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HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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AN ASSESSMENT OF THE TOOLS NEEDED TO FIGHT THE FINANCING OF TERRORISM

WEDNESDAY, NOVEMBER 20, 2002

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter presiding.

Present: Senator Specter.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Good morning, ladies and gentlemen. The Judiciary Committee hearing will now commence on the subject of how to combat the financing of worldwide terrorism.

With last night's passage by the U.S. Senate of homeland security, we have again signaled the determination of the U.S. Government to fight terrorism worldwide. We face enormous threats, as it is well-known from the cataclysmic events of September 11th, and the U.S. Government is in pursuit of Al-Qaeda around the world. Al-Qaeda cannot function unless it is well-financed.

There are other major terrorist organizations, such as Hamas and Hizballah, and there again it is a matter of financing. The U.S. Government has taken steps to deal with our allies, our friends, and some who are not our allies and our friends, to try to stop the financing of terrorism.

We will hear testimony today about what has been undertaken with a trip in mid-October by a key Federal official to Europe to talk to our European allies about stopping money laundering and stopping the financing of terrorism. We are going to hear testimony about a successful criminal prosecution involving Hamas, and we are zeroing in on Hizballah and all other terrorist organizations.

Our hearing today is going to focus on an issue which has not received much attention, if any, and that is the potential criminal liability of individuals who contribute to Hamas or any other terrorist organization, where those organizations are involved in terrorism which results in the death of Americans.

In 1986, Congress passed the Terrorist Prosecution Act which makes it a Federal offense to assault, maim, or murder an American citizen anywhere in the world. In 1984, the United States exercised what is called extra-terrestrial jurisdiction on hijackings and kidnappings.

Customarily, a criminal prosecution is brought in the jurisdiction where the incident occurred. But there is international law and international support for extra-territorial jurisdiction where U.S. citizens are involved. And with the strafing of the Rome and Vienna airports in December 1985, it was obvious that we needed new legislation, which I had introduced and became the Terrorist Prosecution Act of 1986.

When Hamas attacked Hebrew University and killed eight people, including five Americans, recently, one of whom was a resident of Harrisburg, Pennsylvania, those murders triggered the Terrorist Prosecution Act. People who contribute to Hamas, with its being well-known that Hamas is engaged in terrorist activities and well-known that they engage in murder, including murders of American citizens—those individuals are subject to criminal prosecution as accessories before the fact to murder.

I think that message ought to be a loud and clear one which I hope these hearings will emphasize, that where it is known that you have a terrorist organization and that terrorist organization, like Hamas or Hizballah or Al-Qaeda or others, has a record of suicide bombings which result in killing of Americans, those contributors are liable as accessories before the fact.

We have a distinguished array of witnesses today. We are going to proceed at this time to hear from the Honorable Robert Conrad, Jr., who is the United States Attorney for the Western District of North Carolina.

Mr. Conrad was the successful prosecutor of 18 defendants for operating a Hizballah terrorist funding cell in Charlotte, North Carolina. The indictments occurred before 9/11, but the case took on added significance as a result of what has happened on 9/11 and since. This case was the first trial of a, quote, "material support to a designated terrorist organization," close quote, charged in the United States.

Mr. Conrad, we compliment you on your work. We thank you for joining us and we look forward to your testimony. As it is the practice of the Judiciary Committee, the opening statements will be timed at 5 minutes. We would like you to stay to the extent possible within that time. I understand in Mr. Conrad's case there is a video presentation, so the exception in your case will prove the rule, Mr. Conrad.

STATEMENT OF ROBERT J. CONRAD, JR., U.S. ATTORNEY, WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE, NORTH CAROLINA

Mr. CONRAD. Thank you, Senator, and thank you for inviting me here. I would like to thank you, as well, for your sponsorship of the homeland security bill which passed last night and should be a great asset to our ability to fight terrorism.

I have submitted for the record a summary of this PowerPoint presentation. With your permission, I would like to get right into it.

Senator SPECTER. Thank you very much. The full summary will be made a part of the record and we look forward to your presentation.

Mr. CONRAD. Senator, this was a 4-year investigation. It took about 5 weeks to try, and I have condensed what I can into a few minutes here to present with you today.

At the outset, I would like to tell you and the public that this case was prosecuted by our First Assistant U.S. Attorney, Ken Bell, and the cooperation that he was able to coordinate among law enforcement agencies is something that the Department is proud of and I think the American people should be proud of.

The first slide here is just simply the badges of various law enforcement agencies who cooperated together in the pursuit of the Hizballah terrorist cell in Charlotte. It goes from the State and local level to the international level, and it stands for the position that it is amazing what can be accomplished when no one cares who gets the credit.

There were prosecutorial challenges in this case that we didn't face in other cases. The use of confidential sources is something that all criminal prosecutors deal with, but in this connection the sources that we used—we had to protect their lives and the lives of their families. And so it influenced everything we did in the case, from charging decisions to the way we structured search warrants, and it was a significant prosecutorial challenge.

Of course, we did utilize evidence obtained through the FISA Act, and it is amazing what kind of difference a day can make. Sitting here talking to you today, we now have a FISA structure that was unavailable to us when we started this investigation. And had we had then what we have now, I think we would have learned of earlier and been more effective in our pursuit of Hizballah in Charlotte.

We also obtained great cooperation from the Canadian Intelligence Service. We learned that they had electronic surveillance of a Hizballah procurement cell in Canada with ties to our group in Charlotte, and over time we utilized evidence that they had obtained in their country.

The CIPA Act provided for protection of classified information, and fortunately by the time we got to trial the information we relied upon at trial was declassified. But we were prepared to jump through the CIPA hoops for judges and defense attorneys and other witnesses who would have access to classified information.

One of the most significant things about our prosecution is the RICO charges that we brought against this Hizballah terrorist cell. It was the first time in my knowledge that a terrorist cell had been subject to prosecution under the RICO Act.

It did a number of things for us. It allowed us to call them what they were, and that was a Hizballah financing cell. It allowed us to pick up acts of illegality that were time-barred because of the length of time it took us to uncover the illegal activity. And it allowed us to show to a jury fundraising that dated back a number of years.

Our theory was that this group came to the country illegally, stayed in the country illegally, stole illegally, and then gave proceeds of stolen funds to Hizballah in the Middle East. And we could say all of that to a jury in Charlotte, North Carolina, as a result of the RICO charges.

Senator SPECTER. Mr. Conrad, where did they come from?

Mr. CONRAD. Beirut, Lebanon, and various—they came to the country, as I will lay out as we go, through various mechanisms.

Senator SPECTER. And there were 18 defendants?

Mr. CONRAD. Yes, sir.

Senator SPECTER. Were there other co-conspirators or others involved in the plot?

Mr. CONRAD. Of the 18, there were 6 that we ultimately charged with material support, and there were other associates of the 6 who had various levels of awareness of what was going on. The benefit of the RICO statute is we could charge the whole group as an association in fact and bring all 18 before the United States district court.

Senator SPECTER. So this large group came from Beirut, Lebanon, in a calculated way, coming to North Carolina, engaging in cigarette smuggling, which was the gravamen of their profits, and accumulated millions of dollars and funded Hizballah?

Mr. CONRAD. Yes, sir. You have succinctly summarized our case.

Senator SPECTER. Well, you wonder on that kind of an operation from Beirut, with that many people going to a town in North Carolina on that kind of a scheme and plot, how far-ranging their activities must be.

Mr. CONRAD. I believe that if there is a Hizballah terrorist cell in Charlotte, which was proven beyond a reasonable doubt to the satisfaction of 12 jurors, then there are similar cells elsewhere. And I think this is a serious——

Senator SPECTER. You wouldn't ordinarily expect Charlotte to be the focal point of Hizballah activities, would you?

Mr. CONRAD. You would not. We were very surprised to find that out.

Of course, the material support statute is a great tool in the Federal prosecutor's arsenal. It allows us to not only dismantle a financial enterprise, but in this particular case it allows us to seek heavy sentences for the criminal conduct involved.

The material support charge we brought in Charlotte was the first material support charge that was ever tried to a jury in the country, and it is now being used in Buffalo, Detroit, Portland, and elsewhere. One of the advantages to the material support charge is that, upon a finding of guilty and the application of the Sentencing Guidelines, there is a severe sentence that is applicable as a result of that charge.

There were other significant legal hurdles that we encountered and dealt with, but let me move on a little bit to the facts.

What you have pictured before you is JR's Tobacco Warehouse in Statesville, North Carolina. JR's Warehouse is the largest wholesaler of tobacco products in North Carolina, and it was here that this case began.

An off-duty Iredell County deputy sheriff noticed young men coming into this warehouse and buying bulk quantities of cigarettes with bags full of cash, and then he observed them putting those cigarettes into a van and heading north on I–77.

Now, the only thing north of Statesville on I–77 is Mount Airy, the home of Andy Griffith, and a State line. And once that van crosses a State line, a Federal felony is committed. This deputy sheriff was alert enough to recognize this suspicious activity and

contact his friends at the ATF. The ATF began a cigarette investigation as a result. Basically, the investigation began in July 1996, and the surveillance led to the identification of a Lebanese cigarette-smuggling organization.

The nature of this case was that in North Carolina, cigarettes are taxed at a 50-cent-per-carton rate and no tax stamp is applied to those purchases. In Detroit, Michigan, the cigarette tax is $7.50 a carton, and so this provided the economic incentive to purchase bulk-quantity cigarettes in North Carolina and smuggle them for resale in Michigan.

Our evidence showed that these co-conspirators averaged about $13,000 per van load, that they made approximately three to four van trips to Michigan a week, and that all told they purchased approximately $8 million worth of cigarettes and made a profit of between $1.5 and $2 million.

Now, the difficulty with the case was that we were sitting in Statesville, North Carolina, a rural community, and any juror who sat on this case would have actually benefited from the illegal activity of these co-conspirators. They were, after all, paying retail sales tax on these purchases. The loss was in Michigan, where the tax there was avoided by this illegal activity. So at this point there was a real question as to the jury appeal of a case like this.

What happened was that about this time in the investigation when charging decisions on the cigarette case were made, the FBI walked in with news that they had, through their intelligence investigations, discovered a Hizballah terrorist cell. They showed us a series of pictures that are represented here, and what was interesting about this is that each of these people pictured, whom the FBI had identified as being involved in a terrorist financing cell, were also our cigarette smugglers. And this case ceased to be about cigarettes and became about Hizballah. But these were intelligence sources, not sources we could use in a criminal case without burning those sources, and so a criminal investigation began on Hizballah.

Senator post 9/11, people tend to forget who Hizballah is, in the wake of the attention focused on Al-Qaeda. But we didn't forget. Senator Graham, of the Senate Intelligence Committee, just last spring referred to Hizballah, not Al-Qaeda, as the A Team of terrorism. Imad Mugniyah, in contrast to Osama bin Laden—he said that Mugniyah made Osama bin Laden look like a school boy.

Hizballah is responsible for the Marine barracks bombing in Beirut in 1983 that killed 241 Marines, 6 months after they blew up the embassy in Beirut. They were responsible for the skyjacking of TWA flight 847 and the shooting death of a United States Navy diver who was dropped on the tarmac, and they were responsible for a series of kidnappings in 1980, including Terry Anderson, and CIA Station Chief Buckley, who was tortured and murdered. This is the group that we were confronted with in Charlotte, North Carolina.

Senator SPECTER. And they continue to the present time, Mr. Conrad, to practice terrorism on the southern Lebanon border going into Israel.

Mr. CONRAD. Yes, sir.

Senator SPECTER. And they are reputedly financed by Iran and assisted by Syria, so they are a very formidable force.

Mr. CONRAD. One of the things that we did in this investigation is we executed 18 search warrants of residences of the people we identified as being part of this RICO enterprise. And at the residence of Mohamad Hammoud, the main target of this investigation, we uncovered this video.

The scene you are about to see is from that video from the house of Mohamad Hammoud and it depicts members of the martyr squad from Hizballah taking an oath.

[Videotape shown.]

Senator SPECTER. Now, what is this a picture of, Mr. Conrad?

Mr. CONRAD. This is a video taken from the home of Mohamad Hammoud and it depicts members of a martyr squad taking an oath.

Senator SPECTER. Who took the video?

Mr. CONRAD. We don't know who took the video. We found it in the home of Mr. Hammoud.

Senator SPECTER. It was taken there, not knowing that it would be subject to seizure and observation by law enforcement officials?

Mr. CONRAD. Yes, sir, and quoting from the trial testimony, the translator translated what you just heard from the secretary general of Hizballah saying, "We will answer the call and we will take an oath to detonate ourselves, to shake the grounds under our enemies, America and Israel." And then a group responds, "We will answer to your call, Hizballah. We will answer to your call, Hizballah."

Senator SPECTER. And that occurred in North Carolina?

Mr. CONRAD. Yes, sir.

A second video was seized with, again, the secretary general of Hizballah speaking to a crowd, and he is saying "Death to America." And the crowd is repeating behind him, "Death to America and death to Israel." The crowd replies, "Death to Israel."

Senator SPECTER. Where did that scene occur, if you know?

Mr. CONRAD. It is our understanding that those were speeches given in Beirut, Lebanon, and found in the home of Mohamad Hammoud in Charlotte, North Carolina.

Senator SPECTER. Thank you.

Mr. CONRAD. If I could speak briefly about the two main targets of the investigation, Mohamad Hammoud and Mohamad Atef Darwich, and Darwich's cousin, Ali Fayez Darwich, they came into the United States in 1992 through Venezuela. They bought fraudulent U.S. visas for $200. They landed at JFK, dropped the credentials in the trash can, and claimed asylum. Their reason for asylum was that they were being persecuted by Hizballah.

What happened after that is amazing. They were given a hearing date and released, never to appear again.

Senator SPECTER. Were they granted asylum?

Mr. CONRAD. They never even applied for it after that.

Mohamad Hammoud three times was denied a visa from Damascus. At trial, he was asked why he went to Damascus for a visa. He indicated no special reason. He was cross-examined on the fact that he went to Damascus because Hizballah has blown up the embassy in Beirut.

This slide is a picture of several of the convicted defendants. Each of them engaged in marriage fraud to stay in the country. Some of them tried three times before it finally worked.

Approximately 500 bank accounts, credit card accounts, and other financial accounts were examined via a Federal grand jury subpoena and Federal search warrants. The number of aliases and fraudulent identities in this case was simply amazing.

Mohamad Hammoud had two valid North Carolina drivers' licenses, one in his name, one in an alias. He also obtained other financial identities by either purchasing or being given student accounts. People who had come to UNC-Charlotte and other universities and gone back to Lebanon would leave their account identifications with Mohamad Hammoud, creating an adoptive identity.

His brother, Chawki Hammoud, had multiple identities, and what is very interesting is on the far right there is a Social Security card and an employment authorization card in the name of Haven Shaveski. This name never came up in the investigation and we had expert testimony at the trial that the fact that you would have an identification never used was perfect terrorist trade craft, that you would have an identity and never use it unless, of course, you had to.

Said Harb, another co-defendant, had multiple credit cards and identities. In fact, he had a notebook of fraudulent identities. His theory was that if you declare bankruptcy, every 7 years your credit is cleaned and you can start over again. He had seven sets of false identities and his theory was to bust out credit cards one identity per year, $150,000 or more tax-free, and then just put that aside and 7 years later pick it up and use it again. We caught him in the second year of that——

Senator SPECTER. Is there any way for the credit card companies or law enforcement to track that and stop someone from these multiple identities?

Mr. CONRAD. With the threat of terrorism and the significant role that identity theft and identity fraud play in that threat, I hope that that is a focused concentration of law enforcement throughout the country. It is in Charlotte, North Carolina.

A simple slide: of course, it is always nice when co-defendants take pictures of themselves with ill-gotten gains.

We learned through the FBI that Said Harb, our cigarette smuggler and credit card con artist, was involved in Hizballah procurement activity in Canada. We began slowly to take baby steps with the intelligence service in Canada and acquired information from them over time, first for search warrants which enabled us to look for Hizballah-related material; second, for purposes of detention hearings, and ultimately for use at trial, where we convinced a Federal district court judge in Charlotte to admit Canadian Intelligence Service summaries of intercepts as exceptions to the hearsay rule in the trial of this case.

Here are a few of those intercepts. In the first one——

Senator SPECTER. What was the basis for the exception to the hearsay rule? That sounds like a pretty sophisticated ruling, having tried a few of those cases myself.

Mr. CONRAD. It was two-fold. One was the public records exception. The Canadian Intelligence Service is actually a public agency

whose stated purpose under law is to perform surveillance of this fashion, and we were successful in making that argument.

Senator SPECTER. And what was the quality of the cooperation by the Canadians?

Mr. CONRAD. It was outstanding ultimately, slow at first, some degree of reluctance to share information with American prosecutors that maybe they hadn't shared with the RCMP in cases before. But their cooperation with us was outstanding.

The second theory was past recollection recorded. We were prepared to bring down the operators of the surveillance equipment in light disguise to testify at trial at one point when these things were fresh in their minds that they recorded in the fashion that they did. And once the judge admitted that and was going to permit us to let them testify in light disguise, the defendants stipulated to the admissibility of these intercepts.

One of the defendants who is still a fugitive is Mohamad Dbouk. Mohamad Dbouk is such a major player in the Hizballah organization that on five separate occasions, his application to be a martyr was rejected. Hizballah is such an organized terrorist group that they actually have application forms for martyr duty. Dbouk applied five times——

Senator SPECTER. Application forms for martyrdom?

Mr. CONRAD. To be a martyr.

Senator SPECTER. That is a special application?

Mr. CONRAD. Yes, sir, and he was rejected five times because of his significance to this organization.

Senator SPECTER. What are they looking for? What are the qualifications to be a martyr?

Mr. CONRAD. I don't think there are a whole lot of qualifications to be a martyr.

Senator SPECTER. Why was he turned down?

Mr. CONRAD. I think when you are qualified, they don't want you to be a martyr. He was such a significant player that they would rather get other people other than him to perform that role.

Senator SPECTER. Too important to be a martyr?

Mr. CONRAD. Yes, sir.

Senator SPECTER. But you say separate application forms?

Mr. CONRAD. Yes, sir.

Senator SPECTER. Like applying for a job or applying to law school or medical school?

Mr. CONRAD. Yes, sir. That is what our investigation revealed.

Senator SPECTER. Do you have a copy of such an application? We would like to put one in the record.

Mr. CONRAD. This was human intelligence source information to us.

Dbouk remarked in this intercept that he did not care about anything and was committed to securing all the items for the brothers at any cost to avoid going to hell, and to secure a place in heaven by so doing.

Senator SPECTER. You might focus on that for a just minute, Mr. Conrad. I was asked yesterday as to whether our homeland security bill would deter Al-Qaeda, and whether the President's activities in Prague at the NATO meeting would deter Al-Qaeda. And I responded that Al-Qaeda and Hizballah and Hamas are motivated

by deep religious views and are, as you have noted, searching for a place in heaven.

I think it would be useful if you would expound on that just a little bit as to the kind of an enemy you are dealing with here and how ruthless and how dedicated and how determined they are.

Mr. CONRAD. I agree with that assessment of the seriousness of their motivation, and it is unlikely that the threat of criminal prosecution would deter their violent acts. However, I think a successful criminal prosecution would disrupt their organized violent activities.

Senator SPECTER. And incarceration would disrupt their criminal activities.

Mr. CONRAD. Yes, sir, and that was our goal.

This next intercept involved a communication from Mohamad Dbouk to Hassan Laqis, the head of procurement for Hizballah. Dbouk tells Laqis that he is ready to do—near the last sentence, "I am trying to do my best to do anything you want. So, please, you must know that I am ready to do anything you or the Father want me to do, and I mean anything." The Father, our intelligence sources confirmed to us, is Imad Mugniyah, the most serious terrorist in the Hizballah organization.

This is a lengthy intercept, the significance of which is that Mohamad Dbouk, in the course of discussing life insurance, refers to a person who might, in a short period of time, go for a walk and never come back.

Senator SPECTER. Mr. Conrad, you might explain why some part of the sheet is blacked out, the redactions, for those who are unfamiliar with FBI reports.

Mr. CONRAD. Yes, sir. We have presented both at trial and before you today a declassified version of the intercepts that were shared with us both by the Canadian Intelligence Service and as a result of our FISA warrants.

This next intercept is a conversation between a fugitive defendant and Mohamad Dbouk in which they talk about Imad Mugniyah. Dbouk says he knew who Imad was. "Amhaz inquired if Imad was working with the young men," believed a reference to Hizballah members such as Laqis. Dbouk revealed that Imad was the whole story.

And then in the next intercept, just talking about Imad Mugniyah was a terribly dangerous thing to say. Amhaz asked why Dbouk said what he said and Dbouk answered, "Would anyone bring up Imad's name possibly as being associated with Imad here in Canada or in any other country and stay alive?"

Quickly, on the next slides, our source information was telling us that one of the members of the Charlotte cell was going up to Canada to get false drivers' licenses and false credit cards, and the method of transfer was that these false documents were put in a cigarette package.

It was greatly appreciated by us when CIS shared information with us and showed us a series of photographs of our defendant from Charlotte in Canada taking, first, a credit card out of a cigarette pack and then a driver's license—an amazing corroboration of the human intelligence information we were getting.

Senator here are some of the things charged in the indictment that were procured by this criminal activity and the subject of expert testimony in our case as to their dual-nature use by a terrorist organization: night vision devices; surveying equipment; global positioning systems; mine and metal detectors; video equipment; advanced aircraft analysis and design software; stun guns; hand-held radios and receivers; cellular phones; nitrogen cutters, which I understand are for cutting metal underwater; mining, drilling and blasting equipment; military-style compasses; binoculars; naval equipment; radars; dog repellers; laser range-finders; camera equipment.

Senator this is a picture of the main target, Mohamad Hammoud, who was only 19 when he entered the United States via Venezuela in 1992. We asked ourselves, how could this person maintain a leadership role in an organization like this?

One of his main contacts is Sheikh Abbas Haraki, who is the leader of Hizballah for all of Beirut, and much older than Mr. Hammoud. This is a FISA intercept of a conversation between Mr. Haraki and Mr. Hammoud. If I could take a moment to play it for you, one of the things you will note is the affectionate tone between the two gentlemen. This is an intercept of a conversation in about May of 2000 as Israel is withdrawing from Lebanon.

[Audiotape played.]

Senator SPECTER. Mr. Conrad, why don't you repeat what is on the screen so the record can pick it up?

Mr. CONRAD. This is the translation of a conversation between Mohamad Hammoud and Sheikh Abbas Haraki, the leader of Hizballah for all of Beirut, in which they are congratulating each other on the withdrawal of Israel from Lebanon in May of 2000.

I will go quickly through some of these slides. I know I am over time.

Senator SPECTER. How much longer do you expect to be, Mr. Conrad?

Mr. CONRAD. A few minutes.

These were all additional intercepts of conversations between our group in Charlotte and others, letters or intercepts talking about the opportunity to provide material support to Hizballah from the United States.

Senator SPECTER. Any references beyond North Carolina?

Mr. CONRAD. No, sir, other than the fact that one of our individuals was working with a group in Canada and coordinating a procurement out of Canada as well.

This is a still photo of Sheikh Haraki off a video seized from Hammoud's house with the Hizballah flag on the podium. A series of receipts for material support to——

Senator SPECTER. Speaking from Lebanon?

Mr. CONRAD. Yes, sir, a series of receipts from Lebanon for money sent to Hizballah by members of our organization in Charlotte.

So, in conclusion, ultimately 25 individuals were charged with, first, cigarette tracking, and later RICO wire fraud, marriage fraud, and ultimately material support. At the moment, there are five fugitives, four of them charged with material support.

This is what we are dealing with, Senator. This is a home movie seized from Mohamad Hammoud's residence. It is a picture of his nephews in Lebanon, and the trial testimony revealed that these two nephews were encouraged by adults to tell who they were. And initially the children are not very responsive and they are slapped in the face and commanded, "Tell them who you are, tell them who you are," to which ultimately the little boy in red there says, "Hizballah," age 3.

Senator SPECTER. They start them at a very early age.

Mr. CONRAD. Yes, sir.

This is a picture of defendant Mohamad Hammoud, age 15, at the Hizballah center with his AK standing next to a picture of the Ayatollah Khomeini.

Senator SPECTER. Mr. Conrad, how do you combat that? How do you combat indoctrination of children and teenagers?

Mr. CONRAD. From the U.S. Attorney's perspective, you do what you can with the effects of that indoctrination wherever you can.

Senator SPECTER. We have to start at a much earlier phase, and that is something that this Committee is working on.

Mr. CONRAD. Senator, if I could just show you a few slides, this is defendant Mohamad Darwich, who brought in a family friend to say there was nothing Hizballah-related about this group. And when asked about this photograph, he identified Mohamad Darwich as his cousin. On cross, he was asked if Darwich was a member of any militia and he said no, despite this picture.

On the second picture, they asked this witness who the person on the left was and he said, "My cousin, Mohamad Darwich." And the prosecutor, Ken Bell, said, "Holding a gun?" And he said, "Yes, holding a gun, a very big gun." But this did not trigger any response that there was militia activity by Darwich, nor did this picture. His testimony was it is just a group of guys hanging out, nor that picture.

Senator SPECTER. And these pictures were taken where?

Mr. CONRAD. They were taken in Lebanon and seized in Charlotte.

These are the two principal defendants, Mohamad Hammoud and Mohamad Atef Darwich, in Charlotte, North Carolina, and from the Washington Monument, in a place we never wanted to see them. We accomplished our goal of disrupting and dismantling a financing cell in Charlotte. Whether we did more is anybody's guess.

Thank you, Senator.

Senator SPECTER. Well, that is very impressive, Mr. Conrad. It speaks for itself and it raises the immediate question, if this is going on in Charlotte, North Carolina, involving millions dollars in smuggling on a plot coming out of Beirut, what is happening in other places in the United States? This is a matter which requires very intensive investigation.

What was the result of the trial?

Mr. CONRAD. The result of the investigation is that 18 people have pled or been found guilty.

Senator SPECTER. Have they been sentenced?

Mr. CONRAD. They await sentencing in most every case.

Senator SPECTER. What do the guidelines call for?

Mr. CONRAD. With a material support charge and a 12-level enhancement under the guidelines, and also a criminal history category 6 which is triggered by this kind of conviction, the judge can throw away the key. The statutory maximum, however, is only a 15-year statutory maximum, and that might be one thing that the Senate should look at.

Senator SPECTER. Do you think we ought to reevaluate the sentencing there for tougher prison terms?

Mr. CONRAD. If the guidelines trigger a 30-year-to-life sentence but a defendant can only get a 15-year sentence as the result of a statutory maximum, perhaps that is something for you to consider. In this case, we have box-cared 40-some charges.

Senator SPECTER. We will take a look at that. That is the purpose of the hearing to see if the penalties are adequate.

Mr. Conrad, when you talk about people in Lebanon, and you showed pictures of planning, conspiracy, incitement to violence, what action would you recommend as to those people?

American citizens have been murdered as a result of Hizballah activities. You had the Marine barracks, which you have already identified, in 1983. You had the man thrown out of the airplane on the tarmac, a most brutal killing in connection with hijacking.

Could you give us some idea as to how many murders Hizballah has been involved in involving Americans, United States citizens?

Mr. CONRAD. I think prior to 9/11, they were responsible for more murders of United States citizens than any other terrorist organization known to us.

Senator SPECTER. And a good many of those occurred after 1986, so they would be subject to the Terrorist Prosecution Act, with jurisdiction attaching as of that date.

Mr. CONRAD. Yes, sir. One of the hopefully significant things of this investigation—there are four people charged with material support who are fugitives, one in Canada, and three we believe are living in Lebanon. We would love to bring those people someday before a court of justice in the United States.

Senator SPECTER. Well, the United States is moving against Al Qaeda key people. You saw what happened in Yemen not too long ago, with military action taken against Al-Qaeda key figures. Would you recommend that for Hizballah key figures outside the United States?

Mr. CONRAD. Yes, sir, and I hope that extradition efforts and other rendering efforts might someday be fruitful here.

Senator SPECTER. It is pretty hard to extradite from Lebanon.

Mr. CONRAD. And Canada.

Senator SPECTER. But it is possible to do other things in Lebanon.

Mr. CONRAD. Yes, sir. At the very least, the world has become a smaller place for those individuals.

Senator SPECTER. You mentioned FISA, the Foreign Intelligence Surveillance Act. Have you had an opportunity to study the lengthy opinion of the appeals court that was handed down 2 days ago?

Mr. CONRAD. I am not posing as an expert in that area, but I have read that decision.

Senator SPECTER. Well, it is a very far-reaching case. It goes back and disagrees with circuit court opinions which had concluded

that the primary purpose had to be intelligence-gathering, and picked up the legislative history and noted the intertwining of foreign intelligence and criminal conduct.

There have been concerns raised about the civil liberties point of view which are legitimate concerns, and the court said you could not use the Foreign Intelligence Surveillance Act if there is only criminal activity. But if there is an intertwining, then law enforcement does have a legitimate role.

This Committee is going to do some hearings on that. It is a very, very important subject. The courts had interpreted the Foreign Intelligence Surveillance Act to say the primary purpose had to be intelligence-gathering. In the legislation last fall, the so-called PATRIOT Act, the Congress changed that to "significant purpose."

The Justice Department has argued that if foreign intelligence-gathering is significant, then the primary purpose can be law enforcement. The court didn't go quite that far, but I would be interested in your views at a later date as to how the interpretation by the appellate court would have affected your work. That case may well yet end up in the Supreme Court.

