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THE TERROR FINANCE TRACKING PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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THE TERROR FINANCE TRACKING PROGRAM

Tuesday, July 11, 2006

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2128, Cannon House Office Building, Hon. Sue W. Kelly [chairwoman of the subcommittee] presiding.

Present: Representatives Kelly, Paul, Royce, Kennedy, Garrett, Davis of Kentucky, McHenry, Oxley [ex officio], Moore of Kansas, Maloney, Davis of Alabama, Cleaver, Scott, Moore of Wisconsin, and Frank [ex officio].

Also present: Representative Bachus.

Chairwoman KELLY. This hearing of the Subcommittee on Oversight and Investigations will come to order. Without objection, all members' opening statements will be made part of the record.

I wanted to point out that during World War II, Congressman Andrew May returned from an oversight visit to the Pacific theater and told a group of reporters that those with loved ones serving in submarines didn't need to worry because the Japanese were setting their depth charges to detonate at a level that was too shallow to reach our submarines. Several newspapers reported this.

The Japanese then subsequently reset the fuses on their depth charges. A vice admiral estimated that the public disclosure of this information cost us 10 submarines and the lives of 800 American men.

During the mid-1970's, committees chaired by Senator Frank Church and Congressman Otis Pike brought to the attention of the American public a litany of activities which showed an intelligence community that had, at times, overstepped its bounds, leading to the enactment of the Foreign Intelligence Surveillance Act.

I cite these instances not to draw comparisons with the subject of the hearing today, but rather to demonstrate the cross-pressures that we all confront when dealing with matters of secrecy and national security.

No member wants to undermine our national security.

We all recognize that there are times in wars, Churchill said, when certain truths must be, "attended by a bodyguard of lies."

As a New Yorker, and representative of so many people who are deeply affected by terrorism, I could not feel more strongly about protecting our vital national security tools.

Just the same, no Member wants to forgo the institutional obligation envisioned by the Founding Fathers. We work always to strike a structural balance that James Madison articulated very well in Federalist Paper No. 51. The hearing today is to examine a terror finance tracking program and to examine the merits of the program and to see if it has been properly created and implemented by the Administration.

Along with Chairman Oxley, and my colleague Mr. Gutierrez, and my colleague Mr. Frank, I have spent as much time on terror finance as any Member of this body. We have held many hearings. We have established a bipartisan Task Force on Terror Finance, and in 2004, I even authored an amendment which authorized the government to monitor cross-border wire transfers.

My record properly suggests that I would support a sophisticated and aggressive program similar to what has been described by the media. While many terrorist operatives are increasingly resorting to cash couriers to move funds, charities and wealthy donors who support terrorists are likely to have used the SWIFT system that this program specifically targets. It would be foolish to ignore that.

Furthermore, this program has the support of several important people outside of the Administration who are familiar with the workings of the program: people like Chairman Oxley; the co-chairs of the 9/11 Commission; and former officials such as Dennis Lormel, former head of the FBI's terror financial units, who said that many people in Congress who should have been briefed by this Administration were not.

And while I appreciated the visit last week from Under Secretary Levey after the program's existence was reported in the media, our oversight obligations are far from fulfilled.

I believe that the skepticism the Administration afforded this Congress, perhaps properly, regarding the terror finance tracking program must be reciprocated. We must ensure that an environment of accountability is provided for everyone in government who deals with sensitive financial information.

In our letter our colleague, Intelligence Chairman Hoekstra, recently sent to President Bush about withholding information from Congress, he mentions how he expects it to reinforce an important question in the minds of all Members: What else is it that we don't know? What else don't we know?

So, in addition to this hearing, I am going to ask Under Secretary Levey to come back here to brief this subcommittee, and to answer any questions he cannot answer in public forum today. I will also conduct a follow-up hearing on this subject in September to allow the private sector witnesses to discuss pros and cons of this program.

Additionally I am asking the GAO to conduct an investigation into this program to ensure that it was indeed conducted in accordance with all proper laws; that it does possess all necessary safeguards; and that Congress was appropriately informed. This GAO investigation is mere due diligence, and it is going to help ensure that our trust is not poorly placed in the Treasury Department.

I want to thank Under Secretary Levey for coming here today. I have a deep respect for Under Secretary Levey, and I believe he is doing an excellent job at Treasury. We understand that he did

not make many of the decisions about disclosure to Congress and that there are many things he cannot discuss in an open setting. However, I do look forward to an informative discussion on this matter today.

And with that, I turn to our ranking member, Mr. Frank.

Mr. FRANK. Thank you, Madam Chairwoman. I am here today in the absence of the ranking member of the subcommittee, Mr. Gutierrez, who missed his plane; he flies out of Chicago and these things will happen.

I begin by expressing my appreciation for your statement, Madam Chairwoman. I think you have laid out what exactly the issues are here; namely, the extent to which our fight against terrorism is going to be a genuinely collaborative effort between the Executive Branch and Congress. And I think you were right to point to the broad support for the program. I don't know of any Member of Congress who thinks we should not be tracking the finances of terrorists. The resolution which I offered, which was widely supported by people on my side of the aisle and a few on the other side, explicitly affirmed that.

My problem is that this Administration, by its pattern of rejecting the notion of Congressional collaboration, has made this controversial. That is where the controversies come in. There was not a great deal of controversy about the substance. There is wide agreement that we should be tracking the financing of terrorists in many ways. As the gentlewoman from New York has said, we on this committee have been pushing the Administration to do even more in that area than it wanted to do.

The problem is—and it is not an isolated instance. We have seen it in area after area. I have come to genuinely believe that the fact that the Congress would have been willing to be cooperative is not only irrelevant but seen by the Administration as problematic; that is, I believe this Administration would rather do things unilaterally, without inviting Congressional collaboration, because the dominant factors in the Administration genuinely believe that increased executive authority, unhindered and unhampered by interference by the Congress, is essential. And we have seen this in a number of areas.

To be honest, I have come to believe that the people in this Administration have a different view of democracy than the one that I have.

But I want to be very clear, this is not a case of my accusing them of not being democratic. Those on the left who make those accusations, I think, are wrong. The question is: How do you define democracy? I think this Administration prefers the model of having the single decisionmaker elected every 4 years and basically entrusting most of the important decisions to that decisionmaker. And the willingness of the Congress to cooperate, that the gentleman from New York correctly pointed out, is robust because they think, okay, if we let them agree with us on this issue, then they will have established the right to disagree with us on another.

There would not have been any problem with this program, and the proof of that is the briefing pattern. Now, we are supposed to be briefed on these things. I have a list here of the Members who were briefed on this program.

Let me start with a story. On May 11th, I was invited to a briefing. I went to the secret elevator, up to the secret room, and I took out my cell phone because, you know, who knew who might be listening in on my cell phone. And two people from, I guess, Treasury, that I never even knew, said we are going to tell you about something that is about to be made public.

The conversation I had, the only time I have heard a comparable conversation was between Groucho and Chico. They said to me, "We are going to tell you something that is about to be made public." I said, "Well, is it going to be made public because you want it to be?" "No. It is going to be in the newspaper." "Okay, you are telling me this only because it is going to be in the newspaper?" "Correct." "Well, I have a question. Since you are only telling me this because it is going to be in the newspaper, when it is in the newspaper can I then talk about it?" "No."

So here is the briefing I was offered. I was offered a briefing about something only because it was about to be made public anyway. And the purpose of telling me this, I believe, was that so once I heard about it first from them, I couldn't talk about it in the newspaper.

There have been 28 Members of the House briefed on this program. Two were briefed in March of 2002, a few months after it started; one in 2003; two in 2005; and 23 on the 11th of May 2006.

In other words, the briefings were overwhelmingly after the Administration knew that it was being made public. These were briefings after the fact.

This is the exact opposite. Let me put it this way. When you brief us—and by the way as I read this, no member of this committee was briefed until the 11th of May when the chairman of the committee and I were invited to the briefing room. And I was never briefed, let me say—by the way, I don't want to get myself in any more trouble than I might otherwise be; I declined the briefing. When I was told that I was being briefed only because it was going to be made public anyway, and the consequence of my being briefed would be that I couldn't discuss the program, I excused myself.

And I did tell Treasury, and I will repeat myself for Mr. Levey, if you ever want to tell me about something that I am not going to read in the newspaper, I will be available. But otherwise you can trust me to read the papers on my own. I will be okay with that. If I miss an issue, I will see if I can call and see if I can have you mail me one. But I don't need you to give me the oral version.

To some extent, Treasury saw itself in that position. The role model was La Guardia reading the comics to the people of New York during the newspaper strike.

As long as the newspapers are available, I will get them myself. See, that is the problem; the briefing apparently shows it. You briefed very few Members of Congress; only two Members were briefed between 2003 and the program being made public.

Now, here is the problem with that, and I will wind this up, Madam Chairwoman. I appreciate your indulgence.

Yes, of course, we think this program should go forward. And why do we want to be briefed and have oversight? And let me summarize it this way. I strongly believe that you and the other law enforcement people are the good guys and you are fighting the bad

guys. But you are not the perfect guys. And my problem is that your model seems to assume that you are the perfect guys, that you won't make mistakes, that you don't need to be checked, and that you can do this all on your own. And what I want to do is give you all the powers you can to fight the terrorists, to fight the bad guys; but I don't think anybody ought to be given enormous power. And that is what you are going to be given, because you are going to be given an enormous staff and not have checks. And no matter how many internal checks you have, I don't think they will ever be enough.

I think Congressional oversight makes sense. I think the gentlewoman from New York is correct. She and others have a very good record in being very supportive of this effort against terrorism, and you have rebuffed us. And I think that is a mistake. And, consequently, that is why a program that should not have been terribly controversial has become controversial.

So I hope with the program the gentlewoman has outlined, we will now begin a period of real cooperation, and that in the future there will be a voluntary effort on your part to do this. Thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you, Mr. Frank.

The Chairman of our Committee, Mr. Oxley.

The CHAIRMAN. Thank you, Madam Chairwoman. And Secretary Levey, thank you for appearing today. We are pleased to have you here as the obvious reason for this hearing was to discuss the positive aspects of this program and how effective it has been.

I think that there has been very little argument in the Congress of how effective that has been. The issue raised this morning, of course, was who was briefed and when and so forth. And frankly, I am confident that the Administration did the right thing in very selectively informing the Intelligence Committee. We are not the Intelligence Committee, in case you haven't noticed, and the Intelligence Committee did their work very effectively.

How many people were briefed and when it occurred seems to be relatively irrelevant since the program was up and running, and I think there was general consensus that it was very effective. And, obviously, the fewer people who know about that program, that secret program, the better. The revelations that appeared in the popular media clearly had a negative effect on the effectiveness of that program. I am sure you are going to testify to that later.

I keep coming back back to the warnings or the concerns that were expressed, particularly by the co-chairs of the 9/11 Commission, two well respected gentlemen, Governor Kean, and, of course, our former colleague, Lee Hamilton.

Why would those two individuals, well respected, plead with the news media—in this case, the New York Times—not to reveal that information? It seems to me that goes to the heart of this entire issue. And it was, frankly, never answered during the debate on the resolution that we had a week or so ago.

So we keep coming back to that very poignant issue. And by the way, they weren't the only two who were trying to keep that program secret, because obviously the terrorists, once they get that information, change their habits, the New York Times Editorial Board to the contrary notwithstanding. It is amazing how much the

editorial board at the New York Times understands about terrorists' actions and finances.

But that is for another day.

