financial influence, and every necessary weapon of war—to the destruction and to the defeat of the global terror network.

However, as Attorney General Ashcroft stated in his remarks in Chicago on August 7 to the Organized Crime Conference sponsored by the Chicago Police Department, and as I and other representatives of the Department of Justice have stated on several occasions in testimony before this and other Committees, we are fighting with outdated weapons in the money laundering arena today. When the money laundering laws were first enacted in 1986, they were designed to address what was primarily a domestic problem. Since 1986, money laundering increasingly has become a global problem, involving international financial transactions, the smuggling of currency across borders, and the laundering in one country of the proceeds of crimes committed in another country. Currency, monetary instruments, and electronic funds flow easily across international borders, allowing criminals in foreign countries to hide their money in the United States, and allowing criminals in this country to conceal their illicit funds in any one of hundreds of countries around the world with scant concern that their activities will be detected by law enforcement.

International organized criminal groups based in Asia, Africa, Europe, and this hemisphere have seized upon these opportunities for laundering of their assets. These criminals look upon globalization as an invitation to vastly expand the size and scope of their criminal activities—whether these organized criminal groups engage in narcotics trafficking, securities fraud, bank fraud, and other white collar crimes, trafficking in persons, or terrorism. With their expanded power and reach, international organized criminals seek to corrupt police and public officials in countries around the world to protect their criminal enterprises and enhance their money-making opportunities. Foreign organized crime groups today threaten Americans, their businesses, and their property, as these groups work to expand their influence into this country.

In this environment, law enforcement is challenged, and the criminals often hold the advantage. Criminals are able to adapt to changing circumstances quickly. They pay no heed to the requirements of laws and regulations and recognize no sovereign's borders. Further, these criminal groups have learned to be adaptable and innovative and as we succeed in a new enforcement effort or implement a new regulatory regime, they quickly alter their methods and modes of operation to adapt to the new circumstances.

The reality of international money laundering in this new century has caused countries from Northern Europe to South Africa, and from here in the West to the financial centers of the Far East, to look for ways to update their domestic laws to address this threat to our security. Equally important, countries around the globe are searching for ways to work together to address this problem jointly, irrespective of our different legal systems, customs, and traditions. Criminal proceeds can be moved from country-to-country in an instant. It is critical that our laws are brought up to date, so that we may act effectively and cooperate fully with our partners in law enforcement abroad. The United States should be the leader in this process, but sadly we are falling behind. While our laws have remained mostly static for 14 years, other countries are moving ahead to criminalize international money laundering and to take other steps to separate criminals from their criminal proceeds.

Legislative Initiatives

We are not suffering in this endeavor from the lack of ideas or proposals. The provisions of our proposed Money Laundering Act of 2001 would go a long way toward modernizing our money laundering laws by authorizing new and improved tools for our law enforcement agents and prosecutors, and by increasing our ability to cooperate with our international counterparts in tracing, freezing, and seizing criminal funds in the United States.

In addition to the Department's legislative proposals, Members of Congress have also recognized the need to update our money laundering laws. For example, Senators Levin, Grassley, DeWine, Kyl, Bill Nelson, and Chairman Sarbanes recently introduced a money laundering bill, S. 1371. We look forward to working with you as you consider these and related proposals.

I would like to highlight a few of the pending legislative proposals for the Committee that we believe would be particularly beneficial.

First, we must make it a crime to launder the proceeds of specified foreign crimes in the United States. People who commit crimes abroad, and then hide that money in the United States, are committing an offense that is at least as serious as the one committed by our homegrown criminals who hide their money at the local bank. The potential for terrorist organizations to finance their atrocities with money generated by committing crimes in other countries is obvious. (S. 1371, Sec. 3; Money Laundering Act of 2001, Sec. 6).

Second, it is important that the Federal courts be given authority to restrain a criminal defendant's assets pending trial, so that he is not free to disburse his money before he is convicted and ordered to turn it over to the Government. It is meaningless to authorize the courts to enter post-conviction forfeiture judgments—as the current laws provide—yet allow the criminal to send the money beyond the reach of the court in the months before he is convicted. (DOJ Anti-Terrorism Act of 2001, § 406).

Third, the Federal courts should be given authority to enforce the orders of foreign courts relating to criminal proceeds in the United States. Federal law already permits this in drug cases: a court in Virginia can enforce an order from a court in London if it relates to drug money found in the U.S. (28 U.S.C. § 2467). As we speak, foreign countries are working to determine what assets of terrorist acts occurring within their borders may have involved funds in the United States. If foreign courts issue orders to confiscate that money, we need to be able to enforce them. As a result, the current law needs to be expanded beyond drug trafficking crimes. (Money Laundering Act of 2001, § 39).

Fourth, the limitations period on seizing electronic funds from a bank account should be extended from 1 year to 2 years. Current law requires that the Government trace the money it wants to seize to the offense in which the money was involved. The law recognizes, however, that money is fungible, and that one dollar in a given bank account is the same as any other dollar. This "fungible property" rule, however, only applies for 1 year (18 U.S.C. § 984). If the money has been in the bank account for more than a year, the Government cannot seize it without a strict tracing analysis—something that is all but impossible if the account was active. We need to be able to go back at least 2 years to give true effect to the purposes underlying this law. (Money Laundering Act of 2001, § 15, S. 1371, § 10).

There are other provisions in the Department's anti-money laundering bill that would help us enormously in tracking the assets of terrorists. I mention these few as among the most critical, but a comprehensive revamping of these laws is necessary if we are to make meaningful headway against terrorism and other forms of international organized crime. The Department's Money Laundering Act of 2001 sets out a core group of statutory tools that are necessary to meet the domestic and transnational organized crime threats of the 21st Century. Attorney General Ashcroft considers passage of this legislation essential to any success in disrupting and dismantling the business of organized crime and the cruel reality of terrorism.

Conclusion

I believe that the extraordinary events of September 11 should provide the impetus to jump-start consideration of money laundering legislation that will allow us to address the threats presented to us by international terrorists and criminals. The Department stands ready to provide any assistance it can to facilitate prompt consideration of its legislative proposals.

I would like to conclude by expressing the gratitude of the Department of Justice for the continuing support this Committee has demonstrated for our anti-money laundering activities. We in the Department of Justice look forward to working alongside our Treasury colleagues, with this Committee, with your other colleagues in the Senate, and your counterparts in the House to strengthen the U.S. anti-money laundering regime at this critical hour.

Thank you, Mr. Chairman. I welcome any questions you may have at this time.

PREPARED STATEMENT OF STUART E. EIZENSTAT [1]

FORMER DEPUTY SECRETARY, U.S. DEPARTMENT OF THE TREASURY

SEPTEMBER 26, 2001

Mr. Chairman, Senator Gramm, and Members of the Committee, good morning. This is my first appearance before this Committee since my return to private life, and I am glad to see you again. But more important, I am honored to have this opportunity to contribute to your examination of money laundering and the problems it raises for the United States. Stopping money laundering, and the syndicates it finances, is critical to the fight against narcotics trafficking, organized crime, foreign corruption, and software counterfeiting and other intellectual property crimes,

[1] I would like to thank Debra R. Volland of Covington & Burling and Stephen Kroll, formerly Chief Counsel of the Treasury's Financial Crimes Enforcement Network and now in private practice, for their assistance in preparing this testimony. Mr. Kroll's public service in combating money laundering was a singular contribution to the United States.

as well as to preserving the health of the global financial system. After the events of September 11, it is clear that stopping money laundering is also critical to the personal safety of our citizens.

The Committee's decision to put these issues on its agenda is thus highly appropriate and, sadly, very timely. In the past two decades, in Republican and Democratic Administrations, the groundwork has been laid for effective action against the criminal financial system. But we are now at a crucial point in deciding what that action should be and how to take it. Answering those questions is not easy, as today's hearings will confirm, but our commitment to robust, effective, and balanced action against domestic and international money laundering must remain focused and firmly in place.

My experience during the last 8 years makes that plain to me. At the Department of Commerce, I could see how difficult it was for our companies honestly to bid against competitors who could draw on hidden sources of funds. At the Department of State, I came more fully to understand how money laundering fuels the kleptocracy that can undermine even the most well-thought-through economic development efforts or policies to build civil society. And at the Treasury Department I was confronted with the role money laundering plays in driving the narcotics trade and the other crimes I have already mentioned, the way it infects the vitality of our trade in goods—through the operation of the Black Market Peso Exchange—and the degree to which it can undermine the credibility and safety of the global financial system upon which our prosperity depends.

Now, we are brought face to face with another aspect of the criminal financial system—its use by the merchants of terror. Monday's issuance by President Bush of a new Executive Order aimed squarely at terrorist financing and expanding the blocking of terrorist assets forcefully pinpoints an essential target. Terrorists must have money to pay for weapons, travel, training, and even benefits for the family members of suicide bombers. The September 11 terrorists spent tens, if not hundreds, of thousands of dollars on U.S. flight training, and their U.S. living expenses were likely even higher. They often paid cash, flashing rolls of bills. Estimates of the total cost of the September 11 attacks exceed $1 million.

The capital that terrorists require comes from several sources. The first is pure criminal activity, harking back to the daring daylight robbery of a Tzarist banking van in 1907 by a gang led by a young Bolshevik named Josef Stalin. Terrorists engage in credit card fraud, kidnapping, robbery, and extortion. Their paymasters can include covert state sponsors, who can also conveniently look the other way at strategic partnerships between terrorists and organized criminal groups, especially narcotics traffickers.

Large sums come from old fashioned fund raising through "charitable" organizations here and abroad; a recent World Bank study indicates that the globe's civil wars are primarily funded by contributions from diaspora populations. In some cases donations are understood to be destined for use by terrorists, even when raised for ostensibly humanitarian purposes. There are "charities," for example, in various Gulf States that may serve as conduits for Osama bin Laden and his Al Qaeda movement.

Wealthy individuals may make large contributions. Bin Laden, whose private fortune is often estimated as having at least once amounted to $300 million, is likely a special case, providing seed capital to nascent terrorist groups and operations around the world. Evidence produced at the trial of defendants in the 1998 embassy bombings in Kenya and Tanzania indicated that bin Laden's web included various trading and investment companies, with accounts in several world financial centers. Reports that bin Laden's operatives sold the shares of leading international reinsurers short on September 10 are simply speculative at this point. But his funds are somewhere earning a return as part of the very system he has vowed to destroy.

However obtained, terrorist funds need to be transmitted across borders, marshaled, and spent—with application of a new layer of camouflage at each step. This is the money launderer's domain and brings us directly back to the broader subject.

The sheer size of the criminal financial system provides a rough measure of the problem at hand. The IMF has estimated the amount of money laundered annually at between $600 billion and $1.5 trillion, or 2–5 percent of the world's annual gross domestic product. At least a third of that amount, up to half a trillion dollars annually, is thought to pass through U.S. financial institutions at least once on its clandestine journey. While these are estimates, they are as likely as not to be on the conservative side. Whatever the precise number, it is far too high in real terms and reminds us that the risks money laundering creates simply are not going away.

Money laundering is the financial side of crime. If the so-called "smurfs" can seem merely odd as they dribble drug-tainted dollars into our financial institutions to stay under the $10,000 threshold for reporting currency transactions, the sophisticated

cartel bankers who operate behind the shield of bank secrecy, offshore havens, or suborned officialdom, with millions of dollars at their disposal, are anything but quaint. And that is why, as I mentioned earlier, the fight to curtail money laundering has been in the past the product of a bipartisan consensus.

- The landmark legislation making money laundering a distinct and very serious felony in the United States was the product of the Reagan Administration.
- The Bush Administration led the way in creating the Financial Action Task Force, at the G–7 Summit in 1989, and establishing the Financial Crimes Enforcement Network at the Treasury a year later, and President Bush signed the Annunzio-Wylie Anti-Money Laundering Act in 1992; that landmark legislation authorized suspicious transaction reporting and uniform funds transfer recordkeeping rules, among other pillars of today's counter-money laundering programs in the United States and around the world.
- President Clinton used the occasion of his nationally televised address on the occasion of the United Nations' 50th Anniversary to call for an all-out effort against international organized crime and money laundering, kicking off a coordinated 5 year effort to bring the world's mafias and cartels to heel and finally to close the gaps in our laws and regulatory systems that had permitted those criminal groups to thrive.

The unhappy experience of the Bank of New York highlights the vulnerability of our financial institutions. The Bank was involved in an alleged money laundering scheme in which more than $7 billion was transmitted from Russia into the Bank through various offshore secrecy jurisdictions. At least one relatively senior official of the Bank was suborned, and she suborned others. We do not know to this day how much of the money came from the accounts of the Russian "Mafiya," how much represented assets stolen in the course of the privatization of state industries—undermining the hopes of Russian reformers—and to what extent was the money hidden to escape legitimate taxation, destroying the fiscal projections on which the reformers depended to lower taxes for ordinary citizens. We do know that the money came out of Russia through accounts in shell banks chartered in places such as the South Pacific island of Nauru. The Deputy Chairman of Russia's Central Bank has estimated that, in 1998 alone, $70 billion was transferred from Russian banks to accounts in banks chartered in Nauru; not all of that money went to Bank of New York, of course, but none of it was ever intended to stay in Nauru.

At the same time, everyone should understand that the growth of money laundering is the dark side of globalization. It is an unfortunate by-product of the persistent leveling of barriers to trade and capital flows since the end of World War II, most importantly, of course, the end of capital controls around the world. As Secretary Rubin famously pointed out in his address to the Summit of the Americas in 1995—when that Summit produced a hemispheric declaration against money laundering—few of the acts that the money launderer takes are, in themselves, illegal. All of our national policies are designed to stimulate saving, the free movement of funds, and the operation of efficient payment systems.

What makes money laundering illegal is knowledge of the criminal origin of the funds involved, the criminal purpose to which the funds will be put, or both, and deliberate efforts to fog the transparency of the financial system for criminal ends. The task confronting both Government and the financial sector is to shape cost-effective policies to filter out that tainted conduct, to find the one person in the bank line who is a money launderer in the clothing of an honest bank customer. We devoted immense time and effort in the last 8 years to striking the necessary balance.

Our policy had a number of major components. We continued the drive for creative criminal and civil enforcement of our counter-money laundering laws.

We greatly expanded the information resources available to State and local officials who were building their own money laundering efforts, through programs such as FinCEN's Project Gateway.

We sought to level the playing field by closing gaps in coverage of previously inadequate regulated money transmitters and other nontraditional financial service providers, following our enforcement successes in the New York area against the flow of funds to Colombia and the Dominican Republic in 1996–1998.

We issued guidance to help U.S. financial institutions build their own defenses to protect their business reputations and avoid entanglement with crime—and give appropriate scrutiny to private banking and similar high dollar-value accounts, especially for transactions that could involve transfer of the proceeds of corruption by senior foreign officials. Unlike more general "know your customer" ideas that attracted a great deal of criticism 2 years before, our guidance was carefully tailored to help banks deal with identifiable situations in high-risk accounts.

We recognized the absolutely crucial importance of international cooperation to disrupt the global flow of illicit money. We supported the work of the Financial Action Task Force in its revision of its landmark Forty Recommendations, under the FATF Presidency of Treasury Under Secretary Ron Noble in 1996.

We led the way in building the Egmont Group of Financial Intelligence Units, which now has over 50 member agencies that cooperate in sharing information to fight money laundering around the world.

Even more important, we pushed forward the FATF's noncooperative countries and territories ("NCCT") project in the Clinton Administration's last 2 years. Fifteen nations were cited as being noncooperative in the international fight against money laundering in 2000,[2] and the Treasury followed up the FATF's action and its own analysis by issuing hard-hitting advisories to our financial institutions recommending enhanced scrutiny against potential money laundering transactions involving those nations. I am especially proud that we did not play favorites. Russia was on the list, but so was Israel. Liechtenstein was on the list, but so were the Philippines. We cited Nauru, but we also cited Panama and the Bahamas. And the reaction has been very positive. While I was Deputy Secretary of the Treasury I met with senior officials of Panama and with Israel's then-Minister of Justice, and I learned of the steps those countries were taking to be removed from the NCCT list. My Treasury, Justice, and State Department colleagues met with officials of the governments on the list at various levels to help get the necessary work done—with clear results! Israel, and now Russia, have for the first time enacted laws to criminalize money laundering and are working to put serious anti-money laundering programs into place. Liechtenstein has broken down its time-honored bank secrecy traditions. Panama is now prepared to share information to assist law enforcement investigations around the world.

Finally, we issued the Nation's first two National Money Laundering Strategies, to present a balanced strategic view of our efforts and point the way forward, year-by-year, as Congress asked us to do.

I would like to speak in more detail about several aspects of our work.

International Counter-Money Laundering Act of 2000—now S. 398. The International Counter-Money Laundering Act of 2000 (H.R. 3886), introduced on March 9, 2000, was an important part of our approach, because it would have given the Executive Branch the tools necessary to deal in a measured, precise, and cost-effective way with particular money laundering threats. Under the legislation, which had very strong support from senior Federal law enforcement professionals, the Secretary of the Treasury—acting in concert with other senior government officials and with prompt notice to the Congress—would have had the authority to designate a specific foreign jurisdiction, financial institution, or a class of international transaction as being of "primary money laundering concern" to the United States. Although the legislation had strong bipartisan support, and was approved by the House Banking and Financial Services Committee by a 33–1 vote on June 8, 2000, the legislation did not make it further in the 106th Congress.

I am very pleased that Senator Kerry has reintroduced the legislation, as S. 398, with cosponsors including Senator Grassley and Chairman Sarbanes, as well as Senator Levin, Senator Grassley, and Senator Rockefeller. I would like to explain why Kerry–Grassley–Sarbanes is an extremely important step forward and deserves the Committee's, and the Congress', support now.

Succinctly, we have few tools to protect the financial system from international money laundering. On one end of the spectrum, the Secretary can issue Treasury Advisories, as we did in the summer of 2000; those warnings encourage U.S. financial institutions to pay special attention to transactions involving certain jurisdictions. But they do not impose specific requirements, and they are not sufficient to address the complexity of money laundering.

On the other end of the spectrum, the International Emergency Economic Powers Act ("IEEPA") provides authority, following a Presidential finding of a national security emergency, for full-scale sanctions and blocking orders that operate to suspend financial and trade relations with the offending targets. President Clinton issued a number of such orders, including two, in 1995 and 1998, directed at designated ter-

[2] The list of NCCT's in 2000 was: the Bahamas, the Cayman Islands, the Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, the Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. As indicated below, the Bahamas, the Cayman Islands, Liechtenstein, and Panama were removed from the list in June 2001 after curing most or all of the deficiencies FATF cited, and 8 new countries—Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria, and Ukraine—were added to the list in June and September 2001.

rorist organizations that led to accelerated efforts to locate funds of those organizations in the United States.

Of course, President Bush invoked IEEPA, among a number of other authorities, on Monday. The President's order was obviously appropriate under the circumstances, and it sent a blunt and forceful message. There are many other situations in which we will not want to block all transactions, or in which our concern centers around underregulated foreign financial institutions or holes in foreign counter-money laundering efforts. In those cases a more flexible tool is necessary, but we do not have one available, because under present law there is nothing between the two ends of the spectrum—a Treasury Advisory on the one hand, and full-blown IEEPA sanctions on the other.

As I noted, the key to the proposed statute's operation is the determination by the Secretary of the Treasury that a specific foreign jurisdiction, a financial institution operating outside the United States, or a class of international transactions is of "primary money laundering concern" to the United States. The determination would trigger the authority of the Secretary to take several actions in response.