Mr. CONRAD. Yes, sir.

Senator SPECTER. Well, Mr. Conrad, we thank you for the very impressive job you have done here. To take a criminal prosecution as complex as this from beginning to end—I know from my own experience how difficult it is and it is a great result. And perhaps an even greater result is putting the American people on notice as to how far-reaching Hizballah's tentacles are. If they go to Charlotte, North Carolina, watch out.

Mr. CONRAD. Thank you, Senator.

Senator SPECTER. Thank you very much, Mr. Conrad.

[The prepared statement of Mr. Conrad appears as a submission for the record.]

Senator SPECTER. We turn now to our panel No. 2: Mr. James Gurule, Under Secretary for Enforcement, Department of the Treasury, and Mr. David Aufhauser, General Counsel for the Department of the Treasury.

Mr. Gurule traveled to Europe very recently, in mid-October, to provide several European governments specific information on selected high-impact targets so that they could be designated "terrorist financiers" and have their assets blocked.

Those involved reportedly were wealthy Saudis with assets in Europe who provided financial support to Al-Qaeda. That is a major, major problem about the Saudis financing Al-Qaeda, something that has to be looked at very, very hard.

Mr. David Aufhauser is General Counsel to the Department of the Treasury and has a key role as chairman of the Interagency Task Force on Terrorist Financing, which comes under the ambit of the National Security Council.

So you men are right in the center of high-level efforts to block terrorist funding.

Mr. Gurule, I understand this is your first appearance to testify in a congressional hearing on these important subjects. We thank you for coming and look forward to your testimony.

STATEMENT OF JIMMY GURULE, UNDER SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. GURULE. Thank you, Senator Specter, for holding this important hearing, and thank you for inviting me and my colleague, David Aufhauser, who you stated is the General Counsel of the Department of the Treasury.

I would like to take a few minutes of my opening statement and discuss the actions that the Treasury Department has taken to identify, to disrupt and dismantle the financial networks that are supporting Al-Qaeda and other terrorist groups.

It is also a pleasure to be here today with United States Conrad, from the Western District of North Carolina. As you have heard, he has been involved in a very important and cutting-edge terrorist-related case that involved extensive interagency, international cooperation. I am particularly pleased with the contributions that Treasury law enforcement made, specifically the ATF and IRS CI.

I would also like to thank you and this Committee for the important work that you have done, the tools that you have given the Treasury Department in the form of the USA PATRIOT Act. We have been actively involved in implementing the regulations, publishing the regulations to implement the legislation, and to actually utilize these important provisions.

What distinguishes the Department of the Treasury and its operational law enforcement components is the Department's unique resources and extensive financial investigative expertise, and want to emphasis there "financial," which has been developed over decades. These resources come from many Treasury law enforcement agencies, including the Customs Service, the Secret Service, FinCEN, IRS CI, the Office of Foreign Assets Control, and other important Treasury offices.

The Treasury Department is also in a unique position to leverage its relationships with domestic and foreign financial institutions and foreign finance ministers in the war against terrorist financing.

Treasury's focus is both systemic and financial. We are looking at systems, ways, methods that terrorists use to raise and to move money globally, both through traditional financial systems, banks, but also through non-traditional mechanisms such as charities, hawalas, bulk-cash smuggling, and we have seen, in addition, trade-based money laundering.

We follow the money through these systems to identify targets through public designations, the blocking actions that we have taken, regulations, and investigation. Through these means, we are able to cripple terrorist access to these formal and informal financing channels.

Our strategy is comprehensive and it is long-term. The President has stated repeatedly that this is a long-term effort. He is committed to combatting terrorism for the long term, not only in the form of Al-Qaeda, but other terrorist groups that threaten freedom and democracy around the world.

This strategy focuses on seven areas: first, targeted intelligence-gathering; second, freezing of suspect aspects; third, law enforce-

ment investigative actions; fourth, diplomatic efforts and outreach, if you will, quiet diplomacy; fifth, smarter regulatory scrutiny; sixth, outreach to the financial sector, looking for ways to establish important partnerships with the public sector, with the government and the private financial sector; and, last, capacity-building for other governments in the financial sector to ensure that their regulatory systems are not vulnerable to money laundering and terrorist financing.

Let me speak first to the value of the designation process. This is clearly the most visible and immediately effective tactic of our comprehensive strategy. This has been to designate and block the accounts of terrorists and those associated with financing terrorism.

In fact, just yesterday the United States designated the Benevolence International Foundation and two sister entities in Canada and Bosnia, and submitted these names to the United Nations Sanctions Committee for worldwide designation. So we are taking action to designate terrorist financiers and cutoff their access to U.S. financial institutions, but at the same time work with the international community so that the international community can take action to cutoff their access to foreign banks throughout the world.

I believe that this effort to date has been a very successful effort. It has resulted in the designation of 250 terrorist-related individuals, terrorist financiers and entities, and it has resulted in the blocking of over $113 million in terrorist-related funds globally.

Senator SPECTER. 113?

Mr. GURULE. $113 million, Senator.

Senator SPECTER. Terrorist funds have been seized, blocked?

Mr. GURULE. Have been blocked. The effect of this is that $113 million have been prevented from going into the hands of terrorists and terrorist organizations for use to finance future terrorist acts.

Let me just make one last point. I realize that my time is short, but I think it is important to emphasize that the effectiveness of these designations cannot and should not be measured strictly by the number of terrorist-related designations and the amount of money blocked. I mean, obviously this is important, but it is not the principal goal and objective.

More important than these numbers is the disruptive and deterrent effect that the designation process has on the actual and potential terrorist financing networks. Specifically, these designations advance global interests in suppressing terrorist financing by the following—and then I will conclude—first, by shutting down the pipeline by which designated parties move money to support terrorism; second, by informing third parties who may be unwittingly financing terrorist activity of their associations with supporters of terrorism; third, by deterring undesignated parties that might otherwise be willing to finance terrorist activity; next, by exposing terrorist financing money trails that may generate important investigative leads that will assist the U.S. Government in identifying terrorist cells in this country and abroad; fifth, by forcing terrorists to use more costly and informal means to move money, and riskier means to move money, in essence, to move them out of their comfort zone and cause them to use less proven methods of moving

money such as bulk-cash smuggling; and then, last, by supporting our diplomatic effort to strengthen other countries' capacities to combat terrorist financing.

Finally, let me just comment that, for me, over the last year-plus that I have been involved in this undertaking, what has surprised me the most is the extent to which charities are being used to raise money and to move money to support terrorist activities.

To date, the U.S. Government has designated 15 Islamic charities that are connected to terrorist financing, and we have blocked internationally approximately $20 million in terrorist-related funds, and domestically a little over $8 million of terrorist-related funds.

With respect to my trip, I would just add that I was in Europe last month. I visited five countries in 5 days. Three of those countries represented important international financial centers. I visited Switzerland, Liechtenstein and Luxembourg to meet not only with the finance ministers of those countries, but also to meet with the bankers associations to talk to them about ways in which we can enhance our efforts and make it more difficult for terrorists to access foreign banks and move money.

I also had an opportunity to travel to Copenhagen and to Stockholm. When I was in Copenhagen, my purpose there was to meet with the Chair of the EU clearinghouse. The EU has a clearinghouse process that is similar—there are some significant differences, but similar to the U.S. process of designation of terrorist financiers and entities. There, the concern was how to make the EU process more agile, more efficient, more expeditious in terms of designating terrorist financiers by the EU.

Then, last, with my visit in Stockholm, it was to meet with the incoming president of FATF, the Financial Action Task Force. In June of 2003, Sweden will assume the presidency. We have been working very closely that important multilateral organization to establish international standards against terrorist financing.

So with that, again let me thank you for this important hearing and I am happy to respond to any questions that you might have, Senator.

[The prepared statement of Mr. Gurule appears as a submission for the record.]

Senator SPECTER. Thank you very much, Mr. Gurule. I will have some questions, but first I want to turn to Mr. David Aufhauser, General Counsel at the Department of the Treasury.

Welcome, Mr. Aufhauser. We look forward to your testimony.

STATEMENT OF DAVID D. AUFHAUSER, GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. AUFHAUSER. Thank you, sir. I have a very brief statement if you would like to hear it.

Senator SPECTER. I would.

Mr. AUFHAUSER. I have done a little less traveling than the Under Secretary, but I was in Cambridge, England, on September 11th of 2001, and I was attending an international conference on money laundering and it was populated by a lot of luminaries in the field—judges, chief judges, the head of Interpol, the head of Europol, and a few general counsels.

Although it was a pretty sober affair, it was also an affair of some self-congratulation because we had made over two decades of work on money laundering some advances on a pretty bedeviling, taxing problem. We had elaborate computer screens, we had predictive models, we had profiles of conduct, we had some captures, we had some indictments, we had some forfeitures, all suggesting that we were making some gain on a pretty tough issue.

The disintegration of the World Trade Center silenced everybody in Cambridge. It was a crowd of 400 people who prided themselves on the badges that they wore. And like most of you in this room, time and time again, in an audience of 400, we watched the building fall.

The silence wasn't just a demonstration of the awfulness of what we were watching. What it was, I think—and I might be projecting here, but what I think it was also was a realization by the professionals in the world that chase and hunt money that perhaps we had been looking at the world through the wrong end of a telescope, and that the priorities were changing before our eyes.

Instead of the priority of worrying about illicit money being cleansed and finding a place for concealment and hiding, what we really had to turn to and focus on, and perhaps had not properly focused on earlier in time, was trying to capture clean money that was spirited around the world intended to kill.

The next morning, they put me on a military jump seat and flew me home, and I thought that the Treasury Department, particularly the general counsel of the Treasury Department, would do the orthodoxy, which is to make sure we collect our tax revenues, make sure we sell our bonds, and then ship all the money across the river to the Pentagon to conduct a war.

But this is anything other than a common war and it requires a pretty unorthodox way of going about things. It is actually shadow warfare. That is a term that we have heard, and the primary source of the stealth and the mobility of the conduct of the war is money and it is money that fuels the enterprise of terror.

It also happens to be, fortunately, its Achilles heel. It leaves a signature, an audit trail, and that audit trail proves, in my judgment, to be the best single means of identification and prevention and capture. Indeed—and this was alluded to earlier by the testimony of the Under Secretary—much of the intelligence that we gather in this war is suspect. It is the product of treachery and deceit and interrogation and bribery and listening and trying to read encrypted talk.

But books and records that are not intended for public oversight to do not lie; they are literally the diaries of the enterprise of terror. That is kind of a melodramatic statement, but I don't actually think it is possible to overstate the importance of the war campaign against terrorist financing. You can stop the killing if you can stop the flow of money.

I also don't want to understate the difficulty of the chore. Ours is a deliberately open and porous economy, and the ways to game it are near infinite. Moreover, the problem is international in scope. The overwhelming bulk of the assets that we seek to freeze, the cash-flow that we hope to slow, and the records that we hope to

audit are beyond the oceans that surround us. To act alone would justly invite criticism.

So once I returned to Washington, Secretary O'Neill and the Treasury team set about to craft an ambitious program of a campaign against terrorist financing and it consists, as the Under Secretary has already stated, of a number of steps.

The first is an executive order that raises the standards of conduct and due diligence of financial intermediaries, and explicitly targets even unwitting underwriters of terror for the seizure of their assets.

The second is U.N. Security Council resolutions that mirror the same and criminalize terrorist financing. The third is more scrutiny at the gateways of the U.S. financial markets under the PATRIOT Act.

The fourth is extensive public diplomacy to champion the need and the wisdom for international vigilance. The fifth is engagement of central bankers and finance ministers in the private pursuit of terrorist funds. And the sixth is outreach to the private sector for assistance in the identification, location, and apprehension of terrorists and their bankers.

Much of that effort is overseen by a policy coordinating Committee which the Senator referred to, established by the National Security Council which I chair. Although we all have feet of clay, as best as humanly possible, it is one Government working in concert, sharing their intelligence resources to fight the campaign against terrorist financing.

But the task remains unusually daunting. The material issues that face us include and insatiable appetite for actionable intelligence, which I know you know a great deal about, sir; increasing demands by coalition partners that we share the intelligence; and, frankly, a chorus of competing voices that risks confusion of our message.

As the Under Secretary said, this is not just a box score game. Only a small measure of the success in the campaign is counted in the dollars of frozen assets. The larger balance is found in the weariness and the caution and the apprehension of donors; in the renunciation abroad of any immunity for fiduciaries and financial intermediaries who in the past would have sought refuge in notions of benign neglect and professional discretion rather than in vigilance; in pipelines that we know have gone dry; in the flight to old ways of value transfer, like gold bullion and precious gems, rather than digitized electronic commerce, and the ability for us to focus our resources on those avenues of last resort for value transfer; and, finally, in the gnawing awareness on the part of those who have banked terror in the past that the symmetry of the borderless war that they have declared now means that there is no place to hide the capital that they are underwriting terror with.

I have one last point, with your permission. It is a short story, but I think it is pretty instructive of how we go about things. The Federal Reserve Bank in New York abuts the perimeters of the World Trade Center. It is an imposing and impregnable building, and it is the nerve center of the execution of U.S. monetary policy.

It also literally houses the wealth of nations. Buried deep in the vaults of the New York Fed is the wealth of nations—$63 billion

worth of gold reserves of hundreds of countries. It all had to be abandoned for the first and only time in history when the——

Senator SPECTER. You say $63 billion in gold reserves?

Mr. AUFHAUSER. Yes, sir, in gold bullion reserves.

It all had to be abandoned when the World Trade Center collapsed. The structural integrity of a third building, World Trade Center 7, was threatened by an inferno burning in the center of it, and the prospect of its toppling recommended evacuation for the New York Fed.

Now, this was a first for the fortress-like Fed, as I told you. My counterpart, the general counsel up there, Tom Baxter, who is a member of my Committee, by the way, sir, raced through the building, assuring himself that each and every one of his colleagues was out safely.

Once satisfied, Tom prepared himself to descend the steps of that rather majestic building. There was a palpable sense of urgency. The World Trade Center was still smoldering and there was the risk of the third building toppling. Police sirens were blaring and the Fed's own police were urging Tom to run down the stairs.

But, first, he turned to lock the door, only to recognize it doesn't lock from the outside. $63 billion of gold in an open building and the last man out, so Tom hesitated. He thought of all the alternative ways of returning and winding his way through a maze of corridors and parking lot alleys to secure the building. But entreaties of the police prevailed and Tom joined them and was sped to a place of refuge where his colleagues were.

When he arrived, he immediately telephoned Chairman Greenspan to report the good news that all employees were safe, out, and accounted for, and evacuation had gone without incident. The chairman had only one question: "Tom, did you lock the door?" The answer, of course, was, no, we did not lock the door and we will not lock the door. If we do that to our financial markets, the bad guys win.

So with perfect intelligence, we wouldn't need something like the PATRIOT Act. In that respect, it is a default mechanism, but a badly needed one, because we don't have perfect intelligence. Indeed, the predicate for everything we do is actionable intelligence, sir.

I welcome the opportunity to discuss that with you perhaps in another venue that doesn't jeopardize operations and sources and methods and the like, but I will try to be as responsive as I can be this morning to any questions you otherwise pose.

Thank you, sir.

Senator SPECTER. So the officials of the Fed just left $63 billion in gold unsecured?

Mr. AUFHAUSER. Well, actually, it is buried pretty deep in the bedrock of Manhattan, well below the subway system, and there is a safe.

Senator SPECTER. Lucky these fellows from North Carolina didn't know about it.

Mr. AUFHAUSER. Yes, sir.

Senator SPECTER. How much would $63 billion in gold weigh?

Mr. AUFHAUSER. More than you and I can carry.

Senator SPECTER. It wouldn't take a whole lot for that. That is quite a story, and it is enormously serious, the work that you men are up to. I am glad to see what you are doing, and it shows areas where we have to be very, very vigilant.

Mr. Aufhauser, when you commented about the donors and the apprehension of them, and identification of the donors and discouraging the donors, I think that is a very, very key point.

Mr. Gurule talks about the charities at the outset of his testimony, and then he talks about 15 Islamic charities. It is true that some of those charities have traditional charitable purposes in mind to help people, help widows, orphans, and help the destitute. But where the dollars are intermingled with funding terrorists, funding murderers, those donors have to be on notice that they are culpable, that they are liable, and that the jurisdiction of the United States attaches where U.S. citizens are murdered.

People who make contributions, once they know—you have to have knowledge that there is terrorist activity and there has to be the assistance of that group, but that is pretty apparent from the history of Hizballah, Hamas, and Al-Qaeda. Where these donors are put on notice that they could be liable for being accessories before the fact to murder, an accessory is equally guilty with the principal under the law. That is the law of accessories, so that our quest here for the donors is very well placed and very well calibrated.

Mr. Gurule, when you made your trip—and there may be some of this you would want to comment about in camera, in a closed hearing, but the issue of the Saudis is a very, very big one. We have not yet come to grips with the bombing of the Khobar Towers from 1996, where 19 U.S. military personnel died and 400 were wounded. The FBI was thwarted from questioning the people who were in custody.

Fourteen of the suicide bombers were Saudis. Osama bin Laden is a Saudi. There are public reports from our intelligence Committees about the Saudis financing Al-Qaeda. They do so under the representation that they are charitable, but that only goes so far. They know what Al-Qaeda is doing.

To what extent, if you can make a public disclosure, have your activities been directed to discouraging Saudi financing of Al-Qaeda?

Mr. GURULE. Well, I think we have made some important progress with the Saudis on this issue, on this problem of terrorist financing, and let me just illustrate with a couple of examples.

In fact, in March of this year, the U.S. Government and the Saudi Arabian government jointly designated an Islamic charity by the name of Al Haramain. This was the Somalia and the Bosnia-Herzegovina branches of Al Haramain. So we jointly designated these branches of this particular Saudi-based charity and these names were forwarded to the U.N. Security Council for addition to the U.N. list.

As early as September of this year, the U.S. and Saudi Arabia jointly referred to the Sanctions Committee an individual by the name of Wa'el Julaidan, an associate of Osama bin Laden and a supporter of Al-Qaeda, for designation and blocking.

And perhaps even more important is the fact that we have been working very closely with the Saudis on ways to enhance oversight of Saudi-based charities. And one of the fruits, I think, of our joint actions has been an oversight Committee that was recently established in Saudi Arabia, referred to as the Saudi Higher Authority for Relief and Charity.

This is a Committee that is making recommendation to the crown prince of Saudi Arabia on ways to better regulate, better control, and make more transparent these charities so they are not vulnerable to abuse by terrorist financiers and so the money is only going to support legitimate humanitarian efforts and activities, not terrorism-related activities.

Senator SPECTER. How can that be accomplished, Mr. Gurule? If the money goes into the charity, who can supervise the disbursement of the funds to be sure that those moneys do not go to terrorists?

Mr. GURULE. I think that one of the ways that they are looking at doing this—and this again is based upon a recent meeting, in fact, yesterday that David Aufhauser and I held with the foreign policy adviser to the crown prince where we discussed at some length this issue, and we are going to be engaged in further discussions. They are looking at establishing an oversight agency that would audit these charities, conduct internal audits of these charities to determine who the money is going to.

Senator SPECTER. Who would those auditors be?

Mr. GURULE. Well, they would be internal auditors within the Saudi government, part of this oversight agency that would be responsible for overseeing the activities and the transparency——

Senator SPECTER. Would it be possible to structure some international participation there? I would feel a lot more comfortable if the Saudis weren't auditing the Saudis. We have had some experience with auditors with conflicts of interest.

Mr. GURULE. Certainly, I can appreciate that. Well, this is certainly something that we could raise with the Saudi government. I think it is important, though, nonetheless to recognize the fact that the Saudi government is moving forward. They have recognized the problem. I think that they have acknowledged the problem and they are taking, I think, important steps. They may be first steps and they may be baby steps, but they are taking steps to address the problem and they are working with us in that effort. So that is encouraging.

Senator SPECTER. Do your conversations with the Saudis include the issue of the Saudis financing Palestinian suicide terrorists, giving money to those individuals and their families?

Mr. GURULE. That subject has been raised. By the way, that subject has been raised in a broader scope with respect to our European allies as well. When I traveled to Europe in October, I raised at each of my stops and visits this issue that is a vexing issue for the U.S. Government, and that is a distinction that is often made by European countries with respect to the military wing of Hamas, for example, and the political and the social wing of Hamas.

They are willing to take action against the military wing in terms of blocking and designations, but less willing, reluctant, to take action against the social or the political wing. The U.S. Gov-

ernment does not make that distinction. If the money is going to Hamas, we do not believe that there is a bank account for humanitarian activities and a bank account that is being maintained for terrorist activities.

Senator SPECTER. Well, it is a distinction without a difference, the political wing and the military wing. The political wing has funds and they co-join in a body and those funds are made available to the military wing.

Mr. GURULE. Well, we certainly believe that it supports the infrastructure of Hamas. It directly or at least indirectly supports the activities of Hamas, including terrorist activities, and we are working with our allies to see if we can move them away from that distinction and into taking more aggressive action against supporters of Hamas and Hizballah.

Senator SPECTER. Well, if we come to the point where we proceed criminally against a contributor to Hamas for being an accessory to murder of the five Americans murdered at Hebrew University and there is a defense that it went to the political wing and not to the military wing, I have had a fair amount of experience as a prosecuting attorney, a district attorney, and that kind of an argument doesn't have much credence with a jury. People better not try to defend themselves on the ground that they are dealing with the political wing and not the military wing when those funds are interchangeable.

When you said you were successful on cutting off the funding for some $113 million, do you have any ballpark figure as to the extent of the money that is involved here? $113 million s a very impressive figure, but obviously there is a lot more. Is that the tip of the iceberg? Are we really dealing with funding into the billions?

Mr. GURULE. It is very difficult to define the scope and magnitude of the problem with respect to the funds that are available to support terrorism. I think the fact that we have blocked, frozen, if you will, $113 million is significant, but I think it is even more significant that we have been able to cutoff important channels of funding, and specifically financial networks like Al Barakaat.

With respect to Al Barakaat, an organization that we believe has tentacles, if you will, that reach as many as 40 countries around the world, on the one hand when we designated Al Barakaat in the United States back in November of last year, we blocked just a little over $1 million. But more importantly, we basically dismantled that network for moving money.

In the process, we cutoff a channel that we believe had been moving as much as $20 million or more a year to support the UBL and Al-Qaeda. So, again, sometimes the money itself, the amount of money that has been blocked does not tell the true story, the full story of the effect and the impact of our actions.

But to be more direct and responsive to your question, I can't give you a precise figure as to the amount of money that is out there that is available.

Senator SPECTER. But we are dealing with large sums.

Mr. GURULE. Huge sums.

Senator SPECTER. If you intercepted $113 million, you can speculate or estimate it is many, many times that.

Mr. GURULE. That is fair. I would agree.

Senator SPECTER. Mr. Gurule, do you need any more legislation on the freezing of assets? Is there anything we can do for you here to start some legislation through to help you? This is the right place to come.

Mr. GURULE. Thank you, thank you, and we appreciate your support. The PATRIOT Act has been very valuable, provided us some very valuable tools. Just recently, Deputy Secretary Ken Dam established a USA PATRIOT Act task force. This is a task force that Mr. Aufhauser and I, as well as Under Secretary Taylor and Under Secretary Fisher, serve on. It is chaired by the Deputy Secretary and its purpose is to evaluate the effectiveness of the PATRIOT Act provisions and come back to Congress and ask for any amendments, any changes as we identify them.

Senator SPECTER. Well, we are very interested in responding to your needs. It took us a little time to get the homeland security bill. Senator Lieberman and I introduced on October 11, 1 month after 9/11, and it took too long and it was touch and go up until the last minute. The House of Representatives last Wednesday passed a bill which was materially different from the bill that we had expected, and when you go to the fine print many of us were very unhappy with a great deal of what was in the bill. They say that you don't like to see either sausage or legislation made, but that bill bordered on giving sausage a bad name. It was a very tough matter.

Mr. AUFHAUSER. Can I take you up on your offer and give you some ideas?

Senator SPECTER. Sure. I made it to you as well, Mr. Aufhauser.

Mr. AUFHAUSER. We actually have a bill up here right now. When we name a charity such as Benevolence or Global Relief or Holy Land as a terrorist organization under the executive order and IEEPA, its 501(c)(3) status continues in place and we have to go through a rather elaborate procedure at the IRS to revoke that license and the revocation proceedings threaten to expose important information.

So we have asked Congress, and it has been passed by the House and I think it is—I must confess I don't know if you are still in session today, but if not this lame duck session, then in January we have asked for a very simple amendment to the Internal Revenue Code which would say that when we name a U.S. domestic charity as a terrorist organization, its 501(c)(3) status is suspended and/or revoked. So that is issue one. So that is automatic.

Second, one of the powers that you granted the Treasury Department, in particular, under the PATRIOT Act is called Section 311, which is the power to designate persons or even jurisdictions, whole countries, as primary money laundering concerns, and there are severe consequences if they are named as such by the Secretary of the Treasury.

In those proceedings, we do not enjoy the same privileges of keeping classified information secret that we do in IEEPA proceedings. So we would like a parallel provision to protect evidence so that we can present it ex parte, in camera, in Section 311 proceedings that mirrors what you all granted us in the PATRIOT Act with regard to the execution and the implementation of the Inter-

national Emergency Economic Powers Act. I can put that in writing to you, too.

A third percolating thought, because I heard your question about accessories to murder, is we want to be clearly understood that we think those who bank terror are equally culpable to those who commit it.

Senator SPECTER. Good.

Mr. AUFHAUSER. That is point one. That is what the Under Secretary and I and Secretary O'Neill are about on this mission on terrorist financing. Again, I meant it when I said if we stop the money, we stop the killing.

Having said that, I think you know better than anyone, having prosecuted cases—and I know from defending cases with the likes of Brendan Sullivan and Edward Bennett Williams—that it is difficult for you to make a case for aiding and abetting in the absence of a knowing of specific intent of the actual injury that is worked.

An idea that might be worth looking at by the Committee and by your staff is borrowed from an area of law where I used to practice, which is public welfare offenses in the environmental area or in the food and drug area, and that is the notion of reckless endangerment, knowing and reckless endangerment.

It is possible to get a serious felony for people who bank something like Hamas without having to demonstrate that they knew with certainty or beyond a reasonable doubt that it was going to result in the death of an American. So that is another idea that I think you could profit from looking at.

One last point, if I can, also on the Saudi issue, and I know you didn't intend it. We are not at war with Islamic charities. In fact, we applaud them. It is important that what we do is not perceived incorrectly as having declared a campaign to undercut Islamic giving and Islamic charities. It is a tenet of their faith, as it is a tenet of most people's faiths, that charitable giving is good and should be applauded.

We have, however, declared war on counterfeit charities, and where it gets very, very difficult is that deliberate strategic decisions are made by terrorists to use a charity, frequently unwitting to the charity's fiduciaries, in a manner to divert money because of lax financial controls and the like, because the charities have outposts throughout the world in trouble spots which are not well-policed.

So when we talk to the Saudi government, for example, about more rigor in the audit and management of money that goes through charities, it is really an exploration with them of how to manage financial controls well so that money doesn't get diverted.

Senator SPECTER. Well, I believe that it is indispensable, as you have noted, to make the distinction between what is really charitable work. Islamic giving and Islamic charities are to be commended, and Islam is a great religion and we have to avoid painting with a broad brush. We have to be very specific. But when the distinctions are made between a military wing and a political wing, that simply will not stand up.

Mr. AUFHAUSER. We are in heated agreement with you on that. The idea that there is a firewall there is counterfeit.

Senator SPECTER. So that has to be pursued. From my work in chairing the Intelligence Committee in the 104th Congress back in 1995 and 1996, I have a lot of questions about the degree of cooperation of the Saudi officials.

When I went and talked to the crown prince about the Khobar Towers, it was a stone wall. And when FBI Director Louis Freeh went there on several occasions to question those suspects—and I have wondered whether those suspects were involved with Al-Qaeda and ultimately with 9/11. We did not have a chance to question them. There was a car bombing in Riyadh shortly before the Khobar Towers was blown up.

I believe we have to press the Saudis much harder. We have got 5,000 of our military out there in the middle of the desert protecting Saudi Arabia. We talk about cooperation by the Saudis in the movement by the U.N. as to Iraq and we are not getting it. So I think it is important to be very precise in what we are asking for, and very demanding. You have to be fair. You have to acknowledge charities, but if it crosses the line, we have got to be very tough about it.

I think your idea on reckless endangerment is a good idea. At common law, if there is a reckless disregard for the safety of another resulting in death, that is the equivalent of malice, which supports a prosecution for murder in the second degree. So you do not have to prove premeditation or the same level of criminal intent on reckless endangerment, and I think that is a good suggestion. It is good to have lawyers sit down and talk every now and then.

Well, this has been very fruitful, Mr. Aufhauser and Mr. Gurule. I thank you for what you are doing and we will pursue the suggestions that you have made. I think when you talk about the revocation of a 501(c)(3), you are talking about something very different from detaining someone or denying someone liberty or having a search warrant and seizing property. You are talking about really a privilege which is given, a benefit which is given. The Treasury Department of the U.S. Government can determine that. We don't have to exercise excessive largess if there is reason to pull back.

And tell that Pennsylvanian, Secretary Paul O'Neill, that we thank you for your good work and thank him for his work.

Mr. GURULE. Thank you very much.