It seems to me that, again, the purpose of this hearing is to describe how effective the program has been and the potential and real damage the leaks have caused. When this committee debated and voted on the terrorist financing part of the PATRIOT Act, it was this kind of program that we clearly had in mind.

If you look at the editorial in the New York Times shortly after 9/11, they called upon the Administration to do exactly what the Administration did. And sometimes I am concerned that maybe the effectiveness of the program is what really upsets some folks in the media. But we have in this committee, I think, set the framework in the terrorist financing provisions and the anti-money-laundering provisions in the PATRIOT Act that really allow the Administration to do this effective program that has, I think, been severely weakened by the revelations that occurred in the popular press. I find that to be very upsetting.

By the way, this is not the first time that we have had this kind of situation where you have had unauthorized leaks from—which I think is frankly treason—and it has been reported in the popular press, for whatever reason. This is at least the third time that we have had that situation occur. And as one of my colleagues said on the Floor, nobody is happier about these revelations than those who would harm us. I find that incredibly upsetting, and of real concern, as chairman of this committee, that we would find ourselves in that position today. I yield back.

Chairwoman KELLY. Thank you.

Mr. Moore, do you have an opening statement?

Mr. MOORE OF KANSAS. Thank you, Madam Chairwoman, and thank you, Secretary Levey, for being here today. And I really appreciate the opportunity to have a brief conversation with you and hear your testimony.

I really, really appreciate the statement, the strong opening statement made by our Chair, and I really do mean that sincerely.

I believe what she said, I believe what the Ranking Member said, that every Member of Congress wants to protect our country. Nobody wants any more harm to come to our country. That is not the issue and that is not the question. When I disagree with somebody I try to at least understand why they do what they do so I can work with it.

And I really, truly, believe that had the President and the Administration come to this Congress after September 11th and said, look, the whole world has changed. We need to look at the FISA law which has been in effect since 1978—and I understand there are 17,000 applications and only 6 or 10 or 8 rejections after 17,000. I was a district attorney for 12 years. I never had that kind of a record, the batting average, when I went to get search warrants. And I just think that is an exceptional number.

And my point by saying that is this: If the President had come to Congress to say, "Look, the whole world has changed, we need to change the FISA law, we need to enact some new laws regarding wire transfers and bank transactions in other countries," I think Congress would have lined up, Republicans and Democrats—this is

not about partisan politics, as the Chairman said—Mr. President, we will do anything reasonable you ask.

And I mean that very sincerely, and that is what I invite and encourage the Administration to do in the future if there is something like—in the war on terror, we need to work together. We are all Americans and we all want to protect our country. And I say this with the greatest respect and sincerity. I hope the Administration will come to Congress and say we need to change the laws in the area. And if they do that, I really believe—I honest to God believe that we will work together with the President to do whatever, anything reasonable to protect our country.

So I look forward to hearing your testimony today, Mr. Secretary Levey, and look forward to asking you some questions, and thank you for being here. Thank you, Madam Chairwoman.

Chairwoman KELLY. I am going to turn to Mr. Paul in 1 minute, but because there are a number of people here, and I know that the Under Secretary is going to need to leave, I am going to ask all members to shorten their opening statements to a 2-minute, rather than a 5 minute, with unanimous consent.

Mr. Paul.

Dr. PAUL. Thank you, Madam Chairwoman. I know today it is not very appropriate to bring up the subject of the Constitution and the Fourth Amendment, so I am not going to pursue that. But I am always concerned about the legal authority for what our government does.

The whole issue of whether or not records can be examined without a subpoena issued under probable cause is really questionable. And I too, like everybody else, wants to do whatever we can to find out what the terrorists are planning to do.

But I want just take a minute to make the point about the practicality of what we do.

Quite frankly, I don't think the terrorists were tipped off to anything. You know, we have been monitoring financial transactions for 30 years. And, they know what is going on. As a matter of fact, they have been suspicious to the degree that they essentially don't use the system any more. They have gone to this hawallah type of system, which is off the books. And therefore, all the effort that we put forth may be wasted effort and may be confusing things.

This assumption that more is better—spend more money, have more reports, have more subpoenas—can actually backfire on us. And I want to just quote a U.N. report that came out after 9/11. As a matter of fact, it came out in May of 2002. And this dealt with a $69,000 wire transfer that Mohammed Atta, leader of the hijackers, received from the United Arab Emirates. The report noted that this particular transaction was not noted as quickly enough because the report was just one of a very large number and was not distinguishable from those related to other financial crimes.

So therefore, this idea that we just need more financial surveillance is flawed since the Bank Secrecy Act, FinCEN, has been around, we have had executive orders, we have the SWIFT program. And to think for a minute that the hijackers aren't going to be very knowledgeable about this—I just think we are kidding ourselves. And this whole idea of more is better, I think, needs to be questioned.

I yield back.

Chairwoman KELLY. Thank you, Mr. Paul.

Ms. Maloney.

Mrs. MALONEY. Thank you, Chairwoman Kelly and Ranking Member Frank for holding this important hearing. Our oversight is legally required under the International Emergency Economic Powers Act, the law the Administration is using to support this initiative. But the Administration has kept Congress in the dark. Although Treasury started subpoenaing data from SWIFT in October of 2001, only three present Members of this body were informed about the program before May 11, 2006.

Even though this committee has jurisdiction, most of us learned about the depth of this program only from the New York Times when it published its article on June 23rd of this year. Apparently, Congressional notification occurs when the New York Times is delivered to our office.

The Administration's intentional failure to consult with Congress for 5 years—even though it is clearly required by the law they argue supports this program—is part of a very disturbing pattern. As the Chairman of the Intelligence Committee, Chairman Hoekstra, noted over the weekend, the Administration needs to be reminded that keeping Congress informed of intelligence programs is not optional. It is a legal requirement.

Congressman Hoekstra's comments echo those of the Supreme Court in reviewing the Guantanamo Bay tribunals. The Administration needs to remember that this is a country where there are three branches of Government.

I would just like to say that when the Times brought this program to our attention, it was condemned by the Administration. But these are the same types of charges leveled against the same paper that we heard about with the Pentagon Papers. But despite the statement of the President and Secretary Snow, no one was exactly surprised that the U.S. Government is monitoring international wire transfers.

And I have here a list of public statements in papers across this country, in Canada, and in Australia, about the SWIFT program and our government's monitoring of it. And I request permission to place this in the record, and would note that the interns in my office compiled it in just 2 days and it is quite extensive. So no one was surprised.

I request permission to put my entire statement in the record.

Chairwoman KELLY. So moved.

Mrs. MALONEY. And the press clippings.

Chairwoman KELLY. Thank you.

Mr. Davis.

Mr. DAVIS OF KENTUCKY. Thank you, Madam Chairwoman. I think we face two issues here. I appreciate your coming here, Mr. Secretary. One is the ability to act; and second is the issue of how we manage an effective oversight program from a constitutional perspective.

I think it was extremely regrettable and frankly reprehensible that the New York Times published this information. I am thoroughly familiar with the hawallah networks myself from my experience and study with the Middle East; however, I think the bigger

aspect is their selectivity in information that they have shared, particularly since they called for this type of program in an editorial on September 24, 2001.

However when we look at this ability to act, I think one of the deeper issues is that we need collaboration as opposed to briefing. I have been to plenty of briefings during my time in the House that were classified, and all of the information was available online or in public media sources. I would question the status of the classification.

But I think what we need at a deeper level, rather than information, is participation and using the expertise in the House to collaborate because we are dealing with adaptive networks. Just as terrorists are changing as they find out methods that we have, one of the things that I think would be helpful to maintain the constitutional oversight, that it is necessary for the Administration to work closely with the subcommittees in Congress, and specifically those Members with expertise on these issues and understanding perhaps the political dimension in a way that many of the agencies may not, to ensure that we can have a robust, flexible, and responsive system and one that can adapt to the continuing changes in technology and the way our enemies operate.

I appreciate your being here today, and I look forward to the discussion. I yield back, Madam Chairwoman.

Chairwoman KELLY. Thank you. Mr. Cleaver.

Mr. CLEAVER. Because I respect the seniority system, then I will wait until next if it is okay.

Chairwoman KELLY. Okay, thank you. Mr. Scott.

Mr. SCOTT. Thank you very much, Chairwoman Kelly. Again I want to congratulate this committee under the leadership of Chairwoman Kelly for providing the leadership on a very intense and important issue of terrorist financing. And I am very pleased to have served with her on this committee. I have been to every meeting. I think it is very important, Secretary Levey, that we understand what we are really saying here. What we are saying is that this Administration needs to understand that they are not the only ones who are concerned about the war on terror. The American people elected a Congress, men and women who care about this country, who are just as concerned about this fight on terror as the President is. He has no monopoly on that.

What is of paramount concern to me is that the framers of the Constitution put this government together, and they put it together—and the phrase that John Adams used was, "We put this government together in a manner that is a balance of a delicate nature," meaning that there is a separation of power. It is not just the Executive Branch. They put the Executive Branch there to execute and administrate. But they put the Congress of the United States here so that we might be able to handle the purse strings, but, most importantly, to provide the oversight.

And what it appears to me that this committee—and the President seems to think this committee is not a committee of oversight but a committee of hindsight. We are here to tell this Administration that we are not a committee of hindsight. We are going to do our job that the American people put us here to do.

Now, it is not the New York Times or the Washington Post or the L.A. Times or even the Wall Street Journal or any of our distinguished newspapers that need to be called to task. It is this Administration. The leaks didn't come from the New York Times. They came from people in your Administration.

The fundamental question has to be: When is this Administration going to look in the mirror? That is where you need to look.

Let that message go back to this Administration. We care about it. Why don't you have people over there with loyalty? Where is your test? Where is your examination for people who work in this Administration? What are you doing to seal the leaks?

The other issue that is of paramount importance, Mr. Levey, is the first amendment and the fourth amendment. They are precious. Our men and women of many years throughout the history of this country died on the battlefield so that we could have that first amendment, which is the freedom of the press, so we can have that fourth amendment, which protects our privacy.

It is along those lines that I would like to question you this afternoon. Thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you, Mr. Scott.

Mr. Garrett.

Mr. GARRETT. Thank you, Madam Chairwoman, and I will be very brief. First of all, I think I go along with the statements by the ranking member that members on both sides have the same bottom-line interest to make sure that the job gets done, but within a constitutional framework. I will just be listening to your testimony on three quick points. One is the aspect of why it is that—we can go back to my constituents and tell them why it is that the information from programs such as SWIFT is vital to the overall program, but does not go to the point that Mr. Paul raised, is just providing us with too much information. Secondly, how can I assure them that the average, the majority of Americans, their financial information is not going to be within—or is it—not going to be within the information that you look at. And thirdly, to the overall issue of information going out to the public, to the question of was the information that was reported in all the papers and what have you truly unique and new information to the public, or was it actually information as we have heard both here and on the Floor of the House, information that was really out there in the general domain prior to this? And if it was information that was out in the general domain prior to this, is this something your program looks at and should have done something to dissuade them from putting it on their Web site, that how they work with their government and the general public has this access to information in the past? But I appreciate your being here. And thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you Mr. Garrett.

Now, Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman, and Ranking Member Frank. Under Secretary Levey, thank you for participating in this hearing, and I am looking forward to hearing about the Administration's efforts to combat terrorism and how you plan to implement communication between this Administration and the Congress as we address this critical issue of fighting terrorism.