After consultation with the Chairman of the Federal Reserve System, the Secretary could:

1. Require financial institutions operating in the United States to keep records or file reports concerning specified types of transactions, in the aggregate or by individual transaction, and to make the records available to law enforcement officials and financial regulators upon request. Requiring such record retention could prove invaluable to law enforcement and help the Government better to understand the specific money laundering mechanisms at work. As a corollary benefit, a requirement that U.S. institutions increase the level of scrutiny they apply to transactions involving targeted jurisdictions or institutions could result in pressure on the offending jurisdictions to improve their laws.

2. Require financial institutions to ascertain the foreign beneficial owners of any account opened or maintained in the United States. Requiring financial institutions to ascertain foreign beneficial ownership would help cut through layers of obfuscation that are one of the money launderers' primary tools.

3. Require identification of those who are allowed to use a bank's correspondent accounts (as well as so-called "payable-through" accounts), which allow customers of a foreign bank to conduct banking operations through a U.S. bank just as if they were the U.S. bank's own customers. Requiring identification of those who are allowed to use a bank's correspondent accounts and payable-through accounts would prevent abuse of these technical financial mechanisms by foreign money launderers who seek to clean their dirty money through U.S. financial institutions. The United States needs to be able to find out who really benefits from these accounts, and, by application of transparency, discourage abusive practices.

4. Where necessary in extreme cases, the Secretary would have the authority to impose conditions upon, or prohibit outright, the opening or maintaining of correspondent or payable-through accounts. Having that authority in reserve gives credibility to the rest of the statute's measures, and may, in cases of documented, continuing abuse of the financial system by known criminals, be a necessary last resort.

The legislation would also have made necessary corrections in existing law. It would have codified and strengthened the safe harbor from civil liability for financial institutions that report suspicious activity. It would have toughened the geographic targeting order ("GTO") mechanism that was used so effectively in New York, New Jersey, and Puerto Rico, against Colombian and Dominican narcotics traffickers. It would have made it clear—as Congress intended—that the "structuring" penalties of the Bank Secrecy Act apply both to attempts to evade GTO's and to attempts to circumvent the funds transfer recordkeeping and identification rules that Congress specifically authorized in 1992. In addition, the legislation would have made it clear that banks could under certain circumstances include suspicions of illegal activity by former bank employees in written employment references sought by subsequent potential bank employers.

The legislation was designed to permit carefully tailored, almost surgical, action against real abuse; that action was to be graduated, targeted, and discretionary graduated so that the Secretary could act in a manner proportional to the threat presented; targeted, so the Treasury could focus its response to particular facts and circumstances; and discretionary, so the Treasury could integrate any possible action into bilateral and multilateral diplomatic efforts to persuade offending juris-

dictions to change their practices so that invocation of the authority would not be necessary. There will be situations in which the United States may have to lead the way alone, and if so the statute would have given it the capacity to do so.

Importantly, the legislation would not jeopardize the privacy of the American public. The focus of the recommended legislation is not on American citizens. The recommended legislation focuses on foreign jurisdictions, foreign financial institutions, or classes of transactions with or involving a jurisdiction outside the United States, that involve the abuse of U.S. banks facing a specifically identified "primary money laundering concern." For this reason, the recommended legislation is different from the so-called "know your customer" rules proposed 2 years ago. And finally, it should be noted that the proposed legislation is narrowly drawn, so as not to add burdens to financial institutions. The approach targets major money laundering threats while minimizing any collateral burden on domestic financial institutions or interference with legitimate financial activities.

Changes to the Definition of Money Laundering Offenses in Title 18. We had also hoped to see through the passage of legislation, long sought by the Department of Justice, to widen the range of money laundering offenses. As you know, money laundering under our criminal laws must involve the proceeds of "specified unlawful activities." Unless a particular set of transactions involves the proceeds of such a predicate crime, it cannot serve as the basis for a money laundering investigation. But there are important gaps in the definition, especially for crimes against foreign governments, such as misappropriation of public funds, fraud, official bribery, arms trafficking, and certain crimes of violence. Unless such crimes are made "specified unlawful activities," a rapacious foreign dictator can bring his funds to the United States and hide them without fear of detection or prosecution in many cases; this we should not, indeed we cannot, continue to allow. I am pleased that S. 1371, introduced this session by Senator Levin and cosponsored by Senator Grassley, Chairman Sarbanes, Senator Kyl, Senator Bill Nelson, and Senator DeWine, includes the necessary change and important related changes to the Nation's forfeiture laws.

FATF. We must continue to support FATF and other multilateral counter-money laundering efforts. FATF's work is ongoing; in June it designated 6 additional nations—Indonesia, Nigeria, Egypt, Hungary, Guatemala, and Myanmar—as noncooperative, and it completed the most recent round of reviews in early September by adding Grenada and Ukraine to the list. But it has also signaled the progress made in the Cayman Islands, Liechtenstein, the Bahamas, and Panama, by removing those countries from the list, and it is working with other designated countries to ameliorate the problems identified in the NCCT process. In particular, I hope that Israel, which has already initiated at least one significant money laundering prosecution, can be removed from the list shortly.

This is multilateral cooperation at its best. The efforts of our Government, at the Departments of Treasury, Justice, and State, must continue to view the problem of money laundering "holistically," as part of the broader issue of global financial standards—for banking supervision, tax administration, and counter-money laundering control—that are necessary to foster international prosperity and faith in civil society, underlying the growth of democratic governance around the world. Before September 11, Treasury had yet to issue advisories concerning the countries added to the FATF list this year; that may have been an accident of the calendar, since the FATF had a supplementary meeting, at which it named Grenada and Ukraine as noncooperative, in the first week in September. But I hope that the sort of guidance that was issued in the past will continue to be the norm, rather than a scaling back of the perceived consequences of the FATF designations.

I suspect that you would like me to compare the work in which we were engaged more broadly with the approach of the new Administration to money laundering. It is too early to make any firm comparisons. The Bush Administration's first National Money Laundering Strategy emphasizes strong enforcement and intensified use of criminal and civil asset forfeiture laws and continues a number of specific enforcement initiatives—the High Intensity Financial Crime Areas or HIFCA program, expanded State and local involvement in money laundering investigations, and efforts to dismantle the Black Market Peso Exchange—that we began. And I was glad to see Attorney General Ashcroft announce in a recent speech that he will be seeking legislation like that sought by the sponsors of S. 1371, to expand the money laundering laws in Title 18 to deal with the proceeds of foreign corruption, as I discussed earlier in my statement. I understand the Administration's anti-terrorism legislation also includes a necessary amendment to the money laundering laws to add support for designated terrorist organizations to the statute's list of specified unlawful activities; I support this change.

I hope, however, that the program outlined in the National Money Laundering Strategy for 2001 does not shortchange appropriate legislative and regulatory efforts

to shore up the weaknesses in our financial mechanisms that money launderers can exploit. There is no substitute for creative and aggressive enforcement of our laws; but enforcement itself is not enough. A targeted approach to strengthening our anti-money laundering rules is necessary to close loopholes through which criminal proceeds flow, and to reduce risks that later take countless resources to investigate and prosecute, after the damage is done. We can never know who exploits the weaknesses in our network of transparent financial arrangements and anti-money laundering defenses, and a program that relies only on enforcement is unlikely to be as effective as we would want.

I would also like to mention several recommendations relating specifically to the financing of terrorism. The Administration moved forcefully on Monday to cut off terrorists' financial oxygen; as the President recognized, that is a critical part of the effort the Nation is now embarked, and rules already in place can be applied forcefully and quickly to financial support for terrorism. Necessary steps include:

- Adequate staffing, funding, and authority for the Foreign Terrorist Asset Tracking Center first sought by National Security Council officials 18 months ago and initially brought together last week at the Treasury.
- Intensified analysis and matching for terrorist links of information reported under the counter-money laundering rules. We must also obtain information reported in other countries, using the multilateral "Egmont group" of anti-money laundering agencies that now has more than 50 members.
- Investigation and blocking of underground banking practices such as the "Hawala," through which a potentially significant portion of terrorist funds is thought to pass into or out of the United States without ever touching the formal banking system.
- Greater scrutiny of phony charitable organizations by our Government and our allies abroad, a move that was begun in the last 5 years and is, again, brought forcefully forward by Monday's Executive Order. That scrutiny must not be limited to the United States, because much of the money involved is simply not here, and we should ask Saudi Arabia, Kuwait, Qatar, and the UAE to apply similar scrutiny to ostensible charitable organizations operating in those nations.
- Pressure by the FATF for quick improvement in the anti-money laundering and financial transparency rules of countries such as the UAE and Pakistan.
- Issuance of guidance about terrorist money laundering to U.S. financial institutions, with special emphasis on identification of beneficial account ownership.
- Continued careful coordination with the U.S. economic sanctions program aimed at terrorists' assets.

Of course, we cannot overestimate our chances of success; financial data alone, no matter how good it is, rarely provides the archetypal "smoking gun" in investigations. Moreover, our adversaries are very good at hiding funds, using traditional systems outside sophisticated financial channels to transfer funds, and, simply, making do on a meager budget. And the amounts of money terrorism requires—even for organized, purposeful, continuing terrorist organizations such as those that produced the September 11 tragedy—is never large enough even to cause a blip in the daily stream of international cross-border payments. But the fact that the clues are not easy to find cannot and should not deter us. Information is rarely determinative; even the fabled naval code breakers of World War II at Bletchley Park and at the Naval Intelligence Station in Washington could only track U-Boats, on good days, to ocean "sectors" many hundreds of square miles in area.

The acid test for me of the Administration's anti-money laundering strategy is whether the Administration will support passage of S. 398, working with this Committee, which I hope will mark up the legislation and move it forward expeditiously. Indeed the legislation was designed to give the Secretary of the Treasury the sort of flexible targeted authority that can now be used to advantage in the fight against financial aspects of terrorism, as well as against money laundering generally. I want to emphasize again the bipartisan support we found in the House for last year's version of the legislation, and the 33–1 vote by which the House Banking Committee—led by Jim Leach of Iowa—sought to move that legislation, conscious of its obligation to protect the expectations of our citizens about the credibility of our Federally insured financial institutions.

To sum up: the rapid growth of international commerce, along with advances in technology, are making it easier for criminals in foreign jurisdictions to launder money through foreign institutions into the United States, and hence to finance the expansion of the global criminal economy and the growth of organized criminal groups and international terrorists as substate threats to our security. Money laundering debilitates the integrity and stability of financial and government institutions worldwide, as a parasite that feeds on the very advances in global finance and

free economies that make successful money laundering possible. That is why we have had a strong history of support on both sides of the aisle for designing investigative, regulatory, and legislative steps to fight money laundering around the world, and why it is both fitting and essential that this Committee monitor the work of the Administration in this critical area and act where necessary to shore up our national defenses against this criminal contagion.

Thank you very much. Again, it is a pleasure to be here and contribute to the Committee's work. I would be happy to answer your questions.

PREPARED STATEMENT OF WILLIAM F. WECHSLER

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SEPTEMBER 26, 2001

Mr. Chairman, Senator Gramm, distinguished Members of the Committee, I want to commend you for calling attention to the important and growing problem of money laundering and the ways by which terrorists in general and Al Qaeda in particular raises, moves, launders, and distributes its money. It has been a while since this Committee last seriously addressed this issue. I feel honored to have been asked to participate in this hearing, and I thank you for the opportunity.

I would like to divide my remarks into three parts. First, I will discuss in general terms what we know about how Al Qaeda's financial network operates. Second, I will describe what has and what can be done about it. And third, I will discuss how we can better combat the general problem of money laundering.

The Al Qaeda Financial Network

Unlike most terrorist leaders, Osama bin Laden did not first gain recognition among Islamic radicals for leading an army in battle, or for personal acts of valor in combat, or even for running a local terrorist cell. He first gained fame for his abilities to raise, manage, and move money for the Afghan armies fighting the Russians in the 1980's. He still derives much of his authority and influence from the money under his control.

The terrorist financial network that Osama bin Laden helped build in the 1980's provided the foundation for the financial network that supports Al Qaeda today. This is commonly misunderstood. When reporting on Al Qaeda finances, journalists generally focus on the $300 million bin Laden is reported to have inherited from the family construction business, as if he is simply writing personal checks to terrorists in the field. If this was the case, the problem would be much easier to solve. While his own funds have undoubtedly been helpful to his cause, his network of financial donors, international investments, legal businesses, criminal enterprises, smuggling mechanisms, Muslim charitable organizations, Islamic banks, and underground money transfer businesses have been of far greater value.

Today this network continues to raise money throughout the world to constantly replenish Al Qaeda's coffers. And have no doubt that the money that is raised is substantial. We should not be confused when we read that any one terrorist attack likely only cost Al Qaeda a few thousand or a few hundred thousand dollars, or that any one terrorist cell seemed to be just scraping by and committing petty crimes to help fund their activities. There is an important difference in the amount of money that is available to the organization overall, and the amount that is available to any local element. This only makes sense. Think of the U.S. military: by any measure it overall spends a lot of money each year. But if you go to any individual army base, you will see sergeants desperately trying to scrape by with limited funds and still achieve their mission.

As noted, Al Qaeda raises money from criminal schemes and seemingly legitimate businesses—and now we are all reading reports of United States, European, and Japanese regulators investigating whether Al Qaeda may have profited from short-selling reinsurance and airline stocks just before the recent attacks—a frightening possibility.

But perhaps the most important source of Al Qaeda's funds are direct solicitations and charitable contributions. This does not mean that everyone whose money goes to Al Qaeda knows that they are contributing to terrorism. Millions of Muslims around the world believe as part of their religion that donating to charity is a fundamental part of their lives. No doubt most would be aghast if they knew that some of the money they may have given to charities has been diverted to terrorist use. Nor does it mean that the charities that support Al Qaeda do not also provide social services. Hamas and Hizzbolah have demonstrated that it is very advantageous for a terrorist organization to also help the poor and weak. It does mean, however, that

Al Qaeda is able to get funds under the guise of charitable donations, mostly in cash, and that money keeps coming. This is also, by the way, how the IRA has long raised money in the United States. Once Al Qaeda has the money, it moves and launders it through four primary methods.

First, there is simple cash movements and smuggling. We should remember that the economies of much of the Middle East are much more cash intensive than our own. If you lived there you would likely carry much more cash than you do today and use electronic means much less. It is not terribly uncommon for people in say, Saudi Arabia, to purchase something on the order of a car in cash. That means that in general there is less of an electronic and paper trail in these societies, unfortunately.

Second, Al Qaeda uses what we think of as the global banking system to hold and launder money. Terrorists are particularly attracted to underregulated money laundering havens. These places have little or no anti-money laundering regimes—strict bank secrecy, poor customer identification, no bank supervision or examination, no suspicious activity reporting, little or no cooperation with foreign law enforcement. In an era of globalization and the internet such places provide no-questions-asked banking services to clients from around the world who, for some reason or another, are interested in hiding their money from authorities.

Third, Al Qaeda uses the Islamic banking system, which is an entirely legitimate parallel system for those who feel their religion prohibits them from being involved in the payment of interest. There is nothing inherently wrong with this system at all—but it is in general even less regulated in many countries in which it operates.

And fourth, Al Qaeda undoubtedly makes good use of the hawala underground banking system. The hawala system is particularly valuable to Al Qaeda because it allows little or no paper trail, just money transfer without money movement. There is also nothing inherently wrong with the hawala system—it has been in operation in South Asia and the Middle East for centuries, and there is a similarly ancient system based out of China. In some remote areas of the globe the hawala system is the banking system—there are no Citibank branches.

The system is run by South Asians along familial lines and has served people in the Middle East for centuries. You are a Hawaladar because your family has for generations. Moving money through the Hawala system is as easy as a phone call, or a fax, or an e-mail from one Hawaladar to another. A client gives cash to a Hawaladar in say, Pakistan, and asks him to make sure that another person gets it in say, New York. So the hawaladar calls his colleague in New York, who hands out an equivalent amount of money. At no time, however, is there any wire transfer or basic connection with the wider banking system. Accounts are balanced quite often over time, since there is thought to be quite a lot of money constantly rolling through the system. But if accounts are unbalanced for a while between the two Hawaladars, they are not concerned because fundamentally they trust each other. They are good for it. They have been in this business for generations and they are not going to cheat each other. And perhaps if the accounts get seriously unbalances, then they will have to actually move cash from one place to another, or engage in some under-invoicing scheme to transfer wealth.

As best we can tell, Al Qaeda distributes money to its decentralized, loose confederation of terrorist cells mostly as start up money or venture capital. The cells are then required to help sustain themselves, sometimes from crimes such as cigarette smuggling, a particular favorite of criminal networks around the world.

Combating the Al Qaeda Financial Network

We should also recognize what can and cannot be accomplished by targeting the financial network. Such actions will not, by themselves, strike a death blow to Al Qaeda. There is no silver bullet here. We are not likely to wake up one morning and read in the newspaper that the United States and its allies have frozen all of Al Qaeda's money and therefore the terrorist organization is no more.

Here in the United States we have been going after organized crime's financial network ever since we convicted Al Capone for tax evasion. But organized crime still exists. What we can do is identify key components of the financial network and disrupt them by rounding up key people, shutting down front companies, and targeting the banks that provide laundering services. Every time a key component is disrupted it will force Al Qaeda to take time, money, and personnel to rebuild it—and in the process likely deter or delay individual terrorist operations. Over the long term, combined with additional military, diplomatic, intelligence, and law enforcement actions, these efforts will eventually seriously degrade Al Qaeda's terrorist capacity. Organized crime in the United States is not today what it was several decades ago. We can score a similar victory over Al Qaeda, but it will take time.

That is as far as the analogy with organized crime can be taken, however. We have tools that can be used against Al Qaeda that could never be used against organized crime—our military services and intelligence community. But we also face a more difficult environment in which to target the Al Qaeda financial network. Here in the United States we have over the years built a strong anti-money laundering regime, including specific anti-money laundering laws and bank regulations. Virtually none of this exists where Al Qaeda raises and moves most of its money. This makes the problem much more difficult.

Disrupting, degrading, and where possible, taking down the Al Qaeda financial network will require actions by both the Bush Administration and the Congress. The Administration's efforts should focus on fully exploiting the power inherent in the International Emergency Economic Powers Act, the law cited by President Bush in his Executive Order on Monday. President Bush should be commended for his announcement on Monday, and for his establishment of a new Terrorist Asset Tracking Center in Treasury's Office of Foreign Asset Controls. These acts have started the Bush Administration off on the right path.

The most important provision of the Executive Order that President Bush announced Monday is not the one that freezes assets in the United States, although this is nice to do in those rare moments when money is actually found. Most of the time, however, people like Osama bin Laden are a little too smart to put money in U.S. banks under their own names. That is why the first question that is always asked in these instances is the wrong one—so how much money have we frozen?

A better question to ask is what is your plan for how you going to use this authority to get new information about and new actions against the Al Qaeda financial network that you would otherwise not be able to get. The most important provision of the Executive Order is the one that then allows the United States to threaten to cut off anyone, anywhere that is found to "be controlled by" or "act on behalf" or "provide support for" Al Qaeda—any person, company, bank, or country. This allows the United States to quietly, behind the scenes, approach foreign governments and institutions that might fall into that category, whether willfully or unwittingly, and then present them with a simple proposition: be cut off from the U.S. economy or quietly give the United States new information on terrorist financing and take additional actions against the Al Qaeda financial network. I must stress that in many cases this has to be done quietly to be effective.