Mr. AUFHAUSER. Thank you, sir.

Senator SPECTER. We will now go to panel No. 3. While panel three is being seated, I think it worth noting that other Senators are not here today to participate in this hearing because late last night the Senate finished its business and we had a last vote on the continuing resolution. When the Senate concludes its voting, there are many, many plans. Many of my colleagues were in the air before 7 a.m. this morning.

Senator Leahy, the chairman, and Senator Hatch, the ranking Republican, have statements which we will include, without objection, in the record.

[The prepared statements of Senators Leahy and Hatch appear as submissions for the record.]

Senator SPECTER. Senator Leahy had asked me to chair this hearing, even though we do not have the same party designation,

because of his agreement that the hearing was important and because of the work which I have done on the Judiciary Committee and in law enforcement before.

We had asked the Holy Land Foundation to attend and testify to give other points of view, a hearing, an audience, but they declined, saying that they did not have adequate time to prepare once the notice of the hearing was given. So we will maintain an open record. If they wish to submit something for the record or if they wish to be heard, we will give them an opportunity for a public hearing at a later time.

Our first witness is Mr. Nathan Lewin, who represents the family of David Boim, a dual U.S.-Israeli citizen who was murdered by Hamas terrorists in a drive-by shooting in Israel. Mr. Lewin has instituted suit against a number of charities and has had considerable experience in the field.

We welcome you here, Mr. Lewin, and look forward to your testimony.

STATEMENT OF NATHAN LEWIN, LEWIN AND LEWIN, LLP, WASHINGTON, D.C.

Mr. LEWIN. Thank you very much, Senator Specter. My name is Nathan Lewin. I am a lawyer in private practice in Washington, D.C., in a family law firm called Lewin and Lewin that I operate with my daughter, Alyza Lewin, who is here with me today.

I was a prosecutor with the Department of Justice many years ago, and I practiced white collar criminal defense law and appellate litigation. I have represented former President Richard Nixon and Attorney General Ed Meese while he was Attorney General in an independent counsel proceeding. I have argued 27 cases in the Supreme Court of the United States, and have taught at Harvard, the University of Chicago, Georgetown, Columbia, and George Washington University law schools.

I am gratified to have received your invitation to testify on the subject of the assessment of the tools needed to fight the financing of terrorism because I believe I have discovered the cheapest means from the perspective of the American taxpayer to fight the financing of terrorism from sources within the United States.

The principal tool for this battle is, I believe, America's private litigators, lawyers who are ready to bring private lawsuits at no taxpayer expense against private organizations and individuals who provide funds to organizations that engage in terrorist acts abroad or in the United States.

Senator SPECTER. Excuse me one moment. We have people in the hall, people who have come in. You are welcome to come up front and have seats. There is no additional charge. Anybody who is in hallway needn't stand in the hallway. I believe that you are all taxpayers, so we will try to provide seating for you.

You may proceed, Mr. Lewin.

Mr. LEWIN. I was saying, Senator Specter, that I thought this was the cheapest way from the American taxpayer perspective of deterring individuals and charities in the United States from supporting terrorism.

I speak from personal experience. Sometime in 1997, when I was visiting the state of Israel, as I frequently do, I was introduced to

Joyce and Stanley Boim, the parents of David Boim, a young man who was killed by Hamas terrorists in May 1996 when he was only 17 years old.

David, who was born in the United States to American citizen parents, was standing at a bus stop near the school he attended when a car drove past and shot randomly at passengers boarding a bus and others standing nearby. The killers were two members of Hamas, the organization that immediately took credit for the attack. One of the killers went on to be a suicide bomber in September 1997, in the heart of Jerusalem, when he killed seven others, including a young girl who was an American citizen, and wounded 192, including several young American students.

The second, the driver of the car, is named Amjad Hinawi. He confessed when he was finally brought to trial in a court in the Palestinian Authority in early 1997. An American State Department representative, Mr. Abdelnour Zaibeck, witnessed the confession and reported on it. Hinawi received a slap on the wrist from the Palestinian court. Although he was found guilty and sentenced to 10 years in prison at hard labor, he has been seen walking around free in Palestinian territory.

I testified about this outrage and the inexplicable failure of the Department of Justice to indict Hinawi and seek his extradition in a subcommittee proceeding chaired by you, Senator Specter, in March 1999. Absolutely no progress has been made in the more than 3 years since that time.

There is no reason in the world why a confessed murderer of an American student shot in cold blood while waiting at a bus stop has not been criminally charged by American authorities and brought to trial in an American court.

I have met with the Department of Justice three times on this subject and have received no satisfactory explanation whatever. And there has not been a single criminal prosecution, Senator Specter, under the statute that you referred to that I think you were involved in getting enacted, the Act of 1986, which makes this a criminal act that should be prosecuted by American authorities. Not a single person killed in Israel, American citizen killed in Israel, has been the subject—none of the killers of those people have been the subject of an indictment in a United States court.

The Boims asked me then whether they had any remedy at all under American law, and I did what maybe too few lawyers do today and I looked at the statute books. I found that in 1991 and 1992, Congress had passed anti-terrorism laws, including what is now 18 U.S.C. 2333, that gave American citizen victims of such terror anywhere in the world a civil remedy, with treble damages and attorneys' fees, against those who commit murder or assault.

Obviously, there was no purpose in suing Mr. Hinawi, who has no funds, if he can be found, and no funds that can be reached for a judgment. And his confederate killed himself and seven others in a later suicide bombing. Against whom can such a statute be used?

Over initial objections from my then-partners, I drafted and filed a lawsuit against those who enabled the perpetrators to kill David Boim, the organizations in the United States that collected funds and provided other support for Hamas in the years preceding May 1996.

I was challenged by my partners, by friends, and other lawyers who wanted to know why I was suing the leading Muslim charity in the United States, the Holy Land Foundation for Relief and Development, and others that were engaged in purportedly charitable activities in the Middle East.

I responded that the defendants in my case, none of whom are foreign governments or government agencies, knew that they were also funding violence by Hamas directed against civilians. I sued in Federal district court in Chicago, in the Northern District of Illinois, because the United States had seized $1.4 million in a civil forfeiture action based on allegations of money laundering on behalf of Hamas. I hoped that the Boims, who were the victims of Hamas terrorism, would be able to reach those funds.

Our complaint was filed on May 12, 2000. On January 11, 2001, District Judge George Lindberg denied motions by the Holy Land Foundation and other defendants to dismiss the complaint. I agree to the defendants' request for an interlocutory appeal to the Court of Appeals for the Seventh Circuit because I believed it important that the litigation's deterrence to contributions for terrorism receive great prominence.

Briefs were filed and the case was set to be argued on September 25, 2001, and then came September 11th. The judges on the court of appeals, realizing the importance of the issues they were being asked to decide, asked the Department of Justice to file a friend-of-the-court brief. We argued the case on September 25, and in November 2001 the Department of Justice filed its brief supporting my argument that any organization that contributes to a terrorist organization, with knowledge that it engages in terrorism, is an aider and abettor of the terrorism and is civilly liable for damages.

The Court of Appeals accepted that argument in a landmark decision issued on June 5 of this year, which is called *Boim* v. *Quranic Literacy Institute* and is reported at 291 F.3d 1000. The Holy Land Foundation did not seek Supreme Court review and we are now engaged in the discovery process.

We are fortunate to have the volunteer assistance of a major Chicago litigation firm, Wildman Harold Allen and Dixon, of Chicago, and specifically Stephen Landes and Richard Hoffman of that firm, in this time-intensive discovery stage. If not, we would not be able to continue with this exceedingly important lawsuit. And this brings me to my recommendations for legislative amendments that are essential to make this deterrent to the funding of terrorism work.

First, although 18 U.S.C. 2333 provides for very substantial damage awards, treble damages and attorneys' fees, it does nothing to enable lawyers to pursue litigation prior to a final judgment. I and the firms I have been with since I began this project have invested approximately $1 million of attorneys' time in this case. Although $1.4 million of seized funds is sitting in the clerk's office in the Federal court in Chicago, we have received not one penny for the heretofore successful prosecution of this action.

The law should provide that if a plaintiff is successful in defeating a motion to dismiss, he automatically recovers attorneys' fees and out-of-pocket expenses from the defendants. That will enable the private attorneys general, such as myself and Mr. Gerson and

the a attorneys who are bringing his lawsuit, to continue to prosecute these cases to a successful conclusion. Otherwise, well-financed defendants can exhaust a plaintiff's lawyer in all the preliminary skirmishes that have marked this case.

Second, funds that have been seized by the United States from defendants in——

Senator SPECTER. Mr. Lewin, you are at about double time now. Could you sum at this point?

Mr. LEWIN. I will. I am coming to a conclusion.

My second point is that the funds that have been seized should be made available for the payment of plaintiffs' attorneys' fees whenever the plaintiffs have prevailed at the pre-trial stages.

We sued the Holy Land Foundation. On December 4, 2001, President Bush, Attorney General Ashcroft and Secretary of the Treasury O'Neill announced that they were seizing the assets of the Holy Land Foundation because they were used to support schools and indoctrinate children to grow into suicide bombers.

Now, those seized funds are being used at a rapid rate to pay lawyers for the Holy Land Foundation for their work in challenging the seizure and in defending against our lawsuit. If the litigation goes on long enough, all the money that has been seized will be spent paying the lawyers for the Holy Land Foundation. They have lost their challenge to a seizure in a recent district court decision here in the District of Columbia, where the district court held that they had connections with Hamas, that they were actively involved with Hamas leaders, and that they provided financial support to the Hamas suicide bombers. Their lawyers are being paid top dollar from seized assets. Why should not the plaintiffs' lawyers also receive compensation for the work they have done?

Third, the law should authorize the distribution and the availability of information that Federal prosecutors gain in their investigations to the private attorneys general. Prosecutors are loathe to share information. There should be a provision that grand jury and other investigative materials should be disclosed to private attorneys for their actions under court——

Senator SPECTER. Mr. Lewin, we have that point. Do you have any other specific points, because we are going to have to move on?

Mr. LEWIN. OK, then let me just say my two other proposals are that the statute of limitations be amended and that causes of action—that the theories that we have established in our litigation be specifically provided in the statute. Aiding and abetting, which you have spoken about, Senator Specter, should be specified in the statute as a basis for civil liability, and individual responsibility by individuals who contribute to these organizations.

I thank the Committee for the opportunity to testify here this morning in this very, very important endeavor to cutoff what the Senator has called, and I think what everybody else has called, stopping the money to stop the killing, to discourage the donors. I think that is the effort that should be made by the statutes.

Thank you.

[The prepared statement of Mr. Lewin appears as a submission for the record.]

Senator SPECTER. Well, thank you very much for your testimony, Mr. Lewin. I am very distressed that the Department of Justice

has not acted under the Terrorist Prosecution Act. You noted the hearing we had 3 years ago that went into the case in some detail. You have performed extraordinary service not only to your clients, but to America in pursuing this matter, and I will have some questions for you when we move forward on the panel.

Our next witness is distinguished lawyer Allan Gerson, co-counsel on a case filed by September 11th victims against the financiers of Al-Qaeda. He was involved in representing Pam Am 103's victims' families and their claims against Libya, very extensive experience in this field.

Thank you for joining us, Professor Gerson, and we look forward to your testimony.

STATEMENT OF ALLAN GERSON, PROFESSORIAL LECTURER IN HONORS, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

Mr. GERSON. Thank you, Senator Specter. I am very appreciative of this opportunity to appear here today to contribute to the terribly important and urgent goal that this Committee has set for itself: assessing the tools needed to fight the financing of terrorism.

Surely, Senator Specter, the standard by which these tools can be assessed must in large measure revolve around the progress that has been made in securing for the families of the victims of 9/11 the rights guaranteed to them under recent U.S. antiterrorism legislation. It is through these initiatives that they seek to hold accountable those responsible for facilitating the murders of their loved ones, and that begins with the proposition that the root of the problem lies in the financing of terrorism.

First, I would like to express gratitude to you, Senator Specter, and the entire Committee on behalf of the over 3,600 individual family members that Ron Motley, my partner in this endeavor, and I have the honor to represent. They understand that your continuing interest and involvement in the justice of their cause will enable them to play the important role carved out for them in the war against terrorism.

Senator Specter, 9/11 was the work of terrorists that preach global jihad. The mass rallies of the Nazis and the fanning of bigotry and hatred have now been replaced by the use of global jihad's adherence to the Internet and the click of a computer mouse. Yet, I fear, Senator Specter, that we are still using—and I will try to illustrate this in my remarks—antiquated and obsolete techniques and ideas to deal with today's threats.

The victims of 9/11 were, of course, predominantly civilians, and yet today these families, the families of the victims, have the capacity to strike back, but if, and only if, their hands are not tied. They must be allowed to invoke the full force of our laws.

As Secretary of State Powell recently noted, "The coalition against terrorism must advance on all fronts—political, financial, legal and military—to root out terrorists wherever they live and plot." Indeed, President Bush almost immediately following the September 11th attacks proclaimed, "Our goal is to deny terrorists the money they need to carry out their plans. Our weapons are military and diplomatic, financial and legal."

Today, the families of the 9/11 victims are in the front ranks of those fighting the war on the financial and legal fronts. Their weapon is the legal process. Their principal target is terrorism's financial underbelly, and it is no accident that the organized 9/11 families call themselves Families United to Bankrupt Terrorism, for they are essentially acting through their lawyers, as Harvard Professor Alan Dershowitz has characterized it, as private attorneys general, stepping in where the Government is constrained by economic and political considerations.

In this regard, our legal team has assembled highly experienced litigators to scour records in 13 countries on behalf of the suit we have filed entitled *Burnett, et al.* v. *Al Baraka Investment and Development Corp.* here in the District Court for the District of Columbia.

The suit names over 100 defendants in a complaint that spans 1,000 pages, with the third amended complaint to be filed this Friday. In addition, a more recently filed case in New York, *Ashton, et al.* v. *al Qaeda, et al.*, names many of the same defendants on behalf of approximately an additional 1,000 9/11 family members. The defendants in the Burnett suit are primarily Saudi banks, charities, institutions, wealthy contributors, and individuals, some of whom have very close associations with the government of Saudi Arabia.

In this effort, we have the active assistance of the governments of Russia, Uzbekistan, Israel, and Bosnia, to name but a few. We have the active cooperation of the judiciary and the government's prosecutorial arms in Spain and in Germany. Indeed, in Germany we are preparing as I speak to appear on behalf of the families as co-plaintiffs in a criminal prosecution against one of the alleged 9/11 plotters, a procedure permitted under German law. This will enable us to see evidence that is fresh, to call witnesses, and to strengthen our case.

For example, one of the items obtained in our global investigatory efforts and which will be noted in the third amended complaint which we will be filing on Friday is a document that shows fund transfers made by the Saudi American Bank located here in Washington's Watergate Hotel complex—payments made to the Middle East that ultimately ended up in Hamas's pockets for the purpose of suicide bombings in Israel. We intend to demonstrate that this financing pattern served as a template for funding Al-Qaeda. We have also obtained judicial cooperation in tracking the Al-Qaeda money trail that, as reported by the New York Times on September 21 of this year, ran from Saudi Arabia through Spain and directly to the perpetrators of 9/11.

Senator Specter, for all of these reasons, I believe we are making good progress in using the tools that Congress has already made available to us. I am not here to ask for new legislation. Rather, I come to thank you for what the Committee has made possible and to make one specific request.

I respectfully urge you to do all in your power to make sure that those advances not be frustrated by pernicious maneuverings by those who persist in viewing the 9/11 families suit as unwarranted interference in America's foreign policy.

Credible reports that our Government might be considering stalling or otherwise impeding the suit were reported in the New York Times on October 25, and as a result a large delegation of family members promptly came by bus loads from New York to stand vigil before the Capitol on November 1 to insist that our Government stand with them and not against them.

Regretfully, I am not in a position to assure the families that the cause for their great anxiety and fear of betrayal has passed. In a full-page, open letter to the President that appeared in the Washington Post on November 1, they asked that President Bush, quote, "disavow any effort by our Government to disarm us as we join you in the fight against terrorism," end quote. No response has been forthcoming.

Today, recourse to the courts by American citizens against the perpetrators of terrorism is surely a constitutional right. It cannot be taken away or suspended without violating the due process and taking of property provisions of the Fifth Amendment.

What is needed is an affirmative statement that there will be no interference in the 9/11 families' efforts to seek redress. Beyond that, I would hope that, wherever practicable, there would be active cooperation in the sharing of evidence because, if I may conclude, it is in this context, a context of cooperation and sharing of documents between courts, involvement of private plaintiffs all along the way, making sure that evidence that does not turn stale, and allowing them to go into areas where for economic or other reasons governments are loathe to tread, that we have the essential elements of the new international public-private partnerships that are essential in enabling us to successfully wage the fight against terrorism.

Thank you, Senator Specter.

Senator SPECTER. Thank you, Professor Gerson. The Congress has supported these claims with legislation on civil rights of action and I do not believe that the executive branch will impede what you are doing. You may come to a point where you are seeking to attach assets of some foreign government where you may have some difficulties. Many of us on Capitol Hill have been supportive of you there, as well. We will monitor it all very closely and we are available to be of assistance.

Mr. GERSON. We enormously appreciate that expression of support, Senator Specter.

[The prepared statement of Mr. Gerson appears as a submission for the record.]

Senator SPECTER. We turn now to Mr. Jonathan Winer, former U.S. Deputy Assistant Secretary of State for International Law Enforcement, a member of the Council on Foreign Relations, and a member of task force that recently published a report on terrorist financing.

Thank you for joining us, Mr. Winer, and we look forward to your testimony.

STATEMENT OF JONATHAN M. WINER, ALSTON AND BIRD, LLP, AND MEMBER, COUNCIL ON FOREIGN RELATIONS, WASHINGTON, D.C.

Mr. WINER. Thank you very much, Mr. Chairman. I am grateful for the opportunity to testify before you on the administration's use of the tools provided them to fight terrorism over the past year, and to discuss the findings of the report of the Independent task Force on Terrorist Financing, sponsored by the Council on Foreign Relations and chaired by Maurice Greenberg.

I have been working in the field of anti-money laundering for some two decades. Since September 11, 2001, we have accomplished more in the past year than I thought would be achieved during my entire lifetime. Over the past year, the administration has undertaken a herculean task of transforming the tools provided to it by the Congress in the PATRIOT Act into practical realities. By and large, they have done a remarkable job. As always, there are a few things that can still be done.

In light of the discussion today, I would like to turn directly to the charity issue. I think we still need to consider further action on Islamic charities, such as subjecting them to the Bank Secrecy Act. Some of these charities turn President Lincoln's quote on its head; it is charity toward none and malice unto all.

After I testified before the Senate last year, right after September 11, one Islamic charity I listed on a chart as being alleged to have ties to terrorism gave me an ultimatum: I retract what I told the Senate or they would sue me. On the very day they were planning on filing the lawsuit against me, the defamation action for my constitutionally protected testimony before the Congress, President Bush shut them down as a terrorist finance organization. You have heard about them earlier today. It was the Holy Land Foundation.

Senator SPECTER. Well, there you are, Professor Gerson. Do you see the cooperation from the executive branch?

Mr. GERSON. We welcome it.

Mr. WINER. That was the Holy Land Foundation that gave me that ultimatum.

I am tremendously concerned that funds from some of these charities have been used to purchase interests in otherwise legitimate U.S. businesses. I think that there is a penetration of other institutions that some of these charities have been able to engage in and it is going to be tremendously important to investigate that and go after it.

I have also seen that charity fraud and charity abuse is not limited to Islamic charities, as we have seen in the Washington area recently. I have encountered abuses of charities in many contexts during my time in Government, both on the Hill and in the executive branch. Our regulation of charities at the Federal level is minimal to non-existent, and charities are not today expressly covered by U.S. money laundering regulations.

I would urge consideration of whether the administration should use its existing authorities to treat charities as financial institutions for the purposes of the Bank Secrecy Act, and thereby become subject to Federal examination for compliance with our anti-money laundering laws. We are asking insurance companies and loan and

finance companies to be subject to examination, we are asking hedge funds to be subject to examination, but not charities.

Second, I would suggest that the Secretary of the Treasury should use his powers under Section 311 of the PATRIOT Act to designate foreign jurisdictions or financial institutions for special measures for enhanced scrutiny. This is a power the Congress gave the Secretary in the PATRIOT Act. The Treasury hasn't used the power.

It is hard for me to understand that the Treasury has not identified even one foreign country or one financial institution that poses an unacceptable level of money laundering or terrorist finance risk, and therefore hasn't subjected a single one to the lesser level of sanctions available to the United States under Section 311.

Mr. Aufhauser has asked for some additional protections in order for them to use the Section 311 authority. I can't assess whether the absence of those protections precludes such action, but I think using that particular authority would send a very strong signal to financial institutions in other jurisdictions that we are going to protect ourselves.

Third, I believe the U.S. Government should be developing international standards for regulating and tracking gold and other precious metals and jewels that are used for trans-national terrorist finance. The U.S. has had an exemplary investigation of money laundering through gold by Italian organized crime and Colombian drug traffickers in the Colon Free Zone, in Panama.

Dubai is the largest gold trading zone in the world. There really is more that we should be doing to try and create a standardized international global regulatory regime for tracking and regulating gold and other precious metals and gemstones subject to abuse especially across borders. One means of doing it might be through the existing G–8 anti-terrorist group led by Treasury.

Fourth, you have heard quite a bit about problems for the private sector and the administration sharing information. I believe that in that connection, further information needs to be shared about our actions vis-a-vis halawadars, alternative remittance systems.

There is no location today where the public can go to determine whether a money transfer business has registered with the Government, as they are all required to do under the Bank Secrecy Act and the PATRIOT Act. FinCEN has a confidential system for Federal prosecutors to use. Not all of them know about it. I have talked to some who had no idea it existed, but they have such a system.

The information is not public. I think it should be public, who has registered and who hasn't. It would have a lot of positive assistance for the financial institutions that don't want to do business with unregistered money service businesses.

Last, and this relates to the information-sharing issue as well, the private sector has to be brought in as a partner to governments in combating terrorist finance. British law enforcement has referred to the private sector as the deputy sheriffs who have been deputized to assist the government in going after the bad guys and protecting us against them.

I believe the U.S. could work with private sector institutions and non-governmental institutions to create white lists of financial in-

stitutions and perhaps charities that, regardless of the legal environment in their home jurisdiction, commit to the highest level of due diligence, anti-money laundering, and anti-terrorist finance procedures, and agree to a system of external assessment of compliance, precisely the idea, Mr. Chairman, that you raised in the Saudi context. External assessment for compliance is a critical element for such a white list.

In addition to the reputational benefit from being included on such a white list, inclusion on the list could be a factor taken into consideration by the World Bank, the International Monetary Fund, and other IFIs in considering which financial institutions to put their money through, as well as by USAID and its counterparts in the rest of the world.

Mr. Chairman, these suggestions have been endorsed by the distinguished bipartisan group of the Council on Foreign Relations on which I participated. I thank you for the opportunity to testify before you today.

[The prepared statement of Mr. Winer appears as a submission for the record.]

Senator SPECTER. Well, thank you very much, Mr. Winer. We appreciate your being here.

We now turn to Mr. Salam Al-Marayati, Director of the Los Angeles-based Muslim Public Affairs Council, who authored an op ed piece in the New York Times to the effect that Muslim charities should not be prosecuted, but rather the officers of those charities if they support terrorism.

We welcome you here and look forward to your point of view, sir.

STATEMENT OF SALAM AL-MARAYATI, EXECUTIVE DIRECTOR, MUSLIM PUBLIC AFFAIRS COUNCIL, LOS ANGELES, CALIFORNIA

Mr. AL-MARAYATI. Thank you, Mr. Specter. I would like my full testimony in writing to be submitted for the record.

Senator SPECTER. Without objection, your full testimony will be made a part of the record.

Mr. AL-MARAYATI. Thank you, and I will keep my time limit to 5 minutes so I will keep my remarks very brief.

Senator SPECTER. Thank you.

Mr. AL-MARAYATI. The Muslim Public Affairs Council has issued its counter-terrorism policy position paper in 1999. It presented it to the Clinton administration, and it has also submitted it to the Bush administration. In the paper, we talk about means of dealing with this problem of financing terrorism without shutting down charities in whole or making blanket indictments against charities.

We believe that the effective way to combat terrorism is there must be a culture of understanding and cooperation among all Americans, between government officials and law enforcement on the one hand, and ordinary citizens and communities on the other hand. Unfortunately, this tool of partnership is being threatened today.

I would like to talk a little bit about zakat, alms-giving, religious freedom, and national security. First, in terms of zakat, this is the religious obligation of every Muslim. It is one of the five pillars of

Islam. It is similar to the Christian tradition of tithing. Zakat is the major manifestation of social justice in Islam.

American Muslim charities make special appeals for the needy, whether in terms of feeding the homeless or in helping refugees abroad. American Muslims become very disturbed when reading reports that funds intended to uplift the downtrodden are used for violent purposes or are frozen under suspicion of being used for violent purposes.

A very unfortunate climate has been created in which Muslims who donate money are being associated with nefarious activities. Just as it is wrong to associate all American Catholic charitable giving with the activities of the IRA, it is just as wrong to associate American Muslim giving with terrorism.

Fundraising by American Muslim charities has been conducted in cooperation with and support from local American Muslim communities and their mosques. If it is proven that directors of any institution were guilty of embezzlement of funds, then those individuals should be subjected to the full extent of the law, and they will be met with stiff opposition from American Muslims as well.

The funds should either be returned to the donors or should be directed to the needy through legitimate non-governmental channels. If any wrongdoing is proven in an open court, government diversion of those funds for any purpose other than the donor's intent would be a misdirection of those funds a second time.

The shut-down of American Muslim charities has detrimentally affected innocent people working or volunteering their time to the non-profits. Incriminating innocent people results in a tragic attack on the character of humanitarian activists throughout America.

MPAC has argued that the U.S. Department of the Treasury should provide guidelines for meeting new anti-terrorism standards in order for American Muslim charities to demonstrate accountability in their fundraising and financial disbursements. We are encouraged that the Treasury Department has issued voluntary best practices for U.S.-based charities.

We have argued that the tools to combat terrorism are optimized in an open, democratic process, and preserving our democratic traditions in America is paramount for effectively combatting terrorism. Short circuits to justice usually lead to a false sense of security. MPAC works with other groups to oppose the use of secret evidence in the courts, asks for open hearings, and protests indefinite detentions.

In an ideal setting, American Muslim charities serve a national security interest by promoting a positive image of America throughout the Muslim world. Unfortunately, the view that American Muslims are a harassed or persecuted religious minority is gaining ground overseas, partially because of the blockage of the Muslim charities.

Another important aspect of this problem is the issue of religious freedom, which the U.S. has championed in recent years, yet seems to be back-tracking on as a result of new anti-terrorism standards. The United States risks being perceived as failing to adhere to the values we are promoting abroad.

Last, Muslim charities which meet the urgent development and subsistence needs of many of the Muslim world's poor, dispossessed

and destitute can be used to enhance our national security interest by helping to mitigate some of the factors that breed extremism and violence.

Thank you very much.

[The prepared statement of Mr. Al-Marayati appears as a submission for the record.]

Senator SPECTER. Thank you very much, Mr. Al-Marayati, for your testimony.

Mr. Lewin, beginning with you in sequence of direct testimony, are the funds which have been frozen in the Holy Land Foundation available for disbursement to their attorneys?

Mr. LEWIN. Yes, they are available and they are used by their attorneys.

Senator SPECTER. How can that be if the funds are frozen?

Mr. LEWIN. Well, pursuant to the regulations of the Treasury Department, the funds that are frozen and proceedings to freeze those funds are made available to attorneys to defend in that case. In other words, the argument that is made is that as a constitutional matter, the organization that is being sued should be entitled to defend itself.

Senator SPECTER. No limitation, not even if those fees totally deplete the fund?

Mr. LEWIN. Well, there is no indication that there would be any limitation. I will tell you that in our case, in Chicago, there is an attorney who is a very fine counsel. He comes up from New Mexico for every status conference in Chicago and is being paid out of that fund, even though our case is not the case in which the freezing of those funds is an issue.

But nonetheless, because the funds may be used by counsel, to our knowledge, they are being distributed for his attorney's fees. And our concern is that this litigation may last long enough that by the time it is over, there will be nothing left because the attorneys defending these cases will simply have depleted the funds.

Senator SPECTER. Mr. Lewin, how do you propose to establish liability for the Holy Land Foundation?

Mr. LEWIN. We believe that it was public knowledge in the United States from newspapers well before 1996 that Hamas was engaged in violence and murder of civilians in Israel and in the Middle East. This was known through the media to everybody who ran the foundation, and indeed to people who contributed to it.

Therefore, we believe the foundation, when it contributed to Hamas, although they claim they were trying, as I think had come out in prior testimony, to contribute only to its charitable activities such as hospitals——

Senator SPECTER. Does the Holy Land Foundation have genuine charitable activities?

Mr. LEWIN. The Holy Land Foundation, I think, has genuine charitable activities, but the problem is that they also engage in financing terror, which is what the President and the Attorney General and the Secretary of the Treasury found when they seized its funds.

You don't have to show that the foundation or the organization is engaged exclusively in terrorist activities, but if they do so to a substantial degree by contributing to Hamas, which is what was

found and what the district judge found to be true, then their funds may be seized and they are engaging in illegal funding of terrorism.