Among the critical institutional issues that this topic has helped to shed light on is the importance of Congressional oversight with respect to fighting terrorism and implementing other Federal programs and activities.

I am sure that my colleagues and the Administration will agree that Congressional oversight is an integral part of our system of checks and balances, as fundamental to our Nation as the right to vote. And as a Member of Congress, I believe it is incumbent upon this body not only to protect the people from terrorists but to also ensure that our government respects our Constitution and follows the rule of law.

Again, I look forward to hearing your testimony.

And I will have some very, very clear questions that I would like for you to address.

Thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you.

Mr. McHenry.

Mr. MCHENRY. Thank you, Madam Chairwoman. I certainly appreciate your holding this important hearing today, and I certainly appreciate the Secretary taking the time to be here.

I think of major importance to this committee and to Congress and to the public at large is the question of is the government doing enough to protect us from future attacks. And I think that is at the heart of what this is all about.

You have some who just want to put their head in the sand and say that we will just duck and cover and avoid the next attack. But I think that is a horrible policy. It is a cut-and-run policy. It is an ignoring-the-world-as-it-is policy. And I am grateful that this Executive Branch, and you, Mr. Secretary, have taken on this task.

I mean, after all, you are the Under Secretary for Terrorism and Intelligence. What are you supposed to be doing, other than figuring out the financial transactions of the terrorists and harvesting that intelligence?

Now, I certainly appreciate the fact that this was disclosed to the Intelligence Committee, as it should be. I understand their special place and their special protections in Congress of that information so that we can provide necessary insurance that it is not let out to the public.

I do think it is horrible what the New York Times has done to this program. But I do commend you, Mr. Secretary, for working hard every day. I look forward to your testimony and opportunity for you to answer some questions today.

Thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you.

Ms. Moore.

Ms. MOORE OF WISCONSIN. Well, thank you, Madam Chairwoman and Ranking Member Frank. I want to welcome the Under Secretary to this very important hearing. It must be a relief to see me speak, because I am the last. I have the least seniority on this committee. And so certainly this part of the inquiry will be over soon.

I can tell you that as a new Member of Congress, I was not here on 9/11. I was not here for the debate on the PATRIOT Act and other things.

But I do—as a citizen, at the time, I do recall the many, many discussions and the debates that were held and statements that were made by people on both sides of the aisle about how our enemies were jealous of our freedoms, that a victory to the terrorists would be that they would be able to undermine our freedoms, undermine our system of democracy which they held in great contempt and disdain.

Part of the system on our way of life of government that we revere so much is, in fact, this shared power, this Congressional oversight, oversight of the people. And I am wondering as we begin this hearing—I do want you to keep this in mind—are we indeed capitulating on that very fear by an Administration that is determined that our need to surreptitiously examine financial records is more important to capitulate to that fear than it is to include the Congress of the United States in their oversight role and to make sure that we are not conducting warrantless searches without the consent of the people? Are we indeed capitulating to that fear? I yield back.

Chairwoman KELLY. Thank you very much, Ms. Moore.

Mr. Bachus.

Mr. BACHUS. I thank the chairwoman.

Secretary Levey, I almost feel like apologizing to you. There are obviously not only many newspapers in this country, but there are many Members of Congress who simply will not acknowledge what is a fact, and that is, number one, this is a legal program.

The legal foundation of this program is well established. In fact, it has not been questioned by any of the newspapers. The New York Times has actually admitted that this program does, in fact, have a sound legal basis.

Number two, the program is necessary. The New York Times, 2 weeks after 9/11, in an editorial, urged the Administration to start such programs as this.

And the third thing that no one has disputed is that this is a very successful program.

The program is legal, it is necessary, and it is successful.

The one point of debate has been whether or not this classified secret covert operation, whether or not Members of Congress or newspapers had the right to print publicly the sources of our information, the methods we were using, and the details of the program.

And I would hope that Members of this Congress, and newspapers and the media, would realize that decision which the Administration has said comprised this program, that decision was not given under our Constitution to either newspapers or Members of Congress. And for Members of this Congress, if I had gone out and held a press conference and revealed this information, I could have been criminally prosecuted.

And when newspapers reveal classified secret information which not only compromises the program but compromises our allies overseas, it is—to me, it is inexcusable and reprehensible. And I am sorry that your job of protecting this country is being made more difficult by not only Members of this Congress but by the media.

Chairwoman KELLY. Thank you very much, Mr. Bachus.

We have before us Under Secretary Levey. He is Under Secretary for Terrorism and Financial Intelligence of the U.S. Department of the Treasury. And, Secretary Levey, I understand that the problem here is not the program itself. The problem that this committee has is that we have a charge to provide oversight over the legislative arena to make sure that there is not anything going on that might in some way inherently damage the public of the United States. That is what our committee is charged to do.

Given that, as you know, some people have lamented that public disclosure of this program has essentially rendered it defunct, we now would like to hear your opening statement, and then we will follow that with questions.

STATEMENT OF STUART LEVEY, UNDER SECRETARY, TERRORISM AND FINANCIAL INTELLIGENCE, U.S. DEPARTMENT OF THE TREASURY

Mr. LEVEY. Thank you, Chairwoman Kelly, Congressman Frank, and distinguished members of the committee. This is my fifth time appearing before your committee in the past 2 years in what has been an ongoing and fruitful discussion of our government's efforts to track and combat terrorist financing. It is clear from everyone's opening statements that we share the same mission, which is to succeed in disrupting those terrorists.

The program we are discussing today, the terrorist financing tracking program, has supplied a powerful source of intelligence that has greatly advanced that mission to track and disrupt terrorists.

Counterterrorism officials place a heavy premium on financial intelligence because it is rich and accurate. When terrorist supporters send or receive money, they may provide the kind of concrete leads that can advance a terrorism investigation.

As 9/11 Commission Chairman Lee Hamilton testified before this committee in 2004, "Following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public, but it is a critical part of the overall campaign against al Qaeda."

The terrorist finance tracking program was until recently just such a powerful and invisible tool. It has been a key part of our efforts to combat al Qaeda and other terrorist groups and its exposure represents a grave loss.

SWIFT is the premier messaging service used by banks around the world to issue international transfers, which makes its data exceptionally valuable. In response to a subpoena, SWIFT makes available to us a subset of its records that it maintains in the ordinary course of business in the United States. SWIFT data consists of records of completed financial transactions, largely overseas transfers. It does not contain, for the most part, information on ordinary transactions made by individuals in the United States such as deposits, withdrawals, ATM transactions, and the like. It does not provide access to individual bank account information.

The program is consistent with privacy laws as well as Treasury's longstanding commitment to protect sensitive financial data. The SWIFT subpoena that we issue is powerful but narrow. We

cannot simply browse through the records that SWIFT turns over. We are only able to see that information that is responsive to targeted searches in the context of a specific terrorism investigation.

The data cannot be searched unless the analyst first articulates and enters into a computer the justification that links that target of the search to a terrorism investigation.

I want to emphasize that we cannot search this data for evidence of nonterrorist-related crime such as tax evasion, economic espionage, money laundering, or other criminal activity. As a result, we have access to only a minute fraction of the data that SWIFT has provided.

Because we agree with Mr. Frank that people aren't perfect and people in government are not perfect either, the program we have instituted has multiple overlapping layers of governmental and independent controls to ensure that the data is only searched for terrorism purposes and that the data is properly handled. SWIFT representatives are able to monitor our searches in real time and stop any one of them if they have any concerns about the links to terrorists.

In addition, a record is kept of every search that is done and those records are reviewed by SWIFT's representatives and by an outside independent auditor. Moreover, Congress was informed of this program in the traditional way of such matters through the Intelligence Committee.

The program has also delivered results. It provides counterterrorism analysts with a unique and powerful tool to track terrorist networks. To cite one prominent example, the program played an important role in the investigation that culminated in the capture of Ham-bali who, as you know, is JI's operation chief and masterminded the deadly bombings in Bali in 2002.

But beyond these headlines cases, the program has proved its worth in many quieter but equally significant ways. Anyone who has tried to piece together a complex terrorism investigation with months of sweat and dead ends knows how important it can be to uncover a new connection or a new personal identifier.

This program generated just such leads on a regular basis. Some observers, including some members of this committee, have argued that the disclosure of this program did little damage because terrorist facilitators are smart and they already knew to avoid the banking system. They note that we were quite open, that we were following the money and trying to track financial transactions.

But let me respond to this issue firsthand. When I was asked to oversee this program nearly 2 years ago, I requested that the written output from this program be part of my intelligence briefing every single morning. Every day I go into our SCIF and I get my intelligence book and behind tab 11 of my book is the output from this program. And I can't remember a single day when my intelligence book hasn't included concrete leads from this program and most often many more than one.

Now, one can debate the reasons why, but the fact is that financiers and associates of terrorist networks have continued to use the banking system. And this program continued to show us who they are and how they do so.

In short, the terrorist finance tracking program has been extremely valuable. It is grounded in law and bounded by safeguards. It represents exactly what I believe our citizens hope we are doing to prosecute the war on terror.

Finally, much has been said about the newspaper's decision to publish information about this program. As a government official, and as mentioned here today, I must point out that the newspapers almost certainly would not have known about this program if someone had not violated his or her duty to protect this secret.

At the same time, I do very much regret the newspaper's decision to publish what they knew. Tracking terrorist money trails is difficult enough, without having our sources and methods revealed. I can assure you, however, that our efforts will not wane. We will continue to do everything in our power to follow terrorist money trails and disrupt their activities. We are absolutely committed to this mission, and I know that this committee is, as well.

I look forward to answering your questions about this program. Thank you.

Chairwoman KELLY. Thank you, Secretary Levey. Without objection, your full opening statement will be made a part of the record.

[The prepared statement of Secretary Levey can be found on page 44 of the appendix.]

Chairwoman KELLY. I am going back to something I said before, which is that there are people who have lamented that public disclosure of this program has essentially rendered it defunct. 9/11 Commission co-chair Tom Kean said, "I think it is over."

I am interested in exploring this suggestion that the program is no longer useful. You have testified before Congress that there was a lag between what Saudi Arabia said and what Saudi Arabia did regarding their efforts to fight terror financing. And you and others in government have raised concerns about wealthy individuals and charities based in Saudi Arabia.

Given the nature of the data that passes through the SWIFT system, it seems reasonable to conclude that the tracking program may continue to be particularly useful in monitoring the activities of charities and wealthy individuals who support terrorism under the veil of legitimacy.

Generally speaking, how, if at all, has this SWIFT program helped you assess whether the Saudis and other emerging banking centers such as the UAE and Bahrain have lived up to their stated commitments to combat terror financing?

And in talking about this, if you would specifically respond to the suggestion that the program has been killed by public disclosure, I would appreciate it. And I would appreciate you updating your views on how Saudi Arabia and others are cooperating with us in our fight against terror financing. Is Treasury investigating the link that resulted in the public disclosure, also? So I am asking you essentially three questions.

And I will repeat them. Would you like me to?

Mr. LEVEY. Sure.

Chairwoman KELLY. Okay. One is I would like to know how the SWIFT program has helped you assess the Saudis and other emerging banking centers such as UAE and Bahrain, how that has helped you assess whether they have lived up to their commit-

ments in combating terror finance. And in discussing that, I would like you to specifically talk about whether or not the program disclosure, the SWIFT program disclosure, has been killed because its usefulness is no longer available to us. And the third question I would like to ask is if Treasury is investigating the leak that resulted in the public disclosures.

Mr. LEVEY. I think I have those questions.