This is the strategy that the Clinton Administration adopted after the terrorist attacks on the U.S. embassies in East Africa in 1998, when President Clinton signed similar Executive Orders against Al Qaeda and the Taliban government in Afghanistan. In some instances it was successful, and the United States was able to get a degree of cooperation from certain countries that it had previously been denied. For instance, these efforts helped ground the Afghan national airline around the world, at the time a key way Al Qaeda moved resources back and forth from Afghanistan. There is no doubt that this action disrupted a key element of Al Qaeda's infrastructure.

But in the big picture we only had limited successes. In some cases, foreign governments responded with delay and denial due to a lack of political will. In other cases the governments in question wanted to help, but had limited abilities to get the information we wanted since they had no anti-money laundering regime and did not routinely audit charities. In the current environment, however, and with a increased focus on the charities that provide a direct fundraising link between Al Qaeda and the wider societies in the Middle East, the Bush Administration should be able to be more effective in this effort.

Three things now need to be done. First, President Bush, Secretary Powell, and Secretary O'Neill now should now, as part of their quiet discussions with their counterparts in key countries—particularly Saudi Arabia, Egypt, Pakistan, the United Arab Emirates, and all generally friendly nations along the Persian Gulf—sully exploit the leverage inherent in the President's Executive Orders and personally demand that their law enforcement and intelligence services fully cooperate with U.S. efforts to trace and destroy the Al Qaeda financial network, no matter where the money trail leads. They should also demand that these countries bring their anti-money laundering regimes up to full compliance with international standards. These countries should also fully audit their domestic Muslim charitable organizations, using outside auditors if necessary, to ensure that they are not being used as fronts for terrorist cells. It will undoubtedly be difficult to get many of these countries to take these steps. But without these actions U.S. efforts to combat the Al Qaeda financial network will continue to be only marginally effective.

Second, the Bush Administration should identify and take down individual foreign banks that are found to be safe havens for terrorist funds. This might be done covertly, through information warfare. Or it might be done overtly if the Administra-

tion can using Monday's Executive Order, get enough publicly-releasable information that show that a specific foreign bank is moving money for Al Qaeda. But that can be a high threshold. Quite often, in my experience, our intelligence may be sketchy, or we may have enough intelligence but cannot release it for important reasons involving sources and methods of collection.

What is needed is a new set of powers to more easily and effectively cut rogue banks off from the legitimate international financial system. The United States needs to be able to approach suspected foreign rogue banks—again often quietly, behind the scenes—threaten to sanction them not because we can prove that there are some specific terrorist funds going through an account, but because of general concerns that the bank has become a money laundering haven. This could mean that the bank has no internal compliance system, that it has a pattern of illegal activities, or that it operates under a strict bank secrecy regime. These facts would be much easier to prove openly, and therefore give the United States important additional leverage to use strategically.

Last year a bipartisan bill that would have done just that was supported by the Clinton Administration. Unfortunately, even after passing out of the House Banking Committee 31 to 1, it was killed without ever receiving a full vote. As of Monday, the Bush Administration still had not figured out its position, even though Treasury Secretary O'Neill was first briefed on this matter during his first weeks in office. Let me be clear: I know that bill backward and forward. There is absolutely no good reason why it should not be law as soon as possible. There are few things that the Congress could do that would be more helpful in the fight against terrorism. The Treasury and the diplomatic and intelligence communities should begin work now behind the scenes to identify which specific foreign banks will be approached after this becomes law.

And finally, the Bush Administration and the Congress together should make sure that we are doing everything we can to prevent terrorist fundraising at home. We should make it harder for websites to solicit funds for terrorist groups online. U.S. financial institutions should be given specific guidance on how to identify transactions that raise suspicions of terrorist financing. Moreover, the Hawala underground banking system is alive and well in virtually every major U.S. city, almost completely unregulated. Law enforcement has done a poor job at getting its arms around the Hawala system and the role it plays in terrorist financing. A Treasury Department regulation that would require these underground bankers to register, and make it a Federal crime if they do not, has recently been delayed. This decision should be reversed and the FBI should aggressively begin to use this new legal tool against suspected terrorist moneymen. And the Congress should make sure that the Treasury issues regulations immediately, under authority it already has, to bring nondepository financial institutions such as casinos, securities brokers, and insurance firms into the U.S. anti-money laundering regime. These steps are required if the United States is to become in full compliance with international standards. And given the new global investigations of possible terrorist stock manipulations, it is all the more important that the securities industry operating in the United States should be required to report suspicious transactions just as those operating in Europe already do.

In all, efforts to take down terrorist groups and their supporters through military actions will likely take longer than we now appreciate; efforts take down terrorism's financial network will likely take even more time. But I have no doubt that a fully committed United States will eventually be successful in both.

The General Problem of Money Laundering

Many of the ways in which Al Qaeda moves and launders money are also used by other criminal organizations and drug cartels around the world. Other witnesses today, including Stuart E. Eizenstat, already have described the general threat the United States faces from money laundering, at home and abroad. They have outlined how money laundering feeds, furthers, and facilitates criminal and terrorist enterprises; how money laundering can corrupt the safety and soundness of individual financial institutions and can undermine the integrity of national financial systems; and how money laundering can harm U.S. national interests around the world.

I would like only to stress one aspect of this general problem for you here today, before I move on to what can be done to combat it. We cannot fully discuss money laundering today without taking into account globalization. Relatively recent advances in banking and communications technologies have allowed money to move farther and faster around the world than ever before. Distant countries are now just a mouse-click away and the bank next door may be doing business halfway around the world.

But just as this has opened great opportunities for legitimate commerce and investment, this has also opened great opportunities for criminals. The global financial system is only as strong as its weakest link, and money launderers and tax evaders have been adept at finding, exploiting, and even creating some of those weak links. So in recent years we saw the vast proliferation of money laundering havens—places where drug cartels and terrorist organizations could easily find no-questions-asked banking secrecy. Many of these places even advertised their weak bank regulatory systems and poor anti-money laundering regimes on the internet. And once dirty funds have been washed clean in these money laundering havens, they often find their way to the United States.

For instance, just a few years ago, the small South Pacific island of Nauru was an exceedingly marginal player in the global banking system. But after it decided to become a money laundering haven, things changed. A single bank registered in Nauru was the ordering party for more than $3 billion of the $7.5 billion that illegally moved from Russia through the Bank of New York. And in 1998, according to the Russian Central Bank, of the $74 billion that was transferred from Russia to offshore accounts, $70 billion went to banks registered in Nauru.

The Clinton Administration appreciated how globalization had fundamentally changed the environment for the fight against money laundering. Internationally, we worked with our G–7 allies in a cooperative, multilateral, and eventually successful effort to combat global financial abuses—money laundering, tax evasion, and rogue banking. Domestically, we issued the first-ever National Money Laundering Strategy, which represented the most comprehensive approach ever taken on this issue.

The Clinton Administration's strategy was driven by one fundamental principle: law enforcement and regulatory agencies must move forward together in order to combat money laundering effectively. We had unprecedented law enforcement victories such as Operation Casablanca against Mexican money launderers. But notwithstanding those accomplishments, the Clinton Administration also recognized that law enforcement alone would not do the job. Improved examination and regulation of the financial services industries for money laundering weaknesses had to be part of the solution. Criminals were constantly developing new and ever more sophisticated money laundering techniques; our regulations had to keep pace.

This should not be a controversial principle. Indeed, the basic necessity of regulatory efforts to complement law enforcement efforts to combat money laundering has been understood and attracted bipartisan support for years. President Nixon signed the Bank Secrecy Act that created the regulatory framework that still exists today. President Reagan made money laundering a crime in and of itself, fundamentally expanding that framework. President George H.W. Bush created the Treasury Department's Financial Crime Enforcement Network, the lead regulatory agency in the fight against money laundering. This regulatory framework has received virtually unanimous support from the U.S. law enforcement community during both Democratic and Republican Administrations. And finally, beginning with the first Bush Administration and continuing throughout the Clinton Administration, the United States worked with its international allies to establish strong international anti-money laundering standards, including mandatory customer identification and suspicious activity reporting by financial institutions. To put it bluntly, almost all of the world's well-developed financial centers have grown to accept the regulatory anti-money laundering framework that the United States first invented.

But with globalization changing the nature of the money laundering problem, the Clinton Administration also recognized that the United States could not continue to push the international community to do more without making sure that we were strengthening our own anti-money laundering regime here at home. So this, too, was a reason why the Clinton Administration held as one of its driving principles that law enforcement and regulatory improvements must go hand in hand.

Many long-time observers of the Federal bureaucracy did not think this would work. Federal law enforcement agencies have long been notorious for not cooperating with each other, much less regulatory agencies. And I do not have to tell this Committee about the historical problems the Federal financial services regulatory agencies have had learning to cooperate with each other. But the strategy did work, better then almost anyone had predicted, thanks in no small part to the skills of Stuart Eizenstat and the leadership of Lawrence Summers. U.S. international achievements were unprecedented as Mr. Eizenstat has described. New law enforcement programs were begun setting the stage for what the Bush Administration now hopes to accomplish. And important new regulatory initiatives were unveiled, such as the guidance issued to U.S. financial institutions to help protect the U.S. financial system from being abused by corrupt foreign leaders.

Unfortunately, before the horrible events of September 11, the media reports indicated that there were wide philosophical divergences within the Bush Administration on how to best address money laundering. From Attorney General John Ashcroft, we heard a commendable speech urging strong actions and proposing legislative changes that would help law enforcement. His proposals closely resembled proposals made previously by the Clinton Administration but not then acted upon by the House and Senate Judiciary Committees. Federal law enforcement agencies are also reportedly stepping up a Clinton Administration initiative to measure the effectiveness of their efforts and resources in the fight against money laundering. These law enforcement efforts should be commended. I assume that the Bush Administration will seek the personnel and funding necessary to ensure they succeed.

On the other hand, many law enforcement officials have been concerned about what they have heard from White House Economic Advisor Lawrence Lindsay for many years: his strong opposition to the legal and regulatory foundations of the U.S. anti-money laundering regime, even those regulations that are now at the heart of international anti-money laundering standards. And Treasury Secretary Paul O'Neill had also publicly questioned the value of fundamental, longstanding elements of the U.S. anti-money laundering regulatory regime. Just a few weeks ago regulatory officials were being told to reevaluate some existing anti-money laundering rules, delay some long-planned regulatory enhancements, and forego altogether some anticipated new regulatory initiatives that would further assist law enforcement and deter criminals from abusing the U.S. financial system. Treasury's cost-benefit analyses were focusing not on the horrible costs Americans bear from drug trafficking, terrorism, and other crimes that money laundering helps finance, but on the relatively minor costs U.S. banks bear from living up to internationally accepted anti-money laundering regulations. As an institution the Treasury Department seemed to be caught in the middle with one part—the one represented here today—responsible for law enforcement and wanting to take one step forward, and another part responsible for overseeing regulatory policies and wanting to take one step back. Perhaps in the wake of recent events this has all changed. If so, that will be good news. Money laundering is vital to terrorists and other criminals around the world. To fight them, we need law enforcement, diplomats, intelligence officials, and the regulators all working together, all talking from the same script.

Thank you, once again, for giving me the opportunity to share my opinions on this important subject. I look forward to answering any questions you might have.

PREPARED STATEMENT OF JONATHAN WINER

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U.S. DEPARTMENT OF STATE

SEPTEMBER 26, 2001

Mr. Chairman and distinguished Members of this Committee, I am grateful for the opportunity to testify before you on the topic of domestic and international money laundering and terrorist finance. Given our national emergency, I will focus my testimony solely on what we can do to combat terrorist finance.

Mr. Chairman, there is much we do not know about terrorist finance, and about Osama bin Laden's financial networks. However, the many shards of information we do have should concentrate our minds on the work ahead.

Before you is a chart displaying a portion of Osama bin Laden's financial network. Every one of the more than 100 boxes on this chart reflects a publicly reported financial link of bin Laden, residing in more than 20 separate countries, in the Americas, Asia, Africa, Europe, and the Middle East. Public information demonstrates terrorist funds moving through Islamic charities, travel agents, construction businesses, fisheries, import-export businesses, stock markets, chemical companies, and a number of banks. All of this is public record, and far from complete. There simply is not room on a single chart to include everything connected to bin Laden and related terrorist groups.

Some of these entities are now defunct, as a result of law enforcement and other operations. Others may have only marginal ties to terrorist finance. But the chart illustrates why responding to this multifaceted network will require sustained, tenacious cooperation by many, many governments.

The actions announced by the Bush Administration on Monday represent some potentially significant new steps. If followed by further action and international cooperation, they could begin to have consequences. But that will only be true if every component of the financial services sector internationally—not just banks and cer-

tainly not just U.S. banks or foreign banks with offices in the United States—are all subject to similar rules and obligations. An anti-terrorist finance regime must be globalized, standardized, harmonized, and it must be multisectoral to have impact. The United States cannot dictate to other countries if the consequence is that the United States does not achieve cooperation with others. The United States must integrate other national policies with our own. In financial services regulation, including dealing with terrorist finance, having varying rules for different jurisdictions, State, Federal, or international, invites trouble.

While there are many steps that should be taken, I wish to focus on seven areas for action.

First, register and regulate money services businesses, including Hawala institutions, as Congress has directed the Executive Branch to do since 1993. Our failure to complete this process has created a substantial vulnerability by which terrorists can anonymously obtain cash below the radar of our financial services regulatory system. This is the Department of the Treasury's job. It should be completed without further delay, so that nonbank money services businesses in the United States are subject to obligations at least as tough as those already required of banks. To be effective, these laws must then be vigorously enforced.

Second, increase the international pressure on countries that have yet to put into place financial regulatory and enforcement regimes that facilitate accountability and the tracing of assets. We have been doing this already, but we need to push harder and faster. Financial institutions that are based in jurisdictions that are not adequately regulated should not have unfettered access to our financial institutions, unless they can demonstrate that other adequate protections are in place. Adequate financial services regulation, supervision, and enforcement is essential not only to discourage terrorist finance, but also to protect international financial stability. The recent apparent attacks on global markets by apparent terrorist short-sellers demonstrates why being able to trace financial transactions internationally cannot be discretionary. Financial regulation and enforcement cannot stop at borders when terrorist finances do not. They must be evenly promulgated and evenly enforced.

Third, the United States needs to accelerate efforts to ensure that every nation signs up to the UN Terrorist Finance Convention, criminalizes terrorist finance, and freezes and seizes terrorist funds and assets of organizations that support terrorism.

Fourth, the United States must do more to build our terrorist finance database from existing cases. Not merely the records associated with every terrorist prosecution should be scoured but cases that abut or adjoin terrorist activity but involve other criminal activity. The Bush Administration has announced that it has now begun this task.

Fifth, the Congress should support Presidential use of economic war powers to broaden the reach of U.S. sanctions policy in true national security emergencies, as the President announced he would do on Monday. But unilateral action is inherently insufficient. We must obtain the support of key partners including the G–8 and the European Union.

Six, the United States needs to secure domestic and international action against those entities that have wittingly or unwittingly provided support to terrorism, as the President committed himself to doing in his announcement Monday. These include a number of Islamic charities, some of which are prominent and otherwise do many good works. We will need to work with other governments, including many in the Middle East, to cleanse charities that have supported terrorism unwittingly and to protect them from abuses by terrorists. Other charities, who have systematically supported terrorism, should be closed down, with their assets seized and made available to assist terrorism's victims.

Seventh, we need to strengthen international regulatory cooperation in our securities markets, and close regulatory gaps, so that no terrorist who engages in the obscene act of market manipulation in connection with an attack ever gets away with it. Countries whose bank secrecy laws, anonymous trusts and untraceable business companies are used by terrrorists need to understand there will be consequences if they do not quickly change their laws and practices to help the world trace and seize terrorist finances.

In summary, cutting off terrorist finance is like cutting off the heads of the hydra. Every time we chop off one head, more will grow back in its place. To survive, we must kill the entire beast, and that means more than a single bin Laden, or any one part of his or related terrorist finance networks. I am available to answer any questions you may have.

Steps to be considered by the United States in connection with combating terrorist finance.

Regulating Hawala and MSB Regulations

Congress directed the Administration in 1993 in the Annuzio–Wylie Act to require registration of all money services businesses. Because the Executive Branch had never regulated money services businesses, uncertainty about how best to proceed, and at what level suspicious transactions should be reported, delayed the issuance of regulations until August 1999. The Clinton Administration delayed implementation of the MSB regulations until the end of 2001. This year, the Bush Administration announced that it was delaying the MSB regulations still further, to late 2002. The Executive Branch has undertaken little focused attention on underground banking systems and money services businesses in the United States, and U.S. Government knowledge about these businesses remains limited. Actions regarding Hawala and MSB that could be considered would include:

- Requiring all MSB's to register within a very short period, rather than by late 2002. The form for MSB reporting already exists. Requiring registration immediately would transform those entities that are not registered illegal. This will inevitably include all or most Hawalas, which are unlikely to register, making them vulnerable to being shut down by law enforcement as our intelligence regarding Hawalas deepens.
- Issuing new suspicious activity reporting (SAR) requirements focused on Hawala type business to existing U.S. financial institutions. This advisory would be issued from FinCen and require enhanced scrutiny of the transactions that involve Islamic countries and their neighbors, and which meet other indicia such as: apparent commingling of funds, dollar volume of business not commensurate with stated nature of business; substantial number of transactions to locations in the Middle East not commensurate with stated nature of business. Here, reference to existing indicia applicable to Black Market Peso Exchange could be translated into Hawala indicia.
- Issuing SAR requirements to MSB's which in turn create various specifications on possible indicia of activity involving unregistered MSB's (Hawala, Hundi, chop or "flying money" houses) and as well, separately, other possible indicia of terrorist finance.
- Reducing the threshold for MSB currency reporting requirements, which would require revised regulations to be issued by Treasury/FinCen. Originally, MSB regulations would have required a low suspicious activity reporting requirement of $500. The MSB's objected, and the suspicious activity reporting requirement was raised to $2,000 for some transactions, and $5,000 for others. Given what we have learned about the use of currency by the terrorists who attacked the United States, the Administration should consider revising the suspicious reporting requirement downward for money service businesses, with exceptions as appropriate for larger institutions that have other, adequate controls. This lower reporting requirement could be amended as needed as experience is gained, or as we find ourselves beyond the current emergency. Lower reporting requirements for suspicious reports for money services businesses will likely push some funds out of MSB's entirely into the formal regulated U.S. banking system. This outcome is not necessarily a negative, as our banks, thrifts, and credit unions are certainly better regulated and more accountable than money service businesses have been to date.
- Consider adding to the existing MSB form another question which would require MSB's to specify whether they handle remittances directed to foreign countries, and if so, to specify the countries where they regularly handle such remittances. This question could provide a means of focusing which MSB's may be used by those in terrorist strongholds, for early on-site inspection.
- Immediately begin on-site inspections of registered MSB's, focusing first on those that handle remittances to the Middle East. There are two possible near term options for conducting such inspections. First, the Congress or possibly the Administration by Executive Order, could grant such authority to the examiners of the existing regulated banking industry, such as the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Federal Deposit Insurance Corporation (FDIC). The Federal Reserve could perhaps share in this obligation. These organizations might defer their regular schedule of examinations on some institutions they already regulate to review the operations of the newly registered MSB's, when necessary, on-site. Second, the Federal Government could encourage State banking officials and other regulators to examine money service businesses where such they have authority at the State level. In some States, MSB's are already theoretically regulated. Nevertheless, in many jurisdictions oversight of MSB's is irregular, inadequate, or nonexistent. On-site inspections may uncover a variety of poor practices, and could provide insights as to which institutions are being used for illicit finance to terrorists. They would also

likely provide information on MSB's which remain unregistered, and thus illicit, and thus provide leads to other criminal financial activity.
- Prosecute unregistered MSB's for failure to register.
- Seize records and assets of unregistered MSB's who fail to register.
- If deemed necessary, increase the penalties substantially for MSB failure to register or to report suspicious transactions involving currency.
- Amend existing MSB regulations to explicitly describe Hawala type institutions as included within MSB's. This could make it easier to demonstrate intentional noncompliance in prosecutions, rather than accidental failure to register.