Since they contributed to Hamas, and we believe that their own literature showed that they knew they were contributing to Hamas violence as well as to Hamas charities——

Senator SPECTER. How do you prove that they knew they were contributing to Hamas violence?

Mr. LEWIN. Well, that is going to be proved, we think, A, by the fact that it was public knowledge that Hamas was engaged in violence, and they contributed to Hamas. And, B, it is going to be proven through discovery by the testimony of their officers, whom we will subject to examination on the question of what they knew about the people to whom they contributed, the organizations to which they contributed.

Senator SPECTER. How do you deal, Mr. Lewin, with the considerations and the contentions raised by Mr. Al-Marayati about freedom of religion and about the basic tenet, as Mr. Al-Marayati articulates it, for Islam to help on charitable goals?

Mr. LEWIN. Let me begin my answer by just a personal note. I don't think there has been any lawyer in the United States who has been more involved in trying to protect freedom of religion than I have. I have argued a number of cases in the Supreme Court under the Free Exercise Clause, and I am very concerned about that both with regard to Jewish citizens and Muslims and Catholics and all minorities in the United States.

I believe that freedom of religion can be protected by ensuring that the charities that collect for charitable purposes have internal guidelines which make sure that they disburse their funds only for peaceful, charitable purposes. If they send it abroad, as the Holy Land Foundation did, they may not send it abroad to an organization that engages in violence.

Senator SPECTER. Mr. Al-Marayati, would you accept that approach as a limitation on internal audits? That might not be too hard to accomplish if it would satisfy Mr. Lewin. What do you think?

Mr. AL-MARAYATI. Well, yes, and we are representing really not the charities themselves, but the donors. And the issue is if the charities don't fulfill their obligations by filing the proper tax forms or conduct the audits, then they are at fault and the question is what to do with the money that the donors intended to give to the needy. That money should not be used for lawyers fighting battles out in court. That money should not be used for another country or another purpose altogether.

Senator SPECTER. How do you deal with the considerations which have been raised throughout this hearing about Hamas, for example, having a political wing and a military wing, when the funds can move from one to other?

A contributor may say, I want to give it to the charitable wing, but when you see what Hamas does at Hebrew University, is Mr. Lewin right or wrong when he talks about notice to the public as to what Hamas is really up to?

Mr. AL-MARAYATI. Well, I agree that if a group is on the foreign terrorist organization list, then any support financial for that group

is a violation of the law and is a criminal act. And any person who conducts such a financial support for that group should be held liable. The charity itself should not be held liable.

For example, if the United Way's chief executive officer commits fraud, the charity of the United Way should not be held liable. The donors to the United Way still want that money to go for the proper purposes. But the issue of what happens abroad—the Treasury Guidelines are making it available for Muslim charities to demonstrate transparency not only here in terms of the financial fundraising, but in terms of the financial disbursements over there.

I think by following those guidelines and by having an authentic accrediting agency, then we can overcome this problem of intermingling of funds between legitimate charity needs and terrorist activity.

Senator SPECTER. But the United Way doesn't have a military wing.

Mr. AL-MARAYATI. I agree, but I am talking about in terms of the problem of embezzlement and liability of the officer himself.

Senator SPECTER. Well, embezzlement is always available as a criminal prosecution if some officer takes the money that belongs to the organization. But where you have an organization like Hamas which is well-known for the military wing, do you think it inappropriate to say to donors to Hamas, with what has been on the public record, that they are not knowingly contributing funds in a direction which will be used for murder?

Mr. AL-MARAYATI. Donors should be notified if that is the case. If the case is the money is going to a foreign terrorist organization, then donors should be notified and the money should not go through those channels anymore.

My argument is we believe as American Muslim donors—and I am not here to support any foreign group. We don't take money from any foreign governments. I am not here to even support the foreign governments that were made an issue today. But as donors, we believe that money can go to those in need in the West Bank and Gaza Strip without necessarily intermingling those funds with terrorist activities.

Senator SPECTER. Mr. Winer, when we talk about regulations, should there be more regulations? Should there be Federal legislation to deal with charities to try to make the dichotomy which Mr. Al-Marayati suggests?

Mr. WINER. First of all, I think it would be useful for this Committee to look generally speaking at the issue of regulation of charities and whether the current regulation of charities at the Federal level, which is essentially an IRS matter, is sufficient.

Senator SPECTER. What do you think? We are calling you as an expert here.

Mr. WINER. The short answer is no.

Senator SPECTER. Not sufficient?

Mr. WINER. Not sufficient.

Senator SPECTER. What more should we do?

Mr. WINER. There has to be some mechanism for examination and monitoring at least of larger charities, certainly of larger charities that are operating internationally.

Senator SPECTER. Examination and monitoring?

Mr. WINER. Yes.

Senator SPECTER. Would you propose Federal legislation to accomplish that?

Mr. WINER. What I would propose in the first instance is that the PATRIOT Act, which gives the Secretary of the Treasury the authority to designate certain kinds of institutions as susceptible to sufficient money laundering risk that they should be covered by the PATRIOT Act, should consider whether charities or certain types of charities should be required to be listed as financial institutions and must be subject to examination in the same way we are subjecting insurance companies, for example.

Senator SPECTER. So you think the Secretary of the Treasury has sufficient authority under the so-called PATRIOT Act?

Mr. WINER. Yes, sir, and under the Bank Secrecy Act, I do, sir.

Senator SPECTER. Well, you have had a lot of experience with this, Mr. Winer, with the Council on Foreign Relations. The Committee would be interested in your views as to what supplemental legislation would be appropriate.

Mr. WINER. I will consider that further and respond.

Senator SPECTER. That really is what we are looking at here, whether there ought to be more legislation. Mr. Lewin would like to have access to those funds before he gets a judgment. He thinks a motion to dismiss ought to be sufficient, and we will entertain those thoughts. We can legislate on that.

Professor Gerson, how are you going to collect from Al-Qaeda?

Mr. GERSON. Well, our focus is not simply Al-Qaeda. Our focus is much, much broader than that.

Senator SPECTER. You have a third amended complaint?

Mr. GERSON. We have a third amended complaint.

Senator SPECTER. Now, as your complaint, do you have a first amended complaint and then a second amended complaint, and now you have a third amended complaint?

Mr. GERSON. That is correct.

Senator SPECTER. Your pleading file must be very thick.

Mr. GERSON. It is enormous, and the reason it is enormous is because we have become, in effect, private attorneys general doing what the families of 9/11 have asked us to do, which is to focus on one issue, and that is accountability.

Senator SPECTER. How many families do you represent?

Mr. GERSON. We represent about 3,600 family members at this particular point, and we continue to represent more families everyday and they tell us repeatedly it is well and good to listen to members of the administration. Some of them have testified today about new regulatory reforms that are going on, greater cooperation between the United States and the Saudi government in this regard. But we are interested in accountability because we want deterrence. We don't want a repetition of what occurred to our loved ones to happen to other loved ones. And that can't happen without accountability, so that is our focus.

Senator SPECTER. Are some of the families whom you represent among those from Flight 93 which crashed in Shanksville, Pennsylvania?

Mr. GERSON. Yes.

Senator SPECTER. How many do you represent there, if you know?

Mr. GERSON. It is over a dozen. I am not exactly sure.

Senator SPECTER. We had a memorial service on September 11 this year, and the families were there and it was a most moving situation where the families came from all over the country to visit the site where their loved ones had gone down on Flight 93, and very, very poignant and a tremendous need.

Mr. GERSON. Well, out of this terrible tragedy, the families are trying to salvage something that will be beyond themselves and be a legacy to all Americans.

Senator SPECTER. And you believe you have a realistic change of identifying financial institutions where you can recover damages for 9/11?

Mr. GERSON. Senator, I spent the last week in Spain working with the Spanish authorities under a special procedure that was authorized by Judge Robertson of the district court here.

Senator SPECTER. Give me one illustration as to how you propose to establish liability and collect money from somebody.

Mr. GERSON. Well, liability is established by using the standard that Attorney Nat Lewin referred to earlier in the landmark *Boim* case. It is not incumbent upon us to prove that individuals that contributed to charities had actual knowledge of particular horrific acts that were going to be committed.

Senator SPECTER. So you are looking to contributors to Al-Qaeda?

Mr. GERSON. We are looking to the financial institutions that contributed part of their own revenues, sitting on their board of directors.

Senator SPECTER. You have already filed this publicly. Can you name one financial institution? I am trying to get a specific idea as to how you are proceeding.

Mr. GERSON. Sure. I will give you a list of the names of some of them.

Senator SPECTER. No. Just give me one and tell me what your approach is, your theory, how you are going to prove your case, and how you are going to collect the money.

Mr. GERSON. Well, we are naming a number of organizations in Spain, for example, which goes beyond the focus strictly on Saudi-related institutions.

Senator SPECTER. And you have jurisdiction in the United States?

Mr. GERSON. We have jurisdiction in the United States.

Senator SPECTER. And service?

Mr. GERSON. We have already completed service on many of these banks. Many of the banks have financial holdings in the United States. The Saudis, for example, have on their own about $860 billion in the United States. We are intent on——

Senator SPECTER. You are going after the Saudis?

Mr. GERSON. Saudi interests. We have not named the government of Saudi Arabia as a defendant at this point.

Senator SPECTER. Saudi interests. Name one Saudi interest, just so I have an idea.

Mr. GERSON. Well, I mentioned earlier the Saudi American Bank, which is located in the Watergate, will be named as a defendant.

Senator SPECTER. The Saudi American Bank?

Mr. GERSON. Yes. They will be named as a defendant this Friday.

Senator SPECTER. What did the Saudi American Bank in the Watergate do?

Mr. GERSON. They served as a conduit for the transfer of funds to Hamas, we allege, and to Al-Qaeda.

Senator SPECTER. OK, and do you have to show knowledge on their part?

Mr. GERSON. We have to satisfy the standard that the Seventh Circuit Court of Appeals spoke about in the Boim case, which is not actual knowledge, but constructive knowledge; that is that a reasonable person understanding the circumstances had reason to believe that this money was going to be used for terrorist purposes.

Senator SPECTER. For Al-Qaeda and Hamas, and if you can do that, of course, they know what Al-Qaeda and Hamas are up to?

Mr. GERSON. Yes, of course.

Senator SPECTER. Sure.

Well, listen, thank you very much.

Mr. LEWIN. Could I just make one more point in response to the exchange you had here, just a very hypothetical——

Senator SPECTER. Just one more point? Frankly, Mr. Lewin, I doubt that you can make only one point, but go ahead.

Mr. LEWIN. I will. This one, I promise, will——

Senator SPECTER. You are free to comment even if it is more than one point.

Mr. LEWIN. All right. I think the analogy with regard to the Holy Land Foundation and the money being given to Hamas is as if the United Way disbursement Committee said, we are going to give 15 percent to Murder, Incorporated. Now, if they did that, then I think everybody would know that that is illegal and it is involved in murder.

I don't understand why the Holy Land Foundation, if it is says "I am giving some percent to Hamas formally," can say, "well, OK, now as a charity we are free of that." I think that is what Mr. Al-Marayati is saying. The charity shouldn't be held responsible for the fact that it has given money to Murder, Incorporated. That is what it has done.

Senator SPECTER. Mr. Al-Marayati, you are entitled to respond.

Mr. AL-MARAYATI. Yes, thank you. Well, first of all, let's go to other examples. For example, you had the Jewish Defense League that targeted our office on December 17. The FBI notified us. It was a group of Jewish terrorists who were involved in that activity. They killed Alex O'Day, allegedly, in 1985. The culprits have not been brought to justice. So are those who supported the Jewish Defense League going to be held with the same standard as American Muslims today are being held in terms of supporting other charities?

You mentioned the point about the distinction between the political wing and the military wing. In 1995, the Congress actually allowed Sinn Fein, the political wing of the IRA, to operate. I am not

saying that that is the road we need to take today because we live in a different era, but the point is we have many Muslims in need throughout the world.

The hot spots involved in terms of charitable giving are going to involve the West Bank and Gaza Strip, Kashmir, Chechnya, Bosnia. Those are the areas where the front line of the war on terrorism is being fought. So we have to work more closely together with the Government and with law enforcement because I think there needs to be a paradigm shift where American Muslim charities are being used as a partner for national security abroad and for counter-terrorism here even domestically in a more constructive way.

Senator SPECTER. Mr. Winer, you can have the last word.

Mr. WINER. Thank you, sir. It is a very bad thing when a witness, given an opportunity by a chairman of a Committee like this, doesn't take advantage of it, so let me take advantage of your previous question.

Senator SPECTER. It happens all the time.

Mr. WINER. The Committee could consider the possibility of creating a receivership for any charity found to have had its legitimate funds commingled with terrorist funds and appointment of a Federal receiver. In that case, the Federal receiver would then be in a position to be able to continue the legitimate activities of the charity, while shutting down and stopping any potential leakage of that charity into illegitimate areas.

Thank you, sir.

Senator SPECTER. Well, thank you very much, gentlemen. I think it has been very productive hearing. I admire what you are all doing. You, Mr. Lewin, and you, Professor Gerson, on tackling these matters are private attorneys general is very, very important. The Government cannot maintain all these cases.

Our courts are open to citizens and that is why we legislated as we did to give rights of action and treble damages and counsel fees, on the analogy to the antitrust field. The lawyers are very frequently criticized, and I think very, very often unjustifiably, because cases are undertaken which are extremely difficult. They are undertaken without being on a retainer or without having an hourly rate which is paid. Very substantial costs have to be advanced—filing fees, deposition costs, travel. So you are to be commended in the greatest tradition of the American legal profession.

Mr. Al-Marayati, we are very much concerned about the issues you raise on freedom of religion and about the Islamic religion and charitable matters and helping the needy. That is commendable, but we are going to have to draw the line and I think Mr. Winer may be able to help us with some practical suggestions from the Council on Foreign Relations to draw that line.

But this Judiciary Committee is going to be very active. I have already given instructions, Mr. Lewin, to followup on the hearing we had 3 years ago. It is just not right that the Justice Department has not acted. I have discussed those matters with the Israeli Prime Minister, Prime Minister Netanyahu, back in 1996, and Chairman Arafat. There ought to be extradition; there definitely should be extradition. There ought to be teeth there.

We are available to legislate in the field. We appreciate your suggestions and we are going to be pursuing this matter further so that people are on notice we are dealing with Al-Qaeda or Hamas or Hizballah. When money goes there and it is known what the purposes are, people can be responsible as accessories before the fact to murder, or as the suggestion was made, for reckless endangerment, which would not require the same specific intent that is equal to malice which would support a prosecution for second-degree murder.

So thank you all and that concludes our hearing.

[Whereupon, at 12:30 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Senate Judiciary Committee
Hearing on "An Assessment of the Tools Needed to Fight the Financing of Terrorism"
November 20, 2002

Senator Joseph R. Biden, Jr. -- Written Follow-up Questions

Question for the Honorable Robert J. Conrad, Jr.

Question # 1

I read with particular interest your testimony regarding the cooperation between your office and the Canadian Security Intelligence Service in investigating and prosecuting the defendants in Operation Smokescreen. In my view, our ability to fight international crime, to work cooperatively with foreign governments and to overcome certain challenges to evidence secured abroad will be key to our efforts to fight terrorism. Despite the importance of foreign cooperation, I continue to hear from prosecutors and investigators that significant impediments (e.g., jurisdictional limitations, evidentiary hurdles) prevent aggressive investigations and successful prosecutions.

Please outline the challenges you faced in navigating the international aspects of the case against the defendants in *United States v. Hammoud, et al*. Can you suggest any legislative improvements that would eliminate, or at least mitigate, these difficulties?

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D C 20530

February 10, 2003

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter is in response to the Committee's request for a written response to a question from the Senate Judiciary Committee following the November 20, 2002, hearing on "An Assessment of the Tools Needed to Fight the Financing of Terrorism."

The United States Attorney's Office for the Western District of North Carolina (WDNC) achieved the successful prosecution of a Hizballah fund raising cell in large measure due to the outstanding cooperation and assistance of Canadian authorities, both intelligence and law enforcement. In unprecedented cooperation, the Canadian Security Intelligence Service ultimately provided 113 pages of summaries of electronically intercepted communications and the witnesses necessary to make the summaries admissible in a United States District Court. The Royal Canadian Mounted Police very responsively gathered evidence requested through a Mutual Legal Assistance Treaty (MLAT) request.

Although many challenges were met, and obstacles hurdled, in securing the first successful prosecution at trial pursuant to the material support to a designated foreign terrorist organization statute, there were frustrations which were not overcome. Among these were the inability to trace funds through the international financial system and extradition of fugitives.

Canadian Security Intelligence Service (CSIS)

Early in the investigation, criminal agents and prosecutors in the WDNC were informed through FBI intelligence channels that CSIS had electronically intercepted communications of a Hizballah procurement cell operating from Vancouver, British Columbia, and that one of the individuals intercepted and referred to by other members of the conspiracy was Charlotte, North Carolina resident Said Harb. Harb was also a subject of criminal and intelligence investigations in the WDNC. The prosecution team, together with attorneys from the Department of Justice Terrorism and Violent Crime Section (now the Counterterrorism Section), initiated negotiations with CSIS to obtain access to and permission to introduce into evidence the content of their interceptions. This effort was entirely unprecedented. CSIS is an intelligence gathering agency of the Canadian Government; it is not a law enforcement entity. As such, it does not generally want to become involved in litigation and criminal prosecutions. Pursuant to its legislative mandate, it collects and retains only information that is "necessary" to protect the national security of Canada and to advise its national leaders in matters of intelligence. The information CSIS collects is neither gathered nor retained in a way to make it readily admissible in criminal courts. Indeed, the summaries are not used by the Royal Canadian Mounted Police (RCMP) to prosecute cases in Canadian courts.

Through a series of meetings, the prosecution team earned the trust of CSIS officials and persuaded them to release the summaries to us and to allow their use in our criminal proceedings. Ultimately, however, the admissibility of the CSIS summaries had to be tested in court in the United States.

The uncertainty of admissibility must be realized. To our knowledge, the district court in this case was one of the first courts to consider the admissibility of the summaries. CSIS is not a law enforcement agency. Communications are intercepted and caught on tape. The tapes are listened to by linguists and analysts, and reports are created summarizing the intercepts. The reports are accurate and closely paraphrase the communications, but they are not verbatim. Once the reports are approved, the tapes are destroyed (usually within 30 days), because the mandate of CSIS to retain only what is "necessary" compels them to keep the information, as reported in the summaries, but not the tapes themselves. To summarize, WDNC prosecutors were offering into evidence non-verbatim, summary reports of intercepted communications by a foreign intelligence service for which the tapes of the intercepts no longer existed.

Prosecutors argued to the court that the CSIS summaries were "public records," and thus admissible as an exception to the hearsay rule, pursuant to Federal Rule of

Evidence 803(8). That Rule provides that records of "public" offices and agencies are admissible in a prosecution if there is a duty imposed by law to observe and report the matters included in the record, unless the public office or agency is law enforcement. In another significant act of cooperation, CSIS provided a senior Service official for in-court testimony to establish the facts necessary to support the theory of admissibility. Ultimately, the District Court ruled that the summaries were admissible as "public records." To insure admissibility, CSIS permitted two analysts/linguists to testify. With these two witnesses available to testify to listening to the original intercepts and their preparation of the summary reports, the additional hearsay exception of "recorded recollection" (Rule 803(5)) came into play. Offering these linguists was extraordinary. CSIS officials testified that the linguists are recruited from the community targeted for electronic surveillance, and that the identity of the linguists is essentially a national security secret. At the insistence of CSIS, prosecutors secured protective orders from the Court to allow for foreign depositions, light disguises, use of aliases, shielding from public view and other measures to protect the identities of the linguists.

The unique cooperation provided by CSIS cannot be overstated or over-appreciated. We were fortunate to achieve a successful outcome. Particularly in this post-September 11th era, we anticipate the necessity of relying on such information in future terrorism-related prosecutions.

Royal Canadian Mounted Police

A great deal of evidence needed, and eventually admitted during trial, was obtained through the MLAT process. Gathering evidence abroad can be difficult. First, prosecutors draft a detailed request that includes a description of the evidence sought, the need for the evidence, the reasons to believe the evidence exists in the foreign country and the justification for the foreign court to order procurement and production of the evidence in the United States. The request is forwarded to the Office of International Affairs (OIA) at the Department of Justice for review. OIA officially submits the request to its counterpart in the foreign country. The central authority in Ottawa, Canada, forwarded the request to the Provincial authority for action. The process was slowed by requests made by Canadian officials for several re-submissions, to satisfy the Canadian officials that a Canadian court would issue the order to obtain and release the evidence.

RCMP was tasked with the actual execution of the orders. They were extremely responsive and helpful. Often they had acted to preserve evidence, knowing that the request was coming but would be delayed by the process. Once the order was issued RCMP moved expeditiously to secure and forward the evidence. They also hosted and

assisted investigators in conducting interviews and reviewing evidence in Canada.

To summarize, the MLAT process can be cumbersome and in some instances may simply take too long to be useful, despite the provisions in the Speedy Trial Act for continuing the trial for a period not to exceed one year. But once the process is completed, at least Canadian law enforcement can be counted on to expedite receipt of foreign evidence.

Tracing Through Foreign Financial Institutions

Trial evidence established that most of the money raised for and provided to Hizballah by the Charlotte cell was rendered into official checks and taken by courier to Lebanon. However, there were some financial records that showed wire transfers from defendants' accounts in the United States to foreign accounts, primarily in Lebanon. Unfortunately, that is where investigators' ability to trace the funds ended. For countries, like Lebanon, with which the United States does not have good law enforcement relations, there is practically no ability to obtain foreign financial records, which are the backbone of investigations and prosecutions of terrorist financiers.

The USA PATRIOT Act of 2001 includes a provision permitting the Attorney General and the Secretary of the Treasury to issue administrative subpoenas to foreign banks that maintain a correspondent account in the United States for records related to such correspondent account. While this provision may be an effective investigatory tool when used under the proper circumstances, due to the sensitivities of our international partners in the war on terrorism, its use has generally been limited to those situations where other mechanisms to obtain foreign evidence, such as Mutual Legal Assistance Treaties, are unavailable or otherwise inadequate.

Extradition

The WNDC indicted six individuals for provision of material support and resources to a designated foreign terrorist organization (Hizballah). One defendant entered a guilty plea and cooperated, and the leader of the Charlotte cell was convicted after the first trial in the nation using the 1996 statute. Four defendants remain fugitives, one in Canada and three believed to be in Lebanon, including the Chief of Procurement for Hizballah, and the Hizballah commander for the Beirut suburbs.

Extradition essentially contains two components. First, even treaties that do not specifically list extraditable crimes will contain a dual criminality requirement: to be sent

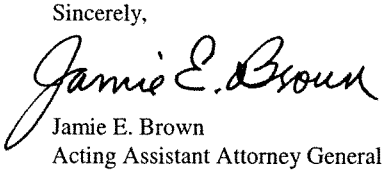
to the United States for prosecution the person sought must have committed acts that are recognized as a crime and proscribed in the requested state. Second, the requested state must be provided with sufficient evidence, admissible in the foreign extradition proceeding, to support the extradition request. In particular, Canadian law requires that the requesting state's evidence in support of extradition make out a prima facie showing of guilt.

Until December 24, 2001, Canada did not have an offense corresponding to our material support statute. Moreover, Canada only recently designated Hizballah as a terrorist organization. Because of the prior absence of dual criminality, we do not have an extradition request pending, but the very recent changes to Canadian law have now made extradition a real possibility.

For those fugitives in Lebanon, extradition is currently not an option, since we have no extradition treaty with that country. This is not to say that we will never be able to obtain custody of them. For example, they might travel to another country with which the United States does have a treaty. However, as of this moment they appear to be beyond our reach.

We appreciate your interest in this matter and the opportunity to discuss this important case with the Committee on the Judiciary. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,



Jamie E. Brown
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Senate Judiciary Committee
Hearing on "An Assessment of the Tools Needed to Fight the Financing of Terrorism"
November 20, 2002

Senator Joseph R. Biden, Jr. -- Written Follow-up Questions

Questions for the Honorable Jim Gurule

Question # 1

Under the USA PATRIOT Act (P.L. 107-56), Congress gave the Administration unprecedented tools to fight the war against terrorism. Included among these added tools were new powers given to the Secretary of the Treasury to designate individual foreign jurisdictions or financial institutions as a "primary money laundering concern" to the United States (pursuant to § 311). Such a designation empowers the United States to restrict or prohibit access to the U.S. financial system by states and individual foreign financial institutions with weak anti-money laundering controls. I understand that, in the year since enactment of the USA PATRIOT Act, this new power has gone unused – despite seemingly widespread knowledge that some foreign states and banks do pose an unacceptable level of money laundering risk.

Please explain the Administration's plans to take advantage of this tool, as well as any gaps in the current framework that might be remedied by further congressional action.

Question # 2

Several observers, including members of an independent task force assembled by the Council on Foreign Relations (hereinafter "CFR Task Force"), have commented on the absence of a single, high-ranking official within the Administration to direct and coordinate policies of the United States with respect to terrorist financing. I am aware of recent efforts within the Administration to focus attention on this area (including the Interagency Task Force on Terrorist Financing, headed by the Treasury Department; Operation Green Quest, led by the U.S. Customs Service; and the Terrorist Financing Task Force within the Criminal Division of the Justice Department), but share the task force's concerns regarding the lack of interagency coordination and the absence of a Presidential designee.

What is your view regarding the task force's recommendation that the Executive Branch designate a Special Assistant to the President for Combating Terrorist Financing, charged with leading U.S. efforts on terrorist financing issues?

Question # 3

As I am sure you appreciate, effective international cooperation among nations is critical to any effort to impede the financial networks that support terrorism. Notwithstanding the importance of international efforts, the CFR Task Force concluded

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Senator Joseph R. Biden, Jr. -- Written Follow-up Questions

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that "U.S. efforts to curtail the financing of terrorism are impeded not only by a lack of institutional capacity abroad, but by a lack of political will among U.S. allies." Moreover, the CFR Task Force determined, "no international organization has emerged with the mandate and expertise to direct and coordinate global efforts to combat a problem that, by its very nature, requires global responses." In my view, the United States has an important role to play in facilitating the global response. We should use the full weight of our influence to compel other governments to prioritize terrorist financing.

Given the importance of sustained financing to the continued threat of terrorism, how might we expand U.S. programs (like the training programs offered by the Treasury Department's Office of Technical Assistance and Office of International Enforcement Affairs) that help key countries build their institutional capacity, including strengthening their technical capabilities or regulatory infrastructure, to address terrorist financing? In your view, is such an expansion advisable?

In your written testimony, you indicate that the Financial Action Task Force's Working Group on Terrorist Financing, of which the United States is a co-chair, has "identified a number of countries to receive priority technical assistance in order for them to come into compliance" with the task force's recommendations on terrorist financing. Please list the countries that were identified as such and detail any specific steps the United States has taken, or is taking, to facilitate their compliance.

What is your view of the CFR Task Force's recommendation that the United States lead efforts to establish a specialized international organization dedicated solely to combating terrorist financing?

Question # 4

The CFR Task Force observed that "[f]or years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaeda; and for years, Saudi officials have turned a blind eye to this problem." The veracity of this observation has been underscored by recent reports of possible, and perhaps inadvertent, Saudi support for two of the September 11th hijackers. I have long been concerned that the United States has not been sufficiently forthright in confronting and exposing shortfalls in the Saudi government's efforts to curtail terrorist financing. While I fully appreciate that our historic relationship with Saudi Arabia is both complex and sensitive, I am convinced that the urgency of dealing with terrorist financing is far more important than traditional alliances and, thus, warrants more aggressive action on our part.

What recent efforts has the Saudi government undertaken to disrupt reported financial ties between individuals and charities based in Saudi Arabia and known

terrorists? What is your view about the effectiveness and sufficiency of these efforts – including implementation of the money laundering laws that Saudi Arabia adopted in 1999?

I understand that Saudi Arabia has audited some Saudi charities and announced plans to establish oversight authorities to ensure transparency in charitable operations. How many (and what proportion of) Saudi charities have been audited? Are you satisfied that the audits and planned "oversight authorities" are sufficient to stem the flow of financing to terrorists? Given the Saudi government's track record on this issue, some observers have questioned the wisdom of the current approach of self-monitoring – i.e., the Saudis are in essence auditing themselves. What is your view regarding the need for an independent oversight entity? To what extent do existing international bodies, like the Financial Action Task Force and Egmont Group, serve in such an oversight capacity?

As you know, in March and September of this year, the United States and Saudi Arabia jointly referred two organizations and a single, named individual to the United Nations Sanctions Committee for designation as a terrorist supporter. In light of the magnitude of the known problem and reports of intelligence information and other evidence implicating other terrorist supporters, the number of joint designations strikes me as small. Has the United States identified other organizations and individuals eligible for such a designation? If so, are the United States and Saudi Arabia planning jointly to refer these organizations and individuals to the United Nations Sanctions Committee? If not, will (can) the United States refer these organizations and individuals to the Committee on its own?

It has been reported by the *Washington Post* that a National Security Council task force is recommending that the United States present the Saudi government with an ultimatum that it act within 90 days to stem the flow of terrorist financing from specific financiers or risk unilateral U.S. action. Did the task force in fact recommend that the President issue such an ultimatum to the Saudi government? Is the referenced task force the interagency Policy Coordinating Committee on Terrorist Financing? If not, to what extent has the Coordinating Committee worked with the task force? In what way have you and the Treasury Department been involved in the working of this task force and in the development of its recommendations? What specific actions is the task force suggesting that the Saudi government take? What specific type of "unilateral U.S. action" is the task force contemplating? Has the United States delivered the ultimatum to the Saudis?