Let me start by the damage from the disclosure. I think, as I indicated in my opening statement, there is no doubt there has been damage from this disclosure. As everyone on this committee knows, this is a very formidable enemy. They are intelligent. They do what they can to cover their tracks. The fact that we have now made explicit the information that we are looking at to track their money trails is definitely damaging, just as a matter of logic.

The question that you pose, though, is whether the program is dead or absolutely without value. And to be very honest, I think that remains to be seen.

One of the things that one has to take into account is when you talk about terrorist networks, there are lots of aspects to it. And I think you have alluded to some of the key points, which is that you have some people trying to live in polite society and keep one foot in both worlds, one foot in the legitimate world and one foot in the world where they are supporting violent jihad. You have charities and so forth. It may well be that this program will still yield a great deal of value in those sorts of—those sorts of investigations.

I can tell you, without going into specifics about any individual case, for obvious reasons, that one of the ways that this program has been quite valuable is in the investigation of charities and particularly their attempts to reconstitute themselves after they have been first exposed. So without going into specific detail about how it has helped with respect to the countries you named in your question, I can tell you that the program has been quite valuable in that respect.

If I can just touch briefly on the question you asked about the leak and investigation of the leak.

Obviously, I think everyone here knows that the Department that handles investigations is the Justice Department and they would be responsible for any investigation. All I can say at this point is that we have shared information with the Justice Department and are in consultation with them about the appropriate way to go forward.

Chairwoman KELLY. So you are working with Justice to investigate the leak that resulted in the public disclosure; is that correct?

Mr. LEVEY. We are in consultation with them. The responsibility for doing an investigation in this sort of matter would be the Justice Department.

Chairwoman KELLY. I would like for you to describe the thought process behind the plan notifying Congress. When you—this was brought out by Mr. Frank. Correct me if I'm wrong, but it looks to me like the Administration sought to brief chairs and ranking members of the Intelligence Committees on this program prior to their decision to preempt—only prior to preempt the New York

Times, Wall Street Journal, and L.A. Times. My colleague testified he was told that he was only briefed because it was going to appear in the newspapers.

I would like to know if at any point there were changes made to the program in response to feedback from the people in Congress that you did notify? And I would further like to know, what kind of—I would like to hear an explanation for the limited scope of briefing Congress. The authorities that the Administration, you, cite in your testimony for the program are the International Economic Powers Act, the United Nations Participation Act, and Executive Order 13224. The International Economic Powers Act is the primary jurisdiction of this committee along with the International Relations Committee.

The International Relations Committee has jurisdiction also over the U.N. Participation Act. The executive order cited focuses on Treasury Department powers but also references both Justice and State Departments.

So why did the Administration choose to brief none of the committees that have been put in charge of overseeing the government functions that you talk about giving you authority? Why did they brief others and not the committees of jurisdiction?

Mr. LEVEY. Well, thank you for that question. I look forward to responding to it. I know it is a concern of yours and many others.

I should say at the outset that I very much value the partnership we have with this committee. This has been an excellent relationship. We have done many good things together and I hope we will continue to do so. As I said in my opening statement, Congress was informed of this program in exactly the way that Mr. Frank indicated in his opening statement, through the chairman and ranking member of the Intelligence Committees.

The members were briefed as consistent with my understanding of the National Security Act and the customs and practices that have been agreed upon over time by both the Executive and Legislative Branches in working on intelligence matters.

As you indicate in your opening statement, these were decisions that were made in 2002, and so I can't tell you the thinking that went behind them because I was not there at the time.

I can tell you that when I did arrive at the Treasury Department in 2004, and I was given responsibility for this program, I took a look at that and it seemed at that time even more appropriate because the office that I had been just confirmed to be the head of is a hybrid office. It is one where we have a policy function as well as an Assistant Secretary for Intelligence and an Intelligence Office.

My Assistant Secretary for Intelligence is naturally a part of the Intelligence Community. She reports not just to me but to the DNI. Her confirmation—I know that is a Senate issue—but her confirmation went through the Intelligence Committee and not through Senate Banking or Senate Finance. And we have a hybrid office and she is the person with day-to-day responsibility for this program. It seemed appropriate to me that the Intelligence Committee would be the committee that would have the primary responsibility for oversight of what is essentially an intelligence-gathering tool.

And that is why the decision was made, I believe, as it was, and continued until May of 2006.

Chairwoman KELLY. Mr. Secretary, I would call to your attention the International Economic Powers Act, section 1703, which requires full Congressional notification and on a continuing basis. That is full Congressional notification. I would also note that your testimony comments about the fact that you have hired an outside independent auditor for oversight. That is the province of this committee.

We turn now to Mr. Frank.

Mr. FRANK. Thank you. First—and I think there is a genuine interest in trying to find out how we control leaks. I would say I know my friend from Alabama referred to Congressional, as well as newspaper, divulging of information. I am not aware of any Member of Congress who divulged anything, including those who were briefed.

Obviously the question about how much damage was done is a very important one; we don't want to see damage done. But here is my problem. You quoted Mr. Hamilton in your statement. Mr. Hamilton said a long time before this leak: "Following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public but it is a critical part of the overall campaign."

Didn't that make it visible? I mean, when Lee Hamilton said that, he said here is a tool that is invisible, was Lee Hamilton irresponsibly leaking when he said that this is an invisible tool and it made it visible?

Mr. LEVEY. Actually, I think what Chairman Hamilton was doing was something very different, and I don't think that he caused damage to this program or any other. I think what Chairman Hamilton was doing was saying that following the money is an important—

Mr. FRANK. Okay, but here is the key question. No, Mr. Levey, here is the problem. We announced to the al Qaeda and others—it says it is a critical part of the campaign against al Qaeda, following the money.

Did they not infer from that that we would be looking at their bank accounts? I mean, did they think we were sneaking into the caves at night and going through their pockets? I mean, I really have trouble understanding.

By the way, I also have seen this referenced in December of 2002, a U.N. Communication, public, that said, talking about SWIFT, the United States has begun to apply new monitoring techniques to spot and verify suspicious transactions. Was this not known to them, that we were carefully tracking financial records?

Mr. LEVEY. I think we can't speculate about what the terrorists knew. What I can tell you, as I said in my opening statement, is that I look at this every day and it still is providing concrete leads.

Mr. FRANK. Today? It still is?

Mr. LEVEY. Yes.

Mr. FRANK. So it is still working, even after the leak? You just said that, Mr. Levey.

Mr. LEVEY. Yes, it is.

Mr. FRANK. Okay. Good.

Mr. LEVEY. But the leak hasn't had any effect on the program yet, because the data we are looking at predates the leak.

I would like to answer your question, if I could, about this U.N. report and other disclosures that were made. What was done very commonly was we would discuss that we are following the money. But that leaves people in some doubt as to what exactly we are able to look at. Once the SWIFT program is disclosed, it is my fear that they will now know exactly what it is.

Mr. FRANK. Excuse me, but the U.N. reference here refers specifically to the SWIFT program. It says settlement is handled through correspondent banking relationships, such as the SWIFT, Fedwire, and TIPS. The United States has begun to apply new monitoring techniques to spot and verify transactions. It mentions SWIFT in that reference.

Mr. LEVEY. I have read the U.N. report. I have to admit, I read it after this week, because I probably, like everybody else, didn't see that U.N. report until after it was brought to our attention. But I can tell you that U.N. report does not describe this program.

Mr. FRANK. It does say we are tracking things, and it mentions SWIFT.

Mr. LEVEY. But there is a significant difference, Mr. Frank. The difference is that U.N. report talks about then monitoring and looking for suspicious transactions. I think it is important for people to understand that is not what we are doing in this program. We are not looking for suspicious transactions. We are doing targeted searches on individuals.

Mr. FRANK. I would say this. Look, I want this program to work. My sense is that people do these things even though they are generally aware they are being tracked. People get wiretapped, and everybody knows about wiretapping. That doesn't keep people from saying things we can wiretap.

Mr. LEVEY. I hope we are right.

Mr. FRANK. I am going to ask for a classified briefing in a few months as to whether or not there is damage. This is a serious question. I have to correct myself. I said I was offered a briefing on the 11th of May. It was the 25th of May.

If it wasn't important to brief me before it was going to become public, why did you decide after it became public to brief me? What was the point of that?

Mr. LEVEY. Well, the point of that was that, when we realized that there would be a very likely disclosure, there was discussion within the Administration about briefing certain chairmen and ranking members of committees so—as a courtesy to them so they wouldn't read about it.

Mr. FRANK. As a courtesy to me. The courtesy is that this program has been going on for four-and-a-half years; I have been the ranking member for a couple of years; Mr. Oxley is the chairman; and we don't know about it. Did I miss something in Miss Manners? What is courteous? To say that I am going to tell you a secret because everybody is going to know it in an hour, and the question is I couldn't talk about it as much. If I was due the courtesy after you knew it was coming out, why not before? It is not a matter of courtesy.

I want to go back to what the chairwoman said. We wanted to help you make this thing work. I think we can. We can look at this and say this is a good idea, but how about this or that element of privacy?

We work with the financial services community. This committee has, on several occasions, recommended changes. We haven't always agreed. We passed in our regulatory relief bill a loosening of some of the requirements because we thought we could make the system less inefficient and less burdensome without any damage. Not everybody agreed, but we did it. The Senate rejected that.

That is the kind of give and take that, I think, improves the program. You talk about briefing. Let me just say again, yes, the chair and ranking member of the Intelligence Committee were briefed on the 7th of March of 2002, just after the program started. There was virtually no briefing until—only three other members were briefed: the chairman of the Intelligence Committee, and you apparently tried to brief the ranking member—she wasn't available it says—and the chairman of the Appropriations Subcommittee. So between 2002 and 2006, when you knew it was going to be made public, there were three briefings. That is not nearly an adequate effort for us to work together on this.

This program is not in controversy. The unilateralism with which you proceed is, and that is what makes something controversial.

Chairwoman KELLY. Thank you.

Mr. Oxley.

The CHAIRMAN. Thank you, Madam Chairwoman.

Mr. Levey, are you satisfied that the proper requirements were met in terms of briefing the Intelligence Committee?

Mr. LEVEY. As I understand this process, I think the proper requirements were met, that you brief the chairman and ranking member of the Intelligence Committees, which is what we did.

The CHAIRMAN. And the program at the time was up and running and you didn't feel it necessary to brief the Intelligence Committee every couple of weeks or that the program was operating, they were briefed on it, they knew how the program was operating?

Mr. LEVEY. That is correct.

The CHAIRMAN. And my briefing with the committee, with the ranking member and the chairman, was informative. I didn't feel upset that I had not been briefed beforehand. After all, I am not on the Intelligence Committee. This is the Financial Services Committee. The obligations the Administration had to brief the members of the Intelligence Committee, the chairman and the ranking member were met under the law, and at least this chairman is perfectly satisfied with the way that was handled.

All right. As you know, Congress had mandated a FinCEN exploration of a system to review all cross-border financial transactions. I believe it was in the PATRIOT Act. Could you tell us the status of that?

Mr. LEVEY. Yes, Mr. Chairman, I would be happy to.

Let me first do that by distinguishing what that program of cross-border wire project—how it differs from the SWIFT program. I think it is important.