Enhanced Scrutiny of Financial Institutions in Underregulated Jurisdictions, Especially Those in the Middle East

Banks in major money centers in the world have put into place increasingly strong constraints against the placement of illicit funds. Some banks based in the Middle East, operating globally, have equally good systems for preventing money laundering and terrorist finance. However, to date there has been little to no money laundering enforcement in the Middle East. Historical reasons abound. For example, in oil rich states, those controlling oil resources have often preferred to require less financial transparency as a means of discouraging oversight by others within their country or outside it. In some oil rich countries, income taxes do not exist, and without such taxes some governments have had less incentive to maintain accounting, auditing, and financial standards to trace funds. Endemic corruption in other countries has further impeded transparency and oversight. Currently in the Middle East, the only countries with money laundering laws of any significant scope are Cyprus, Israel, Lebanon, and the United Arab Emirates. Each of these countries has a history of money laundering and lack of financial transparency. For many years, until it cleaned up its financial services sector in response to pressure from the European Union, the United States, and others, Cyprus was one of the world's centers for terrorist finance. In the remainder of the Gulf States, as well as in Algeria, Nigeria, Sudan, Egypt, among other countries, there remains little obstruction to many forms of financial crime and little to no scrutiny that would prevent money laundering. A week before the attack on the United States, Nigeria and Egypt were already placed on the list of noncooperative countries by the Financial Action Task Force, as Israel and Lebanon had before them. The United States should consider undertaking a twin regulatory and diplomatic approach in relation to the financial institutions of those countries that place no barriers to the placement of terrorist funds. The regulatory approach would require enhanced scrutiny of financial transactions coming from these countries. A concurrent diplomatic approach would require countries without money laundering laws or their enforcement, to enact and enforce such laws or face sanctions from the United States such as enhanced scrutiny by U.S. financial institutions. Actions the United States could consider in pursuit of this objective might include:

- Asking the Financial Action Task Force to speed its consideration of sanctions against noncooperative countries such as Nigeria and Egypt and to hold emergency meetings to consider further multilateral measures to combat terrorist finance; these could include enhanced efforts against underground banking systems such as the Hawala as specified above.
- Asking Pakistan and the Gulf States to regulate Hawala without delay. Every country in the world should be asked, and as appropriate, required to register Hawalas.
- Advising countries that have failed to put money laundering laws into place of the immediate steps needed to provide tightened scrutiny and recordkeeping on financial transactions as mechanism to deal with the problem that institutions in these countries have been used wholesale for the placement of terrorist funds.
- Advising countries that do not have the capacity to discourage the placement of terrorist funds in their financial institutions of the United States intention to place enhanced scrutiny on such institutions. The United States needs to consult with these countries regarding the possible market implications of reduced access to the United States upon failure to impose measures against money laundering. Any actual enforcement decisions need to be rendered on a case-by-case basis to ensure that financial institutions that have put into place strong anti-terrorist and anti-money laundering compliance programs do not suffer from sanctions.

Building Momentum for Ceasing Terrorist Finance Internationally

While many countries have given lip service to combating terrorist finance, aggressive, coordinated, pragmatic action against this problem has been limited. To date, the United States has not undertaken adequate action to stimulate immediate

implementation of regimes to counter terrorist finance. Near term actions to build international capacity against terrorist finance could include the following:

- Asking each country that has yet to sign on to the Terrorist Finance Convention to demonstrate their opposition to terrorism by signing, ratifying, and implementing this Convention without delay.
- Seeking commitments by other countries to put into place sanctions similar to those the United States has promulgated in connection with its use of the International Emergency Economic Powers Act (IEEPA).
- Instructing U.S. executive directors at World Bank and IMF to vote against funding to states that do not sign up to Terrorist Finance Convention and to promise to implement it.
- Asking Finance Ministries of U.S. allies to similarly make action against terrorist finance a precondition to receiving support from the World Bank and similar international financial institutions. Concerted efforts by the major donor efforts to channel funds in relationship to anti-terrorist efforts and to deny funds to jurisdictions that fail to take such steps could provide substantial incentives for appropriate action against terrorist finance.
- Asking Interpol in Lyon, France to undertake immediate efforts at pooling expertise on terrorist finance and make recommendations for further global actions to combat terrorist finance; request experts at Europol in the Hague, and the World Customs Organization in Paris, do the same, as well as the G–7/G–8 process.
- Requesting the Basel Committee of Bank Supervisors to work with the International Monetary Fund and other appropriate institutions important to the development of international regulatory standards to meet and make recommendations on actions they can take to attenuate terrorist finance.

Building Intelligence From Existing Cases

In both State and Federal law enforcement, there are cases involving witnesses or defendants involved in such activities as money laundering, document fraud, credit card crime, alien smuggling, trafficking in women, drug smuggling, and other crimes who may be in a position to shed light on terrorist finance, or on underground banking, or both, if the information were to be viewed as important by the law enforcement officials investigating and prosecuting the original offense. The United States should consider asking Federal and State law enforcement agencies in jurisdictions across the Nation to review cases undertaken over the past 2 years that involved any form of possible links to terrorist finance or to Hawala system, or to underground banking. When field offices and locals report such cases, these offices could present information pertaining to such cases, such as documents, information from transcripts or depositions, and names of possible witnesses/informants to the task force at Treasury tasked with creating the integrated terrorist finance database. This additional information could be used not only to investigate terrorism, but also to track unregistered Hawala and MSB's to prosecute them for failure to register in connection with the MSB initiative discussed above. Such information may also provide the basis for asset seizures and record seizures. Such information can in turn be shared with U.S. intelligence agencies as a mechanism to better target intelligence collection on terrorist finance, which can then in turn be pushed back when appropriate to law enforcement, or else dealt with in an IEEPA or national security context, as specified below.

Broaden Information Base and Scope of Application of IEEPA

The United States has used the International Emergency Economic Powers Act (IEEPA) to the limits of what may be possible to target bin Laden and the Taliban within United States and among U.S.-based institutions. The historic effectiveness of IEEPA has been limited in two respects. First, it appears that the United States has yet to cover enough of bin Laden's businesses under IEEPA, including the instruments through which he has laundered and hidden his resources. Second, IEEPA's unilateral nature and limitation to territory of the United States for foreign institutions based here has impaired its effectiveness due to bin Laden's use of financial institutions outside the United States. Accordingly, the United States should urgently add names of specific terrorist support entities under IEEPA beyond the very short list provided to date. Also, the United States should secure the support of other countries to adopt IEEPA-like sanctions, so that terrorist finance does not simply slide from the United States to other countries. Harmonizing international efforts against terrorist finance is essential here for sanctions to be effective and fair. Given globalization, it makes little sense for financial institutions based in the United States to be subject to more stringent rules than similar institutions outside of the United States.

Require Enhanced Scrutiny of Islamic Charities

Contributing to charity is one of the five pillars of Islam. Islamic charities perform numerous good deeds every day, all over the world. A number of Islamic charities have, however, had either provided funds to terrorists or failed to prevent their funds from being diverted to terrorist use. While the vast majority of the uses of these charities are proper, ethical, and humane, a method to cleanse these charities of their terrorist connections must be found. The United States should work with foreign governments and with representatives of Islamic charities to develop programs that would provide better oversight of and controls on the uses of charitable funds within the Islamic world. The United States has found over the years the need to exercise substantial controls over the functioning of charities to prevent abuses. Other countries, and the Islamic charities themselves, need to undertake similar steps. If they do not, the United States should follow through on the commitment made by President Bush to freeze the funds of charities that have become vehicles for terrorist finance.

Enhance Cooperation Among International Securities Regulators To Trace Cases Involving Market Manipulation, Especially in Futures and Options Markets

The SEC has stated that it is investigating a possible case of market manipulation connected to the attacks on the United States, as have securities regulators of some dozen other countries. We should use any information that is gathered in these apparent cases of market manipulation by terrorism to assess the gaps within the international regulatory system that impede efficient tracing of the proceeds of such market manipulation and to close them. In addition to tracing these instances of apparent market manipulation, the Securities and Exchange Commission (SEC) and the Commodities Futures and Trading Commission (CFTC) should meet with counterparts in Japan, Hong Kong, the UK, France, Germany, Switzerland, the Netherlands, and other affected jurisdictions as soon as possible to identify any weaknesses and impediments and to take collective action to improve mutual assistance in future cases of possible market manipulation by terrorists.

PREPARED STATEMENT OF ALVIN C. JAMES, JR.

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U.S. DEPARTMENT OF THE TREASURY

SEPTEMBER 26, 2001

Thank you, Mr. Chairman, Senator Gramm, and Members of the Committee, I am very pleased to be given this opportunity to speak to you today about money laundering. My name is Alvin James and currently I serve as the leader of the Anti-Money Laundering Solutions group at Ernst & Young, LLP. However, the views I am expressing here are my own and do not necessarily reflect the views of Ernst & Young. Less than 2 years ago, I retired from Federal service after 27 years of law enforcement within the U.S. Treasury Department. Most of my public service was spent as a Special Agent with IRS Criminal Investigation Division where I specialized in international undercover money laundering investigations. I spent the last 5 years of my Federal law enforcement service at the Financial Crimes Enforcement Network (FinCEN) concluding the last 2 years as their Senior Anti-Money Laundering Policy Advisor. As this Committee knows, one of the truly unique characteristics of FinCEN is its networking capability. It serves as a sort of hub for representatives from Federal, State, and local law enforcement agencies from across the United States. It was at the FinCEN that a DEA colleague, Greg Passic, and I collaborated on developing a model that explained what is generally recognized as the largest money laundering system in the Western Hemisphere—the Colombia Black Market Peso Exchange (BMPE). That model, which was developed using law enforcement intelligence, describes how this underground financial system works and identifies vulnerable choke points. During my tenure at FinCEN I also served as the Founding Chairman of the Treasury Under Secretary for Enforcement's BMPE working group.

Mr. Chairman, most of my testimony today will center on the BMPE as a global money laundering system. However, I would like to begin with a few remarks to highlight the use of the BMPE and other underground financial systems by international terrorists. Terrorists do not usually need to launder money because terrorism, unlike other criminal activity such as narcotics trafficking, does not generate money. However, terrorists do need to move funds covertly. There are major similarities among all underground financial systems—also called parallel payment sys-

tems—including the BMPE, Hawala, and the Chinese Underground Banking or Chit system. The most significant of these similarities is their ability to facilitate anonymous international transfers of money. This feature makes these systems attractive to terrorist groups. We know that they use these systems to covertly move the money they need to support their activities.

In light of recent events I would caution those who attempt to concentrate U.S. law enforcement resources on terrorist money laundering. A separate and distinct system of laundering or hiding money for terrorist activity does not exist. They use those systems of transferring and hiding funds that are most readily available, discreet, and cheap. The longer we studied BMPE the more evident it became that this system of money laundering was used for not only a multitude of criminal activities but also legitimate commerce, capital flight, tax evasion, and the simple transfer of assets. Recent developments also indicate that BMPE brokers have teamed up increasingly with partners in the Middle East. In addition to typical placement in the United States, drug dollars are now being deposited in Lebanon, Israel, and Palestine. Persons responsible for the first World Trade Center bombing also received funds from a BMPE broker working out of Venezuela. I feel that by fully identifying those individuals, businesses, and banks handling BMPE transactions in the Middle East, we have an opportunity to flag transactions supporting all types of illegal activity including terrorism. Recent U.S. drug money investigations have revealed laundering through businesses in the Middle East. Some of those individuals are involved in terrorist circles. The knowledge that U.S. investigators gained by tracing funds generated by the BMPE cells operating in the United States will prove tremendously valuable in developing a workable game plan to pursue terrorist finances. The BMPE system is funded almost exclusively by drug money while the other systems that I mentioned are often funded by parallel transactions of legitimate trade. Thus for the BMPE, terrorism is yet another compelling reason to disrupt and ultimately dismantle this purely illegitimate system. In addition, we must either bring the other systems under close scrutiny and regulation within the world's legitimate financial community or dismantle them as well.

The remainder of my testimony will focus on the BMPE as a global money laundering system and the danger it poses to our country, as well as the challenges it presents to our law enforcement, business, and financial communities. The BMPE presents numerous dangers to our country. Most directly this system facilitates the Colombian drug trade by allowing the Colombian drug wholesaler a relatively safe means to annually convert $5 billion generated by the sale of drugs in the United States to pesos in Colombia. In turn the BMPE makes these billions of dollars available as a commodity for sale outside our regulated financial system. There they are ready for those who need a discreet source of funds that is difficult to trace. As I mentioned earlier, U.S. law enforcement has evidence that some of these funds have been purchased in the past by middle-eastern terrorists including those who bombed the World Trade Center in 1993. The links to possible terrorist funding through the BMPE are even stronger today since, as we will see, the initial placement of drug dollars into U.S. financial institutions now begins in nations throughout the world.

The funds are also available to Colombian importers who wish to hide their purchases of U.S. trade goods that they smuggle into their country. This smuggling, totally funded by the BMPE, is so prevalent that the Colombian government is unable to tax the sales of almost 50 percent of retail goods sold in Colombia. This lack of legitimate revenue destabilizes the Colombian government and hinders its ability to fight the narcotics suppliers on their home turf. In addition, Colombia's business community has been destabilized because those businesses that choose to operate legitimately find it almost impossible to compete with those who sell smuggled goods. The Colombian drug traffickers are able to use their billions to fund the Colombian rebels who stand between cocaine and heroin production facilities and the governments of the United States and Colombia who are trying to eliminate the Colombian narcotics business. Finally, the rebels use this drug money not only to fund their military objectives, but also to finance acts of terrorism aimed at promoting their cause and hindering their enemies in Colombia.

U.S. law enforcement has the authority, the ability, and the knowledge to severely disrupt and ultimately dismantle the BMPE. By so doing it would force the drug traffickers and money launderers to use laundering tactics more vulnerable to law enforcement. There is considerable evidence that law enforcement can impact the BMPE system. Vigorous enforcement of the Bank Secrecy Act (BSA) and other anti-money laundering laws have caused the Colombian drug trafficker to be willing to sell his share of the drug proceeds to the BMPE peso broker for discounts in excess of 30 percent rather than take the risk of either moving the funds or laundering them himself in the United States. The application of the Geographic Targeting Order to the money service businesses in New York City had a dramatic, although

short-lived, impact on the ability of the BMPE system to place its drug currency and then move its funds. Undercover operations designed to infiltrate the BMPE system have been responsible for a shift away from currency placement in the United States to placement in foreign locations. However, in spite of these and the numerous other activities that have made up 20 years of law enforcement efforts in this area, I must also note that the BMPE still remains the primary vehicle used by Colombian traffickers to launder their drug proceeds. Money laundering systems are like a balloon. If you squeeze them in one place, they just get bigger somewhere else. The main challenge faced by U.S. law enforcement is to coordinate their activities in a systemic approach and pop the balloon.

It should be noted that many of our law enforcement efforts have been more notable for the degree to which they disrupted the system than for the law violators they brought to trial. However, the BMPE is a financial system and as such it is not dependant on any one individual or group of individuals. Therefore, a plan that is directed entirely toward arresting and prosecuting the drug traffickers and the money launderers who use this system will not by itself stop the system. The second major challenge for law enforcement is to place the goal of disruption and dismantlement of the system on an equal footing with prosecuting the individuals who use it. Of course, the Congress and the Administration are also challenged to measure their successes accordingly.

The U.S. financial institutions and their regulators face a different challenge. The financial community has done a pretty good job of implementing our anti-money laundering laws. Colombian drug traffickers have virtually stopped laundering their funds in the United States. They pay a substantial fee to the BMPE peso brokers to take this high-risk activity off their hands. The funds the brokers cannot handle, the traffickers smuggle out of the country, but sale to the BMPE is their preferred method. While the banks have not kept the drug money out of their institutions all together, they deserve some of the credit for the current shift of drug currency placement from the United States to foreign locations. However, therein also lies their challenge. A large portion of the drug currency that is being smuggled offshore is still being placed in the U.S. financial system through the international correspondent banking relationships between the respective foreign banks and their U.S. correspondent banks. While the front door of our U.S. financial institutions closes ever more tightly to those who would bring in ill-gotten gains, the back door of international correspondent banking gapes open. The challenge to U.S. financial institutions and their regulators is to close the unguarded back door.

Before I discuss these topics in more depth, let me first briefly describe the system. The Colombian Black Market Peso Exchange is the most egregious example of an underground financial system used to launder dirty money. We believe that as much as $5 billion dollars in Colombian drug proceeds (or about half of U.S. wholesale drug proceeds) are laundered per year through this system. There are other underground financial systems or parallel banking systems that operate in much the same way throughout the world, such as the Hawala system in the Middle East or the Chinese Underground Banking or Chit system in Asia and the Pacific Rim. However, the BMPE system is the only one that is funded almost exclusively with illegal proceeds, namely drug dollars.

The sale of drugs in the United States generates currency. No one uses his or her checkbook or his or her credit card to buy drugs—at, least not yet. Each tier of the drug sales and distribution organizations in the United States takes their cut of the cash and passes the remainder up the line. Finally the Colombian suppliers' wholesale share is amassed in secret stash houses in ports of drug entry such as New York City, Miami, Houston, Chicago, and Los Angeles. At this point, the Colombian trafficker has a serious problem. Cash is not only heavier and bulkier than the narcotics he imported but also a more precious commodity. Drug manufacture and supply operations in Colombia operate at about 30 percent of capacity. Therefore, if a shipment of drugs is seized, it is easily replaced, but if the money is lost it is irreplaceable. The Colombian drug trafficker's dilemma is to get the value of cash home to Colombia in pesos without detection by United States or Colombian authorities.

The BMPE peso brokers, always in need of a source of U.S. dollars, were a ready-made solution. The BMPE has existed since the late 1960's as a means for Colombian importers to pay for U.S. trade goods with dollars while avoiding tariffs enforced by the Colombian central banking system. The peso brokers provided the additional service of placing the dollars in the U.S. financial system and transferring them directly to the U.S. exporter on behalf of the Colombian importer. In the beginning peso brokers used Colombian exporters of goods to the United States, such as cut flowers and coffee, as their source of dollars. However, the Colombian drug traffickers offered the peso broker a deal he could not refuse. The drug dollars were offered at a substantial discount, as much as 30 percent, to compensate the

peso broker for the fact that the dollars he was buying were in the form of currency and carried considerable risk. The peso brokers began to alter the way they did business in order to place the drug currency in the U.S. financial system and to meet the needs of both sets of customers, the Colombian drug trafficker, and the Colombian importer. Once the process was in place to handle the dirty money, there was little reason to go back to the old ways and pay full price for the dollars. The Colombian traffickers could provide a virtually unlimited supply of funds. If fact the annual wholesale Colombian drug proceeds are estimated to be between $8 and $12 billion. There is only enough demand for dollars through the BMPE to accommodate about half that amount. The end result is that the BMPE became almost wholly funded with drug dollars.