Question # 5

Senate Judiciary Committee
Hearing on "An Assessment of the Tools Needed to Fight the Financing of Terrorism"
November 20, 2002

Senator Joseph R. Biden, Jr. -- Written Follow-up Questions

Mr. Salam Al-Marayati, Executive Director of the Muslim Public Affairs Council and a witness on the third panel of this hearing, suggested in his written testimony that "[i]f it is proven that directors of the [charitable] institution were guilty of embezzlement of funds, then those individuals should be subjected to the full extent of the law . . . . The funds should either be returned to the donors or should be directed to the needy through legitimate non-governmental channels. If any wrongdoing is proven in an open court, government diversion of those funds for any purpose other than the donors' intent would be a misdirection of those funds a second time." Similarly, Mr. Jonathan Winer, former U.S. Deputy Assistant Secretary of State for International Law Enforcement and a witness on the third panel, suggested that the federal government could create a receivership for charities whose donations are directed to terrorists, enabling legitimate activities to continue while terminating illegitimate activities.

Please outline the current disposition of such funds and comment on the merits of Mr. Al-Marayati's and Mr. Winer's suggestions.

Question # 6

In your written testimony, you mention, but do not elaborate on, terrorists' use of the internet to recruit supporters and raise funds. Also, I understand that the Group of Eight (G-8) industrialized nations recently has taken steps to make it easier to monitor Internet communications concerning terrorist financing. Please comment on the distinct challenges you face in countering cyber-fundraising and the specific strategies you are employing. Also, please elaborate on the G-8's recent efforts.

SUBMISSIONS FOR THE RECORD

Testimony of
Mr. Salam Al-Marayati
Executive Director
Muslim Public Affairs Council (MPAC)

Testimony on "An Assessment of Tools Needed to Fight the Financing of Terrorism."

November 20, 2002

Thank you, Mr. Chairman, Senator Hatch, and distinguished members of the Senate Judiciary Committee, for inviting me to appear before you today.

My name is Salam Al-Marayati and I am the executive director of the Muslim Public Affairs Council (MPAC). I was invited to testify today on "An Assessment of Tools Needed to Fight the Financing of Terrorism."

I. The Muslim Public Affairs Council and it's Role in the Fight Against Terrorism

Before I delve into the particular issues of today's topic, let me say a word about MPAC, it's mission, and its work. MPAC was founded in 1988 as a vehicle to increase outreach and dialogue efforts between the American Muslim community and other Americans. MPAC's main purpose is to develop and promote a constituency of American citizens imbued with Islamic values of mercy, compassion, justice and freedom. We firmly believe that to be a good American is to be a good Muslim. MPAC has articulated an authentic Islamic voice within an indigenous American tradition.

Prior to the tragedy of September 11, 2001, MPAC had developed a track record on national security issues. In 1989, we organized the first conference in the country addressing American international interests in the Muslim world, convening Muslim leaders from around the world in a discussion with US diplomats. MPAC has also been a leader in interfaith dialogue as a means of promoting understanding and reconciliation, and as a model that can be emulated in areas of conflicts involving religion as a motivation for violence. To date, MPAC's Muslim-Jewish dialogue and Muslim-Christian dialogues have expanded from merely promoting mutual respect to heightened levels of joint interfaith action in the service of people and communities. MPAC has held several forums in Washington, DC on such topics as: on America's global image, on the concept of an Islamic democracy, on Middle East peace and trends in Islamic movements. Finally, MPAC and law enforcement have issued joint statements against terrorism and calling for cooperation between citizens and the authorities.

In 1999, MPAC was the first and only American Muslim organization to publish a counterterrorism policy position paper, which included: an overview of Islam's stand against terrorism; an analysis of key trends in combating terrorism; a documentation of American Muslim organizations' condemnations of terrorism dating back to the early 80s; and recommendations to the US policymakers and American Muslim institutions. Our position paper was presented to both the Clinton and Bush administrations. MPAC is working on presenting a new counterterrorism analysis and recommendations to be ready for distribution next month.

We at MPAC believe that in order to effectively combat terrorism, we must continue to nurture a culture of understanding and cooperation among all Americans, regardless of ethnic, religious, or racial affiliation -- and between government officials and law enforcement on the one hand and ordinary citizens and communities on the other. This is a culture for which America is known throughout the world. Yet it is being threatened today.

There is growing concern among all segments of the American Muslim community at the ever-expanding terrorism industry that exploits the pain and suffering of victims and prays on the fears and misconceptions of ordinary Americans, while doing little to help America in the war on terrorism. An industry that emanates primarily from those who want to draw artificial "civilizational" lines between *us* and *them.* As American Muslims -- at once both *us* and *them* - we cannot accept cultural or religious explanations of terrorism. Those who seek to promote a "clash of civilizations" within this country and abroad clearly do not have America's interests at heart.

There has been much attention on Muslim charities and terrorism financing, both at home and abroad. MPAC does not speak on behalf of any foreign country, but focuses on American Muslim institutions. In fact, as a matter of policy, MPAC has never, and will never, accept any funds from foreign governments. Terrorism financing is a criminal act, and most revenues for terrorists are gained through criminal means, charities being among the least likely sources of funding. More likely sources include money-laundering, credit-card schemes, arms trafficking and drugs smuggling. It is important, therefore, to get a closer look at charitable giving within the American Muslim community.

II. *Zakat* (Almsgiving), Religious Freedom, and National Security

A. Religious Duty

American Muslim donate their money to the needy in order to meet the religious obligation of Zakat (almsgiving), one of the five pillars of Islam. The closest analogy that can be made to *zakat* is the Christian tradition of tithing. Zakat is the one pillar that aims at purifying the intentions of a believer through a social manifestation that benefits those who are less privileged. All other pillars focus on the belief and practice of the individual for the individual. Zakat comprises a major instance of the social justice emphasis in Islam.

Ramadan is a special month for Muslims, as it is the month the Quran was first revealed, the month of learning self-restraint through daylight abstinence and the month of charitable giving. American Muslim charities make special appeals for the needy during this month, whether in terms of feeding the homeless or in helping refugees abroad.

In light of this, American Muslims become very disturbed when reading reports that funds intended to uplift the downtrodden are used for violent purposes or are frozen under suspicion of being used for violent purposes. A very unfortunate climate has been created in which Muslims who donate money are being associated with nefarious activities. Just as it is wrong to associate

all American Catholic charitable giving with the activities of the IRA, it is just as wrong to associate American Muslim giving with terrorism.

B. Religious Freedom and Governmental Obstacles to the First Amendment

The 1st Amendment guarantees to all Americans the free exercise of religion. Obstacles to religiously-mandated charitable giving, therefore, is unacceptable and a violation of American Muslims' constitutional rights. The United States government should not interfere in American Muslim charitable giving.

Fundraising by American Muslim charities has been conducted in cooperation with and support from the local American Muslim communities and their mosques. If it is proven that directors of the institution were guilty of embezzlement of funds, then those individuals should be subjected to the full extent of the law, and they will be met with stiff opposition from American Muslims as well. The funds should either be returned to the donors or should be directed to the needy through legitimate non-governmental channels. If any wrongdoing is proven in an open court, government diversion of those funds for any purpose other than the donors' intent would be a misdirection of those funds a second time. The shutdown of American Muslim charities has detrimentally affected innocent people working or volunteering their time for the non-profits. Incriminating innocent people results in a tragic attack on the character of humanitarian activists throughout America.

MPAC has argued that the US Department of the Treasury should provide guidelines in meeting new anti-terrorism standards in order for American Muslim charities to demonstrate accountability in their fundraising and financial disbursements. Recently, Arab American and American Muslim organizations met with the Treasury department to discuss such a measure. Shortly thereafter, the Treasury department issued "Voluntary Best Practices for US-Based Charities." While these new measures are helpful, we feel the government must do more. While these new guidelines are helpful, they are incomplete. According to the press release issued by the Department of the Treasury, "If a US-based charity follows these guidelines, and commits resources to implement them effectively, there will be a corresponding reduction in the likelihood of a blocking order against such charity or donors who contribute to such charity in good faith, absent knowledge or intent to provide financing or support to terrorist organizations." In other words, American Muslim charities can only reduce the likelihood of a blocking order rather than eliminate it altogether if it follows every order in the new guidelines. What is needed, therefore, is an accreditation agency to certify charities through legal and financial audits per the new guidelines. The goal for the charities is to demonstrate due diligence on their part and for the US government to respect and reward such efforts.

We have argued that the tools to combat terrorism are optimized in a open, democratic process, and preserving our democratic traditions in America is paramount in effectively combating terrorism. Short circuits to justice usually lead to a false sense of security. MPAC works with other groups to oppose the use of secret evidence in the courts, asks for open hearings, and protest indefinite detentions.

C. American Muslim Charities and National Security

In an ideal setting, American Muslim charities serve a national security interest by promoting a positive image of America throughout the Muslim world. Unfortunately, the view that American Muslims are a harassed or persecuted religious minority is gaining ground overseas partially because of the blockage of the Muslim charities without a resolution or a replacement. Another important aspect of this problem is the issue of religious freedom, which the US has championed in recent years, yet seems to be backtracking on as a result of new anti-terrorism standards. The United States is risking being perceived as failing to adhere to values we are promoting abroad. More broadly, the targeting of Muslim charities has reinforced the false impression, particularly abroad, that the war against terrorism is a war against Islam per se. We can not afford to allow this impression to grow. Lastly, Muslim charities, which meet the urgent development and subsistence needs of many of the Muslim world's poor, dispossessed, and destitute can be used to enhance our national security interests by helping to mitigate some of the factors that breed extremism and violence.

In closing, tracking terrorist finances, like all counterterrorism measures, requires focus and specificity. While we will be issuing more precise recommendations about terrorist financing and other counterterrorism measures, law enforcement officials and financial institutions should work with members of the community to help identify specific problem areas or criminal activity. Every attempt should be made to avoid broad sweeping measures that may harm as many people as they are intended to benefit.

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November 21, 2002

Via E-mail & First Class U.S. Mail

Honorable Senator Patrick Leahy, Chairman
Senate Judiciary Committee
United States Senate
433 Russell Senate Office Bldg.
(at Constitution and Delaware)
United States Senate
Washington, DC 20510

Honorable Senator Arlen Specter, Hearing Chairman, "Assessment of
Tools Needed to Fight Financing of Terrorism"
United States Senate
711 Hart Building
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

I write in connection with the current hearing of the Judiciary Committee on "Assessment of Tools Needed to Fight the Financing of Terrorism."

Our firm represents the Holy Land Foundation ("HLF") in litigation that HLF is pursuing against the Department of the Treasury and others in connection with the government's decision

to declare HLF a terrorist organization and seize its assets. Holy Land Foundation for Relief and Development v. John Ashcroft, et al., was filed in the United States District Court for the District of Columbia, Cause No. CV 02-422 and is presently on appeal before the District of Columbia Circuit. We also represent HLF in defending the lawsuit brought against HLF and others by the family of Daniel Boim, who was killed some years ago by terrorists presumably connected to the terrorist organization Hamas.

Late last week, Thomas Swanton of Senator Specter's office called me to inform me of the hearing which was held yesterday. Because I was out of town, I did not get the message until Monday. It was when I returned Mr. Swanton's call then that I learned that there would be a hearing on Wednesday on this subject and that I or another representative of HLF was invited to testify. It was not reasonably possible to prepare testimony within the day-and-a-half before the hearing. Having read today Mr. Lewin's prepared testimony, I believe there are some things the members of the Judiciary Committee ought to be aware of. I will summarize them below:

1. Representatives of HLF have filed sworn declarations in the litigation pending in the District of Columbia that there is not now and never has been a connection between HLF and Hamas, and HLF has never provided support to Hamas. I e-mailed copies of those declarations to Mr. Swanton. Other than an unsubstantiated claim that an unidentified "FBI asset" told an unidentified FBI agent that HLF funded Hamas, and the evidence referred to in ¶2, below, there is no evidence of which we are aware that impeaches these statements, other than conclusory opinions that HLF supports Hamas.

2. In declaring HLF to be a terrorist organization and seizing its funds, the Department of Treasury substantially relied on a Government of Israel ("GOI") "summary" of a statement attributed to HLF's former West Bank manager. In the GOI summary, the manager is quoted as "confessing" that some of HLF's money goes to Hamas. By independent means, we obtained copies of the manager's actual statements to GOI interrogators, as well as his sworn testimony in an Israeli court regarding the same subject matter. The original statements and the transcript of his testimony demonstrate that, far from admitting support for Hamas, he categorically denied that HLF provided support to Hamas. In other words, the "summary" of his statements provided to our government by the GOI was false. We do not know whether Treasury or the FBI had copies of the original statements and were therefore aware that the GOI summary was false. They are certainly now aware that the GOI summary on which Treasury relied was false, but have taken no steps to correct it.

3. The Department of the Treasury also relied on HLF's provision of support for the Al Razi Hospital in Gaza to support its conclusion that HLF supports Hamas. According to the

report on which Treasury relied, this hospital is affiliated with Hamas. Accordingly, so the theory in the report goes, HLF's support for the hospital establishes the connection between HLF and Hamas. HLF, however, had no reason to believe that this hospital - which existed and served the public under the Israeli occupation and under the Palestinian Authority - has ever been a Hamas front. Most tellingly, Treasury failed to disclose that the United States Agency for International Development was also providing support to this same hospital, at the very time that our government was "accusing" HLF of supporting it. USAID even touted its assistance to the Al Razi hospital on USAID's website. We would be happy to provide the Committee a copy of the USAID web page in question, which USAID has since changed to delete reference to Al Razi hospital. Treasury has admitted, however, that USAID has supported the Al Razi hospital. In supposed explanation of our government's inconsistent position, Treasury stated in a court filing that the decision to support the hospital had not been made by a government official but, rather, by its subcontractor, PriceWaterhouse. It has not explained why USAID, whose office in Palestine is undoubtedly aware of which institutions are suspected of association with Hamas and which are not, would not only approve such an expenditure, but would trumpet its expenditure as proof of its friendship with the Palestinian people.

4. The Department of Treasury also relied on the fact that in 1994 HLF paid the airfare and travel expenses of a particular Palestinian cleric to visit the United States to raise funds for HLF. According to Treasury, this man was known to be a notorious "Hamas activist." To HLF, he was known as an advocate for peace in the Middle East. HLF's payment of the man's travel expenses occurred *before* our government declared Hamas to be a terrorist organization. In addition, we learned independently that *after* our government declared Hamas to be a terrorist organization, the United States Information Service brought this same man to the United States, at taxpayers' expense, on a good-will tour, during which he met with, among others, Jewish organizations interested in peace in the Middle East.

5. The Department of Treasury made much of the fact that HLF provided funds to the children of people it identified as "martyrs," claiming that HLF's support for such families demonstrated support for terrorism and Hamas. Treasury's "Exhibit A" for this allegation was a list of close to 400 children who live in Gaza and who were receiving support from HLF after the deaths of their fathers. HLF's program was akin to "Save the Children" in that HLF secured sponsors for particular children whose fathers had died. Of the close to 400 children listed, some 76 were identified as having had fathers who were "martyrs." Because some of them are siblings, the total number of fathers in this category was 46, which was slightly less than one-fourth of all of the fathers who were deceased and whose children were seeking assistance. As it turned out, of those 46, four were found to have been in connected with terrorism. *Nine were murdered - probably by Hamas or other terrorist organizations - because they were thought to*

be collaborators with Israel. All of these children have now lost the $45/month stipend that they received through HLF.

6. The Department of Treasury alleged that HLF supported the families of Hamas activists in 1992, when the Government of Israel expelled a number of dissidents from Palestine and stranded them in a no-man's land between Israel and Lebanon. HLF did come to the assistance of the exiles and their families, but Treasury fails to mention that so did the United Nations and a number of other international charities whose *bona fides* have never been questioned. Treasury also fails to mention that international pressure on the GOI forced Israel to allow these persons to return home. It is not reasonable or fair to criticize HLF for its support of the families of these wrongly-exiled persons, nor is it reasonable to affiliate HLF with Hamas on the basis of HLF's help for these refugees, particularly in light of the fact that at the time Hamas was not considered a terrorist organization.

7. The Department of Treasury alleges that HLF's should not have used the services of certain Palestinian "Zakat" ("charity") committees to assist HLF in identifying the needy and in distribution of aid. The evidence will show that HLF has been like many other charities in these regards and that only HLF has been singled out for designation as a terrorist for having a relationship with these committees, which have been integral to the life of Muslim communities for hundreds of years. The government contends that these Zakat committees are in some way connected to Hamas, yet it raised no objection when other, non-Muslim charities cooperated with them. HLF believes that representatives of other charities would testify, if called upon, that the issue of whether to deal with a particular organization, institution or person in Palestine is easily resolved: They consult the lists of terrorists and terrorist organizations that are available through the United States Departments of State and Treasury. If the person, institution or organization appears on the lists, they do not deal with them. If they are not on the lists, they feel free to deal with them. None of the Zakat committees in Palestine that HLF has worked with appears on these lists, and nor does the Al Razi hospital or the other hospitals HLF has supported (The Dar Al Salam Hospital). In short, the allegation that HLF should not have dealt with these organizations is completely unfounded.

8. The Department of Treasury alleges that HLF should not have accepted money in 1992 from a man named Abu Marzook, who is now known to be a high official in Hamas. The Department of Treasury has not explained why HLF should not have accepted money from this man, who was not at that time designated a terrorist. Furthermore, Treasury accuses HLF of providing support *to* Hamas, not receiving money *from* persons associated with Hamas, and has never attempted to explain why receipt of a contribution from Marzook demonstrates support for Hamas, other than pure guilt by association.

The remaining evidence of HLF's supposed connection to Hamas is close to a decade old, demonstrably unreliable and, when understood, includes nothing of an inculpatory nature. Although some of the evidence raises questions about alleged connections between HLF and Hamas, HLF is fully prepared to address and refute *all* of it if it is ever given the opportunity to do so in the context of a fair hearing.

There is much more to be said about the conduct of both our government and the GOI in the destruction of this charity, which can be derived by reviewing the limited evidence that HLF submitted to the Federal District Court for the District of Columbia in HLF v Ashcroft et al. I respectfully request that the Committee review that evidence, some of which I have supplied to Senator Specter's office by e-mail. I also respectfully request that the committee review the administrative record that supposedly supports the designation and blocking order. What is remarkable is that it consists almost entirely of hearsay, innuendo, unsupported opinion and even hundreds of pages of newspaper articles. More remarkable is that the Treasury Department has gone to lengths to deflect any opportunity for a hearing at which it would be required to defend its decisions. (See below.)

I also wish to address a matter that Mr. Lewin raised in his prepared testimony. In it, he complained that it was unfair that HLF was able to pay its lawyers while he was having to work for the Boim family *pro bono*. Under Department of Treasury's Terrorism Sanction Regulations (§585.506), the funds of a blocked entity may be used for "[t]he provision to or on behalf of a specially designated terrorist of...legal services" for cases such as these. In order to be paid, we submit our bills and an application for a license to the Office of Foreign Assets Control. Those portions of our bills which OFAC approves are then made the subject of a "license" which we may then use to draw on blocked funds in HLF's blocked bank account.

What Mr. Lewin requests - that HLF be put out of business and be deprived of any ability to defend itself or to contest its designation as a terrorist organization or the blocking order - would render intolerable what is already a breathtakingly unfair process. What Mr. Lewin appears to be asking is that the President and his designees be given the authority to seize the assets of an American organization, based on evidence that may run the gamut from reliable to unreliable to outright fabricated, *and deprive that organization of the ability to contest the evidence, the designation or the blocking order.* In the case of the Boim litigation, Mr. Lewin wishes to promote a situation in which HLF, deprived of counsel or any ability to defend itself, will suffer a default judgment because of its inability to hire counsel. In that case, Mr. Lewin could then access HLF's blocked funds without ever having to prove that HLF actually had any complicity whatever in the tragic death of his clients' son. If Mr. Lewin believes he has a case against HLF, then he should prove it. If he has enough evidence to get to a jury and is able to

persuade the jury that HLF should be held legally responsible, he will likely be able to access HLF's blocked funds, and he can be paid from those funds just as any other lawyer would who worked on a contingent-fee basis.

HLF also respectfully requests that the Committee consider the lack of fundamental due process protections that the law provides for organizations such as HLF. Specifically, HLF requests that the Committee consider that the current regulatory and statutory scheme provides no mechanism for a hearing either before or after assets are seized and an organization is designated a terrorist organization. HLF could probably satisfy an impartial fact-finder that HLF has no connection whatever to Hamas, but it has never had an opportunity to do so. Yet much of the evidence that the government has used to justify its actions turns out to be manufactured and the rest is at best unreliable. In court, the government has taken the following positions with respect to the evidence described above: first, they have rejected it without a hearing; second, they have treated much of it as "irrelevant" because it was not in the "administrative record" when the decision was made to designate HLF a terrorist organization, a process in which HLF had no meaningful opportunity to participate. For example, when confronted with irrefutable evidence that GOI's "summaries" were false, the government's response has been to reject HLF's evidence and to rely on the principle that it is always appropriate for one government to rely on information supplied by another, notwithstanding proof that the information is false. As to HLF's support for institutions that are supposedly connected to Hamas and that the United States also supports, the government's explanation is that HLF acts with bad motive in supporting such institutions while the United States and the other charities do not. The government has offered no explanation whatever for its apparent confusion regarding HLF's use of the term "martyr." Finally, it is the government's position that HLF *should never be permitted a hearing.*

Many organizations and persons who have been designated terrorist organizations are foreign, have little or no due process rights under our law, and are unlikely in any event to appear and contest their designations as terrorists. It would be extraordinary, for example, if representatives of Hamas wished to appear and contest that organization's terrorist status. HLF, however, is an American organization operated by Americans. It is fully prepared to address the allegations against it in a neutral forum, but has been unable to obtain any due process whatever. Just as this Committee is rightly concerned with the most effective mechanisms for cutting off funding to terrorist organizations, its efforts should not ignore the injustice to HLF, and any other similarly-situated organizations, that results when American organizations and American citizens are destroyed and stigmatized as terrorists and are provided no opportunity whatever to establish their innocense.

I appreciate having been given the opportunity to provide this information to the Committee. If I can provide any further information, please ask.

Respectfully,

JOHN W. BOYD

JWB/ks
cc: Thomas Swanton
Sen. Orrin G. Hatch
Sen. Edward M. Kennedy
Sen. Strom Thurmond
Sen. Joseph R. Biden, Jr.
Sen. Charles E. Grassley
Sen. Herbert Kohl
Sen. Dianne Feinstein
Sen. John Kyl
cc: Sen. Russell D. Feingold
Sen. Mike DeWine
Sen. Charles E. Schumer
Sen. Jeff Sessions
Sen. Richard J. Durbin
Sen. Sam Brownback
Sen. Maria Cantwell
Sen. Mitch McConnell
Sen. John Edwards

TESTIMONY OF ROBERT J. CONRAD, Jr.
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NORTH CAROLINA

November 20, 2002

Before the Committee on the Judiciary
United States Senate

Chairman Leahy, Senator Hatch, and Members of the Committee, thank you for inviting me to appear before this Committee to discuss this important issue - terrorist financing enforcement. The presentation I will share with you today is a case overview of Operation Smokescreen. It is an account of a group of young Lebanese men who, for the most part, came to this country illegally through visa fraud, remained here illegally through immigration fraud, committed a host of crimes (including cigarette smuggling, money laundering and credit card fraud) and sent some of the proceeds of their criminal enterprise to Hizballah, a designated foreign terrorist organization.

To successfully prosecute this terrorist support cell the United States Attorney's Office for the Western District of North Carolina utilized several sophisticated legal tools. Among these were the first conviction at trial of a violation of 18 U.S.C. § 2339B (providing material support and resources to a designated foreign terrorist organization), the first application of the Racketeering Influenced and Corrupt Organization (RICO) statute to a terrorist support cell, the protections of the Classified Information Procedures Act (CIPA), the securing of evidence from a foreign country (Canada) through Mutual Legal Assistance Treaty (MLAT) requests, and the use of sensitive confidential human sources of information. In addition, this prosecution also successfully employed electronic communications intercepts authorized by the Foreign Intelligence Surveillance Act (FISA) and introduced into evidence, for the first time in a United

States Courtroom, electronic intercepts by the Canadian Security Intelligence Service (CSIS).

In 1996 an alert Detective Sergeant of the Iredell County, North Carolina Sheriff's Department noticed a group of young men with grocery bags full of cash buying van loads of cigarettes at a wholesaler and heading north out of state. Not knowing for sure whether this was illegal, he contacted a friend at the Bureau of Alcohol, Tobacco and Firearms. Immediately, they began a joint state and federal investigation of the interstate smuggling of contraband cigarettes. Using such traditional investigative tools as surveillance, telephone and financial records analyses, vehicle stops, and the cultivation of co-conspirator witnesses and confidential informants, these investigators amassed a thorough case for prosecution.

In 1999, as the matter was being considered by the United States Attorney's Office, the Federal Bureau of Investigation informed prosecutors that it had been conducting an intelligence investigation of a Hizballah fund raising support cell in Charlotte, North Carolina. What made this information all the more significant was that the Hizballah supporters were the same men as the cigarette smugglers. As a result, even before the District had a Joint Terrorism Task Force, and before the events of September 11, 2001, these criminal supporters of one of the most dangerous terrorist organizations in the world had already been targeted by a multi-agency task force. This task force consisted of the United States Attorney's Office for the Western District of North Carolina and the Terrorism and Violent Crime Section of the Department of Justice, as well as agents from the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, the Iredell County Sheriff's Department, the Immigration and Naturalization Service, the Charlotte-Mecklenburg Police Department, the Criminal Investigation Division of the Internal Revenue Service, the Diplomatic Security Service of the Department of State and the

North Carolina State Bureau of Investigation.

Initially it was not known whether this organization could ever be publicly charged for what it was: a criminal association that funneled some of its illegal proceeds to Hizballah. The government's strategy was to bring charges for whatever offenses could be proven. In this way, no matter what else may have happened, the group could be identified, disrupted, imprisoned and eventually deported. As a result, through tremendous effort and cooperation, indictments were prepared to address certain recurring criminal conduct. Generally speaking, members of this organization entered the United illegally through fraudulently obtained visas. They generally remained in the country through fraudulent marriages to United States citizens and the commensurate defrauding of the Immigration and Naturalization Service. While here, they conspired to commit a host of crimes, including the interstate smuggling of contraband cigarettes, the laundering of the proceeds, and bank and credit card fraud.

Furthermore, we were able to charge these individuals for serving as a financial support cell for Hizballah. Using the RICO statutes, we alleged that the "association in fact" was the Charlotte Hizballah Cell, and that some of the proceeds of the criminal enterprise were sent to Hizballah in Lebanon. Never before had the RICO statutes been used against a terrorist support cell.

In addition, we were able to employ 18 U.S.C. § 2339B (material support of a designated foreign terrorist organization) against these individuals. It was known through confidential sources that the leader of the Charlotte Hizballah Cell, Mohamad Hammoud, raised money for the terrorist organization by playing propaganda tapes and making motivational speeches at the conclusion of weekly Shia prayer meetings, soliciting funds for Hizballah and having the money

delivered by couriers to Lebanon. This information was confirmed by the development of witnesses, the execution of 18 search warrants in July 2000, and the declassification and authorized use of electronic intercepts under FISA.

During the investigation, prosecutors were informed that the Canadian Security Intelligence Service had captured conversations involving a member of the Charlotte Hizballah Cell, Said Harb, assisting in extensive procurement of dual use equipment for Hizballah's violent activities. CSIS established that Hizballah operatives, acting under the direction of Hizballah's chief of procurement, were acquiring such sophisticated equipment as night vision devices, global positioning systems, aircraft design and analysis software, laser range finders and more. In unprecedented cooperation, CSIS agreed to allow its information to be used in a prosecution in a United States District Court for the first time.

The result of this collaborative effort is that 10 individuals have been convicted of conspiring to engage in a series of criminal offenses under the RICO statutes and sending some of the illegal proceeds to Hizballah, a designated foreign terrorist organization. Six people have been indicted for providing material support and resources to a designated foreign terrorist organization in violation of 18 U.S.C. § 2339B. Of these six, one pleaded guilty, and another, Mohamad Hammoud, was the first conviction at trial under the statute. Hammoud's conviction is significant. Information included in search warrant affidavits established that Hammoud, if directed to do so, would execute an order for a violent act. He headed a cell that provided financial support to a group that, prior to September 11, 2001, killed more Americans than any other terrorist organization. He lived among us in a middle class lifestyle, traveled extensively in the United States, and can even be seen in photos in front of the Washington Monument and

White House. We may never know whether the aggressive prosecution of this support cell averted an attack on the United States. But we can draw comfort from the fact that Hammoud, the leader of this particular cell, will probably spend the rest of his life in a United States prison.

Four defendants charged with material support remain fugitives, including the chief of Hizballah's procurement activities, the leader of Hizballah in the Beirut suburbs, and a top Hizballah operative. While we hope someday to bring these fugitives to justice in a United States Courtroom, in the meantime they must live with the constant threat of arrest and extradition in most countries around the world.

Finally, it should be noted that, as a direct result of the government's experiences in this case, the RICO statute was amended as part of last year's USA Patriot Act to include all terrorism-related acts, in order to insure full prosecution of any future cases involving such activities.