The cross-border wire study that we are doing a feasibility study on now, that project is both narrower in a sense, because it only

deals with U.S.-to-abroad and abroad-to-U.S. transactions, whereas the SWIFT program is worldwide, but it is also much broader as well, because it deals with all cross-border transactions, whether handled by SWIFT or not. We can use that information for terrorism, money laundering, all sorts of law enforcement purposes; and we can do all kinds of things that people traditionally think about when they think about data mining in terms of looking at trend analysis, suspicious activity, and the like.

We are currently doing a feasibility study on that broader project that you have asked us to take a look at. We have gotten some comments from the private sector as well as from the regulators which we are currently considering.

I can tell the committee that one thing we are considering is whether we should try to do this as a pilot project to see if we can set up the system right and get value for it before we proceed with the larger project.

The CHAIRMAN. And once that is completed, then will that be reported back to this committee and to the Congress?

Mr. LEVEY. Yes. I think we have to do a feasibility study; and, of course, we have to brief this to our new Secretary who will be the decisionmaker about how he recommends that we go forward.

The CHAIRMAN. Let me ask you about the Terrorist Finance Tracking Program and use of SWIFT data. What key protections were part of that program that could guarantee fourth amendment protections?

Mr. LEVEY. Well, as you know, Mr. Chairman, the fourth amendment, the Supreme Court case of the *United States* v. *Miller,* that there is no fourth amendment right to privacy in the types of records we are talking about here. But we take very seriously the sensitivity of financial data, so we did put in place very serious protocols and controls. They include making sure that the data is in a very secure place, the most secure place, the most secure environment, that the people who have access to it are only those with the appropriate clearances, and that they can only use this data to do terrorism searches.

As I indicated at the outset, actually, I sat down with one of our analysts yesterday and watched how this worked. If—you type in the target of the search, and then the next required field is the justification, the connection to terrorism, and if you don't fill that in, you can't search the data.

It is that justification field that is monitored both by the SWIFT people onsite and an outside auditor after the fact to ensure that any improper searches are identified.

The CHAIRMAN. As I understand it, one of the arguments that the New York Times used after the story broke to rationalize this was, well, everybody knew about this program. It was out there in the general media, and people knew that that SWIFT program was up there and operating.

If that were true, why was it a kind of a "man bites dog" story above the fold in the New York Times?

Mr. LEVEY. I think that is an excellent question, Mr. Chairman. I can't speak for the New York Times. They clearly thought it was front-page, above-the-fold news.

I think, as I tried to explain to Mr. Frank, the answer here is it is one thing to say that you are following the money, and people think, okay, maybe they are getting suspicious activity reports and whatnot. It is quite another thing to tell people exactly what you are looking at and how.

I think—I won't speak for the members of this committee, but the people that I have talked to, very, very few of them knew what SWIFT was at all before June 23rd, let alone exactly how it worked. Unfortunately, that informational advantage that we had over our adversary is gone.

The CHAIRMAN. Precisely, the operational details of how this program worked. Mr. Frank made the analogy to wiretaps. I used to do this for a living. Not for a moment did I think that the people I was wiretapping, organized crime, knew that I was wiretapping them. It would be pretty evident from the discussions on there that they would have never said that had they known I was listening in on the proceedings.

So it seems to me that this program, which has proven to be very, very effective, and the revelations, that really kneecaps our operational actions here, and the success of that program is deeply disturbing.

To the extent you can tell us, who implored the New York Times to not run this story?

Mr. LEVEY. I had a series of meetings with the reporters and with the editors of the New York Times and implored them, as persuasive as I could be—apparently not persuasive enough—that they shouldn't run the story. In addition, Secretary Snow had a separate meeting with Mr. Keller to make the same points.

We tried—the position I took with them—and everyone knows what the outcome was—was that this program was legal, that it was properly controlled and it was valuable and, therefore, the real newsworthiness of this story would just be the tipping off of our adversaries as to what we were doing. I didn't think it was something that they should do. They obviously differed with me on that and published it.

The CHAIRMAN. What role did Governor Kean and former Congressman Hamilton play as well?

Mr. LEVEY. As I understand it, Chairman Hamilton both met with the New York Times and urged them not to publish the story and Governor Kean made the same request, as I understand it, over the telephone; and they made their argument that this story—that they knew about the program, that they thought the program was well run, and that publishing it would not—would be harmful to our overall effort in combating terrorism. But, apparently, their suggestions were not heeded as well.

The CHAIRMAN. To your knowledge, did any sitting Members of Congress implore the New York Times to withhold the story?

Mr. LEVEY. It is my understanding—though I am not 100 percent sure about this—that Congressman Murtha did, but I don't know. All I know is that he told us that he was going to, but I don't know whether he did.

The CHAIRMAN. I am sorry, what was the last part?

Mr. LEVEY. He told us he was going to, but I don't know whether he did.

The CHAIRMAN. You had some conversations with Congressman Murtha?

Mr. LEVEY. Yes, we did.

The CHAIRMAN. The stories I read at least indicated that he followed up on that?

Mr. LEVEY. Yes, but I can't say for sure.

The CHAIRMAN. So here you had a current Congressman, well-respected on these issues, a former chairman, well-respected on these issues, and a former chairman, of course, of the 9/11 Commission, both Democrats, along with Governor Kean, former Governor of New Jersey, Republican Governor, along with the Secretary of the Treasury, and I am assuming some other folks, perhaps higher up in the Administration, imploring the New York Times that this would do serious damage to our ability to track terrorist financing and to better protect the American people, and the New York Times basically said, as their famous headline said about Gerry Ford, drop dead.

I yield back.

Chairwoman KELLY. Thank you, Mr. Chairman.

Mr. Moore.

Mr. MOORE OF KANSAS. Thank you, Madam Chairwoman.

Chairman Oxley said, "I used to do this for a living," talking about gathering information subject to wiretaps and others. I did as well as a district attorney. But I have tremendous respect for our system and the fact that we have an Executive Branch, a Legislative Branch and a Judicial Branch, all of which have co-equal power, meaning that they all have the same power.

In our system there is oversight by the Executive Branch, and that is the FBI, the district attorney or the local police department, but the Judicial Branch, especially when gathering sensitive, private information. Is our system here sufficient, do you believe, to protect the privacy of individuals, number one?

Number two, what Members of Congress—you mentioned the Intelligence Committee chairman and ranking member are advised or briefed. Anybody else?

Mr. LEVEY. I think that the system we have in place does provide appropriate oversight.

Mr. MOORE OF KANSAS. By whom?

Mr. LEVEY. Both by Congress, through the Intelligence Committee, the controls we have in place that I have described in my testimony, but also you mentioned the type of process that we use to gather the information.

We issued an administrative subpoena in this case. The key fact that I think is important to point out here is that the recipient of this subpoena, SWIFT, had every right to challenge that subpoena in court. They could go to district court and challenge the subpoena on any ground they wished. They had, and continue to have, the most excellent outside counsel that one could obtain, and they knew all of their rights. They could have gone to court.

This is not a situation that I know has been debated in other contexts where the recipient of the compulsion order from the government is not able to—or doesn't feel able to challenge the compulsion in court. This is a situation where they not only were able to as a matter of law, but were fully aware that they were able to.

Mr. MOORE OF KANSAS. Were other Members of Congress, aside from the chairman and ranking member of the Intelligence Committee, briefed?

Mr. LEVEY. I believe Mr. Frank has the list of briefings and has better information than me. We can get back to you.

Mr. MOORE OF KANSAS. My question is, initially, were other than those two people briefed, other Members?

Mr. LEVEY. Of Congress?

Mr. MOORE OF KANSAS. Yes.

Mr. LEVEY. There would be, both in the House and the Senate, the chairman and ranking member.

Mr. MOORE OF KANSAS. So four Members of Congress, the House and the Senate, were briefed.

Mr. LEVEY. It is my understanding, yes.

Mr. MOORE OF KANSAS. How often did that briefing take place, besides the initial briefing?

Mr. LEVEY. We gave them the briefing. I wasn't there at the time, and I don't know if there were follow-up discussions or not.

Mr. MOORE OF KANSAS. I would like you to find that out, if you would, please, and provide that information to the committee, if there were follow-up briefings after the initial briefings of the House and Senate committee. Would you do that, sir?

Mr. LEVEY. I will look into that.

Mr. MOORE OF KANSAS. Not responsive, your honor. Will you do that, sir?

Mr. LEVEY. I will look into that. I don't know if I have that information.

Mr. MOORE OF KANSAS. If you do, will you please provide that or tell us why you can't provide it?

Mr. LEVEY. Yes, absolutely.

Mr. MOORE OF KANSAS. Thank you.

With disclosure—well, with disclosure of the eavesdropping program that has happened in the past few months here, with disclosure of this program, a lot of Americans are wondering if there are other programs that this government is operating right now that even we, Members of Congress, don't know about. And I guess again I would ask you—as I said in my opening statement, I would really appreciate and invite the Administration to bring Congress in and tell us in classified briefings, if necessary, if you think it is necessary, and I would certainly respect that as a former prosecutors, but tell us, make us part of this whole thing, so we can protect our country as well and not feel like we are being kept out of the process. That is what it feels like, I think, to a lot of Members of Congress; and that is why you are getting this kind of questioning right now from some people.

I would absolutely respect any request for a confidential briefing, a classified briefing. I think it is important that there really be oversight here so the three branches of government and our system of checks and balances can operate to protect the people in our country.

Thank you, sir.

Chairwoman KELLY. Mr. Moore, two things arose in your questioning. One, you asked about oversight, and the Secretary said

they have oversight. The oversight, however, is an outside auditor that has nothing to do with government.

Mr. MOORE OF KANSAS. Very good point.

Chairwoman KELLY. I have asked for a classified briefing. We have formally asked for a classified briefing to follow this. So we will be having that.

Mr. MOORE OF KANSAS. I thank the Chair.

Chairwoman KELLY. Thank you very much.

Mr. Bachus apparently has to leave, so we will go next to Mr. Bachus.

Mr. BACHUS. Thank you. I have to go to the Floor on the Internet gambling bill.

Mr. Secretary, I think most members of this committee and the Congress are aware the Espionage Act of 1917 basically makes it a criminal act to, "communicate, deliver or transmit information to any person not entitled to receive it." They are talking about, there, information related to national defense.

Now that Act allows the Executive Branch to classify information. This information was classified information. So it fit into that category, and it makes it a criminal act to communicate that information, to deliver it or to transmit it.

Having said that, the case law—the Supreme Court has made an exception, and it has said, if specific information has been published or released by the government that it is not a criminal act.

It is my understanding that the New York Times and some members of this committee have said that this information was already published. Would you one more time go over whether or not—it is not the existence of something. We know we have spies, for example, in Russia. But if we reveal the names of those spies, that would be a different thing.

Would you go over with this committee one more time whether or not the methods of this program, the details, had been revealed?

Mr. LEVEY. I would be happy to. I think you make a good point.

I think Mrs. Maloney pointed out that there are lots of statements made in the public about following the money. Even the word SWIFT, I gather if you do a Google search, you can find SWIFT someplace, and people have found that.

But what wasn't revealed before these articles was how we are doing this, we are subpoenaing the information from SWIFT. There were other aspects of the New York Times story that talked about the interagency collaboration in exploiting the data that was classified and remains classified. It is that sort of operational detail that both was classified and remains classified, but also which I find so disappointing, because, as I said, my interest here is not in anything other than getting after the terrorists. I was very disappointed to see the story because it makes my job, that I think we are doing all together here, much, much more difficult.

Mr. BACHUS. I read the case last night, *United States* v. *Morrison,* which says that the determination of whether something should be published or not or given to the public is up to the Executive Branch of the Government, and at no time did you all make a determination to publish this information, as I understand it. In fact, you made the determination not to.