As stated earlier, the greatest challenge for law enforcement is the need for a coordinated approach. We have made strides in several areas of BMPE enforcement, but as yet we have not combined these successes in a coordinated attack on the BMPE system as a whole. I firmly believe that our only hope to destroy this system lies in the use of all our tools in a calculated effort to force drug dollars out of the relative safety of the BMPE and into an arena that offers less security to the drug trafficker and more susceptibility to law enforcement.

The substantially overlapping money laundering jurisdictions at the Federal, State, and local levels is fundamentally responsible for the current lack of coordination in BMPE strategy. Most of our law enforcement agencies in this country have some form of money laundering jurisdiction. At first glance this looks like optimum coverage for money laundering enforcement. Let me also say at this point that there can be no doubt of the will of each and every one of these agencies to do their utmost to enforce money laundering laws. However, especially at the Federal level, law enforcement administration is a competitive endeavor. There are only so many law enforcement dollars in the Federal budget. Competition for those funds between the agencies is fierce. This problem is exacerbated by the Federal asset forfeiture funds that return a proportional share of seized and forfeited funds back to the respective seizing law enforcement agencies. Asset forfeiture is a major part of most money laundering prosecutions. The ability to return seized assets to individual agency budgets only serves to fan the fires of competition in money laundering enforcement. Our efforts to include BMPE investigations in the National Money Laundering Strategy have not really addressed this problem.

These competitive pressures also work against cooperative investigations and sharing of information. True sharing of information and full coordination of investigations is vital if we hope to pop the money laundering balloon. We must get past the ugly questions of who gets credit for the prosecution or the seized assets. The BMPE operates on a truly global basis and its only limitation is safety and profitability for its users. It thrives in an environment where its adversary is hindered by a new set of rules each time a boundary is crossed, whether the boundary is between agencies, states, or countries. We cannot afford to allow interagency competition to continue in this already complex enforcement environment.

The second challenge for law enforcement centers on our measure of success in this area. Our primary focus now is on the prosecution of individuals and the seizure and forfeiture of their assets. Of course, this traditional approach remains an important leg of any enforcement initiative. However, the BMPE is not dependant on any individual or group of individuals to continue its operation. It operates on the demand for dollars available outside the traditional banking system. As long as those dollars are available and can be supplied safely to the users, the system will continue to operate. Further the system is large enough and the profits are substantial enough to entice replacements in spite of the risk of arrest and prosecution. Therefore, individual cases and prosecutions should not be our sole goal or the sole measure of our efforts in this area. Disruption of the system should be an equally acceptable goal of law enforcement action. Once again the challenge here is not only to pursue success along both lines of measurement, but also to do so in a coordinated fashion so as to keep up the pressure on all fronts at one time.

Earlier I spoke about the Bank Secrecy Act (BSA) and its administration by bank regulators and how our financial institutions have had a profoundly negative impact on the ability of narcotics traffickers to move their illicit funds through our financial system. When Colombian narcotics began to arrive on the U.S. drug scene in mass, the banks in the major entry ports, especially Miami, were literally awash in drug currency. At the outset drug traffickers were able to bring suitcases of currency into local banks and wire transfer it wherever they wanted. Law enforcement and bank regulators raised the alarm and the enforcement of the currency reporting provisions of the BSA came into effect. The effectiveness of that statute and the resolve of the banking community, as well as the enforcement and regulatory arms of the Government to keep dirty money out of their institutions has severely dampened the

ability of money launderers to use our financial systems. Unfortunately, it has not been able to keep the dirty money out altogether.

Drug sales generate huge revenues and huge profits. The pressure generated by the need to move and launder these funds is immense. The BMPE is the primary vehicle used by Colombian drug traffickers to counter the BSA. In fact the discount offered by Colombian drug wholesalers to the dollar peso brokers is one measure of the effectiveness of the BSA. The drug traffickers would rather sell their profits in U.S. currency at a discount of up to 30 percent than take the risk of laundering the dollars themselves. In so doing they pass the money laundering enforcement risk to the dollar peso broker. At first the peso broker was able to place the drug currency into the U.S. financial institutions by using transactions structured below the Government's and the bank's detection thresholds. But the pressure that drove the trafficker to sell his funds at a substantial discount has mounted on the peso broker as well.

The broker has countered the pressure against currency placement in the United States through the use of international correspondent banking. The susceptibility of correspondent banking relationships to money laundering has been highlighted in a report compiled by the Permanent Subcommittee on Investigations. Senate bill 1371, sponsored by Senator Carl Levin, also addresses these weaknesses. The following is an example of money laundering through correspondent banking that relates directly to the BMPE.

The peso brokers have begun to smuggle large amounts of currency to nations whose banks have correspondent relationships with major U.S. banks. The nations of choice are those with either lax money laundering laws or lax enforcement of those laws. In return the foreign bank may sell a U.S. dollar check drawn on the foreign bank's U.S. correspondent account. These dollar delineated bank checks carry the same weight as fully negotiable cashiers checks in Latin American markets. Therefore, the checks are readily sold to the Colombian importer as dollar based financial instruments that are readily acceptable in these Latin markets. The brokers often go so far as to have the checks drafted with the name of the respective payee specified by the Colombian importer. The foreign bank may also accept the currency deposit and then order a wire transfer from their correspondent account to the account designated by the depositor.

The foreign bank is left with a large amount of U.S. currency and no bank wants to keep excess currency on hand. Since they do not have an account with the Federal Reserve, they get rid of the excess by sending a deposit of currency to their correspondent bank. This replaces the funds withdrawn by the check sold and eliminates the excess currency problem. The effect of this transaction is that we are back to suitcase deposits of U.S. drug currency into our financial system. The only difference is that the dollar peso broker uses the correspondent back door to the bank rather than the front door in Miami or New York.

The BSA has worked in that we have begun to force the dollar peso brokers to move their money offshore rather than structure the deposits here in the United States. The challenge presented to banking community and their regulators is to keep up the pressure in the United States while also keeping drug currency placement out of their correspondent institutions as well. Law enforcement sources have noted an increase in correspondent BMPE activity in Haiti, Guatemala, the Dominican Republic, Venezuela, Israel, Lebanon, Palestine, and Australia. When one views this list it is easy to see that these dollars can be made available to individuals with much more heinous purposes in mind than smuggling duty-free refrigerators into Colombia. The BMPE is a global problem calling for global coordination. Given the recent terrorist acts, it is even more imperative that we force these billions of dollars out of this system that can make them so easily available on a truly global basis to anyone with a need for covert funds.

In conclusion, I would like to restate that our Government has the ability, the authority, and the knowledge to take action now against the BMPE. The question is how do we bring our forces to bear in such a way that the BMPE will be dismantled? I believe the answer lies in eliminating the problems brought on by fragmented anti-money laundering jurisdiction. I suggest that this can be accomplished by the creation of a special task force at the highest possible level, which would have the charge to coordinate and direct our law enforcement efforts against the BMPE and other underground financial systems. The most important first step for this task force is to create a single repository for law enforcement money laundering intelligence. This repository must include a method to retrieve even the most sensitive law enforcement information on a real time basis. If we ever hope to truly dismantle these systems we must put this most valuable recourse in the hands of a task force that is responsible for the big picture. In addition, once they have this information, they must have the authority to disseminate it, as they deem appro-

priate for their mission. The task force should also have the power to take action on their own or direct the efforts of other law enforcement operations working along these lines. Law enforcement has seen the need for this type of combined effort, but to date they have been unable to achieve the desired level of cooperation. I believe a high level task force will achieve the sought after results.

That concludes my testimony.

Thank you, Mr. Chairman.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CARPER FROM JIMMY GURULÉ

Q.1. It is my understanding that the U.S. Customs Service lacks the clear authority to inspect mail and other postal items leaving the United States. Given that money laundering activity and the exportation of other contraband could be facilitated by the use of the U.S. mail, what are Treasury and the Administration doing to close this loophole, and grant Customs the authority to inspect outbound postal items?

A.1. Outbound international mail has been treated as exempt from inspection, because of Postal Service insistence that its laws preclude Customs border search of such mail. This has created the possibility that outbound mail is being used to facilitate major violations of U.S. law. The violations can range from the unreported exportation of currency and other monetary instruments to strategic merchandise and intellectual property rights infringement. U.S. mail shipments are the only shipments leaving the country, other than diplomatic pouches, that are not subject to Customs' examination.

U.S. Postal Services' and Customs' legal positions with respect to this issue are exhaustively documented. Customs asserts authority to search all mail leaving the country, under 31 U.S.C. 5317(b), which authorizes Customs officers to stop and search items including "envelopes" entering and leaving the country without a warrant. The Postal Service maintains that 39 U.S.C. 3623(d), which requires the Postal Service to maintain at least one class of mail of domestic origin that is sealed against inspection without a search warrant, directly conflicts with the authority in 31 U.S.C. 5317.

U.S. Customs Service has intensified their efforts to obtain outbound search authority. There has been movement on Capitol Hill during this session to enact legislation granting outbound search authority of U.S. mail by U.S. Customs.

Currently, Customs has internal procedures and policies in place on the search of outbound mail.

Q.2. I understand that U.S. Customs does all of its enforcement and security targeting on international shipments arriving in the United States by running computer checks against the sender, the recipient, the description of the contents, the country of origin, etc. I also understand that some international carriers provide this information electronically to Customs in advance of shipment arrival, while some do not, including the U.S. Postal Service.

a). Can Customs get accurate content information from the Postal Service?

b). If not, what impact does this have on Customs' ability to inspect and screen items entering the United States via the U.S. Postal Service?

A.2.a. At this time, the Postal Service does not provide content information to Customs either electronically or in hard copy format. Rather, the content information is provided on a Customs declaration attached to each item, which is prepared by the individuals sending the parcel, not by the Postal Service. Customs personnel

must manually review these items and declarations to determine which will be inspected, which greatly slows the process.

The Postal Service is dependent upon the electronic capabilities of the originating countries, which vary dramatically. In addition, the customer base for international mail is overwhelmingly individual to individual, while Express Consignment Operators carry primarily business to business, which is more easily electronically manifested.

The U.S. Customs Service has the ability to perform enforcement and security checks on inbound international shipments. Advance information pertaining to some cargo shipments is provided electronically by some international carriers. This information includes, but is not limited to, the name and address of the foreign shipper and consignee, a description of the items contained in the shipment, the country of origin, and the value. In the Express Consignment Operator environment, advance information is provided to Customs electronically, as well as hard copy computer printouts. With the Postal Service, enforcement and security checks must be performed based on a manual review of Customs' declarations in real time.

A.2.b. The current process requires Customs' personnel to manually review each parcel and accompanying declaration, delaying facilitation. An advantage to advance information is that it allows Customs to perform their inbound inspections more efficiently. Most Express Consignment Operators present their manifests to Customs while the conveyance is en route to the United States. Customs reviews the manifest data to identify those shipments that are to be examined.

Ideally, Customs would like advance information on all shipments. This serves the interests of both Customs and the Postal Service, enabling both agencies to utilize its limited resources to conduct searches and clearances on those requiring immediate attention, without delaying those items not needing review.

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 18, 2001

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Co-Chairman
Senate Drug Caucus
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Mr. Co-Chairman:

We are writing in response to your recent letter to Attorney General Ashcroft concerning S. 1371, the Money Laundering Abatement Act. We appreciate your continued commitment to addressing the serious problem of money laundering in this country and abroad, as demonstrated by your introduction of S. 1371. As you indicated in your letter, the Attorney General has expressed the need to strengthen our money laundering laws. In his August 7th speech, the Attorney General stated:

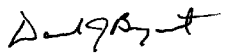
> The Department of Justice has identified several areas in which our money laundering laws need to be updated to more effectively combat organized crime and to better serve the cause of justice.

We were very pleased to see that one of the areas highlighted in the Attorney General's speech – the need to add to the list of foreign offenses that constitute predicate crimes for money laundering prosecutions – is included in S. 1371. This and other provisions in your bill would greatly improve our money laundering laws.

As the Attorney General also indicated in his speech, the Department of Justice has been developing its own proposal to update our money laundering laws and we hope to provide Congress with our own recommendations in the near future. We look forward to working with you in pursuing our mutual goal of strengthening and modernizing our money laundering laws to meet the challenges of this new century.

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

U. S. Department of Justice
Drug Enforcement Administration

Washington, D.C. 20537

SEP 20 2001

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for requesting our views on S. 1371, the "Money Laundering Abatement Act," which is designed to combat money laundering and protect the United States financial system by strengthening safeguards in private and correspondent banking.

We greatly appreciate your initiative in this important area and believe that several provisions of S. 1371 would be of particular benefit to DEA's efforts to combat money laundering. In addition, as Assistant Attorney General Bryant recently indicated in his letter to you, the Administration has been working for some time on a package of additional suggested money laundering amendments, which we hope to be able to share with you shortly.

We look forward to working with you to strengthen and improve the Nation's money laundering laws. If I can be of any further assistance, please do not hesitate to contact me. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Asa Hutchinson
Administrator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

September 7, 2001

Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to comment on S. 1371, the Money Laundering Abatement Act. The Federal Deposit Insurance Corporation shares your concern about the damage to the U.S. financial system that may result from money laundering activities and we congratulate you for your leadership in this area.

As deposit insurer, the FDIC is vitally interested in preventing insured depository institutions from being used as conduits for funds derived from illegal activity. As you may know, in January of this year, the FDIC, together with the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of State, issued Guidance On Enhanced Scrutiny For Transactions That May Involve The Proceeds Of Official Corruption. The FDIC is also an active participant in other working groups that seek more effective ways to combat money laundering.

S. 1371 is an important step in trying to preclude foreign entities from laundering money through U.S. financial institutions. S. 1371 would, in several ways, require U.S. financial institutions to identify foreign parties who open or maintain accounts with U.S. banks, such as through correspondent accounts or private banking accounts. The bill would also prohibit customers from having direct access to concentration accounts, and make it a crime to falsify the identity of a participant in a transaction with or through U.S. financial institutions. Correspondent and concentration accounts have the potential to be misused so as to facilitate money laundering, and the bill appropriately addresses these concerns.

One point we would like to raise is in relation to Section 3 of the bill. Section 3 provides for consultation between the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, both in regard to devising measures to combat money laundering and defining terms relating to anti-money laundering measures. The FDIC believes that such consultation requirements should include the FDIC as well as the other Federal banking agencies.

Thank you again for the opportunity to provide our views on S. 1371. Please do not hesitate to contact Alice Goodman, Director of our Office of Legislative Affairs, at (202) 898-8730 if we can be of any further assistance.

Sincerely,

Donald E. Powell
Chairman

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

WILLIAM J. RICHARDS
Deputy Attorney General

P.O. BOX 30212
LANSING, MICHIGAN 48909

JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

September 25, 2001

Honorable Carl Levin
United States Senator
459 Russell Senate Office Bldg.
Washington, DC 20510

Honorable Chuck Grassley
United States Senator
135 Hart Senate Office Bldg.
Washington, DC 20510-1501

Dear Senators Levin and Grassley:

I write to express my strong support for S1371, the Money Laundering Abatement Act. This is a prevalent problem that has allowed the criminal element to secrete the proceeds of criminal activity and to generate funds needed to facilitate and underwrite organized crime.

The bill will make it harder for foreign criminals to use United States banks to launder the proceeds of their illegal activity and allow investigators to detect, prevent, and prosecute money laundering. In particular, the bill strengthens existing anti-money laundering laws by adding foreign corruption offenses, barring U.S. banks from providing banking services to foreign shell banks, requiring U.S. banks to conduct enhanced due diligence, and making foreign bank depositors' funds in U.S. correspondence banks subject to the same forfeiture rules that apply to funds in other U.S. bank accounts.

Recent events highlighting the activities of foreign terrorists have demonstrated the necessity for this law. My colleagues in the U.S. Justice Department indicate that this and similar laws are essential if we are to succeed in our fight against organized crime, drug dealers, and terrorism. This bill is the result of lengthy hearings and congressional fact-finding that concluded that the regulations set forth in the bill are needed. The bill has my support, and I would urge its passage as soon as possible.

Sincerely yours,

JENNIFER M. GRANHOLM
Attorney General

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

MAIN PHONE : (602) 542-5025
FACSIMILE : (602) 542-4085

August 2, 2001

The Honorable Carl Levin
SR-269, Russell Senate Office Building
US Senate
Washington, DC 20510

The Honorable Chuck Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510-1501

Dear Senators Levin and Grassley:

I write to express my views on the Money Laundering Abatement Act you are planning to introduce soon. This bill would provide much needed relief from some of the most pressing problems in money laundering enforcement in the international arena. The burdens it places on the financial institutions are well considered, closely tailored to the problems, and reasonable in light of the public benefits involved.

The bill focuses on the structural arrangements that allow major money launderers to operate. These include the use of shell banks and foreign accounts, abuse of private banking, evasion of law enforcement efforts to acquire necessary records, and of safe foreign havens for criminal proceeds. The approach is very encouraging, because efforts to limit the abuse of these international money laundering tools and techniques must come from Congress rather than the state legislatures, and because such measures attack money laundering at a deeper and more lasting level than simpler measures.

The focus on structural matters means that this bill's effects on cases actually prosecuted by state attorneys general are a relatively small part of the substantial effects its passage would have on money laundering as a whole. Nevertheless, its effects on money laundering affecting victims of crime and illegal drug trafficking would be dramatic. I will use two examples from my Office's present money laundering efforts.

My Office initiated a program to combat so-called "prime bank fraud" in 1996, and continues to focus on these cases. Some years ago, the International Chamber of Commerce estimated that over $10 million per day is invested in this wholly fraudulent investment scam. The "PBI" business has grown substantially since then. To date, my Office has recovered over $46 million in these cases, directly and in concert with U.S. Attorneys and SEC. Prime bank fraudsters rely heavily on the money movement and concealment techniques that this bill would address, particularly foreign bank accounts, shell banks, accounts in false identities, movement of funds through "concentration" accounts, and impunity from efforts to repatriate stolen funds. One of our targets was sentenced recently in federal court to over eight years in prison and ordered to make restitution of over $9 million, but without the tools provided in this bill, there is little hope that the victims will ever see anything that was not seized for forfeiture in the early stages of the investigation.

My Office is now engaged in a program to control the laundering of funds through the money transmitters in Arizona, as part of the much larger problem of illegal money movement to and through the Southwest border region. This mechanism is a major facilitator of the drug smuggling operations. Foreign bank accounts and correspondence accounts, immunity from U.S. forfeitures, and false ownership are significant barriers to successful control of money laundering in the Southwest.

Your bill is an example of the immense value of institutions like the Permanent Subcommittee of Investigations, because this type of bill requires a deeper understanding of the issues that comes from long term inquiries by professional staff. We who are involved in state level money laundering control efforts should be particularly supportive of such long term strategies because they are most important to the quality of life of our citizens.

I commend your efforts for introducing this important legislation and will assist you in anyway I can to gain its passage.

Yours very truly,

Janet Napolitano
Attorney General

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698

THOMAS F. REILLY
ATTORNEY GENERAL

(617) 727-2200

August 1, 2001

The Honorable Carl Levin
459 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

This letter is to express my strong support for the Money Laundering Abatement Act. As I am sure you are aware, money laundering has become increasingly prevalent in recent years. As law enforcement has worked to curb the illegal laundering of funds, the criminal element has become more sophisticated and focused in its efforts to evade the grasp of the law. Specifically, money launderers are taking advantage of foreign shell banks, offshore banks, and banks in jurisdictions with weak money laundering controls to hide their ill-gotten gains.