Mr. Chairman and Members of the Committee, thank you for this opportunity to appear before you today. I welcome any questions you may have at this time.

Statement by Dr. Allan Gerson

Hearings of the Senate Judiciary Committee on
"Assessment of the Tools Needed to Fight the Financing of Terrorism"

November 20, 2002

Chairman Leahy, Senator Specter, distinguished members of the Judiciary Committee:

I am very appreciative of the invitation to appear here today to contribute to the important goal that this Committee has set for itself: assessing the tools needed to fight the financing of terrorism. Surely, the standard by which these tools can be assessed must, in large measure, revolve around the progress that has been made in securing for the families of the victims of 9/11 the rights guaranteed to them under recent US anti-terrorism legislation. It is through these initiatives that they seek to hold accountable those responsible for enabling the murder of their loved ones, beginning with the proposition that the root of the problem lies in the financing of terrorism. First, however, I would like to express gratitude to this Committee, on behalf of the over 3600 individual family members that I and my partner in this endeavor, Ron Motley, have the honor to represent. They understand that your continuing interest and involvement in the justice of their cause will enable them to play the important role carved out for them in the war against terrorism.

9/11 was the work of terrorists that preach global jihad. The mass rallies of the Nazis, fanning bigotry and hatred, have been replaced by their use of the internet and the click of a computer mouse. And yet I fear, Mr. Chairman, that we are still using antiquated and obsolete techniques to deal with today's threats.

The victims of 9/11 were predominantly civilians. Yet today their families have the capacity to strike back. But if, and only if, their hands are not tied. They must be allowed

to invoke the full force of our laws. As Secretary of State Powell recently noted: "The coalition against terrorism must advance on all fronts – political, financial, legal and military – to root out terrorists wherever they live and plot." Indeed, President Bush, almost immediately following the September 11th attacks, proclaimed: "Our goal is to deny terrorists the money they need to carry out their plans." He went on to say: "Our weapons are military and diplomatic, financial and legal." Today, the families of the 9/11 victims are in the front ranks of those fighting the war on the financial and legal fronts. Their weapon is the legal process. Their principal target is terrorism's financial underbelly. It is no accident that the organized 9/11 families call themselves Families United to Bankrupt Terrorism. They are essentially acting, through their lawyers, as Harvard's Professor Alan Dershowitz has characterized it, as "private attorneys-general, stepping in where the government is constrained by economic and political considerations."

Our legal team has assembled highly experienced investigators to scour records in thirteen countries on behalf of the suit we have filed, *Burnett, et al. v. Al Baraka Investment and Development Corp., et al* in the US District Court for the District of Columbia. This suit names over 100 defendants in a complaint that spans 1,000 pages, with the third amended complaint to be filed this Friday. In addition, a more recently filed case in New York, *Ashton, et al. v. al Qaeda, et al.*, names many of the same defendants on behalf of approximately an additional one thousand 9/11 family members. The defendants in the *Burnett* suit are primarily Saudi banks, charities, institutions, wealthy contributors and individuals associated with the Government of Saudi Arabia. In this effort, we have the active assistance of the governments of Russia, Uzbekistan, Israel, and Bosnia, to name but a few. We have the active cooperation of the judiciary and the governments' prosecutorial arms in Spain and in Germany. Indeed, in Germany we are preparing, as I speak, to appear on behalf of the families as co-plaintiffs in a criminal prosecution against one of the alleged 9/11 plotters, a procedure permitted under German law. This will enable us to see evidence that is fresh, to call witnesses, and to strengthen our case. For example, one of the items of evidence obtained by our global investigatory

efforts is a document showing fund transfers made by the Saudi American Bank in Washington's Watergate Hotel to the Middle East that we believe ultimately ended up in Hamas's pockets for the purpose of suicide bombings in Israel. We intend to demonstrate that this financing pattern served as a template for funding al Qaeda operations. We have also obtained judicial cooperation in tracking the al Qaeda money trail that, as reported by the New York Times on September 21 of this year, runs from Saudi Arabia through Spain.

For all of these reasons, I believe we are making good progress in using the tools that the Congress has already made available to us. Accordingly, I am not here to ask for new legislation. Rather, I come to thank you for what you have made possible, and to make one specific respect. I respectfully urge you to do all in your power to make sure that those advances not be frustrated by pernicious maneuverings by those who persist in viewing the 9/11 families' suit as unwarranted interference in foreign policy. Credible reports that our government might be considering stalling or otherwise impeding this suit were reported in the New York Times on October 25. As a result, a large delegation of family members promptly came by busloads from New York to stand vigil before the Capitol on November 1 to insist that our government stand with them, and not against them. Regretfully, I am not in a position to assure the families that the cause for their great anxiety and fear of betrayal has passed. In a full page open letter to the President that appeared in the Washington Post on November 1, they asked that President Bush "disavow any effort by our government to disarm us as we join you in the fight against terrorism." No response has been forthcoming.

Today, recourse to the courts by American citizens against the perpetrators of terrorism is a Constitutional right. It cannot be taken away or suspended without violating the due process and taking of property provisions of the Fifth Amendment. But, Senators, what is needed is more than grudging acceptance of this principle. What is needed is an affirmative statement that there will be no interference in the 9/11 families' efforts to seek redress. Beyond that, we would hope that, where practicable, there would be active

cooperation in sharing of evidence.

Together we can act effectively to protect our citizens and our country. In the past, whenever we were faced with a serious challenge to our national security, new advances in public-private partnerships always arose to utilize the skills of all Americans. For example, as is surely pertinent to our present inquiry, in the post war era as Americans turned their sights inward toward combating the scourge of racism, it was private actions for civil damages which bankrupted the Ku Klux Klan. I am proud to say that one of the attorneys that spearheaded that effort, Rich Hailey of Indianapolis, is affiliated with us in our effort on behalf of the 9-11 families.

Former US National Security Advisor Richard Allen was on target when he said that the 9/11 families' lawsuit against foreign interests should be supported by the United States government because it will provide important opportunities for learning about the workings of terrorism, and this will enhance the security of all Americans.

Congress's courageous initiatives in its anti-terrorism legislation thus operates not only for the benefit of individual citizens seeking compensation for past wrongs, but for all American citizens by helping to make them safer. If the reach of our enemy is global, then our response must surely be global. One thing is clear. International terrorists look for any opportunity to take advantage of the increasing porousness of international boundaries in order to find the best venue for their clandestine work, for places where it is easiest to launder money and hide assets. A counter-attack must necessarily use the same tools of globalization. It can begin with the criminal law process. In this regard, it is worth giving closer attention to a case instituted in the immediate aftermath of the International War Crimes Tribunal at Nuremberg: the US prosecution of Carl Rasche of the Dresdner Bank, in "The Banker's Case". He was convicted for giving financial assistance and financing the requirements of the Reich's deportation and ill-treatment of the civilian population of occupied countries, and the persecution of persons deemed racially or politically

undesirable. The court there held that financial assistance, the signing of a check or otherwise effecting a financial transaction, can have the same devastating effect as the detonation of a bomb or the turning of the wheels of the gas chamber.

But it is not the criminal track alone that can lead us to the results that we seek. I have already mentioned the example of the bankrupting of the Ku Klux Klan. And it is worth noting that it was in that same spirit of recognizing the role of private citizens that the US Congress, in passing the 1991 and 1993 Anti-Terrorism Acts, and the 2001 American Patriots Act, sought to further in enabling private plaintiffs to address the evil of financing terrorism.

In this context, cooperation and the sharing of documents between courts, involvement of private plaintiffs all along the way, making sure that evidence does not turn stale, and allowing them to go into areas where for economic or other reasons governments are loathe to tread are all the essential elements of the new international public-private partnerships that must wage the fight against terrorism.

If the 9/11 families need the help of the US government in the prosecution of their law suit, it would also be true to say that the government needs their help. To be sure, dealing with foreign governments has traditionally been considered the exclusive prerogative of the State Department and the US government. Over the years, the 19th century concept of sovereign immunity, despite changing times, developed to the point that any foreign government would be immune from accountability in our courts to private citizens for even the most appalling behavior. Fortunately, that doctrine has been eroded by Congress's response to terrorist outrages against American citizens. But make no mistake: it was not the State Department that inspired these changes, but private citizens. It was the families of the victims of Pan Am 103 acting in unison with the families of the victims of the April 1995 Oklahoma bombing that deserve much credit for moving the US Congress to pass the 1996 Anti-Terrorism and Effective Death Penalty Act which

permitted suits against governments designated by the State Department as sponsors of terrorism. That legislation was necessary in order for our courts to assert jurisdiction over Libya in connection with the bombing of Pan Am 103, an act which occurred outside the territorial jurisdiction of the United States. Had Libya's act of terrorism occurred within American borders, as did the outrage of 9/11, there is good reason to believe that an expansive reading of the 1976 Foreign Sovereign Immunities Act might have permitted a law suit against any government complicit in that event even without the 1996 legislation. This is because the '76 Act provides for an exception to immunity where tortious acts are committed on the soil of the United States.

That critical victory was followed after 9/11 by passage of the 2001 American Patriots Act which specifies the intent of Congress to accord broad latitude to all anti-terrorism legislation, including the 1991 and 1993 Anti-Terrorism Acts which provide for civil remedies against individuals perpetrating acts of terrorism. It also holds open the prospect of RICO conspiracy actions. And, this legislative empowerment of those victimized by terrorism has coincided with far-reaching judicial decisions, most notably the unanimous decision of the Seventh Circuit Court of Appeals in the Boim case last summer which makes clear that the standard for determining liability in actions under the '93 Anti-Terrorism Act is not limited to actual, but includes constructive knowledge.

It is only proper that I also note at this point another ongoing effort by the 9/11 families as they seek to play a vital role in the war against terrorism to fulfill what they see as their mission -- preventing the horror visited upon them from being visited upon another group of innocent Americans. They fully support the establishment of an independent commission to examine that tragedy as a means of trying to avoid similar future tragedies. In this regard, the 9/11 families are following in the footsteps of the families of Pan Am 103 who tirelessly, and nearly single-handedly, fought to establish in 1990 an Independent Commission on Aviation Security and Terrorism.

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On May 15, 1990, that Commission issued a lucid and tough-minded 182 page report which, if heeded, might well have prevented 9/11. It made scores of recommendations about aviation security measures, but only some were actually incorporated into law or administrative recommendations. The Report's most strongly worded recommendation of all -- that terrorism cannot be defeated without the national will and moral courage to implement "a more vigorous US policy that not only pursues and punishes terrorists but also makes state sponsors of terrorism pay a price for their actions" -- went all but unheeded.

The 9/11 families want an independent commission with teeth, one which includes individual family members and whose recommendations will be respected. They understand that the work of this Committee in enabling them to proceed in the courts as well as through such independent commissions are flip sides of the same commitment to achieving accountability and, through that, deterrence.

Testimony of Jimmy Gurulé
Under Secretary for Enforcement
U.S. Department of the Treasury
Before the
U.S. Senate Judiciary Committee
November 20, 2002

Chairman Leahy, Ranking Member Hatch and distinguished members of the Committee, permit me to begin by thanking you for inviting me to testify today with my colleague from the Treasury Department, General Counsel David Aufhauser, about the measures the Treasury Department, and the U.S. government more generally, have taken and are taking to identify, attack and disrupt terrorist financing and the lessons we have learned to date about patterns of financing and fundraising.

On September 24, 2001, President Bush stated, "We will direct every resource at our command to win the war against terrorists, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence. We will starve the terrorists of funding." The President directed the federal government to wage the nation's war against the financing of global terrorism, and we have continued to devote our resources and extensive expertise to fulfill this mandate. In our actions and in our words, the Treasury Department has shown quite clearly that in this war, financial intermediaries and facilitators who infuse terrorist organizations with money, materiel, and support must be held accountable along with those who perpetrate terrorist acts.

Before I turn to specific developments in our fight against terrorist financing, I would like to re-state the Treasury Department's gratitude to this Committee and the Congress for the additional resources, authorities, and support given to the Executive Branch this past year to assist Treasury in identifying, disrupting, and dismantling terrorist financial networks. Immediately after the horrific attacks of September 11th, Congress worked closely with the Department of the Treasury, along with the Department of Justice and other agencies and departments, to make significant improvements in the law that enhance our ability to tackle the issue of terrorist financing in a more unified, cohesive and aggressive manner. Of particular importance to our counter-terrorist efforts, the USA PATRIOT Act, enacted into law on October 26, 2001, expands the law enforcement and intelligence community's ability to access and share critical financial information regarding terrorist investigations.

I would also like to emphasize the importance of vigorous interagency consultation and cooperation in attacking terrorist financing, and thank the other agencies and departments in our

federal government for their work with us over the past year. We have seen that terrorist financing is a complicated and multi-dimensional problem that both domestically and internationally implicates a range of legal, regulatory, financial, intelligence and law enforcement interests. Consequently, no successful attack on the financial underpinnings of terrorism may be advanced without coordinated interagency strategies on the use of legal, regulatory, private sector, law enforcement and intelligence-gathering tools required to combat this problem.

I would now like to briefly review our efforts in countering terrorist financing since the events of September 11th. This review will provide a helpful context for some recent developments that I would then like to describe in greater detail for you.

I. A Brief Review of Our Efforts to Combat Terrorist Financing

Identifying, attacking and disrupting the financial underpinnings of terrorism are matters of national security. This war on terrorist financing is an immense undertaking. The openness of our modern financial system, which allows savers and investors to fuel economic growth and promotes the international trade and communications so vital in today's world, also creates opportunities for terrorists. Our challenge in this front of the war against terrorism is to protect the efficiency and flexibility of the world's financial systems while preserving the integrity of such systems by ensuring that they are not abused by terrorists and their financiers. We have enjoyed success, but much more remains to be done.

In the months immediately following the heinous crimes of September 11th, the Department of the Treasury took six principal steps to identify and pursue financial underwriters of terrorism:

1. Working with other USG agencies, we implemented Executive Order 13224, giving us greater power to freeze terrorist-related assets;

2. We established Operation Green Quest, an inter-agency task force which has augmented existing counter-terrorist efforts by targeting financial networks and mechanisms, and by bringing the full scope of the Treasury Department's financial expertise to bear against systems, individuals, and organizations that serve as sources of terrorist funding;

3. The United States won the adoption of UN Security Council Resolutions 1373 and 1390, which require member nations to join us in the effort to disrupt terrorist financing;

4. We engaged other multilateral institutions such as the Financial Action Task Force (FATF) and the international financial institutions to focus on terrorist financing;

5. We began implementation of the USA PATRIOT Act provisions to broaden and deepen our access to critical financial information in the war against terrorist financing and to expand the anti-money laundering regulatory net for our financial system; and

6. We began sharing information across the federal government, with the private sector, and among our allies to crack down on terrorist financiers.

As we executed these initial steps, we began to formulate a strategy for combating terrorist financing on a global scale. For the first time, the 2002 National Money Laundering Strategy (NMLS) contains such a strategy, with a discrete set of objectives and priorities targeting terrorist financing. Goal 2 of the NMLS identifies financial mechanisms or systems by which terrorist funding is effectuated, and seeks to attack these mechanisms on an interagency and coordinated basis. Released this past summer by the Secretary of the Treasury and the Attorney General, the NMLS states that terrorist groups tap into a wide range of sources for their financial support, including otherwise legitimate enterprises such as construction companies, honey shops, tanneries, banks, agricultural commodities growers and brokers, trade businesses, bakeries, restaurants, bookstores. The Strategy also states that, although terrorists receive material assistance and/or financial support from rogue nations and other governments that are sympathetic to the terrorists' cause, they also secure funding from charity or relief organizations, money remitters, informal value transfer systems, as well as trade-based schemes. The NMLS addresses each of these mechanisms, and establishes priorities and objectives to identify and attack their corruption by criminals.

Our strategy, in its broadest outlines, focuses in particular on the following seven areas: (1) targeted intelligence gathering; (2) freezing of suspect assets; (3) law enforcement actions; (4) diplomatic efforts and outreach; (5) smarter regulatory scrutiny; (6) outreach to the financial sector; and (7) capacity building for other governments and the financial sector through Treasury and other departmental technical assistance programs. This is an integrated inter-agency strategy because these efforts draw on the expertise and resources of the Treasury Department, the Department of Justice, the Department of State and other departments and agencies of the federal government, as well as our foreign partners and the private sector. Allow me to highlight briefly the efforts the Treasury Department has taken to tackle terrorist financing in these seven areas of focus identified in our terrorist financing strategy.

First, with respect to identifying appropriate financial targets, we are applying technology, intelligence, investigatory resources and regulations to locate and freeze the assets of terrorists, wherever they may be located. New powers granted to Treasury by the President and Congress have enabled us to scour the global financial system for suspicious activities with greater precision than ever before.

Second, we are freezing terrorist-related assets on a global scale. We have frozen over U.S. $35 million in terrorist-related assets since September 11th and the international community has frozen an additional U.S. $78 million. More important than the dollars frozen is the dismantling of these financial pipelines, which served to transit far greater sums of money for terrorist purposes.

Third, we have coordinated effective law enforcement actions both domestically and internationally against terrorist cells and networks. On October 25, 2001, Treasury created Operation Green Quest ("OGQ"), a new multi-agency financial enforcement initiative intended

to augment existing counter-terrorist efforts by bringing the full scope of the Treasury Department's financial expertise to bear against systems, individuals, and organizations that serve as sources of terrorist funding. Internationally, Treasury has deployed Customs attaches and representatives from Treasury's Office of Foreign Assets Control (OFAC) in strategic embassies around the world to facilitate cooperation with host countries and regions in combating terrorist financing. Between September 12, 2001 and October 28, 2002, international law enforcement cooperation has led to approximately 2290 arrests of suspected terrorists and their financiers in 99 countries.

Fourth, together with other agencies, we are using our diplomatic resources and regional and multilateral engagements to ensure international cooperation, collaboration and capability in dismantling terrorist financing networks. As stated above, the United States has worked through the United Nations to globalize the war on terrorist financing, and we have complemented these efforts with a range of bilateral and multilateral initiatives. One of the bilateral initiatives is the U.S. Government's designation of Foreign Terrorist Organizations (FTO's). Under authorities provided by the Antiterrorism and Effective Death Penalty Act of 1996, the Secretary of State, in consultation with the Attorney General and the Secretary of Treasury, has designated 35 groups as foreign terrorist organizations. The designations make it a criminal offense for American persons to knowingly provide funds or other forms of material support for designated groups. Some other countries have used the designations as a guideline for their own efforts to curb terrorism financing.

Fifth, we are engendering smarter regulatory scrutiny by training the financial sectors to concentrate enhanced due diligence and suspicious activity monitoring on terrorist financing and money laundering typologies. Through the USA PATRIOT Act authorities, we are expanding and enhancing regulatory scrutiny to all businesses within the financial sector that may be susceptible to terrorist or criminal abuse.

Sixth, we have undertaken our regulatory expansion under the authorities of the USA PATRIOT Act in full consultation with the private financial sectors that we are regulating. This outreach has assisted and informed our regulatory strategy with respect to each financial sector so that costs of new regulation are borne only where warranted by the offsetting enforcement benefit. For example, after prolonged discussion with the insurance industry, we decided to regulate life and annuity insurance products because of their investment-like characteristics, but we decided against regulating other forms of insurance, such as health care or property insurance, because of the low risk that such policies have for terrorist financing or other financial criminal abuse. Most importantly, on October 1, 2002, FinCEN's secure link with financial institutions, the USA PATRIOT Act Communications System (PACS), became operational. Bank Secrecy Act reports are now being filed via PACS.

Finally, we have engaged in several capacity-building initiatives with other governments and the private sector with respect to terrorist financing. For example, internationally, Treasury is co-chairing a FATF Working Group on Terrorist Financing, which, among other issues, is charged with identifying technical assistance needs of various governments around the world. This Working Group is collaborating with donor states, the International Monetary Fund, the World

Bank, and the UN Counter-Terrorism Committee in coordinating the delivery of technical assistance to those governments. Bilaterally, Treasury's Office of Technical Assistance and Office of International Enforcement Affairs have actively participated in conducting several inter-agency assessments of technical assistance needs with respect to combating terrorist financing in various countries of strategic interest to the United States.

In pursuing these areas of focus, we have adopted a systemic approach against terrorist financing. As the initial results of the September 11th investigation have made clear, the financial trail left by terrorists and their facilitators represents a vulnerability that must be pursued and exploited. Our strategy takes full advantage of the new authorities granted to us under the USA PATRIOT Act and the international support that we have cultivated against terrorism to find these financial trails and uncover terrorist financing networks and operational cells. We have utilized these authorities and resources to attack the terrorist financial infrastructure; that is, their formal, informal and underground methods for transferring funds across borders and between cells, whether through banks, businesses, hawalas, subverted charities, or innumerable other means. Through designation, regulation and investigation, we have systemically been shutting down terrorist access to these financing channels and mechanisms, and we have used the money trails evident in terrorist financing cases to locate and apprehend terrorists.

Our objective is simple—to prevent acts of terrorism in the short and long term by identifying and disrupting terrorist operations and the financial networks that support those operations. To pursue this objective, we have been working in close partnership with the Department of Justice and its investigative components, the State Department, the Department of Defense, the intelligence community, and many other agencies of the federal government to address terrorist financing on multiple levels. We have concentrated much of our enforcement efforts and resources on identifying, tracing, and blocking terrorist-related assets. In this endeavor, we have gathered the financial expertise, information and authorities that are unique to the Treasury Department to attack terrorist financing on all fronts. We have also engaged the world, in bilateral and multilateral fora, to ensure international cooperation in our anti-terrorist campaign. I would now like to describe these operational, regulatory and international aspects of our counter-terrorist financing efforts in greater detail.

II. Actions Taken Against Terrorist Financing

Shutting Down Terrorist Access to Formal Financial Channels

The most visible and immediately-effective tactic of our comprehensive terrorist financing strategy has been designating and blocking the accounts of terrorists and those associated with financing terrorist activity. Public designation of terrorists, terrorist supporters and facilitators, and blocking their abilities to receive and move funds through the world's financial system, has been and is a crucial component in the fight against terrorism. On September 24, 2001, President Bush issued Executive Order 13244, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism." Section 1 of the Order states:

"All property and interests in property of the following persons. . .that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of United States persons are blocked."

The Department of the Treasury's Office of Enforcement, in conjunction with Treasury's Office of International Affairs and the Office of Foreign Assets Control, has helped lead U.S. efforts to identify and block the assets of terrorist-related individuals and entities within the United States and worldwide. Currently, 250 individuals and entities are publicly-designated as terrorists or terrorist supporters by the United States, and since September 11th over $113 million in the assets of terrorists has been frozen around the world. Beyond simply freezing assets, these U.S. and international actions to publicly-designate terrorists and their supporters advance global interests in suppressing terrorist financing and combating terrorism by:

(i) shutting down the pipeline by which designated parties moved money and operated financially in the mainstream financial sectors;

(ii) informing third parties who may be unwittingly financing terrorist activity of their association with supporters of terrorism;

(iii) providing leverage over those parties not designated who might otherwise be willing to finance terrorist activity;

(iv) exposing terrorist financing "money trails" that may generate leads to previously unknown terrorist cells and financiers;

(v) forcing terrorists to use alternative and potentially more costly informal means of financing their activities; and

(vi) supporting our diplomatic effort to strengthen other countries' capacities to combat terrorist financing through the adoption and implementation of legislation that allows states to comply with their obligations under UN Security Council Resolutions 1390 and 1373.

Only the first interest identified above can be quantified by hard numbers; that is, the value of assets frozen pursuant to blocking actions. Of course, the value of the designation process is much greater than any amount of terrorist money frozen. The designation process is invaluable because it accomplishes all of the other interests identified above, and in doing so, shuts off terrorist access to the world's formal financial systems. In other words, more important than the dollars frozen pursuant to designations is the dismantling of terrorist financial pipelines, which previously served to transit far greater sums of money for terrorist purposes.

Currently, over 165 countries and jurisdictions have blocking orders in force; but, not every country has joined us in blocking every identified terrorist or terrorist supporter. We must continue to work to ensure that countries do more than just add names to a list; we must also work towards ensuring that they have the necessary laws, training and political will to join with us in shutting down terrorist access to international financial systems. The Treasury Department, together with the various other departments and agencies of our federal government, is constantly engaged in these efforts. On the legislative side, for example, Treasury Department officials took part in a series of seminars the Departments of State and Justice recently conducted

for 35 other countries to help them strengthen their counterterrorism laws and regulations, especially in the area of countering terrorism financing.

As we succeed in our domestic and international efforts to deny the world's financial systems to terrorists and their financiers, terrorists will be forced to find alternative methods such as alternative remittance systems, bulk currency transfers, abuse of charitable giving, and trade-based transactions to raise and move money. In a recent speech to the Council on Foreign Relations echoing these concerns, Deputy Secretary Ken Dam stated, "public designations are, by their very nature, public and therefore terrorists can adapt their behavior by keeping their money out of the United States or other financial centers with regulations in place to stop them. Instead, they will utilize other methods to move their money...and avoid storing large sums of money in any one location." We are targeting these mechanisms as well. I'd now like to turn to these alternative financial mechanisms and briefly describe our efforts to combat terrorist financing conducted through these mechanisms.

Protecting Charities from Terrorist Abuse

Charities across the world perform an important function, enhancing the lives of millions of people. In 2000, for example, Americans donated U.S. $133 billion to charity with humanitarian intent. Unfortunately, however, terrorists have preyed upon such noble intentions by diverting charitable funds for terrorist purposes.

Our task then is twofold: (1) to identify and shut down those charities which have ties to terrorist organizations; and (2) to prevent legitimate charities from being abused by terrorist financiers without chilling legitimate charitable donations and charitable works. Our strategic approach, as set forth in the recently published 2002 National Money Laundering Strategy, involves domestic and international efforts to ensure that there is proper oversight of charitable activities, as well as transparency in the administration and functioning of charitable organizations. We also are striving to effect greater coordination with the private sector to develop partnerships that include mechanisms for self-policing by the charitable and non-governmental organization sectors.

Under the authority of E.O. 13224, the United States has designated twelve charitable organizations as having ties to al Qaida or other terrorist groups. In addition, the United States has designated and blocked the assets of the largest U.S.-based Islamic charity, which acted as a funding vehicle for the HAMAS terrorist organization. To date, we have frozen $7.3 million in U.S. funds from these organizations, and an additional $5.7 million in funds from spurious charitable organizations has been frozen by other countries.

We are also increasing the transparency and oversight of charities through multilateral efforts. FATF Special Recommendation VIII on Terrorist Financing commits all member nations to ensure that non-profit organizations cannot be misused by financiers of terrorism. The United States is co-chairing the FATF Terrorist Financing Working Group that has recently produced an international best practices paper on how to protect charities from abuse or infiltration by terrorists and their supporters.

In addition, we are working bilaterally with many countries to ensure transparency in charitable operations. Saudi Arabia and Kuwait have announced the establishment of oversight authorities for Saudi and Kuwaiti charities in their respective countries. We are confident that our work bilaterally and through FATF on this issue will prompt other countries to adopt competent authorities to protect charities from terrorist abuse.

To assist U.S.-based charities concerned that their distribution of funds abroad might reach terrorist-related entities and thereby trigger a blocking action on the part of the Treasury Department, the Department has developed *voluntary* best practices guidelines for all U.S.-based charities. (The guidelines are available at http://www.treas.gov/press/releases/po3607.htm). The Treasury Department developed these guidelines in response to requests from the Arab American and American Muslim communities, who reported a reduction in charitable giving and an increased apprehension among donors as a consequence of the Treasury Department's blocking of the three domestic charities.

The guidelines focus on financial controls and the vetting of potential foreign recipients. They provide for rigorous self-imposed financial oversight and, importantly, high levels of disclosure and transparency that will enhance donor community confidence in the professionalism and bona fides of the domestic charity. Although wholly voluntary, the guidelines, if implemented, offer a means by which charities can protect themselves against terrorist abuse and are consistent with the principles espoused in both the private and international public sectors – *e.g.*, the Better Business Bureau, the Evangelical Council for Financial Accountability and, most recently, FATF. By implementing the guidelines with sufficient resources, diligently adhering to them in practice, and immediately severing all ties to any foreign recipient associated with a terrorist organization, a domestic charity can enhance donor confidence and significantly reduce the risk of a blocking order. The guidelines have been positively received by the Arab American and American Muslim communities.

U.S. Treasury officials have also met with charitable sector watchdog and accreditation organizations, including the *Better Business Bureau Wise Giving Alliance* and the *International Committee on Fundraising Organizations*, to raise their awareness of the threat posed by terrorist financing. We will continue these efforts to promote effective self-regulation and oversight within the charitable industry.

Regulating Hawalas / Informal Value Transfer Systems

Terrorists have also used hawalas and other informal value transfer systems as a means of terrorist financing. The word "hawala" (meaning "trust") refers to a fast and cost-effective method for the worldwide remittance of money or value, particularly for persons who may be outside the reach of the traditional financial sector. In some nations hawalas are illegal; in others they are active but unregulated. It is therefore difficult to measure accurately the total volume of financial activity associated with the system; however, it is estimated that, at a minimum, tens of billions of dollars flow through hawalas and other informal value transfer systems on an annual basis.