Mr. LEVEY. As I said, Congressman, we did everything we could to try to persuade the New York Times not to publish this story. I had several meetings with them. I answered a lot of their questions. I was authorized to give them information in order to persuade them of the controls that we had in place and so forth. I spent some time correcting some misimpressions they had made in the course of their reporting. I did everything I possibly could to try to talk them out of it.

In fact, when they notified us they were going to publish the story, I was in Italy on my way to go to Poland to give a speech with Under Secretary Joseph on the Proliferation Security Initiative. I had to cancel that appearance in Poland in order to come back and have one more meeting with the folks from the New York Times. I very much regret not being able to follow through on my commitment to Under Secretary Joseph on proliferation of finance, which I know is another concern of this committee, but I felt like it was important to do everything I possibly could in this regard.

Mr. BACHUS. Did they give you any reason for why they were going to publish it?

Mr. LEVEY. I think the way I can answer that is Mr. Keller seems to be quite able to speak for himself and has a forum to do so. I will let them speak for themselves.

Mr. BACHUS. I have no further questions.

Chairwoman KELLY. Thank you.

Mrs. Maloney.

Mrs. MALONEY. Thank you.

Mr. Levey, the Administration strongly objected to the publication, as you said over and over, of the Times story, but the fact that the United States was monitoring wire transfers both in this country and abroad was very well known, it was the topic of multiple newspaper articles and testimony, both here in Congress and other places. It was widely reported that Canada had a SWIFT tracking system, as did Australia. Even TV fiction picked up on it, as one of my interns found the issue was a central part of a West Wing episode on May 15, 2002, literally 4 years ago, cross-border wire transfers. I could go into the whole plot of how they found it, but they were tracking it through the central data system. It was very similar to what is happening. This was West Wing, popular TV.

There was a book that came out by a Wall Street reporter several days before this Times report, the One Percent Doctrine, where he goes into the whole deal and how it happened. He goes on to say that the terrorists had wised up. They were no longer using wire transfers.

So, really, my basic question is, is it your position—and I have to say you said there was never a detailed description. But in the Security Industry News of May 2005, there was a detailed description of the SWIFT program. He says, "We are not simply running a watchlist against the data. The SWIFT messages can be parsed, they do contain fields, they can be formatted in a way that helps us to analyze"—and it goes on for pages about how the SWIFT program operates.

So where was the hue and cry against the Security Industry News when they published a detailed description well over a year

before, in addition to the many descriptions that I put into the record?

So is it your position that a significant number of terrorists would not have been aware of this monitoring after all this coverage but suddenly woke up and were threatened by it after they read the New York Times, after it had been in the Australian news, the Canadian news, the Security News, even West Wing stories, well over 4 years ago?

Mr. LEVEY. Absolutely, and I know that for a fact because I go into the SCIF every morning and I read my intelligence book and I see exactly what transactions are still occurring that were captured by this program which came up in response to our targeted searches. That is exactly what value the program had, and I think that value has been compromised by this revelation and the discussion that followed it.

I don't think that any of the things that you referred to revealed this program, as I explained to the prior questioner, did not explain exactly how we were doing this, what we were subpoenaing from SWIFT, that we, the United States Government, had access to that information. None of the things that you referred to revealed that. Even if they had, the front-page discussion of it and the ensuing media description of it made it much more apparent to the terrorists.

I know for a fact—

Mrs. MALONEY. Maybe the terrorists don't watch West Wing.

I have another question. You testified, Mr. Levey, that you obtained large blocks of data from SWIFT and put these in a U.S. Government database. You testified that you only searched this data under specific rules. But those rules are written by you, known only by you, and enforced by you and not by any other branch of government. There is absolutely no review.

Apart from the condition that SWIFT apparently—conditions that they negotiated with you, there is no check on your discretion at all. In fact, we learned that at least one instance of abuse occurred, but we do not know when it happened or what it was.

So my question is, one, are you willing to provide this committee with the subpoenas you served on SWIFT; two, are you willing to provide us with the protocols or rules you used to search the data; and, three, are you willing to give us details about any inappropriate searches to date? We know of one, because that was reported in the paper again, but this information would be very helpful to oversight.

Mr. LEVEY. Well, as Chairwoman Kelly said at the outset, she has requested a classified briefing. Those are requests that we will take back and try to provide as much information as we can in the classified setting, because I think the proper forum for discussing issues like that would be in that setting. We will try to arrange that.

Mrs. MALONEY. Thank you very much. My time is up.

I look forward to the classified briefing. If I may, Madam Chairwoman, put in writing specific questions we would like followed in that meeting.

Chairwoman KELLY. Under Secretary Levey has to leave at noon, so, without objection, all members' written questions will be able

to be submitted. I will be holding the hearing open for 30 days for questions and responses.

With that, we now turn to Mr. Paul.

Mr. PAUL. Thank you, Madam Chairwoman.

Could you tell me, Mr. Secretary, how many subpoenas have been issued under the SWIFT program?

Mr. LEVEY. Mr. Paul, if I could, I would take that question—first of all, I don't know the exact number off the top of my head. Even if I did, I would rather provide it in the other setting, if I could.

Mr. PAUL. How many criminal prosecutions have there been?

Mr. LEVEY. Getting into the operation details, again, and detailed output of the program would not be appropriate for this setting.

Mr. PAUL. In many ways, this whole idea of oversight doesn't amount to a whole lot, because that would be the essence of oversight.

My contention in my opening remarks, in a practical sense, they have an alternative. They go to this transfer of money through hawallahs. Isn't this a possibility that they could do that and isn't it quite possible that they did know about our surveillance since it has been around for a long time? If you could answer that.

And also answer the question I raised about the information being very adequate before 9/11 with that currency suspicious transaction report that told us that Mohammed Atta had actually transferred money. So it isn't the lack of information that is the problem. Just additional subpoenas and information, how is that going to solve our problem?

Mr. LEVEY. Those are good questions, Mr. Paul. Let me take the first one first, which is, is it possible that they knew about this? I think this is the exchange I had with Mrs. Maloney.

I have testified that there is a trend that the terrorists have moved towards cash couriers and hawallahs. I think that is part of what Mrs. Maloney was referring to. I have been very open to that. But a trend doesn't mean 100 percent.

Yes, some terrorists have moved to cash couriers and hawallahs. But what I was very adamant with her, and what I will say to you as well, is I know for a fact that some terrorist facilitators and some parts of these terrorist networks were still using this traditional banking system and we were capturing that information by targeted searches through this SWIFT data and it was yielding value up until the time of this disclosure. That is just a fact.

I don't know for sure why. We can speculate why. But that is the fact. I do know that. That is what I think is lost.

This question that you asked, and I think it is an important point you are making, are we just getting more data and just collecting as much as we can? I think our record on this program is really quite good, because what we have done over the course of time is look at the data that we are getting from SWIFT in response to our subpoena. What we do is we search the data and we see where the value is in that data; and what we have done is stopped collecting from them, stopped getting from them, the parts of the data that are not yielding value.

In addition to that—this really goes to the points you are getting at—we have deleted the data going back historically that wasn't

valuable to a terrorism investigation. That is a very strong indication of our good faith, that we are only using this for terrorism purposes. That is our only intention in getting the data, and that is the only use we are trying to put it to.

Mr. PAUL. I yield back.

Chairwoman KELLY. Thank you, Mr. Paul.

We have been called for a vote, but I think we have time to fit Mr. Davis in.

Mr. DAVIS OF ALABAMA. Thank you, Madam Chairwoman.

Have you read the One Percent Doctrine by Ron Suskind?

Mr. LEVEY. No, sir, I have not.

Mr. DAVIS OF ALABAMA. Among other things, there is a reference in the One Percent Doctrine to human intel that the United States obtains from al Qaeda. There is a description of a particular operative. There are references to specific conversations that the informant had with al Qaeda leadership. There is a reference in the book to locations of those conversations. There is a reference to the exact nature of those conversations. That is information that it would seem to a reasonable listener would provide some information about who the operative was.

There is also a description in the One Percent Doctrine of a particular device called I think a muftaker which could possibly be used to release or discharge chemical weapons. There is a detailed description of how big it is, how wide, its dimensions, what it looks like, a comparison of things it looks like. Obviously, a reasonable al Qaeda operative reading that book could decide to make a change in tactics and come up with a new device of which we have no knowledge.

Tell me why the Administration is not as outraged by the One Percent Doctrine as it is with the New York Times?

Mr. LEVEY. Um—as I said, I haven't read that book.

Mr. DAVIS OF ALABAMA. "Um" is not a good answer.

Mr. LEVEY. Oh, I am sorry. My answer wasn't satisfactory? Give me another chance, okay?

I think that we are concerned about that book and the types of revelations that are made in that book.

Mr. DAVIS OF ALABAMA. Has there been any Congressional resolution introduced, to your knowledge, regarding that book, Mr. Levey?

Mr. LEVEY. I have no idea. You would be in a better position.

Mr. DAVIS OF ALABAMA. Madam Chairwoman, can I inquire of the Chair if the Chair knows of any resolution relating to the One Percent Doctrine?

Chairwoman KELLY. Not that I know of.

Mr. DAVIS OF ALABAMA. Go ahead, Mr. Levey.

Mr. LEVEY. I think I have answered your question, that I don't know whether there has been a resolution.

Mr. DAVIS OF ALABAMA. Do you agree, Mr. Levey, that the information contained in the One Percent Doctrine could cost us an operational advantage against al Qaeda?

Mr. LEVEY. I can't comment on the specific parts of the book that you have referenced, although I have read the muftaker part but not the others. From your description—and I would assume your

description is accurate—I would agree that those are not the kinds of things we would want to see published.

Mr. DAVIS OF ALABAMA. So, therefore—and I am not going to use up my time so that other members can question—but my point, Mr. Levey, I think is fairly straightforward. This is the concern that some of us have. You are not terribly animated about the One Percent Doctrine because, frankly, it is obvious the Administration was a very significant, extensive source for the author of that book. Frankly, for those who read it, it is also clear that the Administration is portrayed in a pretty favorable light.

The New York Times I don't think anyone in this room believes necessarily portrays the Administration in a favorable light. So it leaves the inexplicable conclusion, Mr. Levey—and I think it is a pattern if you look at the Plame disclosures—your Administration is deeply concerned when some sources reveal classified intel; it is not terribly animated when other sources reveal classified intel.

That is exactly the reason why so many people on both sides of these daises have a problem or a question with the kind of unilateral authority the Administration seeks to gather upon itself.

It is crystal clear that anyone reading the One Percent Doctrine knows a great deal about American intelligence gathering operations. It is far more detailed and specific than the New York Times story, and it has not produced a peep of outrage from the people you work for.

I will yield back.

Chairwoman KELLY. Thank you, Mr. Davis.

Mr. McHenry.

Mr. MCHENRY. Thank you, Madam Chairwoman.

Mr. Under Secretary, you are Under Secretary of what?

Mr. LEVEY. Terrorism and Financial Intelligence.

Mr. MCHENRY. Terrorism and Financial Intelligence.

Mr. LEVEY. Yes, sir.

Mr. MCHENRY. So what do you deal with, mainly?

Mr. LEVEY. Well, the broad mandate, it is terrorism was sort of the founding principle upon which the office was created, but, over time, we have done a lot of work on counterproliferation and sanctions and so forth using the financial system and financial intelligence to advance national security goals, including proliferation finance as well. But terrorism still remains the number one priority.