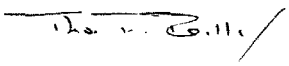
At this juncture, there is a serious need for modernizing and refining the federal money laundering statutes to thwart the efforts of the criminal element and close the loopholes they use to their advantage. The money laundering business has taken advantage of its ability under current law to use foreign banks, largely without negative consequences. This is an issue that must be addressed on the federal level because of its international element. Moreover, in the Commonwealth of Massachusetts, there is no state level money laundering legislation. As a result, we rely on a federal/state law enforcement partnership to eradicate money laundering. The only hope for eliminating international money laundering ties within our state lies with the United States Congress. I encourage the Congress to take the necessary steps to assist state and federal law enforcement in their continuing efforts to control the illegal laundering of funds.

The Money Laundering Abatement Act is an important step in that process. Among the many useful provisions, the Act prohibits United States banks from providing services to foreign shell banks that have no physical presence in any country, and as a result, are easily used in the laundering of illegal funds. In addition, the legislation provides for enhanced due diligence procedures by United States banks which will at the very least, help detect money laundering, and will also undoubtedly deter it in the first place. Further, the Act makes it a federal crime to

knowingly falsify a bank customer's true identity, which will make tracing of funds immeasurably easier. In addition to these few provisions that I have mentioned, the Act contains many other measures that will greatly aid law enforcement in its mission.

I strongly support your efforts to assist state and federal law enforcement in their money laundering control efforts through the Money Laundering Abatement Act. The legislation strengthens the existing anti-money laundering structure and provides new tools that will assist law enforcement in keeping pace with the modern money laundering schemes. Good luck in your efforts to pass this vital legislation.

Sincerely,



Thomas F. Reilly

TEXT: STATE DEPARTMENT ISSUES FACTSHEET ON BIN LADIN
(Sponsor of Islamic extremist activities described)

August 14, 1996

Washington -- The State Department issued the following factsheet on Usama bin Muhammad bin Awad Bin Ladin on August 14, calling him a financier of Islamic extremist activities.

(begin text)

Usama Bin Ladin: Islamic Extremist Financier

Usama bin Muhammad bin Awad Bin Ladin is one of the most significant financial sponsors of Islamic extremist activities in the world today. One of some 20 sons of wealthy Saudi construction magnate Muhammad Bin Ladin -- founder of the Kingdom's Bin Ladin Group business empire -- Usama joined the Afghan resistance movement following the 26 December 1979 Soviet invasion of Afghanistan. "I was enraged and went there at once," he claimed in a 1993 interview. "I arrived within days, before the end of 1979."

Bin Ladin gained prominence during the Afghan war for his role in financing the recruitment, transportation, and training of Arab nationals who volunteered to fight alongside the Afghan mujahedin. By 1985, Bin Ladin had drawn on his family's wealth, plus donations received from sympathetic merchant families in the Gulf region, to organize the Islamic Salvation Foundation, or al-Qaida, for this purpose.

-- A network of al-Qaida recruitment centers and guesthouses in Egypt, Saudi Arabia, and Pakistan has enlisted and sheltered thousands of Arab recruits. This network remains active.

-- Working in conjunction with extremist groups like the Egyptian al-Gama'at al-Islamiyyah, also know as the Islamic Group, al-Qaida organized and funded camps in Afghanistan and Pakistan that provided new recruits paramilitary training in preparation for the fighting in Afghanistan.

-- Under al-Qaida auspices, Bin Ladin imported bulldozers and other heavy equipment to cut roads, tunnels, hospitals, and storage depots through Afghanistan's~~ mountainous terrain to move and shelter fighters and supplies.

After the Soviets withdrew from Afghanistan in 1989, Bin Ladin returned to work in the family's Jeddah-based construction business. However, he continued to support militant Islamic groups that had begun targeting moderate Islamic governments in the region. Saudi officials held Bin Ladin's passport during 1989-1991 in a bid to prevent him from solidifying contacts with extremists whom he had befriended during the Afghan war.

Bin Ladin relocated to Sudan in 1991, where he was welcomed by National Islamic Front (NIF) leader Hasan al-Turabi. In a 1994 interview, Bin Ladin claimed to have surveyed business and agricultural investment opportunities in Sudan as early as 1983. He embarked on several business ventures in Sudan in 1990, which began to thrive following his move to Kh~artoum. Bin Ladin also formed symbiotic business relationships with wealthy NIF members by undertaking civil infrastructure development projects on the re~gime's behalf:

-- Bin Ladin's company, Al-Hijrah for Construction and Development, Ltd., built the Tahaddi (challenge) road linking Khartoum with Port Sudan, as well as a modern international airport near Port Sudan.

-- Bin Ladin's import-export firm, Wadi al-Aqiq Company, Ltd., in conjunction with his Taba Investment Company, Ltd., secured a near monopoly over Sudan's major agricultural exports of gum, corn, sunflower, and sesame products in cooperation with prominent NIF members. At the same time, Bin Ladin's Al-Themar al-Mubarak~ah Agriculture Company, Ltd. grew to encompass large tracts of land near Khartoum and in eastern Sudan.

-- Bin Ladin and wealthy NIF members capitalized Al-Shamal Islamic Bank in Khartoum. Bin Ladin invested $50 million in the bank.

Bin Ladin's work force grew to include militant Afghan war veterans seeking to avoid a return to their own countries, where many stood accused of subversive and terrorist activities. In May 1993, for example, Bin Ladin financed the travel of 300 to 480 Afghan war veterans to Sudan after Islamabad launched a crackdown against extremists lingering in Pakistan. In addition to safehaven in Sudan, Bin Ladin has provided financial support to militants actively opposed to moderate Islamic governments and the West:

-- Islamic extremists who perpetrated the December 1992 attempted bombings against some 100 U.S. servicemen in Aden (billeted there to support U.N. relief operations in Somalia) claimed that Bin Ladin financed their group.

-- A joint Egyptian-Saudi investigation revealed in May 1993 that Bin Ladin business interests helped funnel money to Egyptian extremists, who used the cash to buy unspecified equipment, printing presses, and weapons.

-- By January 1994, Bin Ladin had begun financing at least three terrorist training camps in northern Sudan (camp residents included Egyptian, Algerian, Tunisian and Palestinian extremists) in cooperation with the NIF. Bin Ladin's Al-Hijrah for Construction and Development works directly with Sudanese military officials to transport and provision terrorists training in such camps.

-- Pakistani investigators have said that Ramzi Ahmed Yousef, the alleged mastermind of the February 1993 World Trade Center bombing, resided at the Bin Ladin-funded Bayt Ashuhada (house of martyrs) guesthouse in Peshawar during most of the three years before his apprehension in February 1995.

-- A leading member of the Egyptian extremist group al-Jihad claimed in a July 1995 interview that Bin Ladin helped fund the group and was at times witting of specific terrorist operations mounted by the group against Egyptian interests.

-- Bin Ladin remains the key financier behind the "Kunar' camp in Afghanistan, which provides terrorist training to al-Jihad and al~-Gama'at al-~Islamiyyah members, according to suspect terrorists captured recently by Egyptian authorities.

Bin Ladin's support for extremist causes continues despite criticisms from regional governments and his family. Algeria, Egypt, and Yemen have accused Bin Ladin of financing militant Islamic groups on their soil (Yemen reportedly sought INTERPOL's assistance to apprehend Bin Ladin during 1994). In February 1994, Riyadh revoked Bin Ladin's Saudi citizenship for behavior that "contradicts the Kingdom's interests and risks harming its relations with fraternal countries." The move prompted Bin Ladin to form the Advisory and Reformation Committee, a London-based dissident organization that by July 1995 had issued over 350 pamphlets critical of the Saudi Government. Bin Ladin has not responded to condemnation leveled against him in March 1994 by his eldest brother, Bakr Bin Ladin, who expressed, through the Saudi media, his family's "regret, denunciation, and condemnation" of Bin Ladin's extremist activities.

Corporate

AlShamal Islamic Bank

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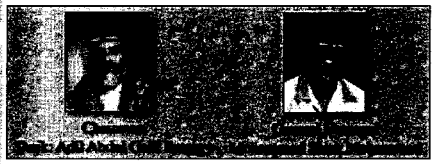

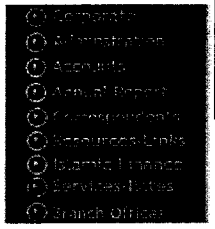

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In the name of Allah, The Compassionate, the Merciful
Al Shamal Islamic Bank

Dear Clients

Greetings

Welcome to our site and hope that it will please you. We shall start turning the pages of a worthy record of Al Shamal Islamic Bank, which started operation in 1990 and undertook a significant role in the Sudanese Economy.

Since its inception Al Shamal Islamic Bank provided Comprehensive Banking services through (18) branches in Sudan and a wide network of correspondents around the world. The various banking services include acceptance of local and foreign currencies. In addition to opening letters of credit, guarantees, transfers internal ad external and extend loans and credits in accordance with the Islamic Sharia and does not deal in the usuary (Riba) .

The Bank uses the most up-to-date communications technology by using Internet webs and linking all its branches to the main head office and the head office with all correspondents in the world through SWIFT system.

The Bank accepts investment deposits in US Minimum of US $ 500 and can be cleared by the end of the calendar year.

It also accepts investment deposits in local currency and is cleared every six months. The main office of the Bank is located in Khartoum Al Sayed Abdel Rahman st. in central Khartoum. It will move in early 2001 to a new multistory building, which enjoys all, the necessary services for the convenience of its clients.

Thanks again for visiting this site and would invite you to turn its pages.

Best Regards,
Al Shamal Islamic Bank .

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Correspondents

AlShamal Islamic Bank

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[South Africa]
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Arab World

Al Rajhi Banking & Investment Corporation – Riyadh

Al Bank AL Saudi Al Fransi – Riyadh

Arab Banking Corporation (B.S.C) – Manama

Faysal Islamic Bank of Bahrain – Manama

Bahrain Islamic Bank – Manama

Cairo Amman bank – Manama

Dubai Islamic Bank – Dubai

Mashreq Bank – Dubai

Faisla Islamic bank of Egypt – Cairo

National bank of Sudan – Cairo

National Commerical Bank – Jeddah

Bank Aljazira – Jeddah

Qatar Islamic Bank – Doha

Saudi Hollandi Bank – Riyadh

The Arab Investment Company – Manama

The Yemen Bank for Reconstruction & Development – Sann'a

Saba Islamic Bank – Sann'a

Bank Libano Francais – Beirut BLF

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Europe

British Arab Commercial Bank-London

Commerz Bank – Frankfurt

Credit lyonnais S.A – Geneva

Die Irste Bank – Vienna

Union de Bankques Arabes et Franciases – Paris

United European Bank – Geneva

Bankque Franciase De Liorient – London

American Express Bank – London

First International Merchant Bank – Malta

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South East Asia

Bank of China – Beijing

I.N.G. Bank – Jakarta

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South Africa

Standard Bank of South Africa Ltd. – Johanesburg

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North America

Arab American Bank – New York

American Express Bank – New York

Citi Bank – New York

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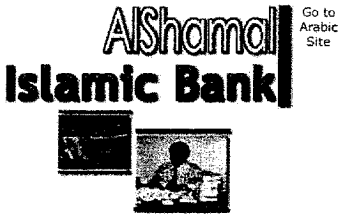
Accounts



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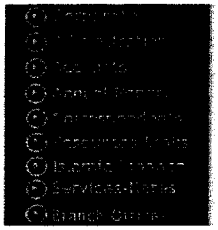
[Opening Personal Account]
[Opening Company Account]
[Investment Account]
[Local Investment Deposit]
[Savings Account]



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Al-Shimal Islamic Bank
(A limited Public Company)

A request for opening current personal account

To: M/S "Al-Shimal Islamic Bank
Date:.....
Branch: .....
Full name:.....
Recommended by /
Address:.....
Name:.....
No. Of identity .....
Address: .....
Occupation/site:.....

Religion: .....
Tel:.....
Residence /district:.....
Signature:.....

I, hereby request to open current account, bearing my name, according to the general conditions, prevailing within the bank, stated below:

1. Withdrawing against the account by cheques, issued by the Bank, delivered to the clients, who bears responsiblity over the consequences of loss and / stealing of these cheques delivered to him, by the Bank, unless promptly reported to the Bank, the case of theft, or loss in due time.
2. The statements of the account would be sent to the client once each half year, (6 months), unless otherwise directed, and if the bank don't receive good reasoned objection within one month-time from the date of sending statements of account, therefore, the statements deemed, considered correct, and agreed to.
3. The Bank has the right to close-up the account, any time after informing the client's in writing, consequently, the client should return, remained unused cheques to the Bank.
4. The client's give permission to the Bank, to use the stock deposited in his account with the bank's own & others, and the bank always keeps compliance to pay on request.
5. The bank attained the right to burden the client with necessary expenses including, post, telephone, stamps etc.
6. The client must comply to inform the Bank in case of changing his address, and thus correspondents considered approached the client as soon as exported with the post, on last

address given to the bank from the client.
Signature of the applicant...

Only for official use of the Bank
Current account No [_____]
Other directives:
Date:
Endorsement & signature of the officer in charge:

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El-Shimal Islamic Bank

A letter of consent, a permission to
opening a Limited Company's Account

Company's name:
Address:

Upon the decision of the company's Board Council.
..... stated as below, the council in its meeting held in _____, concluded in the Agenda, and minutes of that meeting, of the fore-mentioned company , it has been decided , to open an account at Al- Shimal Islamic Bank/ Branch/..... in the name of the mentioned company, the Bank fully authorized upon that decision, to attain the right of using the stock of money deposited in the account, mixed with the Bank's own, and other clients' money, and so the Bank always liable, complemented , liabable to the payment upon request, all cheques, permission bonds, and transfers documents due for endorsement on withdrawal, proprietor, or acceptance on behalf of the company, and registered to the particular account, whether debited/credited, thus, the company deemed responsible for all documents, bonds, permissions, transfers, in addition to all the concluded agreements & contracts, guarantees, and documents concerning the banking operations, including deposited money in investment deposit, implements, supplying projected schemes in participation & share-holding, on partnership bases, granted compliments with any liabilities , mortgage any of its assets , and/or products, and issuing letter of credit, or transfer's documents, or telegraphic transfers, conditioned to sign these cheques & documents of permission & transfers document on any other documents.

Name	Authority	Signature's example

Should also provide the bank with a list of names, and pattern examples of those person authorized to sign, endorsing, in present time, in respect of this decision, and should inform the bank in-writing eventually, about any changes, alterations occurring at any time, and provide the bank with a copy of the decision, to be in-action, till the Bank receives a copy of another decision taken by the company, canceling, or amending that previous decision.

We are pleased to enclose the following documents: -
1. Companies registration's certificate (review & return)
2. Copy of the company's principle rules & regulations.
3. A certificate from company's registration authorizing the company to commence its activities (review & return), endorsed by the Board Council Director, and/or secretary.

Board Director
Secretary

TOP

In the name of Allah The Compassionate The most Gracious The Most Merciful

(Oh! Believers do take money dealt amongst you, falsely, unless being a consented present merchandised commodity) " *translated meaning of the Quranic verse, (Women 29)*

The conditions of investment account

1. The Bank comply fully with the Islamic Shariaa, principle rules, and never deals with "Riba" illegal excess of profit.
2. The investment performed on bases of the absolute investment's deposit
3. The bearer, (investor) has the right to participate in the investment revenues in regard to the percentage of investment deposit, and distributed calculated as ¼ quarter to the bank in respect of the management and ¾ to the investors.
4. The investment deposit, limited to a duration of one year, and the bearer of the deposit who withdraw his deposit before the expiry date, has no right to share in the acquired profit of the investments, unless three months or more passed since date of depositing.
5. Every investment deposit considered a sole deposit account; the bank issues receipts, stating the amount, date of depositing, and expiry date.
2. The proprietor, bearer of the investment deposit account has to report, informing the bank 15 days, before date of expire, if he intends to withdraw the amount, or amending the date of expire, to be extended to another year (renewed)
3. If he desired to withdraw the amount of his deposit, before date of expire, he has to report, informing the bank, before 15 days of withdrawal date, and withdrawing not allowed before three months from date of depositing.
4. The bank provides the bearer of investment deposit account, a book- to register the details of the deposits to his account, bearing his name, stating the date of deposit, and date of expiry of each deposit account.
5. The bearer has the right to withdraw from his account

personally, or who, he authorizes to Withdraw on behalf, in writing.
6. The book must be delivered to the bank at depositing / or at withdrawal.
7. The bearer (proprietor) has no right to give it way, or transfer it to any other person.
8. The bank secures secrecy and confidentiality of the accounts and statements concerning the investors.
9. Any cross, deletion, amendment, changing in the statements of the book, must be endorsed by the Bank's stamp.
10. In Case of loss occurring to the receipts or investment's book of accounts, the bank must be informed promptly, the police authorities must reported to take the required due precautions.

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Conditions of local investment's deposit (General)

1. The Bank liable, keeps compliance in all transactions, with the Islamic " Sharia" laws, avoiding dealing with "Riba": [excess in profit].
2. The investment performed on speculating bases, " absolute contract', whereas the depositors deposit their money as proprietors of the capital " money", and the Bank deemed a speculator investing the capital sum of money, upon best investment's opportunities available, also the depositor permits the Banks to take any decision viewed of benefit.
3. The depositor permits the Bank to mix the money with his, or any other's money.
4. The minimum rate of investment deposit, the sum of 25000 Dinars (two thousands, five hundred Sudanese Dinnars) for a period of six months.
5. The Bank distributes the investment's net profit on half-year bases (every six months). Calculated as follows:

Money proprietor	70%	of the profit
The Bank (speculator)	30%	" "

6. The investment deposit not to be withdrawn before its maturity, unless the Bank accepts the forced situations, reasoned by the money proprietor (investor), consequently deserves no profit.
7. The Bank issues to the proprietor of investments deposit a certificate (document) endorsed by the Bank, and stamped registered on it, all detailed amounts deposited register in his name, stated the date of deposit, date of expiry, maturity of every deposit.
8. The certificate is personal; the proprietor has no right to give it away and/or transfers it to any other person.
9. This certificate submitted at withdrawal, or receiving the profits.
10. Any crossing, deletion, changing in the statement of this certificate, must be endorsed stamped by the Bank authority.
11. The Bank bears no responsibility, in case of third-party, person, got hold, benefiting from the certificate in a way, or another, unless the Bank being informed officially, before the expire date of the certificate. Benefiting from.
12. The investment's depositors should be informed about any amendment occurred in dividing the profits of speculation, by/through means of adverstiment at least 15 days before an amendments inspection, and that amendment not applicable except on accounts opened or decided after date of its execution.
13. Unless the proprietor request withdrawal of his deposits before 15 days, from date of maturity, the investment deposit

deemed, considered eventually renewed with the same conditions.
14. Unless the investor (proprietor) requests withdrawal of his deposit before 15 days from the date of expiry, the investment deposit, considered renewed eventually, automatically with the same previous conditions.
15. The Bank secures secrecy, confidentiality of accounts and all statements of the depositors.
16. The profit acquired paid on 30/6 & 31/12 annually.