Some of the features which make hawalas attractive to legitimate customers -- efficiency, reliable access to remote or under-developed regions, potential anonymity, and low cost -- also make the system attractive for the transfer of illicit or terrorist-destined funds. Traditionally, informal value transfer systems such as hawalas have largely escaped financial regulatory scrutiny. As noted in a recent money laundering report of the Asia Pacific Group, a FATF-style regional body, the terrorist events of September 11th have brought into focus the ease with which informal value transfer systems may be utilized to conceal and transfer illicit funds. Not surprisingly, concerns in this area have led many nations to reexamine their regulatory policies and practices in regard to hawalas and other informal value transfer systems.

The United States has already taken steps to regulate hawalas and informal value transfer systems. The USA PATRIOT Act requires money remitters (informal or otherwise) to register as "money services business" or "MSBs", thereby subjecting them to existing money laundering and terrorist financing regulations, including the requirement to file Suspicious Activity Reports (SARs). As a result, well over 11,000 money service businesses have registered with the federal government and are now required to report suspicious activities. The Act also makes it a crime for the money transfer business owner to move funds that he knows are the proceeds of a crime or are intended to be used in unlawful activity. Failure by money service business principals to register with FinCEN and/or failure to obtain a state license also are federal crimes.[1] In order to increase awareness within the diverse MSB community nationwide about their obligations under the MSB rules, FinCEN is conducting an outreach campaign to include advertising, community outreach and the distribution of educational materials.

We have succeeded in disrupting the operations of several illegal money remitters implicated in terrorist financing. U.S. experts have worked with officials in other nations on proposed licensing and/or registration regimes for money remitters, including hawala operators, to ensure greater transparency and record-keeping in their transactions. We will work closely with the Department of Justice to ensure a balanced, but aggressive, use of criminal authorities to charge individuals who are operating illegal money remitting businesses.

We are also working to ensure the integrity and transparency of informal value transfer systems internationally. FATF Special Recommendation VI addresses this issue by demanding that countries register or license informal value transfer businesses and subject them to all of the FATF Recommendations that apply to banks and non-bank financial institutions. In addition, at a conference on hawala in the UAE in May 2002, a number of governments agreed to adopt FATF Special Recommendation VI and shortly thereafter the UAE government announced it would impose a licensing requirement on hawala operators operating within its borders. Participants at the UAE meeting drafted and agreed upon the Abu Dhabi Declaration on Hawala, which set forth a number of principles calling for the regulation of hawalas.

On the international training front, FinCEN recently hosted a conference on informal value transfer systems in Oaxaca, Mexico. This conference included presentations and discussions covering the money laundering risks posed by informal value transfer systems, such as hawala, and the law enforcement and regulatory challenges posed by such systems. The key findings

[1] 18 U.S.C. § 1960.

from FinCEN's outreach efforts to the domestic law enforcement community were shared with international law enforcement officials at the seminar. Speakers included representatives from, Italy, the United Kingdom, Pakistan, Bahrain, the International Monetary Fund and the World Bank.

Combating Bulk Cash Smuggling

Bulk cash smuggling has proven to be yet another means of financing adopted by terrorists and their financiers. Customs has executed 650 bulk cash seizures totaling $21 million, including $12.9 million with a Middle East connection. Pursuing bulk cash smuggling from a domestic perspective, however, is not enough; disruption of this tactic requires a global approach. To identify and attack bulk cash movements, we must work with the international community to ensure mandated inbound/outbound currency reporting at reasonable levels (*e.g.*, U.S. reporting threshold is $10,000). Further, intelligence-gathering and law enforcement/customs agencies must cooperate with immigration officials to share information about potential terrorist financing smugglers/couriers. We are continuing to explore the creation of bi-lateral and possibly multi-lateral Customs-to-Customs "Hotlines", where appropriate, to exchange "real time" bulk currency information, as well as the sharing of large value cross-border cash reports.

Investigating Trade-Based Terrorist Financing

With respect to trade-based financial systems, we will continue to investigate the use of licit and illicit international trade commodities, for example, diamonds, gold, honey, cigarettes, as well as narcotics, to fund terrorism. We likewise will continue our efforts to identify under and over-invoicing schemes that mask the movement of funds. Countering these trade-based terrorist financing systems demands consultation with domestic as well as international trade communities and will require further bilateral and multilateral efforts. The U.S. Customs Service has developed a state-of-the-art database system to identify anomalous trade patterns for imports/exports to/from the United States. In the past, Customs has demonstrated this system to other nations, including Colombia, with excellent results. We will continue to aggressively pursue sharing and comparing trade-based data bi-laterally and on a regional level to identify and attack unexplained anomalies that might mask terrorist financing and/or money laundering.

To combat illicit international trade commodities such as narcotics, we must build from existing domestic and international law enforcement and investigative authorities and initiatives. As we have seen with both the Taliban and the FARC, narcotics trafficking presents these groups with the greatest potential for raising the funds they need to support their terrorist regimes. Additionally, the associations that these groups establish with narcotics traffickers give them access to the arms traffickers and other facilitators (*i.e.*, smuggling, communication and transportation groups) that service the narcotics organizations.

Treasury (Office of Enforcement) and the United States Customs Service, in consultation with the Departments of Justice and State, have developed an international training program that introduces foreign customs and law enforcement officials to trade based money laundering and Customs developed software used to combat it. An inaugural trade based money laundering

program was presented in Abu Dhabi and Sharjah / Dubai, United Arab Emirates (UAE) from October 10-17, 2002. The two-day program, in each location, included presentations on money laundering, trends in commodity and trade based money laundering, terrorist financing issues, organizing and presenting a money laundering case, and a demonstration of the Numerically Integrated Profiling System using UAE data. This inaugural event was a successful first step in providing assistance to priority countries in the Middle East, and additional programs are planned for Qatar, Kuwait, Pakistan and India in the near future.

Investigating Terrorist Cyber-Fundraising Activities

Finally, we recognize that terrorist groups may exploit the internet to recruit supporters and raise terrorist funds. Developing a strategy to counter such cyber-fundraising activities is a responsibility that the Treasury Department has assumed in its 2002 Anti-Money Laundering Strategy. We are currently working with other government agencies and departments to devise such a strategy.

As you can see, we have developed a sophisticated understanding of the various means of terrorist financing, and we have responded with a range of domestic and international initiatives to counter each of these means. Most of these initiatives that I have been referring to are designed to give us greater access to critical financial information in the war against terrorist financing. In order to take advantage of this information, we have created an operational, interagency investigative group whose purpose is to targeting terrorist financing.

Operation Green Quest

As I indicated earlier, on October 25, 2001, Treasury created Operation Green Quest (OGQ) to focus the Treasury Department's financial expertise in the war against terrorist financing. OGQ identifies and attacks terrorist financing through a systemic financial approach. OGQ specializes in identifying financial mechanisms, such as illegal money remitters, and searching those systems to identify potential terrorist financing. This systems-based approach, and the understanding that the financing of terrorism is not merely an ancillary component of a terrorist-specific investigation, differentiates OGQ from other governmental efforts and brings the unique financial capabilities of Treasury components to bear against terrorist financing.

OGQ is led by the United States Customs Service, and includes the Internal Revenue Service, the Secret Service, the Bureau of Alcohol Tobacco and Firearms (ATF), Treasury's Office of Foreign Assets Control (OFAC), FinCEN, the Postal Inspection Service, the Federal Bureau of Investigation (FBI), and the Department of Justice. The financial expertise of the Treasury Bureaus, along with the exceptional experience of our partner agencies and departments, is also utilized in this operational attack on terrorist financing.

Since its inception, OGQ has referred 1189 cases and/or leads to the field and has received some 631 suspected terrorist financing-related "Hotline" suspicious activity reports (SARs) from FinCEN, as well as 217 proactive analyses of these SARs. OGQ-sponsored and related investigations have resulted in 60 arrests, 28 indictments, 11 convictions, 138 search warrants

issued and/or consent searches and just over $8 million in seizures. In addition, since September 2001, Customs has executed 650 bulk cash seizures totaling $21 million, including $12.9 million with a Middle East connection. This represents more than a two-fold increase of bulk cash seized with a Middle East connection when compared to the year preceding September 11, 2001, when seizures outbound to Middle and Far East countries totaled $5.216 million. Post-seizure, all leads, domestic and international, are aggressively pursued.

In seeking to identify potential financiers of terrorism, as well as in pursuing potential violators, OGQ relies upon traditional criminal law enforcement techniques, including Title III wiretaps, and undercover operations, as well as enhanced access to intelligence information permitted under the PATRIOT Act. At present, OGQ, in tandem with other federal law enforcement agencies, is pursuing more than 17 cases involving unlicensed money remitters, as well as cases involving potential violations of IEEPA blocking orders. OGQ also is aggressively pursuing terrorist financing derived from the commission of criminal offenses in the United States, and seeks to identify possible terrorist financial links of the offshore recipients.

Operation Green Quest has numerous ongoing investigations that cannot be discussed in a public forum due to security and grand jury disclosure concerns. Below are a few that can be disclosed:

Al Barakaat Investigation - On November 2001, USCS agents conducted 10 nationwide search warrants/consent searches in conjunction with an OFAC blocking order that resulted in the seizure of documentary and computer evidence. To date USCS agents have obtained 3 arrest warrants based on violations of 18 USC 1960, Failure to Obtain a State Money Transmitting License. Subsequently one of the targets was tried and convicted resulting in the first successful prosecution under the newly-enacted PATRIOT Act for violations of 18 USC 1960. The other individuals are fugitives.

Herndon, Virginia investigations – Operation Green Quest initiated an investigation of several charities in the United States that are suspected of channeling funds to known terrorist organizations in the Middle East. To date Operation Green Quest has conducted 29 search warrants on businesses, residences and Internet service providers for suspected violations of Providing Material Support or Resources to Terrorist Organizations, Tax Fraud, Failure to Report Foreign Bank Account (FBAR), OFAC violations and Money Laundering.

Hawala Investigation - Operation Green Quest initiated an investigation pursuant to an outbound seizure of suspected Hawala-generated funds that were en route to Yemen. The investigation disclosed that the courier and the reputed owner/broker of the funds were actively involved in the trafficking and repatriation of Hawala-generated funds from the United States. The investigation led to the arrest and indictment of 24 members of this organization for violations of 18 USC 1960, Illegal Money Remitting; 31 USC 5324, Structuring; 31 USC 5316, CTR Violations and 18 USC 371, Conspiracy. To date, agents have executed six search warrants and seized approximately $1 million.

Narco-Terrorist Investigation - On October 22, 2002, Customs Agents arrested a Colombian national who attempted to transport $182,000 in Euro dollars into the United States. The

investigation revealed the suspect is an active money launder that is affiliated with the F.A.R.C. Narco-Terrorist group. The $182,000 was seized and the suspect was subsequently indicted for violations of 18 USC 1960, Failure to Obtain a State Money Transmitting License. This investigation is ongoing.

OGQ, along with the FBI and other government agencies, also has traveled abroad to follow leads, exploit documents recovered and provide assistance to foreign governments. In this effort, OGQ is utilizing its 22 Customs attachés in 31 foreign offices overseas to gather information. These offices and attaches have proven invaluable to our operational efforts against terrorist financing.

Operational Training: Building Upon Existing Treasury Expertise

Treasury's primary assignment in the war on terrorism is to identify and attack financial mechanisms, licit and illicit, supporting terrorism. In pursuing this assignment, Treasury can build upon its efforts to identify and attack money laundering. In many cases, due to the similarity of financial systems used by targets, investigating terrorist fundraising is similar to conducting a money laundering case. There are, however, significant differences between money laundering and terrorist fundraising investigations. A key distinction is manifested in the end game sought by investigators. Money laundering investigations are initiated to achieve prosecution and forfeiture. Terrorist fundraising investigations, although sharing these objectives as well, are more nuanced. The ultimate objective is to identify, disrupt and cut off the flow of funds to terrorists. Significant accomplishments can be had without any significant domestic prosecutions.

There are other differences as well. For example, as opposed to a typical money laundering case, methods used for raising funds to support terrorist activities may be legal. Moreover, in a terrorist financing investigation, the targeted financial transactions tend to be smaller, and much less observable, for example, than the typical narcotics money laundering transaction. Identification of the transaction as suspicious, therefore, may require a much greater melding of private, law enforcement and intelligence information obtained domestically, as well as internationally. To address these issues, it is essential to develop "in-house" expertise and awareness of financial methods utilized by financiers of terrorism, and strategies to attack, disrupt and dismantle them. To accomplish this, interagency training is essential.

Recently, on September 24 and 25, 2002, at the Department of the Treasury, Treasury's Office of Enforcement sponsored a "Combating Terrorist Fundraising Seminar." The purpose of the seminar was to serve as a "train the trainer" mechanism, and to familiarize participants with ongoing terrorist financing methodologies and anti-terrorist financing strategies. Attending the seminar were more than 80 federal investigators, prosecutors and regulators who already possessed a familiarity with terrorist financing issues and problems. Speakers included experts in the field from the various components of Treasury, Justice and State. The participants were drawn from Treasury and its Bureaus, Justice and its components, U.S. Attorney Offices, State, the National Security Council, and Office of the Comptroller of the Currency, the Federal Reserve Board of Governors and the FDIC. The seminar was well-received, and Treasury

(Enforcement) is planning additional regional seminars in key locations in the United States. The first such program is currently scheduled for next month in Los Angeles.

III. International Efforts

I would now like to take a few moments to explain what we have been doing internationally to combat terrorist financing. Terrorist financing networks are global, and consequently, our efforts to identify and deny terrorists access to funds must also be global. Our efforts in this aspect of the war on terrorism cannot be wholly successful if pursued alone. Internationally, the United States has worked not only through the United Nations on blocking efforts, but also through multi-lateral organizations and on a bi-lateral basis to promote international standards and protocols for combating terrorist financing generally. I would like to briefly review some of the more significant initiatives that we have pursued in the international arena.

Bilateral Outreach and Engagement

Recognizing that the success of our efforts to combat terrorist financing will depend in large part on the support of our allies, the Treasury Department has continuously engaged the international community in developing and strengthening counter-terrorist financing initiatives and regimes. This week, Treasury Secretary O'Neill, Deputy Assistant Secretary Zarate and other senior officials are in Afghanistan, Pakistan and India to facilitate the development of effective counter-terrorist financing policies in those countries, and, as appropriate, to offer Treasury technical assistance to strengthen these policies.

As another example of our continuous outreach, I recently completed a five-day trip to five European countries to discuss ways of improving our international efforts to combat terrorist financing. I visited major European financial centers and met with numerous senior government officials and leaders from banking and private industry in each of these countries. I thanked the governments and the private sector banking communities in each of these countries for their cooperation and important actions to date. In addition, I emphasized the global and long-term nature of the war against terrorist financing and the need to renew our momentum in combating terrorist financing, not just against al Qaida, but against all terrorist groups. I listened to explanations of the blocking implementation and terrorist financing targeting procedures in each of these countries and discussed ways of overcoming common problems that plague these efforts.

I also emphasized the importance of developing and strengthening the public-private partnership between governments and the financial sector in identifying and combating terrorist financing activity. I thanked the private sector banking and regulatory communities for their cooperation and progress in combating money laundering in recent years, and I expressed the need to build on this progress in countering terrorist financing. I explained how the U.S. has enhanced financial regulation to combat money laundering and terrorist financing through implementation of the USA PATRIOT Act, and I indicated the importance of consulting with the private sector throughout this process. I also explained the importance of Treasury's PATRIOT Act Task Force in ensuring continued consultation with the private sector as regulations are implemented

and administered, and I encouraged my audiences to engage actively in dialogues that facilitate such public-private partnerships.

Throughout my trip, I discussed the critical importance of European leadership in the war against terrorist financing and explored ways in which Europe can assume a greater role in leading international efforts to combat terrorist financing. I urged each of the countries that I visited to take a more proactive and aggressive approach in designating terrorist-related parties, and I pledged U.S. support in these efforts. I also suggested ways in which the EU could assume a greater leadership role by streamlining the EU clearinghouse process in designating terrorist-related parties and by more aggressively pursuing high impact targets for designation.

Finally, I urged government officials to reconsider the common European and official EU distinction made between political or social wings and military or terrorist wings of organizations such as HAMAS. I raised a number of arguments against making such a distinction, and I urged making this distinction the exception rather than the rule in designating multi-faceted organizations such as HAMAS.

Our message was well received with respect to each of these objectives, and our delegation established and renewed important contacts for following up on a number of issues discussed above. It was abundantly clear that each country I visited greatly appreciated our attention to their efforts and input and the importance that the U.S. places upon European participation and leadership in the war against terrorist financing. We will continue these outreach efforts to ensure that the international community moves in a coordinated and aggressive manner against terrorist financing.

United Nations

Because of its global nature and its ability to require states to take action under Chapter VII of the UN Charter, the UN offered the quickest route for globalizing the war against terrorism in general and terrorist financing in particular. The United States has worked diligently with the UN Security Council to adopt international resolutions, which reflect the goals of our domestic executive orders by requiring UN member states to freeze terrorist-related assets. These UN Security Council resolutions form the legal basis for freezing terrorist assets on a global basis.

The UN 1267 Committee[2] is responsible for UN designations of individuals and entities associated with al Qaida, Usama bin Laden, and the Taliban. States wishing to propose a name for UN designation typically include a statement of the basis for designation, along with identifying information for the use of financial institutions, customs and immigration officials, and others who must implement sanctions. If no state objects to the proposed designation within 48 hours after a name is circulated by the Committee Chairman, the designation becomes effective. The 1267 Committee then puts out an announcement on its web site and all UN member states are required to freeze any assets held by the designated party(ies), without delay.

[2] This committee was established pursuant to UN Security Council Resolution 1267 to oversee the designation of al Qaida and Taliban-related individuals and entities.

We have worked with our allies in the UN to pursue bilateral and multilateral designations of terrorist-related parties where possible and appropriate. We have achieved some notable successes in this area to date:

U.S.-Saudi Joint Designations - On March 11, 2002, the United States participated in its first joint designation of a terrorist supporter. The United States and Saudi Arabia jointly designated the Somalia and Bosnia-Herzegovina offices of Al Haramain, a Saudi-based NGO. These two organizations are linked to al Qaida and their names were forwarded to the Sanctions Committee for inclusion under the UNSCR 1333/1390 list.[3] On September 9, 2002, the United States and Saudi Arabia jointly referred to the Sanctions Committee Wa'el Hamza Julaidan, an associate of Usama bin Laden and a supporter of al-Qaida terror.

G7 Joint Designation - On April 19, 2002, the United States, along with the other G7 members, jointly designated nine individuals and one organization. Most of these groups were European-based al Qaida organizers and financiers of terrorism. Because of their al Qaida links, all ten of these names were forwarded to the UN Sanctions Committee for inclusion under the UNSCR 1333/1390 list.

U.S.-Italy Joint Designation - On August 29, 2002, the United States and Italy jointly designated 11 individuals and 14 entities. All of the individuals were linked to the Salafist Group for Call and Combat designated in the original U.S. Annex to E.O. 13224. The 14 entities are part of the Nada/Nasreddin financial network, two terrorist financiers designated on earlier E.O. 13224 lists.

U.S.-Central Asia Joint Designation – On September 6, 2002, the United States, Afghanistan, Kyrgyzstan, and China jointly referred to the Sanctions Committee the Eastern Turkistan Islamic Movement, an al-Qaida-linked organization which operates in these and other countries in Central Asia.

Designation of Jemaa Islamiyya – On October 23, 2002, the United States designated the Southeast Asian terrorist group, Jemaa Islamiyya, suspected by many in the media of perpetrating the deadly attacks on a nightclub in Bali on October 12th. In the subsequent request of the United Nations to also designate this group for its ties to the al Qaida organization, the U.S. joined Australia, Indonesia, Singapore, and 46 other countries, including all the members of ASEAN and the EU, in requesting Jemaa Islamiyya's designation. This represents the most widespread show of support of any terrorist designation to date.

Beyond designating terrorist-related parties for blocking action on a global basis, the UN has also asked for countries to identify needs for technical assistance in order to comply with UN resolutions and conventions against terrorist financing. The UN has required all member states to submit reports on the steps they have taken to implement the various actions against terrorist

[3] UN Resolutions 1267/1333/1390 mandate blocking sanctions on Usama bin Laden al Qaida, the Taliban, and those associated with them.

financing called for in UNSCR 1373.[4] To date, 187 members have completed their reports. The UN is reviewing those reports with the intent of identifying gaps that member nations need to fill in order to comply with UNSCR 1373.

Financial Action Task Force (FATF)

Since 1989, the 31-member FATF has served as the preeminent anti-money laundering multilateral organization in the world. The United States has played a leading role in the development of this organization. Capitalizing on this financial crime expertise, on October 31, 2001, at the United States' initiative, the FATF issued Eight Special Recommendations on terrorist financing, requiring all member nations to:

(1) Ratify the UN International Convention for the Suppression of the Financing of Terrorism and implement relevant UN Resolutions against terrorist financing;

(2) Criminalize the financing of terrorism, terrorist acts and terrorist organizations;

(3) Freeze and confiscate terrorist assets;

(4) Require financial institutions to report suspicious transactions linked to terrorism;

(5) Provide the widest possible assistance to other countries' laws enforcement and regulatory authorities for terrorist financing investigations;

(6) Impose anti-money laundering requirements on alternative remittance systems;

(7) Require financial institutions to include accurate and meaningful originator information in money transfers; and

(8) Ensure that non-profit organizations cannot be misused to finance terrorism.

Many non-FATF counties have committed to complying with the Eight Recommendations and over 90 non-FATF members have already submitted self-assessment questionnaires to FATF describing their compliance with these recommendations. Together with the Departments of State and Justice, Treasury will continue to work with the FATF to build on its successful record in persuading jurisdictions to adopt anti-money laundering and anti-terrorist financing regimes to strengthen global protection against terrorist finance.

As part of this effort, FATF has established a Working Group on Terrorist Financing (Working Group), which the United States is co-chairing with Spain, devoted specifically to developing and strengthening FATF's efforts in this field. At the most recent FATF Plenary in October 2002, the Working Group, in collaboration with the World Bank, the IMF, and the UN CTC, identified a number of countries to receive priority technical assistance in order for them to come into compliance with the Eight Special Recommendations on Terrorist Financing.

Egmont Group

[4] UN Resolution 1373 mandates member States to: (1) prevent and suppress the financing of terrorist acts; (2) criminalize providing or collecting funds for terrorist use; and (3) block without delay funds and other financial assets and economic resources of terrorists and their supporters, and entities owned or controlled by them or their agents.

Through FinCEN, we have directed the attention of the Egmont Group towards terrorist financing. The Egmont Group represents 69 Financial Intelligence Units (FIUs) from various countries around the world. FinCEN is the FIU for the United States. The FIU in each nation receives financial information (such as SARs) from financial institutions pursuant to each government's particular anti-money laundering laws, analyzes and processes these disclosures, and disseminates the information domestically to appropriate government authorities and internationally to other FIUs in support of national and international law enforcement operations.

Since September 11th, the Egmont Group has taken steps to leverage its information collection and sharing capabilities to support the United States in its global war on terrorism. On October 31, 2001, FinCEN hosted a special Egmont Group meeting that focused on the FIUs' role in the fight against terrorism. The FIUs agreed to: (i) work to eliminate impediments to information exchange; (ii) make terrorist financing a form of suspicious activity to be reported by all financial sectors to their respective FIUs; (iii) undertake joint studies of particular money laundering vulnerabilities, especially when they may have some bearing on counterterrorism, such as hawala; and create sanitized cases for training purposes.

Approximately ten additional candidate FIUs currently are being considered for admission to the Egmont Group. Egmont has conducted and will continue to host training sessions to improve the analytical capabilities of FIU staff around the world. FinCEN is heavily engaged in these efforts and recently participated in the international training session held Oaxaca, Mexico, co-hosted with the UN.

Bilateral/Multilateral Law Enforcement Cooperation

An unintended consequence for al-Qaida of its heinous actions on September 11th has been unprecedented international law enforcement cooperation and information sharing on a scale inconceivable prior to the 9/11 attack. As these efforts continue to improve, terrorist cells and networks become more vulnerable. Let me briefly recount some of our successes with respect to international law enforcement cooperation:

U.S.-Swiss Operative Working Arrangement: On September 4, 2002, a working arrangement signed by the Attorney Generals of Switzerland and the United States and the Deputy Secretary of the Treasury was agreed to in Washington. Under this arrangement, Swiss and U.S. federal agents have been assigned to each country's terrorism and terrorist financing task forces in order to accelerate and amplify work together on cases of common concern. Bilateral cooperation and assistance is occurring on a more informal basis in many other countries.

Successful Results: International law enforcement cooperation has resulted in approximately 2290 arrests of suspected terrorists and their financiers in 99 countries from September 12, 2001 through October 28, 2002. Some of these arrests have led to the prevention of terrorist attacks in Singapore, Morocco and Germany, and have uncovered al Qaida cells and support networks in Italy, Germany, Spain, the Philippines and Malaysia, among other places. In addition, soon after September 11th, a Caribbean ally provided critical financial information through its FIU to

FinCEN that allowed the revelation of a financial network that supported terrorist groups and stretched around the world.

IV. Conclusion

The range of initiatives that I briefly have shared with you today highlights the complexity of the tasks at hand. We have made substantial progress since September 11th, and since my last testimony before Congress on October 9, 2002. This progress is owing to the outstanding cooperation and hard work of all U.S. government agencies and departments and the international community to close the seams that terrorists had exploited before last fall. We are proud of our efforts, but realize that much work remains to be done. We recognize the dynamic nature of terrorist financing and the need to maintain a comprehensive and flexible long-term strategy to effectively combat this threat. We appreciate the tools that you have given us to counter the terrorist financing threat, and we look forward to continuing to work with this Committee and the Congress on this issue of vital national importance.

I will be happy to answer any questions you may have.

NEWS RELEASE

ORRIN HATCH

United States Senator for Utah

November 20, 2002 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the Senate Committee on the Judiciary
Hearing on

"An Assessment of the Tools Needed to Fight the Financing of Terrorism"

Mr. Chairman, hardly a week goes by without hearing another account of some horrific act of terrorism committed in the world. Whether this is a suicide bombing in Jerusalem, a carefully coordinated attack in Yemen, or an anthrax letter mailed to the Senate, we cannot help but to be greatly concerned about these terrorist acts and their tragic consequences. We on the Judiciary Committee have worked diligently for years to give law enforcement officials the tools to investigate and prosecute those who would commit these cowardly and devastating attacks. But we would be remiss if we did not continue to look deeply and carefully at the subject of terrorist financing.

This is a large scale problem with large scale consequences. For this reason, Mr. Chairman, I want to thank you for scheduling this hearing to look into this issue. Despite all we have done in the area of combating terrorism, we can still do more.

Simply put, money is the lifeblood of terrorist organizations. As much as they need a horde of mindless and zealous followers to carry out their destructive plots, terrorists need money to buy their guns, to build their bombs, and to recruit and train their members. Planning an operation as elaborate as the bombing of the Pentagon and World Trade Center takes money – and lots of it.

This problem is two-fold. First, we need to target terrorist fund-raising. If we can find a way to stop or significantly stem the flow of money to these terrorist organizations, we will be going a long way to neutering their ability to plot further acts of coordinated killing. It is chilling to realize that millions of dollars raised in the United States goes abroad to terrorist groups – only to return to this country in the form of shrapnel, assault rifles and persons trained to kill innocent Americans. Second, we need to target assets held by terrorists no matter how they were obtained. Indeed, an Al Taeda training manual gives advice on how to invest funds in projects that offer

financial return to support its terrorist operations.

In reviewing this area, I have been pleased to learn that the Administration has been working diligently to tackle the problem of terrorist financing. The Administration has been carefully designating terrorist organizations that are blocked from soliciting or receiving funds. Since September 11th, the President, by executive order, has frozen more than $30 million in suspected terrorist assets. But the Administration's careful and dogged review of countless financial transactions has done more than lead to a pool of illicit terrorist funds to freeze. It also has led to names of persons associated with those transactions, and this valuable information has led to the arrests of terrorists. This is a valuable source of information that we should be mining, both to staunch the flow of money and to track the flow of terrorists. I am heartened to hear that we have made valuable process in this area. And I am pleased to learn that several changes to the law made by Title III of the Patriot Act have proven instrumental in this effort.

No one can possibly conclude, however, that we are near victory. As I understand it, we still lack a reliable way of determining how much money is flowing to terrorists or how much money terrorists have on hand. In other words, the problem is so immense that we have little hard information as to its scope. But by any measure, terrorists are still raising and moving huge amounts of money to fund their deadly practices. We have our work cut out for us.

Mr. Chairman, thank you for assembling the knowledgeable witnesses who appear today to talk about this issue. I look forward to hearing their thoughts on this important subject. I hope we can emerge from this hearing with a better understanding of what we can do to dry up the flow of money to terrorist organizations and, in doing so, better protect innocent lives.

# # #

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement Of Chairman Patrick Leahy
Senate Judiciary Committee Hearing On
"An Assessment Of The Tools Needed To Fight The Financing Of Terrorism "
November 20, 2002

Today's hearing focuses on fighting the financing of terrorism. Since September 11, 2001, we have learned a great deal about the ways in which Al Qaeda and other groups finance their terrorist activities. Federal investigators have seized more than $113 million. But it has also become clear that there is much we do not know about how terrorist organizations manage their finances. Al Qaeda and other groups are adapting as their assets are frozen and formal markets are closed off to them.