Mr. MCHENRY. Okay. I recognize that may seem a silly question to you, but we are dealing with Congress here. Based on the rhetoric I have heard this morning from my colleagues, it seems a new fact to them that indeed you are trying to deal with the financing of terrorism. You have tools in place to monitor the financing systems of these terrorists, including one that was disclosed, a classified program, which I would hope, Mr. Under Secretary, that you do have classified programs to root out and find these terrorists and their funding mechanisms. Do you not have tools to do this?

I would say you don't have to answer, but I am saying, rhetorically, it seems ridiculous, the rhetoric that has been used here.

Now, additionally, the ranking member of this committee had a level of outrage that you had not come before this committee and disclosed to all that can listen, that can watch it on C–SPAN, who-

ever wants to fall asleep can watch it on C–SPAN, about this program.

Were you asked indirectly about anything related to this SWIFT program by anyone from this committee?

Mr. LEVEY. I am not sure I understand the question, but I don't believe I was ever asked about this program by anyone on this committee.

Mr. MCHENRY. Okay. Or anything related to it?

Mr. LEVEY. I don't believe so, no.

Mr. MCHENRY. But you did disclose this program to the Intelligence Committee, which also has oversight over your activities?

Mr. LEVEY. The Intelligence Committee definitely has oversight of our activities, including our intelligence office, for obvious reasons.

Mr. MCHENRY. I have two quick questions, because we have been called to vote on the Floor.

You said in your testimony that you received written output from the program as part of your daily intelligence briefings and that you, "cannot remember a day when that briefing did not include at least one terrorism lead from the program." Do you believe that this disclosure will, in the end, reduce the number of leads that you will have in this program? Or have you seen a result yet?

Mr. LEVEY. As I indicated to Mr. Frank, we haven't seen the result yet because the data that we are accessing right now was data that was created before the news stories. It is a matter of logic that I would think the public discussion of this would be harmful to the program. But, as I also said to Chairwoman Kelly, I am hopeful that we will still have some value from the program, and we intend to continue with it.

Mr. MCHENRY. Briefly, you also touched on the difference between the wiretapping program, the national security wiretapping program, versus what you are doing with financial tracking.

Mr. LEVEY. If you are referring to the NSA program?

Mr. MCHENRY. Yes.

Mr. LEVEY. I am happy to say I was not read into the NSA program, so I am happy to say I don't know the details of the differences between that program and this one. But there are a couple of things that I think are fairly obvious.

One is that we are obtaining records by subpoena that are kept in the ordinary course of business. We are collecting business records that SWIFT keeps in the United States in the ordinary course of business. From what I have read, I think it is a different legal authority being used in the other programs. But, again, I state very clearly, I don't know for sure. I wasn't read in.

Mr. MCHENRY. Thank you, Mr. Under Secretary. I certainly appreciate your being here today.

Just in conclusion, I think it is a big difference that we are discussing here. It is the difference between a classified program and a headline. Certainly, classified programs are not meant to be headlines so we can protect our operational advantage over our enemies.

I thank you for your service and thank you for your testimony and thank you for answering these questions today, however outrageous some of them have been.

Mr. LEVEY. Thank you.

Chairwoman KELLY. Thank you very much.

We have been called for a vote. I know that the Secretary needs to leave. Mr. Scott has a question he would like to ask. If you could briefly answer that, we would be appreciative.

Mr. SCOTT. Let me just call your attention to what the Act says, because I believe if this Administration had followed the law, had done what the Act expressly says, we wouldn't even be in this shape we are in today.

It clearly states that the President shall—shall, not may—"shall consult with Congress before exercising any of the authorities granted by this Act and shall consult regularly with the Congress so long as such authorities are exercised. Whenever the President exercises any of the authorities granted, he shall immediately transmit to Congress a report specifying, among other things, the authorities to be exercised, the actions to be taken in exercise of those authorities to deal with those circumstances."

We are not here to talk about the SWIFT program or what it has done or all of this. That is fine. There is no problem with that. But it is important for this Administration to understand that they have violated the law. They have not allowed Congress to do its job.

You have people who run not every 6 years, not every 4 years, but every other year. The mandate from the people is to do our charge. The charge of this committee is the oversight and investigation of terrorist financing. Here we are 5 years after and no report.

So when you look at what the New York Times has put forward—and let me just state this very clearly. This is no ordinary leak. I don't think it has been made known that this is no ordinary leak. That story in the New York Times was put together—and the Washington Post—by a compilation of 20 Bush officials who saw something enough wrong that something needed to be done about this.

This is no ordinary leak. This is no story of whether you are strong on terror or not. It is whether or not you are going to stand up for the principles that this country stands for. And had we done what the emergency act says for us to do, clearly we would not be in this position.

When 20—not some clerk, not some disgruntled employee, we are talking about 20 Bush officials, administrators in your Administration, who saw something wrong with the direction in which we were going to say let us pause here for a moment so that—this is a dangerous road we are going on that undermines the very system.

At some point, this Administration, as I said before, needs to clearly look in the mirror and see where the wrong is coming from.

I am going to vote, Mr. Chairman.

Chairwoman KELLY. Thank you, Mr. Scott.

Mr. LEVEY. Again, that was not a question, so I will not have a response.

Chairwoman KELLY. I would like to go and vote, also, but I think it is far more important that we get some of these questions answered, so I am going to stay here and ask a few more questions.

One is a question that you did not have an opportunity to answer, evidently, Mr. Under Secretary.

I asked you about the tracking program that you mentioned might be useful, continue to be useful, with regard to tracking activities of charities and wealthy individuals that support terrorism. The Saudis, for instance, have not yet set up a functioning commission over their charities. I wants to know why there is this lag, and I want to know if this program would be helpful in that regard.

Mr. LEVEY. If I could, Chairwoman Kelly, I would like to respond to those separately, rather than together, because I don't want to talk about the use of this program with respect to any particular country.

As I said to you earlier in response to another question, it is my hope—because, as you point out, there is a multilayered factor to a terrorist network and there may well be parts of terrorist networks where this program, even after its disclosure, will remain valuable because people will still be using the banking system. It is my hope—I hope Mr. Frank is right when he said it will still be valuable. I hope that is right. I don't really care about winning some political argument. What I want to do is get at the terrorist financing. I would be happy if there was no damage at all. Unfortunately, I don't think that will be the case.

With respect to the Saudi charity commission, this is an issue that I know we have discussed both in this room and in your office on several occasions. There is no country that we have spent more time with in terms of trying to work with them on terrorist-financing issues.

The Saudis, as we have said—this will sound repetitive to you because I have said to this to you before, but I think it is important to say the whole piece, which is when it comes to counterterrorism generally and fighting al Qaeda cells in Saudi Arabia, they have been extremely aggressive and effective, and their security services have had causalities, and they are really in the fight in a way that I think is valuable not just in Saudi Arabia. But al Qaeda is a worldwide threat, so when they are fighting cells in Saudi Arabia, that is of benefit to us all.

On terrorist financing, there are a number of issues where, as you put it—and I guess you were quoting me, so I know I agree with it—there has been a real lag between what they say they were going to do and what they do. The charities commission is a perfect example. We haven't seen the charities commission. It is a matter of years now, and there is no charities commission. I am not satisfied—you work personally on getting their FIU up and running. I think that is a project that still requires a lot of work.

The specific thing I was referring to when I made this suggestion about lag and gap in a prior statement was holding individual financiers personally responsible in Saudi Arabia. This is something where the Foreign Minister, Prince Saud, has said they intend to hold people personally accountable; and that has not yet happened. As I say, there is a lag between what they are saying and the facts on the ground. We will see if there is a gap between what they say and what they do.

I think I have been to Saudi Arabia three or four times, and I spent a lot of time and effort on this, and I know you do, too. I am

going to keep at this and do everything I can both to encourage them and to help them fight terrorism more effectively.

Chairwoman KELLY. We have both been advocates for the work of the Egmont Group, the financial intelligence units of a number of different countries. I want to know how the TFTP program complements our technical assistance programs with those groups.

Mr. LEVEY. I have to think about that a little bit, Chairwoman Kelly. I think they may be separate enterprises. They fit together in one sense, which is that effective counterterrorism and, frankly, effective anti-money laundering policy requires the exchange of information and exploiting that information. Egmont is a great forum for doing that on an international basis, and we continue to work on it. A new director of FinCEN, Bob Horner, has taken up the torch on this and is doing a great job and takes this all very seriously.

But, frankly, this program that we are discussing today was one that is separate. It is limited only to terrorism and not to all law enforcement and money laundering efforts like the Egmont group is. So it is narrower in that sense, and the sharing mechanisms are different.

Chairwoman KELLY. How do you evaluate what is working and what is not?

Mr. LEVEY. This has been a very difficult problem ever since I started this job. I think this is something we discussed when I first testified.

A lot of the indices of how effective we are are things that we see only in intelligence reporting, and, therefore, you have to wonder whether you are getting the full story. Because the way intelligence reporting works is you get some information, but you don't know whether there is reporting bias or collection bias or whatever.

There are two things I can point to that I take some heart in. One would be is that, as I indicated in my written statement, we have seen a terrorist organization that was under so much pressure that the intelligence suggested they could not conduct a sophisticated attack because they lacked the funding to do so.

You saw another indication like that in the letter Zawahiri wrote to the now deceased Zarqawi asking for money and saying that the al Qaeda leadership, and Zawahiri, lacked money and their lines have been cut off. That is, of course, a great symbol of success.

I also point the committee to the assessment the 9/11 Commission public discourse project gave us, which was a fairly tough assessment across the board, but when it comes to this issue in particular, they graded the interagency effort as an A-minus, their highest mark. And I should say I have seen some news reporting in recent weeks that that was a grade for the Treasury Department. I want to make clear that wasn't a grade for the Treasury market. That was a grade for the entire government's efforts, including, I would say, this committee.

Chairwoman KELLY. Thank you.

You said that the G–10 central banks were kept informed of the program. But in some countries, like the United Kingdom and others, the Egmont group, the Egmont member FIU, isn't part of the Central Bank. So did they know about SWIFT or were they left in the dark?

Mr. LEVEY. As I said, the ones that were informed were the Central Bank governors, not necessarily FIU's.

Chairwoman KELLY. So other country FIU's may not have known about the SWIFT?

Mr. LEVEY. That is correct.

Chairwoman KELLY. And therefore were not able to use it?

Mr. LEVEY. That is a separate question which I would like to discuss with you in another setting.

Chairwoman KELLY. I thank you.

I have just been reminded that there was a question that I didn't really get an answer to, another section of a question, and that is the question about the UAE and Bahrain and whether they are living up to their stated commitments to combat terrorist finance.

Mr. LEVEY. I think that the general answer is that we have very good relationships there, and our cooperation is strong. I think I can give you a more satisfying answer if I respond to that in writing, if that would be okay with you.

Chairwoman KELLY. That is fine. You can give it to us in a more detailed answer, if you would like to, in a confidential briefing.

I need to do a bit of business here. There are a number of things that we have been requested to insert in the record. One is the list that Mr. Frank had on what Members of Congress were briefed and what the dates were.

The other is the CRS report for Congress entitled Treasury's Terrorist Finance Programs: Access to Information Held by the Society for Worldwide Interbank Financial Telecommunication.

The next one is Reports of U.S. Monitoring of Swift Transactions Are Not New: The Practice Has Been Known by Terrorism Financing Experts for Some Time, by Victor Comras.