No.	Date of renewal	Bank's endorsement	Stamp	Paid profit
1.				
2.				
3				
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Top

Conditions of Savings Account

1. Every depositor receives a deposit-book, bearing serial No. at completion of first deposit's process.
2. All investment's procedures, registered thereon, in the particular, specified place, stating, (date, amount) and every deposit or withdraw endorsed with Bank's stamp, and the signature of cashier, or any authorized person by the bank to endorse, sign.
3. The book should be submitted at and deposit or withdraw, by the owner, bearer, personally or who authorized by the account administration (or young ones) immature children, the bank accept deposit from any person on behalf of, in this case, also deposit's book should be submitted.
4. The deposit-book, cannot be transferred, or given away.
5. The book returned to the bank, when it's pages fully used, or when the account closed.
6. In case of loss occurs to the deposit-account book, the bearer should report the bank promptly, in which case, be provided with another, stated, and registered thereon it previous statements on that lost one. Then a written consent to compensate the bank of any illegal consequences occurred due to the lost book of account.
7. The Bank does not claim any expenses concerning administrating the accounts, not to deal with illegal exceed profit (Riba).
8. The Bank should be reported of any changes of address occurring.
9. The clients has the right to withdraw from his stock any amount, any time, during the working hours, no need to inform the bank previously.
10. The clients permits the bank to free using the deposited stock, mixed with the bank's own, and other clients.

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 ----------x

3 UNITED STATES OF AMERICA

4 v. S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

7 ----------x

8

9 New York, N.Y.
February 6, 2001
10:00 a.m.

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12 Before:

13 HON. LEONARD B. SAND,

14 District Judge

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1 APPEARANCES

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United States Attorney for the
3 Southern District of New York
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DAVID RUHNKE
16 Attorneys for defendant Khalfan Khamis Mohamed

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1 just put them down on the floor. That's fine, too. It's
2 simply whatever you think will be of greatest assistance to
3 you.
4 We're now in the government's case. Government may
5 call its first witness.
6 MR. FITZGERALD: Yes, your Honor. The government
7 calls as its first witness, Jamal Ahmed al-Fadl.
8 THE COURT: All right.
9 JAMAL AHMED AL-FADL,
10 called as a witness by the government,
11 having been duly sworn, testified as follows:
12 DEPUTY CLERK: Please state your full name.
13 THE WITNESS: My name is Jamal Ahmed Mohamed al-Fadl.
14 DIRECT EXAMINATION
15 BY MR. FITZGERALD:
16 Q. Sir, if you could spell your first name and your last name
17 in the English language for the record.
18 A. The first name is J-A-M-A-L. The last name is
19 A-L-F-A-D-L.
20 Q. If you could try to talk as you are doing now into the
21 microphone directly in front of you, if you could also speak
22 slowly, because of your accent, to make sure that everyone
23 understands what you say, and if you could try to pause if you
24 use an Arabic word or name so that we can clarify how that is
25 spelled.

1 Q. When you say you get to Amman Airport that Abu Akram will
2 help you?
3 A. Yes.
4 Q. Do you recall what passport you used to travel outside of
5 Khartoum?
6 A. Sudanese port, but not under my real name.
7 Q. And when you went out of the airport, did you travel by
8 yourself or did someone help you at the airport?
9 A. In Sudan?
10 Q. Yes.
11 A. Yes.
12 Q. Who helped you?
13 A. I don't remember now, but somebody helped me because I
14 don't want my -- somebody helped me, but I don't remember the
15 nickname now.
16 Q. Did the passport get stamped?
17 A. I don't remember.
18 Q. How did you carry the $100,000?
19 A. In my bag with my clothes.
20 Q. Do you recall what kind of bills the $100,000 was in?
21 A. I remember they all hundred bill.
22 Q. Sorry?
23 A. They all hundred bill.
24 Q. They were all hundred dollar bills?
25 A. Yes.

1 Q. Who gave you the money?
2 A. Abu Fadhl, he bring it from Shamal Bank and he bring it to
3 me.
4 Q. Abu Fadhl brought it from the Shamal Bank?
5 A. Yes.
6 Q. Is that a bank in the Sudan?
7 A. Yes.
8 THE COURT: This is in U.S. currency?
9 THE WITNESS: Yes.
10 BY MR. FITZGERALD:
11 Q. Where did you put the $100,000 in hundred dollar bills?
12 A. In my bag with the clothes.
13 Q. And what happened when you got off the airplane in Jordan?
14 A. I remember when I went to the Khost, after the
15 immigration, I met Abu Akram Urdani.
16 Q. You met Abu Akram Urdani. Did you meet him inside the
17 place, the airport, where people are, or outside?
18 A. In the Custom counter.
19 Q. What happened then?
20 A. When I went over there, he talk with one of the Custom
21 people and they didn't check my bag.
22 Q. Did you actually give him the money?
23 A. When we went to his car, I give him the money and we went
24 to his farm.
25 Q. How long did you spend in Jordan?

1 Q. How do you know that the person from that island spoke
2 English?
3 A. Because I remember one time Abu Fadhl Makkee, he asked me
4 to translate fax come from our company called Qudurat
5 Transportation.
6 Q. Fadhl Makkee asked you to translate a fax that came from
7 Qudurat? What language was the fax in?
8 A. English.
9 Q. When you were asked to translate that fax from English,
10 what did you do?
11 A. I tried, but it's hard for me, and we went out to other
12 room in guesthouse, and this Fazhil come with him and he
13 translate the fax.
14 Q. While you were in the Sudan, did you handle money for
15 Usama Bin Laden?
16 A. Could you repeat the question.
17 Q. Did you work on the finances for al Qaeda while you were
18 in the Sudan?
19 A. Yes.
20 Q. Did you know where the bank accounts of Usama Bin Laden
21 and al Qaeda were?
22 A. Yes.
23 Q. Do you know whose names they were in?
24 A. The bank account under Usama Bin Laden in Bank Shaml,
25 Khartoum.

1 Q. That was under Usama Bin Laden's true name?
2 A. Yes.
3 Q. Were there accounts in other names?
4 A. Yes. Afad Makkee got account also.
5 Q. Afad Makkee, the account that he had under his name, do
6 you know what name that is?
7 A. I remember Madani Sidi al Tayyib.
8 Q. Do you know of any other persons who had al Qaeda money in
9 their accounts?
10 A. Abu Rida al Suri.
11 Q. Do you know his true name?
12 A. Nidal.
13 Q. Anyone else that you knew had al Qaeda money in bank
14 accounts in their name?
15 A. Abu Hajer al Iraqi.
16 Q. Do you know his true name?
17 A. Mamdouh Salim.
18 Q. Did you have any accounts in your name?
19 A. Shared with Abu Fadhl.
20 Q. So you had accounts in your name that were shared with Abu
21 Fadhl?
22 A. Yes.
23 Q. Do you recall anyone else that had bank accounts in their
24 name for al Qaeda?
25 A. Abdouh al Mukhlafi.

1 A This conversation in the company he run for Islamic
2 National Front is called Kameem Company.
3 Q Can you give the word to the interpreter.
4 THE INTERPRETER: The Summits, S-U-M-M-I-T, plural.
5 Q What were the circumstances under which this person Abdel
6 Marouf told you about what happened to the uranium?
7 A He told me --
8 Q Don't tell me what he said. What were the circumstances?
9 How did it come up that you had a conversation?
10 A I work with him before and we talk about the south Sudan
11 and the army, they lose a lot of fighting because of the rain
12 and the people in south Sudan do better in the rain against
13 the government, and we talk about the chemical weapons, they
14 try to build it to win the war in south Sudan. After that, he
15 say you did great job about the uranium and they going to
16 check it in Hilat Koko.
17 Q Did you ever hear whether or not in fact they checked the
18 uranium in Hilat Koko?
19 A No.
20 Q Did al Qaeda have any facilities or bank accounts or
21 anything else in Cyprus?
22 A Yes.
23 Q How do you know that?
24 A I remember when I run Taba Investments in Khartoum, Abu
25 Fadhl al Makkee, he make paper works from the Bank of Shamal,

1 and that account that time is shared between me and him in
2 Sudanese pounds and dollars.
3 Q The paperwork that was done for the account that was
4 shared in your name and the name of Abu Fadhl al Makkee, where
5 was the money going to?
6 A Going to Koprus.
7 MR. FITZGERALD: If the interpreter could translate
8 the Arabic word he just said.
9 THE INTERPRETER: Cyprus.
10 Q Did you have any conversation about why the money was
11 going to Cyprus?
12 A He told me, and that time I remember another person, we
13 sit together in the office in McNimr Street office, Abu Isra
14 al Iraqi. And he told me we need visa for Abu Isra al Iraqi
15 because we want to send him to Kopras.
16 Q Did he tell you why they needed to send Abu Isra Al Iraqi
17 to Cyprus?
18 A He say the sesame, he say the sesame and the peanut, that
19 when we send it to Europe it doesn't make good money, but if
20 we send it to Koprus, over there it's free market area, and we
21 can sell it and make more money than send it direct to the
22 company in Europes, because he say in Koprus, we can take the
23 cover from the sesame and also we can take the red cover from
24 the peanuts, and we package small package and we make more
25 money than we send it direct to the Europe companies.

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 ----------x

3 UNITED STATES OF AMERICA

4 v. S(7)98CR1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

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9 New York, N.Y.
February 14, 2001
10:30 a.m.

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12 Before:

13 HON. LEONARD B. SAND,

14 District Judge

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1 mujahideen through a third country intermediary.
2 7. Beginning in 1987 the American military support
3 to the Afghan mujahideen included stinger antiaircraft
4 missiles.
5 The parties have so stipulated, and, as I said, those
6 are facts which are not disputed and are in evidence before
7 you.
8 MR. FITZGERALD: The government now calls Essam al
9 Ridi.
10 ESSAM AL RIDI,
11 called as a witness by the government,
12 having been duly sworn, testified as follows:
13 THE DEPUTY CLERK: Please be seated. Please state
14 your full name.
15 THE WITNESS: Essam al Ridi.
16 DIRECT EXAMINATION
17 BY MR. FITZGERALD:
18 Q. Can you spell your first name for the record as well.
19 A. Certainly. E double S A M.
20 Q. You have a loud voice, so if you could keep your loud
21 voice and just make sure you look at the microphone because
22 it's directional.
23 Sir, could you tell the jury where you were born?
24 A. I was born in Cairo, Egypt, 1958.
25 Q. And for how long did you live in Egypt?

1 A. I moved back to Arlington, Texas.
2 Q. In what year was this?
3 A. 1985.
4 Q. And what did you do for work when you came back to the
5 United States?
6 A. Work as a flight instructor again.
7 THE COURT: What was that?
8 THE WITNESS: Flight instructor.
9 Q. When you were back beginning in 1985 did you ever render
10 any further assistance to the cause of the jihad in
11 Afghanistan?
12 A. Yes. That was one of the things that I have proposed to
13 them, I'm not needed. We are not in line together when it
14 comes to the ideology. It will be best that I move back and
15 I'll still provide the help that you all need.
16 Q. Can you give us examples of what it is that you did to
17 help from the United States?
18 A. The second set of night vision goggles were actually
19 shipped at that time I resided back in the US.
20 Q. And how many night vision goggles were they?
21 A. Eleven.
22 Q. How did you ship them from the United States to
23 Afghanistan?
24 A. Just as a passenger luggage.
25 Q. And who was the passenger that you gave them to?

1 involved?
2 A. 1993.
3 Q. And can you tell us how it came about that you became
4 involved in buying an airplane?
5 A. There was quite a few communications between me and Wadih
6 El Hage about the interests of Usama aquiring an airplane used
7 in Khartoum.
8 Q. When you had these conversations where were you?
9 A. In the States.
10 Q. And where did you understand Wadih to be?
11 A. Khartoum Sudan.
12 Q. Do you know when it was that he moved to Khartoum Sudan?
13 A. I can't really recall the specific year, but it must have
14 been maybe 1998.
15 MR. DRATEL: Your Honor, the basis of his knowing.
16 MR. FITZGERALD: I'll withdraw the question, your
17 Honor.
18 Q. When you spoke to him about the airplane transaction where
19 did you understand him to be?
20 A. Say again, please?
21 Q. When you spoke to Wadih El Hage about the airplane where
22 did you understand that Wadih was?
23 A. In Khartoum.
24 Q. Did you ever call him directly from the States?
25 A. Yes.

1 financial arrangements would work regarding the airplane?
2 A. Well, actually this part did not really go through. They
3 came later with a different price. Instead of 350, anything
4 less than 250.
5 Q. You say "they came." Can you explain who?
6 A. I'm indicating Wadih El Hage and you know representing of
7 course Usama in Khartoum.
8 Q. And what did he tell you about the changed price?
9 A. They wanted something within the 250,000 or less, and my
10 response was, you'll never get a used jet aircraft for that
11 price that will do the range that you want.
12 Q. And what happened then?
13 A. Actually, they came with that final decision, it doesn't
14 matter. This is the budget and let's try to work with that
15 budget.
16 Q. Was there any discussion of the reason why the range for
17 the plane had to be two thousand miles?
18 A. Yes.
19 Q. Can you tell us what was said?
20 A. They have some goods of their own they want to ship from
21 Peshawar to Khartoum.
22 Q. And first of all, who is "they"?
23 A. Again, I'm referring to Wadih and Usama.
24 Q. And did he tell you what the goods were that he wanted to
25 ship from Peshawar to Khartoum?

1 A. Yes.
2 Q. What were they?
3 A. Stinger missiles.
4 Q. And when he told you they wanted to ship Stinger missiles
5 from Peshawar to Khartoum, what did you say?
6 A. I said it's possible as long as we have arrangements from
7 the departing country to the arriving country.
8 Q. And what do you mean by that?
9 A. I meant the legality, because it's clearly air policy.
10 Q. Did you discuss this with Wadih?
11 A. Yes.
12 Q. Tell us what you told him about the legality of shipping
13 the Stingers from Peshawar to Khartoum?
14 A. That we have to have a legal permit to depart Peshawar
15 with that equipment on board, and the legal permit to land in
16 Khartoum, which is not a problem because they could ally
17 people in Peshawar and also in Khartoum. However, the problem
18 with allies, once we have to divert or land for any fuel or
19 any emergency in the countries in between, then it will be
20 definitely exposed and then it will be absolutely a chaos.
21 Q. And what, if anything, did he say in response?
22 A. Nothing in particular. I was just explaining to them
23 technicalities.
24 Q. And did you have a further discussion after that
25 conversation about shipping stinger missiles?

1 A. I don't think so, no.
2 Q. Did you ever actually transport yourself stinger missiles
3 from Peshawar to Khartoum?
4 A. No.
5 Q. Did you find a plane for the price of less than $250,000?
6 A. Yes.
7 Q. And what type of plane was it?
8 A. Again, with the reduction in the price and the range I had
9 limited options, one of which was a military aircraft under
10 the designation of T389 which is the equivalent of a civilian
11 aircraft called Saber-40.
12 Q. And did you find one?
13 A. Yes.
14 Q. And what was the price?
15 A. 210,000 after I finished all the modifications that I
16 needed to do.
17 Q. What kind of modifications did you do on the plane?
18 A. Well, the airplane were in a storage what we call boneyard
19 in Tucson, Arizona.
20 Q. Is that boneyard? B-O-N-E like bones, boneyard?
21 A. Yes.
22 Q. Can you explain what happened then?
23 A. So we pulled the aircraft out of the storage and we had to
24 go through certain checks mechanically and officially of
25 course to certify again and make it acceptable by the FAA to

1 fly the civilian aircraft.
2 Q. Did you do all those things?
3 A. Yes, sir.
4 Q. And where did the money come from to acquire the plane?
5 A. From Khartoum.
6 Q. And approximately how much money came from Khartoum if you
7 recall?
8 A. About a total of 230, 230, around that figure.
9 Q. 230 dollars or 230,000 dollars?
10 A. Thousand dollars.
11 Q. Did you put any of your money toward the purchase of the
12 airplane?
13 A. Well, that initial part of the plan actually. I put up,
14 me and Moataz and another friend a sum of $10,000 where we
15 acquire the airplane and started the process.
16 Q. Now, once you acquired the plane did you have any
17 discussions with Wadih El Hage in the Sudan about the
18 acquisition?
19 A. No.
20 Q. What did you do with the plane?
21 A. I bought it as I said, I finished the, I reconditioned --
22 well, actually I refurbished it completely, and the avionic
23 equipment, updated the version of avionics and also new paint.
24 And we took off from Dallas-Fort Worth to Khartoum.
25 Q. Did you actually fly the plane yourself from the United

1 States to Khartoum?
2 A. Yes, I did.
3 Q. Can you tell us the route just generally the route that
4 you took?
5 A. The airplane had a range of about 1500 miles. You cannot
6 really cross the Atlantic with that range. So we had to go up
7 north almost to the Pole and cross down to mainland. So we
8 took the first one was Dallas-Fort Worth, Slte. St. Marie at
9 the Canadian borders. From there on to a place 67 lat north,
10 I think it's Furbisher Bay, Canada and then from Fervershaw
11 Bay, Canada to Iceland to Lucan, Rome, Cairo, Cairo, Khartoum.
12 Q. How long did it take you to fly the plane from Dallas
13 through the various stops to Khartoum, Sudan?
14 A. It should have taken two days at the most but actually we
15 had some technical problems due to the bad weather in
16 Fervershaw Bay. It was minus 65, so we lost hydraulics and we
17 had a crack in all the window.
18 Q. How long did it actually take you to get there?
19 A. About a week.
20 Q. Do you recall approximately when was that you flew the
21 plane from the United States to Sudan?
22 A. The early part of 1993.
23 Q. And what happened when you arrived in Khartoum with the
24 plane?
25 A. In the sense of if you can explain the question please.

1 Q. You land the at Khartoum with the plane. What do you do?
2 A. Nothing. I just parked the airplane, took permission in
3 the civil aviation authorities there and I was met with Wadih
4 and I'm not sure maybe another driver or so.
5 Q. And where did you go with Wadih and the driver?
6 A. We went to Wadih's house.
7 Q. And what did you do there?
8 A. Had lunch with him.
9 Q. Did there come a time when you met Usama Bin Laden on that
10 trip?
11 A. Yes.
12 Q. When was that?
13 A. It must have been the same day, at night, we were offered
14 dinners on his behalf.
15 Q. And where was the dinner held?
16 A. At his guest house.
17 Q. And who was present for the dinner?
18 A. Quite a few people, but people that I could identify were
19 me, Wadih, Usama, a guy by the name of Abu Jaffer. I think
20 also another guy by the name of Loay, and, yes, that's the
21 names I could recall.
22 Q. We're spelling L-O-A-Y and J-A-F-F-E-R. Do you know what
23 nationality Abu Jaffer was?
24 A. Yes, he's from Iraq.
25 Q. What role did Abu Jaffer play at the dinner?

1 A. This was my first time to be introduced to him and he led
2 the prayers at the night.
3 Q. And let me show you what has been previously received in
4 evidence a number of photographs beginning with Government
5 Exhibit 100 in evidence. If we could display that on the
6 screens.
7 Do you recognize the person depicted in Government
8 Exhibit 100?
9 A. Yes.
10 Q. Who is that?
11 A. Usama Bin Laden.
12 Q. If we could display Government Exhibit 101 in evidence.
13 Do you recognize the person depicted in Government Exhibit
14 101?
15 A. Yes.
16 Q. Who is that?
17 A. Abu Hafs.
18 Q. How do you know Abu Hafs?
19 A. I met him briefly in Peshawar, and thereafter I think he
20 must have been over the dinner, too, with Usama.
21 Q. Do you know what nationality he is?
22 A. Egyptian.
23 Q. Let me show you Government Exhibit in evidence 103. Do
24 you recognize the person depicted in Government Exhibit 103 in
25 evidence?