Due to the dogged work of foreign news correspondents, we have known for months or years that Al Qaeda transferred millions of dollars into untraceable commodities like diamonds and gold to avoid seizure in the international finance markets. Commodities like these can be smuggled across borders without detection. Such transactions were apparently conducted for a significant period of time. A Washington Post article from December 30 of last year quoted a U.S. official as saying, "We are *beginning* to understand how easy it is to move money through commodities like diamonds." (Emphasis added). This statement was made almost four months after the September 11 attacks. The official continued, "One thing we are learning is not to ignore the obvious." Our intelligence community must operate at a higher level than these statements indicate. The security of our nation depends on it.

Cigarette smuggling is another method the terrorists have used to raise funds. In June two men were convicted of running millions of dollars of cigarettes from North Carolina to Michigan and sending some of the proceeds to Hezbollah. These men were prosecuted and convicted of conspiring to provide material support to a terrorist group, money laundering and credit card fraud. I commend successes like these, which focus on less traditional mechanisms of terrorism financing, but I fear they are few and far between. We need to keep ahead of the terrorists.

This Committee is charged with oversight of all federal law enforcement efforts to stop money laundering. This is an area where it is obvious that greater attention needs to be paid. Last weekend, the Administration released a "report card" on its success in the war on terrorism, but missing from that report was any description of domestic and international law enforcement efforts. According to the recent Council on Foreign Relations report on terrorist financing, the various government agencies responsible for this issue have been impeded in their investigations by inter-agency turf battles and an all-too-common unwillingness to share information.

Furthermore, while this hearing is titled, "An Assessment of the Tools *Needed* to Fight the Financing of Terrorism," it is significant to note that the Congress has already provided agencies

with effective and flexible statutes. Last year, working closely together, Senator Sarbanes and I insisted that money laundering provisions be included in the USA PATRIOT Act, despite efforts by the Administration and House Republicans to have those provisions removed. Having enacted those provisions, this Committee must fulfill its oversight obligations.

Which provisions are being used, and to what effect? I was troubled to see that, according to the Council on Foreign Relations report, the measures enacted in the USA PATRIOT Act that give power to the Secretary of Treasury to restrict or prohibit access to the U.S. financial system have *never* been used. Earlier this year I was proud to introduce S.1770, important legislation containing tough new criminal penalties for those who finance terrorism. That legislation, which also contained a new crime for terrorist bombers, was necessary to implement two important treaties that President Clinton signed after the bombings of the American embassies in Kenya and Tanzania. Although the current Administration had not immediately moved to implement these important treaties, even after September 11, I am glad that after I introduced S.1770, I was able to work with the President to secure passage of the measure.

Significantly, S.1770 provided a new crime, 18 U.S.C. 2339C, with a 20 year prison term for anyone who provides or collects funds with the intent that such funds be used in full or in part to carry out a terrorist act. The new law does not require that the funds were actually used for such an act. Thus, law enforcement does not have to wait for the terrorist act to be completed. They can move in to cut off funding before the damage is done. That law also includes another felony, punishable by 10 years in prison, for those who conceal the sources of terrorist financing. Both provisions also give the government extraterritorial jurisdiction of such offenses, in order to allow them to stop terrorist financing that is aimed at harming the United States or its citizens wherever it may occur.

The message should be clear. It is a crime to intentionally fund terrorists or to intentionally help those who seek to do so. S.1770 provided powerful new tools. It is now up to the executive branch, however, to use effectively these important tools that Congress has provided. Thus far, like many of the provisions in the USA PATRIOT Act, I understand that these new provisions have not been used.

Finally, press accounts indicate that the United States has not found a way consistently to work in an effective manner with other governments and private entities in the common fight against terrorism. As I just noted, the Administration's own "report card" on the war on terror omitted any mention of international law enforcement efforts. We depend upon other nations to freeze accounts and seize assets where terrorist-related activities are discovered. But nations whose cooperation is critical to freezing accounts, like Switzerland, have complained of our government's unwillingness to share information.

I was pleased to honor Senator Specter's request to convene this hearing and look forward to the testimony of the witnesses he has selected to appear today.

# # # # #

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STATEMENT OF NATHAN LEWIN
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
November 20, 2002

My name is Nathan Lewin. I am a lawyer in private practice in Washington, D.C., in a family law firm called Lewin & Lewin LLP that I operate with my daughter, Alyza Lewin. I was a prosecutor with the Department of Justice and practice white-collar criminal defense law and appellate litigation. I have represented former President Richard Nixon and Attorney General Ed Meese, have argued 27 cases in the Supreme Court of the United States, and have taught at Harvard, University of Chicago, Georgetown, Columbia and George Washington University Law Schools.

I am gratified to have received your invitation to testify on "An Assessment of the Tools Needed to Fight the Financing of Terrorism" because I believe I have discovered the cheapest means, from the perspective of the American taxpayer, to fight the financing of terrorism from sources within the United States. The principal tool for this battle is, I believe, America's private litigators – lawyers who are ready to bring private lawsuits against private organizations and individuals who provide funds to organizations that engage in terrorist acts abroad or in the United States.

I speak from personal experience. Sometime in 1997, when I was visiting the State of Israel, as I frequently do, I was introduced to Joyce and Stanley Boim, the parents of David Boim, a young man who was killed by Hamas terrorists in May 1996 when he was only 17 years old. David, who was born in the United States to American parents, was standing at a bus stop near the school he attended when a car drove past and shot randomly at passengers boarding a bus and others standing nearby.

The killers were two members of Hamas, the organization that immediately took credit for the attack. One of the killers went on to be a suicide bomber in September 1997 in the heart of Jerusalem, when he killed 7 others (including a young girl who was an American citizen) and wounded 192 (including several young American students). The second – the driver of the car – is named Amjad Hinawi. He confessed when he was finally brought to trial in a court of the Palestinian Authority in early 1997. An American State Department representative, Mr. Abdelnour Zaibeck, witnessed the confession. Hinawi received a slap on the wrist from the Palestinian court. Although he was found guilty and sentenced to 10 years of prison at hard labor, he has been seen walking around free in Palestinian territory. I testified about this outrage and the inexplicable failure of the Department of Justice to indict Hinawi and seek his extradition before Senator Specter on March 25, 1999. Absolutely no progress has been made since that time. There is no reason in the world why a confessed murderer of an American student shot in cold blood while waiting at a bus stop has not been criminally charged by American authorities and brought to trial in an American court.

The Boims asked me whether they had any remedy at all under American law. I did what too few lawyers do today and looked at the books. I found that in 1991 and 1992 Congress had passed anti-terrorism laws, including what is now 18 U.S.C. § 2333, that gave American-citizen victims of such terror anywhere in the world a civil remedy, with treble damages and attorneys' fees, against those who commit murder or assault.

Obviously, Hinawi has no funds that can be reached for a judgment, should the Boims involve that statute. And his confederate killed himself and 7 others in a later suicide bombing. Against whom can such a statute be used?

Over initial objections from my then-partners, I drafted and filed a lawsuit against those who enabled the perpetrators to kill David Boim – the organizations in the United States that collected funds and provided other support for Hamas in the years preceding May 1996. I was challenged by partners, friends and other lawyers, who wanted to know why I was suing the leading Muslim charity in the United States – the Holy Land Foundation for Relief and Development – and others that were engaged in purportedly "charitable" activities in the Middle East. I responded that the defendants in my case – none of whom are foreign governments or government agencies – ***knew*** that they were ***also*** funding violence by Hamas directed against civilians.

I sued in federal district court in Chicago in the Northern District of Illinois because the United States had seized $1.4 million in a civil forfeiture action based on allegations of money-laundering on behalf of Hamas. I hoped that the Boims – who are victims of Hamas terrorism – would be able to reach those funds. Our complaint was filed on May 12, 2000. On January 11, 2001, District Judge George Lindberg denied

motions by the Holy Land Foundation and other defendants to dismiss the complaint. I agreed to the defendants' request for an interlocutory appeal to the Court of Appeals for the Seventh Circuit because I believed it important that the litigation's deterrence to contributions for terrorism receive great prominence.

Briefs were filed and the case was set to be argued on September 25, 2001. And then came September 11. The judges on the Court of Appeals, realizing the importance of the issues they were being asked to decide, asked the Department of Justice to file a friend-of-the-court brief. We argued the case on September 25, and in November 2001, the Department of Justice filed its brief supporting my argument that any organization that contributes to a terrorist organization with knowledge that it engages in terrorism is an aider-and-abettor of the terrorism and liable for damages. The Court of Appeals accepted that argument in a landmark decision issued on June 5, 2002. It is called *Boim v. Quranic Literacy Institute* and is reported at 291 F.3d 1000. The Holy Land Foundation did not seek Supreme Court review, and we are now engaged in the discovery process.

We are fortunate to have the volunteer assistance of the firm of Wildman Harold Allen & Dixon of Chicago – and specifically Stephen Landes and Richard Hoffman of that firm – in this time-intensive discovery stage. If not, we would not be able to continue with this exceedingly important lawsuit. And this brings me to my recommendations for legislative amendments that are essential to make this deterrent to the funding of terrorism work.

First, although 18 U.S.C. § 2333 provides for very substantial damage awards – treble damages and attorneys' fees – it does nothing to enable lawyers to pursue the litigation prior to a final judgment. I, and the firms I have been with since I began this project, have invested approximately one million dollars of attorneys' time in this case. Although $1.4 million of seized funds is sitting in the Clerk's office in the federal court in Chicago, we have received not one penny for the heretofore successful prosecution of this action. The law should provide that if a plaintiff is successful in defeating a motion to dismiss, he automatically recovers attorneys' fees and out-of-pocket expenses from the defendants. That will enable private attorneys general – such as I am in this case – to continue to prosecute these cases to a successful conclusion. Otherwise, well-financed defendants can exhaust a plaintiff's lawyer with all the preliminary skirmishes that have marked this case.

Second, funds that have been seized by the United States from defendants in these cases should be made available for the payment of plaintiffs' attorneys' fees whenever the plaintiffs have prevailed at the pretrial stages. I felt vindicated when, on December 4, 2001, President Bush, Attorney General Ashcroft and Treasury Secretary O'Neill held a joint news conference to announce that the United States Government was seizing the assets of the Holy Land Foundation. President Bush stated, "Money raised by the Holy Land Foundation is used by Hamas to support schools and indoctrinate children to grow up into suicide bombers. Money raised by the Holy Land Foundation is also used by Hamas to recruit suicide bombers and to support their families. . . . [T]he terrorists benefit from the Holy Land Foundation." As a result of that action, approximately

seven million dollars were seized and are now being held by the Office of Foreign Assets Control ("OFAC") of the United States Treasury.

That money is being used at a rapid rate to pay lawyers for the Holy Land Foundation for their work in challenging the seizure and in defending against the lawsuit I brought. If the litigation goes on long enough, ***all*** the seized funds will be spent paying for the Holy Land Foundation's lawyers. They have just lost their challenge to the seizure in a decision by a liberal Clinton-appointee judge in the District of Columbia. Judge Gladys Kessler held:

> [T]he administrative record contains ample evidence that (1) HLF has had financial connections to Hamas since its creation in 1989; (2) HLF leaders have been actively involved in various meetings with Hamas leaders; (3) HLF funds Hamas-controlled charitable organizations; (4) HLF provides financial support to the orphans and families of Hamas martyrs and prisoners; (5) HLF's Jerusalem office acted on behalf of Hamas; and (6) FBI informants reliably reported that HLF funds Hamas.

The Holy Land Foundation lawyers are being paid top dollar from seized assets to make this unsuccessful defense. The lawyers for victims of terrorism are required to do their work *pro bono publico*. That is not justice.

Third, the law should more clearly authorize and require the federal government to cooperate with private attorneys general bringing lawsuits against the funders of terrorism. Prosecutors are loath to share their information with private attorneys, as we found in the initial stages of our lawsuit. Restrictions on statutes and court rules often prohibit such cooperation. The law should be amended to authorize and direct disclosure of grand jury and other investigative materials to private attorneys on application to a

federal court. If, in a proceeding initiated on notice to the United States (but not to the defendant), a party establishes that evidence or other information in the possession of the United States would assist the prosecution of a civil lawsuit brought on behalf of American victims of terrorist acts, federal prosecutors should be directed and/or authorized to disclose such information to attorneys for the plaintiffs pursuant to a federal court order.

Fourth, the laws should be amended to provide explicitly the causes of action that we have established in our litigation. Section 2333 should state explicitly that any person or organization that knowingly provides material support or resources to an organization that engages in terrorist activities is an aider-and-abettor who is liable for the damages provided in the statute. Although we have not yet sued any individual contributor, it is important that the deterrent to funding terrorism be equally effective with regard to individuals as it now is with regard to charitable organizations.

Fifth, the statute of limitations – which is now four years – should be extended to 10 years. Funders of terrorism frequently operate in secrecy and their identity is not known until long after they have paid those who commit murder and other forms of violence. The current four-year statute provides only a short window of opportunity.

In addition, the limitations period should be extended for any new defendant whose involvement is first revealed in the course of discovery. If a plaintiff learns of the participation of an individual or entity that has successfully concealed its role, the plaintiff should have one year after that disclosure to add it as a party defendant.

There are, of course, other amendments that could usefully be made to existing law. These are just several that have occurred to me since your invitation to testify. I would, of course, be happy to work with the Committee staff to make the needed statutory improvements.

Thank you again for the opportunity to testify.

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November 27, 2002

Sen. Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

Re: November 20, 2002, Committee Hearing on "An Assessment of the Tools Needed to Fight the Financing of Terrorism"

Dear Sen. Leahy:

It was an honor for me to be invited to address the Committee on the Judiciary on the topic of "An Assessment of the Tools Needed to Fight the Financing of Terrorism." This hearing represents an important step in recognizing the need to continue the fight against terrorism through unconventional means such as cutting off the flow of funds to terrorist organizations.

I am also writing to request that my full prepared statement be printed in the record and that, in light of Senator Specter's questions to me, an article that I wrote for *The Washington Post* that appeared in its "Outlook" section on August 25, 2002, be included with my testimony. I enclose a copy of this article, which I could e-mail to your office for inclusion in the record. The article provides details regarding my meetings with the Department of Justice on the extradition of persons responsible for murdering American nationals abroad.

Sincerely yours,

Nathan Lewin

NL:jme
Enclosure

cc: Sen. Orrin G. Hatch
Sen. Arlen Specter
Patrick Wheeler

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Sunday, August 25, 2002

Outlook

A Promise the U.S. Makes, But Does Not Keep

Nathan Lewin

After the murder of five Americans last month in Jerusalem -- victims of a bomb placed by the terrorist organization Hamas in a Hebrew University cafeteria -- the Justice Department dispatched a four-member FBI team to investigate. The U.S. ambassador in Israel raised the possibility that the killers could be extradited to the United States for trial. Then last week, Israeli police arrested and publicly identified five members of a Hamas cell in East Jerusalem, including a painter at the university who described to police how he had planted and detonated the bomb. But the families of the victims should be wary of thinking that these encouraging developments -- including the painter's apparent confession -- will lead inexorably to the prosecution of the perpetrators in an American court. The record shows that past U.S. investigations of murdered American citizens in Israel have been a sham.

A 1986 anti-terrorism law makes the killing of any "national of the United States, while such national is outside the United States" a capital crime, subject to the death penalty. The U.S. government has employed this law in prosecuting cases from other countries, but the Justice Department has not returned a single indictment involving any of the 36 Americans killed in Israel since the 1993 Oslo agreement. In the past two years alone, as the intifada has raged, 19 U.S. citizens were killed prior to the Hebrew University bombing.

I am intimately familiar with one case. I am the lawyer for the family of David Boim, a Brooklyn-born American citizen who was 17 years old when he was killed by a terrorist bullet. On May 13, 1996, two Palestinians in a car opened fire on a group of civilians standing at a bus stop in Beit El, a Jewish community approximately 10 miles north of Jerusalem. Boim, a student at a nearby yeshiva whose family had moved to Israel when he was 7, was shot in the head. Hamas took credit for the drive-by shooting, and two men were identified as the perpetrators: Khalil Tawfiq Al-Sharif and Amjad Hinawi. Their car crashed as they drove from the scene, and they fled on foot to a nearby Palestinian village.

Neither Al-Sharif nor Hinawi was ever charged under the American law that calls for such prosecution. Little more than one year after Boim's death, Al-Sharif set off a bomb on Ben Yehuda Street, a pedestrian mall in downtown Jerusalem, killing himself and seven civilians (including an American) and wounding 192.

The Palestinian Authority finally brought Hinawi to trial. On Feb. 12, 1998, in the presence of a U.S. State Department observer, Hinawi confessed to driving the car used in the attack. The State Department's report says that the presiding judge "asked Hinawi whether he was coerced to give the confession, and he answered in the negative." Hinawi's defense, according to a witness he

called, was that he had been "deceived" by Al-Sharif. Hinawi claimed that he did not know that Al-Sharif, who was in the back seat, would be shooting.

Since the undisputed testimony was that the car made two trips past the bus stop -- shooting first at a bus being boarded and, on a second round, at others who had been waiting to board the bus -- Hinawi's defense was preposterous.

Two days later, on Feb. 14, Hinawi was found guilty of "participation in murder" and sentenced to 10 years at hard labor. Within a few months, according to the best information that we have been able to obtain, reliable witnesses saw him walking freely on the West Bank in Palestinian-controlled territory.

American prosecutors have invoked the Antiterrorism Act of 1986, which is Section 2332 of the federal criminal code, against participants in the August 1998 bombings of U.S. embassies in East Africa. When two American citizens were killed abroad in a 1995 drug cartel operation, the murderer was convicted in the United States under this provision. And it has been successfully used in the murder of American citizens in the Philippines.

But it has never been enforced by the Justice Department against the murderers of Jewish American citizens who were living in Israel or visiting the country when they were killed. At best, the selective use of this law is mystifying and cruel to the families of the victims. At worst, it is an abdication of the prosecutors' sworn duty to enforce the law.

Boim's parents, who were born in the United States (as was their son), became Israeli citizens in 1985. But they have retained their American citizenship and make frequent trips to the United States for family visits. David also had dual citizenship. Those facts don't change anything: The Antiterrorism Act does not exclude the murder of U.S. nationals who are also citizens of another country, nor does it draw a distinction between Americans killed while living abroad and Americans killed while traveling. Moreover, Justice officials have never claimed -- in many conversations with me -- that David Boim's residency in Israel was a factor in their reluctance to prosecute.

Boim's parents have been pressing their case since 1997, when they wrote to then-attorney general Janet Reno asking that Hinawi be charged and extradited to the United States. They received letters in November 1997, February 1998 and March 1998 from top Justice officials, including the acting deputy attorney general and the chief of the terrorism unit, saying that the department did not have "sufficient admissible evidence" to charge Hinawi.

Believing that this refusal to prosecute was unconscionable, I undertook pro bono representation of the Boims. On March 25, 1999, I appeared before the foreign operations subcommittee of the Senate Committee on Appropriations and asked why there was no uproar in the United States over the failure to seek justice for the coldblooded murder of a young American. Martin Indyk, then U.S. ambassador to Israel, testified that Hinawi had been returned to jail by the Palestinian authorities -- a response that was irrelevant (and probably inaccurate). Even if Hinawi had been given a prison term by the Palestinians, that did not foreclose his prosecution in a U.S. court.

Mark Richard, a deputy assistant attorney general who testified at the same hearing, invited me to his office on April 19, 1999. He told me that the department's only reason for not prosecuting Hinawi was its concern that Hinawi's confession may have been coerced and might not be admissible in an American court. I replied that, as a former prosecutor, I knew that the federal government had indicted suspects on the basis of far less reliable confessions than Hinawi's.

Richard also said that the Israeli government had not cooperated with the FBI investigators. I checked with the Israeli Ministry of Justice: Officials there insisted that they had cooperated fully. They even gave me copies of statements from Hinawi's brother that corroborated Hinawi's role in the killing, and one from a neighbor of Hinawi who said that Hinawi had told him that he was "a member of the Iz Al-Din Al-Qassam troops of the Hamas and that they did the attack in the name of Hamas." The Israelis said they had given these statements to the FBI team, and the FBI has acknowledged to me that it received them.

Richard sent me a letter in September 1999, claiming that "the FBI and the Department are actively investigating the Boim incident." When there was still no indictment by March 2000, I wrote to Sen. Arlen Specter (R-Pa.), chairman of the Senate subcommittee, complaining that there "was no tangible progress" in the investigation. That prompted a letter from then-assistant attorney general James K. Robinson on May 23, 2000, expressing "disappointment" that I had written to Specter rather than contacting him directly. Robinson's letter stated that FBI agents had traveled to Israel on three occasions to investigate Boim's murder and had even gone to Gaza "with the U.S. Consulate General to meet with senior Palestinian officials." Robinson said that there had been "reports" that Hinawi had confessed (failing to note that the "report" was a State Department account of his trial), and reiterated that "our ability to use any such statement in an American proceeding depends on whether there is sufficient foundation for admissibility under the Federal Rules of Evidence."

Nonetheless, Robinson invited me to yet another meeting. On July 7, 2000, I met with him, two deputy assistant attorneys general and an attorney in the Criminal Division's terrorism section (who, I was informed, had made "several trips" to Israel on the case). I was astounded to hear these hard-nosed prosecutors express concern that if Hinawi were to be indicted, his defense lawyer would move to suppress his confession as coerced. Jeff Breinholt, the terrorism expert who had traveled to Israel, said, "What if Hinawi said he was beaten or tortured for four or five days before he confessed? How would the U.S. prove that it didn't happen?" I reminded him that Hinawi had confessed in a Palestinian, not an Israeli, court, and that Hinawi had acknowledged to a Palestinian judge that the confession was voluntary. I also argued that indicting Hinawi and seeking his extradition might be an effective deterrent against potential future killers of Americans in Israel. Let Hinawi present to an American court any possible claim that his confession was coerced, I said.

The FBI and the Justice Department remained unmoved. Since the Boims were not getting justice from U.S. law enforcement, I filed a civil action on their behalf against sponsors of Hamas terrorism in the United States. The federal court of appeals in Chicago recently upheld our right to sue American charities that finance Hamas.

My last meeting at the Justice Department took place in August 2001. By that time, Koby Mandell, a 13-year-old American living in Israel, had been brutally killed when he and a classmate were hiking in the Judean desert. Some Jewish groups wanted the U.S. government to offer rewards for information about the murders of Americans in Israel and the West Bank, but the State Department was resisting. Some of the officials I had met earlier were at the meeting, and when I raised the Boim case, they again gave me the same weak explanations for failing to indict Hinawi.

Invidious political calculations are surely behind this flagrant refusal to provide evenhanded enforcement of a law that Congress passed more than 15 years ago to protect Americans in foreign countries. The refusal to enforce the law -- with excuses that no prosecutor or defense lawyer would accept for a millisecond -- has encouraged the terrorists to strike at places such as Hebrew University, where, they knew, young Americans would be found.

Nathan Lewin, a criminal defense lawyer in Washington, worked at the Justice Department from 1962 to 1969. He teaches at Columbia Law School as an adjunct professor.

Testimony of Jonathan Winer, Esq.

Alston & Bird LLP, Washington, D.C.

Former U.S. Deputy Assistant Secretary of State, International Law Enforcement

October 20, 2002

U.S. Senate Committee on the Judiciary

An Assessment of the Tools Needed to Fight the Financing of Terrorism

Mr. Chairman and Distinguished Members of this Committee:

I am grateful for the opportunity to testify before you on the Administration's use of the tools provided them to fight terrorism over the past year, and to discuss the findings of the Report of the Independent Task Force on Terrorist Financing sponsored by the Council on Foreign Relations and chaired by Maurice Greenberg.

Over the past year, the Administration has undertaken a Herculean task: transforming the tools provided to the Administration by the Congress in the USA Patriot Act into practical realities. That task has included massive regulatory rulemaking, new investigations and intensification of existing investigations, domestic and international, and the integration of separate databases. The Administration has had to shift existing resources to carry out massive new tasks. The Administration has also had to coordinate this work with counterparts in other governments – counterpart investigators, counterpart

regulators, counterpart prosecutors, counterpart intelligence agencies and counterpart policymakers. The sheer scope of the work is immense.

In carrying out that work, the Administration has made excellent use of the relatively small number of career people in the Departments of Justice and Treasury and the regulatory agencies with competence in this field derived from previous Administrations. People have been asked to work hard and they met their responsibilities at what has often been a superlative level. The Administration has also, in my judgment, made excellent use of its political appointees, some of whom did not have much previous experience in this field, but learned fast. Those of us on the outside who in previous Administrations learned how hard it is to effectuate change can – irrespective of limits, failures and mistakes, which are inevitable in government -- marvel at and admire the work they done at home and internationally. But there is, as always, room for improvement.

When I testified before the Senate Banking Committee last year after the September 11 attacks, I identified a series of steps I felt the government needed to take to protect the U.S. against further use of financial institutions by terrorists. These included action against hawaladars – unlicensed money services businesses and immediate enhanced scrutiny of financial institutions in under regulated jurisdictions, especially those in the Middle East. I asked that the government work to build terrorist finance intelligence from existing cases to make use of evidence from 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 might be in a position to shed light on terrorist finance, or on underground banking, or both. And I advised enhanced scrutiny of Islamic charities, stating that a number of Islamic charities had either provided funds to terrorists or failed to prevent their funds from being diverted to terrorist use. Much has since been done in these areas. I expect that the Treasury's Operation Green Quest will result in dramatic enforcement actions in time. However, more needs to be done. The following include five suggestions for immediate further action:

1. *The U.S. needs to take further action to attack alternative remittance systems or hawaldars engaged in money transfer operations in the United States.* This needs to be done on a regulatory and an enforcement basis. There is no location today where a federal or a state prosecutor can go to determine whether a money transfer business has registered with the government as they are required to do under the Bank Secrecy Act. The Financial Enforcement Crimes Network (FinCEN) of the Treasury needs to publish that list now and update it frequently. Once that is done, whenever someone is arrested at a local level that has used such an institution, a failure to have registered can be immediately assessed and a prosecution brought against the hawaladar or money transfer business. If FinCEN doesn't have the resources to do this now, they need to be provided – fast. As for enforcement, local, state and federal prosecutors have yet to be making halawadar cases at

the level that I am certain is possible. Educating federal agents and prosecutors on how to do this should be an urgent priority.

2. *We need to consider further action on Islamic charities, such as subjecting them to the Bank Secrecy Act.* The financial resources of some charities that have been linked to terrorist finance have been very large, and there remains more to do to protect the United States from abuses involving charities. After I testified before the Senate last year, one Islamic charity I listed on a chart as being alleged to have ties to terrorism was preparing to sue me for my Congressional testimony on the very day the President shut the charity down for their role in terrorist finance. I am tremendously concerned that funds from some of these charities have been used to purchase interests in otherwise legitimate U.S. businesses. Charity fraud is not limited to Islamic charities, as we have seen in the Washington area recently. I have encountered abuses of charities in many contexts during my time in government. Our regulation of charities at the federal level is minimal to non-existent, and they are not today expressly covered by U.S. money laundering laws. I would urge consideration of whether the Administration should use its existing authorities to treat charities as financial institutions for the purposes of the Bank Secrecy Act, and thereby become subject to federal examination for compliance with our anti-money laundering laws.

3. *The Secretary of the Treasury should use his powers under Section 311 of the Patriot Act to designate foreign jurisdictions or financial institutions to require special measures, such as enhanced scrutiny.* The Congress gave the Secretary the power to determine whether any foreign country or financial institution should be subject to graduated sanctions, such as partial limits on market access to the U.S. financial institutions, for posing an unacceptable level of money laundering or terrorist finance risk. The Treasury has not used this power. I find it unimaginable that the Treasury has not identified even one foreign country or financial institution that poses an unacceptable level of money laundering or terrorist finance risk that the Secretary should subject to sanctions. The use of this power by the United States – even once – would send a warning to all other jurisdictions and financial institutions that the U.S. will take steps to protect itself if they do not meet minimum standards. In this area, action by the Administration will speak far louder than words.

4. *We need to develop international standards for regulating and tracking gold and other precious metals and jewels that are used for transnational terrorist finance.* The U.S. has had an exemplary investigation of money laundering through gold by Italian organized crime and Columbian drug traffickers in the Panama Free Zone. Dubai,

used by the September 11 terrorists to handle their money, has the biggest gold market in the world. The U.S. should take a lead in developing and implementing global regulatory regimes for tracking and regulating gold and other precious metals and gemstones subject to abuse, especially across borders, through the existing G-8 anti-terrorist group led by Treasury or by other means.

5. *The private sector must be brought in as a partner to the government in combating terrorist finance.* The U.S. should work with private and non-governmental sectors to create "white lists" of financial institutions and charities that, regardless of the legal environment in their home jurisdiction, commit to the highest due diligence, anti-money laundering and anti-terrorist financing procedures, and agree to a system of external assessment of compliance. In addition to the reputational benefit from being included on such a white list, inclusion on the list could be a factor taken into consideration by the World Bank, the IMF, and other international financial institutions (IFIs) in considering which financial institutions to work with, as well as US AID and its counterparts in the rest of the world.

Mr. Chairman, each of these suggestions has endorsed by the distinguished bipartisan group who participated in the Terrorist Financing Independent Task Force sponsored by the Council on Foreign Relations. I ask the Chairman's consent that a copy

of the Task Force Report be entered into the record at the conclusion of my testimony, together with an article I recently wrote for the Financial Times on how to clean up dirty money.

I thank you for the opportunity to testify and remain available to the Committee for questions.