1 A. Yes, Abu Ubadda.
2 Q. How do you know this person, Abu Ubadda?
3 A. At the same dinner, too.
4 Q. And had you ever met him before that day?
5 A. No.
6 Q. Did you ever meet him after that day?
7 A. Yes.
8 Q. Where was that?
9 A. Well, around the office the next morning.
10 Q. Let me show you Government Exhibit 106 in evidence. Do
11 you recognize the person depicted in Government Exhibit 106 in
12 evidence?
13 A. Yes.
14 Q. Who is that?
15 A. Abu Jaffer.
16 Q. Is that the Abu Jaffer who was at the dinner that evening?
17 A. Yes.
18 Q. What happened at the dinner?
19 A. Nothing actually. We just had dinner and chatted and just
20 had a customary thing I gave the keys of the airplane to Usama
21 Bin Laden.
22 Q. And you gave him the keys to what?
23 A. The keys to the airplane.
24 Q. And did you see any weapons at the dinner?
25 A. Yes.

1 later?
2 A. That's correct.
3 Q. And all those were purely commercial transactions, having
4 nothing to do with anything else?
5 A. No.
6 Q. And this was despite your earlier disagreements and
7 reservations about Mr. Bin Laden, correct?
8 A. Because then the issue was not in existence anymore. He
9 is not in Peshawar, he is not in Jihad, I'm not either, so
10 there is no conflict except we are doing business together.
11 Q. Right. In fact, your rejection of the job offer had
12 nothing to do really with philosophy with respect to Mr. Bin
13 Laden, but really a question of what was going to make it
14 worth your while to move to the Sudan?
15 A. Yes.
16 Q. You testified on direct that the plane, that the purchase
17 of the plane occurred in '93. Isn't it a fact that it began
18 earlier, probably August '92?
19 A. Could be, because actually the process of negotiating and
20 talking about the different types and changing the budget a
21 few times must have taken some time.
22 Q. And during the course of that few months, money was wired
23 into your account from the Sudan, correct?
24 A. Yes, that's correct.
25 Q. And about $250,000?

1 A. Yes.
2 Q. And from the Shamal Bank in the Sudan?
3 A. I can't recall the name.
4 Q. I want to show you what has been marked as defendant El
5 Hage A for identification, just ask you to read the first line
6 of that. And when you're done, let me know.
7 A. "Wadia" --
8 Q. Just read it to yourself. I'm sorry.
9 A. Yes, that's correct.
10 Q. Thank you.
11 Does that refresh your recollection that the wire
12 transfers came from the Shamal Bank in the Sudan?
13 A. Yes, it does. But actually my concern, it wasn't my bank.
14 Q. Yes. And so you were not concerned about having wire
15 transfers come from the Sudan into your account in Texas?
16 A. No.
17 Q. In fact, for the government, for the United States, being
18 in the United States, you didn't have that problem, correct?
19 A. That's correct.
20 Q. If you had been in Egypt, that might have been a problem?
21 A. Possibly, yes.
22 Q. And that's because, as you noted before, the Egyptians and
23 the Sudanese do not get along, correct?
24 A. That's correct.
25 Q. And isn't it also a fact that part of the Egyptian --

Source: All Sources > Reference > Business > **The Bankers' Almanac**
Terms: **afghanistan** (Edit Search)

1. The Bankers' Almanac, Da Afghanistan Bank (Bank of Afghanistan), Ibni Sina Wat, Kabul, Afghanistan, 656 words, February 23, 2000

2. The Bankers' Almanac, Agriculture Promotion Bank, Jaddeh-Maiwand, Kabul, Afghanistan, 11 words, February 23, 2000

3. The Bankers' Almanac, Export Promotion Bank, Jaddah-Temorshahi, Kabul, Afghanistan, 11 words, February 23, 2000

4. The Bankers' Almanac, Banke Millie Afghan (Afghan National Bank), Jada Ibn Sina, Kabul, Afghanistan, 404 words, February 23, 2000

5. The Bankers' Almanac, Industrial Promotion Bank, Shar-i-naw, Kabul, Afghanistan, 10 words, February 23, 2000

6. The Bankers' Almanac, Mortgage and Construction Bank, Shari-i-naw, Kabul, Afghanistan, 11 words, February 23, 2000

7. The Bankers' Almanac, Pashtany Tejaraty Bank, Mohmmad-Jankhan watt, Kabul, Afghanistan, 12 words, February 23, 2000

8. The Bankers' Almanac, The Afghan National Bank Ltd, 43 words, February 23, 2000

9. The Bankers' Almanac, Merchant Banking Corp Nigeria Ltd, PMB 53289, 16 Keffi St, South-West Ikoyi, Lagos, Lagos State, Nigeria, 613 words, February 23, 2000

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The Bankers' Almanac Da Afghanistan Bank (Bank of Afghanistan)

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The Bankers' Almanac

Da **Afghanistan** Bank (Bank of **Afghanistan)**

Ibni Sina Wat, Kabul, **Afghanistan**

Tel: +93 24075 (5 lines)

Tlx: 22223, 22283; Tgms: dafbank kabul, dafbank for branches; Swift: AFGB AF K1

LENGTH: 656 words

TABLE OF CONTENTS:
Company Info
Correspondents
Domestic Branches

* * * * * * * * * * * * * * * COMPANY INFORMATION * * * * * * * * * * * * * *

DESCRIPTION:
Activity: Central Bank
Meetings: August
Branches: 65

HISTORY: Established 1939 as the Central Bank of **Afghanistan.**

* * * * * * * * * * * * * * * * CORRESPONDENTS * * * * * * * * * * * * * * * *

London: Afghan National Credit and Finance Ltd
London: HSBC Bank plc
London: National Westminster Bank Plc
New York City: American Express Bank Ltd
New York City: The Bank of New York
New York City: The Chase Manhattan Bank
New York City: Citibank NA

STANDARD SETTLEMENT INSTRUCTIONS:
GBP: Afghan National Credit and Finance Ltd London.
GBP: HSBC Bank plc London.
GBP: National Westminster Bank Plc London.
USD: American Express Bank Ltd New York City.
USD: The Bank of New York New York City.
USD: The Chase Manhattan Bank New York City.
USD: Citibank NA

* * * * * * * * * * * * * * * DOMESTIC BRANCHES * * * * * * * * * * * * * * *

The Bankers' Almanac Banke Millie Afghan (Afghan National Bank)

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Banke Millie Afghan (Afghan National Bank)

Jada Ibn Sina, Kabul, **Afghanistan**

Tel: +93 25451 (4 lines)

Tlx: 22231; Tgms: bankemilli; Swift: BMAF AF K1

LENGTH: 404 words

TABLE OF CONTENTS:
Company Info
Correspondents
Domestic Branches
Foreign Branches
Subsidiaries

* * * * * * * * * * * * * * * COMPANY INFORMATION * * * * * * * * * * * * * *

SHAREHOLDERS: Nationalised July 22, 1976

DESCRIPTION:
Shares: Af 1,000
Meetings: July
Branches: 16

HISTORY: Established November 9, 1932. Nationalised July 22, 1976

* * * * * * * * * * * * * * * * CORRESPONDENTS * * * * * * * * * * * * * * * *

London: Afghan National Credit and Finance Ltd
London: National Westminster Bank Plc
New York City: The Chase Manhattan Bank
New York City: Citibank NA

STANDARD SETTLEMENT INSTRUCTIONS:
GBP: Afghan National Credit and Finance Ltd London.
GBP: National Westminster Bank Plc London.
USD: The Chase Manhattan Bank New York City.
USD: Citibank NA

* * * * * * * * * * * * * * * DOMESTIC BRANCHES * * * * * * * * * * * * * * *

TOWN: Akchah

HR 2922
The Bulk Cash Smuggling Act of 2001
Section by Section

Section 1. Short Title

Bulk Cash Smuggling Act of 2001

Section 2. Findings and Purposes

1. *To make the act of smuggling bulk cash itself a criminal offense.*

2. *To authorize forfeiture of any smuggled cash and other monetary instruments, together with any other property involved in the smuggling offense.*

3. *To emphasize the seriousness of the act of bulk cash smuggling*

4. *To prescribe guidelines for determining the amount of property subject to forfeiture in various situations.*

Section 3. Criminalize bulk cash smuggling into or out of the United States.

Reverse the 1998 Supreme Court Bajakajin decision and makes it a criminal offense to knowingly conceal, with the intent to evade a currency reporting requirement under Section 5316, more than $10,000 in currency or other monetary instruments; and to transport such currency or monetary instruments (or attempt to do so) into or out of the U.S.

Under this bill a property owner does not automatically forfeit all cash and monetary instruments. Instead, the bill sets forth certain proportionality provisions relating to forfeiture. If the property owner by a preponderance of the evidence demonstrates that the currency or monetary instruments involved in the offense were derived from legitimate source, the court shall reduce the forfeiture to the maximum amount that it is not grossly disproportional to the gravity of the offense. In fact, the Court could determine that no forfeiture of any cash or monetary instruments whatsoever by the property owner is warranted.

Section 4. Forfeiture in Currency Reporting Cases

In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense. The factors include: (1) the value of the currency or

other monetary instruments involved, (2) efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice, and (3) whether the offense is part of a pattern of repeated violations.

Section 5. Interstate Currency Couriers

The final section makes interstate transportation and concealment of bulk cash a criminal offense.

This section amends section 1958 of the Title 18, U.S.C. by adding a new subsection that deals with the concealment of more than $10,000 in currency in any vehicle, in any compartment or container within any vehicle, or in any container placed in a common carrier. If any person then transports (or attempts to transport) such currency, or conspires to transport such currency in interstate commerce on any public road or highway or on any common carrier, knowing that the currency was derived from or used to promote some unlawful activity, the punishment provisions previously described shall apply.

I

107TH CONGRESS
1ST SESSION

H. R. 2922

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2001

Mrs. ROUKEMA (for herself and Mr. LAFALCE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration and such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bulk Cash Smuggling Act of 2001".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

1 (1) Effective enforcement of the currency re-
2 porting requirements of subchapter II of chapter 53
3 of title 31, United States Code, and the regulations
4 prescribed under such subchapter, has forced drug
5 dealers and other criminals engaged in cash-based
6 businesses to avoid using traditional financial insti-
7 tutions.
8 (2) In their effort to avoid using traditional fi-
9 nancial institutions, drug dealers and other criminals
10 are forced to move large quantities of currency in
11 bulk form to and through the airports, border cross-
12 ings, and other ports of entry where the currency
13 can be smuggled out of the United States and placed
14 in a foreign financial institution or sold on the black
15 market.
16 (3) The transportation and smuggling of cash
17 in bulk form may now be the most common form of
18 money laundering, and the movement of large sums
19 of cash is one of the most reliable warning signs of
20 drug trafficking, terrorism, money laundering, rack-
21 eteering, tax evasion and similar crimes.
22 (4) The intentional transportation into or out of
23 the United States of large amounts of currency or
24 monetary instruments, in a manner designed to cir-
25 cumvent the mandatory reporting provisions of sub-

1 chapter II of chapter 53 of title 31, United States
2 Code, is the equivalent of, and creates the same
3 harm as, the smuggling of goods.
4 (5) The arrest and prosecution of bulk cash
5 smugglers are important parts of law enforcement's
6 effort to stop the laundering of criminal proceeds,
7 but the couriers who attempt to smuggle the cash
8 out of the United States are typically low-level em-
9 ployees of large criminal organizations, and thus are
10 easily replaced. Accordingly, only the confiscation of
11 the smuggled bulk cash can effectively break the
12 cycle of criminal activity of which the laundering of
13 the bulk cash is a critical part.
14 (6) The current penalties for violations of the
15 currency reporting requirements are insufficient to
16 provide a deterrent to the laundering of criminal
17 proceeds. In particular, in cases where the only
18 criminal violation under current law is a reporting
19 offense, the law does not adequately provide for the
20 confiscation of smuggled currency. In contrast, if the
21 smuggling of bulk cash were itself an offense, the
22 cash could be confiscated as the corpus delicti of the
23 smuggling offense.
24 (b) PURPOSES.—The purposes of this Act are as fol-
25 lows:

(1) To make the act of smuggling bulk cash itself a criminal offense.

(2) To authorize forfeiture of any smuggled cash and other monetary instruments, together with any other property involved in the smuggling offense.

(3) To emphasize the seriousness of the act of bulk cash smuggling.

(4) To prescribe guidelines for determining the amount of property subject to forfeiture in various situations.

SEC. 3. BULK CASH SMUGGLING INTO OR OUT OF THE UNITED STATES.

(a) ENACTMENT OF BULK CASH SMUGGLING OFFENSE.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

"§ 5331. Bulk cash smuggling into or out of the United States

"(a) CRIMINAL OFFENSE.—

"(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article

1 of luggage, merchandise, or other container, and
2 transports or transfers or attempts to transport or
3 transfer such currency or monetary instruments
4 from a place within the United States to a place out-
5 side of the United States, or from a place outside
6 the United States to a place within the United
7 States, shall be guilty of a currency smuggling of-
8 fense and subject to punishment pursuant to sub-
9 section (b).
10 "(2) CONCEALMENT ON PERSON.—For pur-
11 poses of this section, the concealment of currency on
12 the person of any individual includes concealment in
13 any article of clothing worn by the individual or in
14 any luggage, backpack, or other container worn or
15 carried by such individual.
16 "(b) PENALTY.—
17 "(1) TERM OF IMPRISONMENT.—A person con-
18 victed of a currency smuggling offense under sub-
19 section (a), or a conspiracy to commit such offense,
20 shall be imprisoned for not more than 5 years.
21 "(2) FORFEITURE.—In addition, the court, in
22 imposing sentence under paragraph (1), shall order
23 that the defendant forfeit to the United States, any
24 property, real or personal, involved in the offense,

1 and any property traceable to such property, subject
2 to subsection (d) of this section.
3 "(3) PROCEDURE.—The seizure, restraint, and
4 forfeiture of property under this section shall be gov-
5 erned by section 413 of the Controlled Substances
6 Act.
7 "(4) PERSONAL MONEY JUDGMENT.—If the
8 property subject to forfeiture under paragraph (2) is
9 unavailable, and the defendant has insufficient sub-
10 stitute property that may be forfeited pursuant to
11 section 413(p) of the Controlled Substances Act, the
12 court shall enter a personal money judgment against
13 the defendant for the amount that would be subject
14 to forfeiture.
15 "(c) CIVIL FORFEITURE.—
16 "(1) IN GENERAL.—Any property involved in a
17 violation of subsection (a), or a conspiracy to com-
18 mit such violation, and any property traceable to
19 such violation or conspiracy, may be seized and, sub-
20 ject to subsection (d) of this section, forfeited to the
21 United States.
22 "(2) PROCEDURE.—The seizure and forfeiture
23 shall be governed by the procedures governing civil
24 forfeitures in money laundering cases pursuant to
25 section 981(a)(1)(A) of title 18, United States Code.

1 "(3) TREATMENT OF CERTAIN PROPERTY AS
2 INVOLVED IN THE OFFENSE.—For purposes of this
3 subsection and subsection (b), any currency or other
4 monetary instrument that is concealed or intended
5 to be concealed in violation of subsection (a) or a
6 conspiracy to commit such violation, any article, con-
7 tainer, or conveyance used, or intended to be used,
8 to conceal or transport the currency or other mone-
9 tary instrument, and any other property used, or in-
10 tended to be used, to facilitate the offense, shall be
11 considered property involved in the offense.
12 "(d) PROPORTIONALITY OF FORFEITURE.—
13 "(1) IN GENERAL.—Upon a showing by the
14 property owner by a preponderance of the evidence
15 that the currency or monetary instruments involved
16 in the offense giving rise to the forfeiture were de-
17 rived from a legitimate source, and were intended
18 for a lawful purpose, the court shall reduce the for-
19 feiture to the maximum amount that is not grossly
20 disproportional to the gravity of the offense.
21 "(2) FACTORS TO BE CONSIDERED.—In deter-
22 mining the amount of the forfeiture, the court shall
23 consider all aggravating and mitigating facts and
24 circumstances that have a bearing on the gravity of
25 the offense, including the following:

"(A) The value of the currency or other monetary instruments involved in the offense.

"(B) Efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice.

"(C) Whether the offense is part of a pattern of repeated violations of Federal law.".

(b) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5330, the following new item:

"5331. Bulk cash smuggling into or out of the United States.".

SEC. 4. FORFEITURE IN CURRENCY REPORTING CASES.

(a) IN GENERAL.—Subsection (c) of section 5317 of title 31, United States Code, is amended to read as follows:

"(c) FORFEITURE.—

"(1) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

"(2) PROCEDURE.—Forfeitures under this subsection shall be governed by the procedures estab-

1 lished in section 413 of the Controlled Substances
2 Act and the guidelines established in paragraph (4).
3 "(3) CIVIL FORFEITURE.—Any property in-
4 volved in a violation of section 5313, 5316, or 5324,
5 or any conspiracy to commit any such violation, and
6 any property traceable to any such violation or con-
7 spiracy, may be seized and, subject to paragraph
8 (4), forfeited to the United States in accordance
9 with the procedures governing civil forfeitures in
10 money laundering cases pursuant to section
11 981(a)(1)(A) of title 18, United States Code.
12 "(4) PROPORTIONALITY OF FORFEITURE.—
13 "(A) IN GENERAL.—Upon a showing by
14 the property owner by a preponderance of the
15 evidence that any currency or monetary instru-
16 ments involved in the offense giving rise to the
17 forfeiture were derived from a legitimate source,
18 and were intended for a lawful purpose, the
19 court shall reduce the forfeiture to the max-
20 imum amount that is not grossly disproportional
21 to the gravity of the offense.
22 "(B) FACTORS TO BE CONSIDERED.—In
23 determining the amount of the forfeiture, the
24 court shall consider all aggravating and miti-
25 gating facts and circumstances that have a

1 bearing on the gravity of the offense, including
2 the following:
3 "(i) The value of the currency or
4 other monetary instruments involved in the
5 offense.
6 "(ii) Efforts by the person committing
7 the offense to structure currency trans-
8 actions, conceal property, or otherwise ob-
9 struct justice.
10 "(iii) Whether the offense is part of a
11 pattern of repeated violations of Federal
12 law.".
13 (b) CONFORMING AMENDMENTS.—(1) Section
14 981(a)(1)(A) of title 18, United States Code, is amended
15 by striking "of section 5313(a) or 5324(a) of title 31, or".
16 (2) Section 982(a)(1) of title 18, United States Code,
17 is amended by striking "of 5313(a), 5316, or 5324 of title
18 31, or".
19 **SEC. 5. INTERSTATE CURRENCY COURIERS.**
20 Section 1957 of title 18, United States Code, is
21 amended by adding at the end the following new sub-
22 section:
23 "(g) Any person who conceals more than $10,000 in
24 currency on his or her person, in any vehicle, in any com-
25 partment or container within any vehicle, or in any con-

1 tainer placed in a common carrier, and transports, at-
2 tempts to transport, or conspires to transport such cur-
3 rency in interstate commerce on any public road or high-
4 way or on any bus, train, airplane, vessel, or other com-
5 mon carrier, knowing that the currency was derived from
6 some form of unlawful activity, or knowing that the cur-
7 rency was intended to be used to promote some form of
8 unlawful activity, shall be punished as provided in sub-
9 section (b). The defendant's knowledge may be established
10 by proof that the defendant was willfully blind to the
11 source or intended use of the currency. For purposes of
12 this subsection, the concealment of currency on the person
13 of any individual includes concealment in any article of
14 clothing worn by the individual or in any luggage, back-
15 pack, or other container worn or carried by such indi-
16 vidual.".

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