Another, A Secret the Terrorists Already Knew, by Richard A. Clarke and Roger W. Cressey.

And the final one, Continued Debate Over the Swift Disclosure, by the New York Times by Dennis M. Lormel.

So moved that they be put in the record.

Chairwoman KELLY. With that, the Chair notes that members will have additional questions for this panel that they will submit in writing. So, without, objection the hearing record will remain open for 30 days for members to submit written questions to this witness and to place their responses in the record.

With that, we thank you very much, Mr. Secretary. You have been very patient with us all.

This hearing is adjourned.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned.]

A P P E N D I X

July 11, 2006

Opening Statement

Chairman Michael G. Oxley
Committee on Financial Services

Subcommittee on Oversight and Investigations
The Terrorist Finance Tracking Program
July 11, 2006

Thank you, Madam Chairwoman. And Secretary Levey, thank you for appearing today. And we are pleased to have you here and the obvious reason for this hearing was to discuss the positive aspects of this program and how effective it has been.

I think there has been very little argument in the Congress of how effective that has been. The issue raised this morning, of course, was who was briefed and when and so forth. And, frankly, I am confident that the administration did the right thing in very selectively informing the Intelligence Committee. We are not the Intelligence Committee, in case you haven't noticed, and the Intelligence Committee did their work very effectively.

How many people were briefed and when it occurred seems to be relatively irrelevant since the program was up and running, and I think there was general consensus it was very effective. And, obviously, the fewer people that know about that program, that secret program, the better. And the revelations that appeared in the popular media clearly had a negative effect on the effectiveness of that program. I am sure you are going to testify to that later.

I keep coming back to the warnings or the concern that were expressed, particularly by the co-chairs of the 9/11 Commission, two well respected gentlemen, Governor Kean and of course our former colleague, Lee Hamilton.

Why would those two individuals, well respected, plead with the news media in this case, the New York Times not to reveal that information? It seems to me that goes to the heart of this entire issue. And it was, frankly, never answered during the debate on the resolution that we had a week or so ago.

So we keep coming back to that very poignant issue. And by the way, they weren't the only two that were trying to keep that program secret, because obviously the terrorists, once they get that information, change their habits, the New York Times Editorial Board to the contrary notwithstanding. It is amazing how much the editorial board at the New York Times understands about terrorists' actions and finances.

But that is for another day.

It seems to me that, again, coming back to the purpose of this hearing is to describe how effective the program has been and the potential and real damage it has caused. When

this committee debated and voted on the terrorist financing part of the PATRIOT Act, it was this kind of program that we clearly had in mind.

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STATEMENT OF THE HONORABLE SUE W. KELLY
O&I Subcommittee Hearing on the Terror Finance Tracking Program
July 11, 2006

During World War II, Congressman Andrew May returned from an oversight visit to the Pacific Theater and told a group of reporters that those with loved ones serving in submarines needn't worry because the Japanese were setting their depth charges to detonate at a level too shallow to reach our submarines.

Several newspapers reported this.

The Japanese subsequently re-set the fuses on their depth charges. A vice-admiral estimated that the public disclosure of this information cost us ten submarines and the lives of 800 American men.

During the mid-1970s, committees chaired by Senator Frank Church and Congressman Otis Pike brought to the attention of the American public a litany of activities which showed an intelligence community that had at times overstepped its bounds, leading to the enactment of the Foreign Intelligence Surveillance Act.

I cite these instances not to draw comparisons with the subject of the hearing today, but rather to demonstrate the cross-pressures we all confront when dealing with matters of secrecy and national security.

No member wants to undermine our national security;

We all recognize that there are times in war, as Churchill said, when certain truths must be "attended by a bodyguard of lies."

As a New Yorker and representative of so many people who are deeply affected by terrorism, I could not feel more strongly about protecting vital national security tools.

Just the same, no member wants to forego the institutional obligations envisioned by the Founding Fathers. We work always to strike the structural balance that James Madison articulated so well in Federalist Paper #51.

The hearing today is to examine the Terror Finance Tracking Program, to examine the merits of the program and to see if it has been properly created and implemented by the administration.

Along with Chairman Oxley and my colleague Mr. Gutierrez, I have spent as much time on terror finance as any member of this body. We have held many hearings; We have established a bipartisan task force on terror finance. In 2004, I even authored an amendment which authorized the government to monitor cross-border wire transfers.

My record properly suggests that I would support a sophisticated and aggressive program similar to what has been described to us by the media.

While many terrorist operatives are increasingly resorting to cash couriers to move funds, charities and wealthy donors who support terrorists are likely to have used the SWIFT system that this program specifically targets. It would be foolish to ignore that.

Furthermore, this program has the support of several important people outside of the administration who are familiar with the workings of the program. People like Chairman Oxley, the co-chairs of the 9/11 Commission, and former officials such as Dennis Lormel, former head of the FBI's terror finance unit.

That said, many in Congress who should have been briefed by this administration were not. And while I appreciated the visit last week from Under Secretary Levey, after the program's existence was reported in the media, our oversight obligations are far from fulfilled.

I believe that the skepticism the administration afforded this Congress – perhaps properly – regarding the Terror Finance Tracking Program must be reciprocated. We must ensure that an environment of accountability is provided for all in government who deal with sensitive financial information.

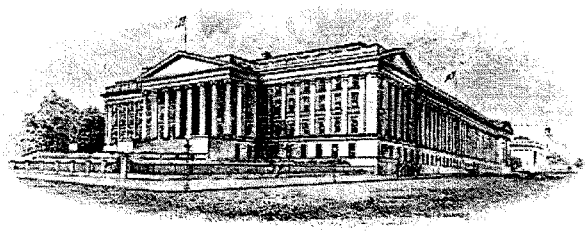
The letter our colleague, Intelligence Chairman Hoekstra, recently sent to President Bush about withholding information from Congress should reinforce an important question in the minds of all Members: <u>What else don't we know?</u>

So in addition to this hearing, I'm going to ask Under Secretary Levey to come back to brief this subcommittee to answer any questions he cannot answer in public forum today. I will also conduct a follow-up hearing on this subject in September to allow private sector witnesses to discuss the pros and cons of this program.

Additionally, I'm asking the GAO to conduct an investigation into this program to ensure that it was indeed conducted in accordance with all proper laws, that it does possess all necessary safeguards, and that Congress was appropriately informed.

This GAO investigation is due diligence which will help ensure that our trust is not poorly placed.

I want to thank Under Secretary Levey for coming here today. I have deep respect for Under Secretary Levey, and I believe he is doing an excellent job at Treasury. We understand that he did not make many of the decisions about disclosure to Congress, and that there are many things he cannot discuss in an open setting. However, I look forward to an informative discussion on this matter today.



U.S. TREASURY DEPARTMENT
OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL 10:00 AM EDT, TUESDAY, JULY 11, 2006
CONTACT Molly Millerwise (202) 622-2960

Testimony of Stuart Levey, Under Secretary
Terrorism and Financial Intelligence
U.S. Department of the Treasury

Before the House Financial Services Subcommittee on Oversight and Investigations

Chairwoman Kelly, Ranking Member Gutierrez, and distinguished Committee members. This is my fifth time appearing before your Committee in the past two years in what has been an ongoing and fruitful discussion of our government's efforts to track and combat terrorist financing. These sessions have advanced our shared mission to undermine terrorist networks and disrupt their vicious objectives. It is always a privilege to be here.

As this Committee knows well, tracking and combating terrorist financing are critical facets of our overall efforts to protect our citizens and other innocents around the world from terrorist attacks. This is true for two main reasons. First, when we block the assets of a terrorist front company, arrest a donor, or shut down a corrupt charity, we deter other donors, restrict the flow of funds to terrorist groups and shift their focus from planning attacks to worrying about their own needs. While any single terrorist attack may be relatively inexpensive to carry out, terrorist groups continue to need real money. They depend on a regular cash flow to pay operatives and their families, arrange for travel, train new members, forge documents, pay bribes, acquire weapons, and stage attacks. Disrupting money flows stresses terrorist networks and undermines their operations. In recent months, we have seen at least one instance of what we look for most – a terrorist organization indicating that it cannot pursue sophisticated attacks because it lacks adequate funding.

Second, "following the money" is one of the most valuable sources of information that we have to identify and locate the networks of terrorists and their supporters. If a terrorist associate whom we are watching sends or receives money from another person, we know that there's a link between the two individuals. And, while terrorist supporters may use code names on the

phone, when they send or receive money through the banking system, they often provide information that yields the kind of concrete leads that can advance an investigation. For these reasons, counter-terrorism officials place a heavy premium on financial intelligence. As the 9/11 Commission staff pointed out – and as Chairman Hamilton testified before this Committee – "following the money to identify terrorist operatives and sympathizers provides a particularly powerful tool in the fight against terrorist groups. Use of this tool almost always remains invisible to the general public, but it is a critical part of the overall campaign against al Qaeda." The Terrorist Finance Tracking Program was just such an invisible tool. Its exposure represents a grave loss to our overall efforts to combat al Qaida and other terrorist groups.

We are facing a clever and adaptive enemy that takes extensive precautions to cover its tracks. If we are to exploit the vulnerability that financial transactions represent, we need to marshal all of our resources and ingenuity. We need to cooperate seamlessly within our government, drawing on our different strengths and talents and appropriately sharing our information without hesitation. We need to work closely with the private sector, which is sometimes best positioned to detect suspicious behavior. And we need to proceed hand-in-hand with our foreign partners, both in sharing information and taking action to identify terrorist financiers, disrupt their operations, and hold them accountable.

My colleagues in the Treasury Department and across the U.S. government have been working with dedication and ingenuity to meet this demanding challenge. Our theater of engagement literally spans the world, from the money changing tables of Kabul to the jungles of South America's Tri-Border Area, from finance ministries to the compliance offices of the world's most sophisticated banks. Thanks to their tireless efforts, we have achieved real successes. The 9/11 Commission's Public Discourse Project awarded its highest grade, an A-, to the U.S. Government's efforts to combat terrorist financing. I would be happy to discuss these efforts in greater detail in a subsequent hearing, and reference some recent highlights in the margin.[1]

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[1] A few selected examples of our interagency work on terrorist financing follow:

- We have made dramatic progress in combating terrorist abuse of charities through a combination of law enforcement and regulatory actions against corrupt NGOs, both at home and abroad. In tandem with these enforcement efforts, active engagement with the legitimate charitable sector has succeeded in raising transparency and accountability across the board.
- Thanks to our work in cooperation with the private sector to enhance anti-money laundering/counter-terrorist financing procedures in the financial system, many terrorists have been forced to resort to alternative means of moving money – such as cash couriers – that are more cumbersome or risky. Couriers offer concealment, but some get caught and some get greedy, and a terrorist is likely to think twice before entrusting a large sum to any one courier. We are working bilaterally and through international organizations like the Financial Action Task Force to ensure that countries around the world both pass and implement laws to regulate the movement of cash across their borders. Our law enforcement colleagues, notably those in DHS's Immigration and Customs Enforcement, are training border agents around the world to make sure these programs work.
- We have encouraged countries around the world to make increased use of the U.N. Security Council to seek the designation of terrorist supporters. This global designation program, overseen by the U.N.'s 1267 Committee, might be the most powerful tool for global action against supporters of al Qaida. It envisions 192 U.N. Member States acting as one to isolate al Qaida's supporters, both physically and financially. Increasingly, countries have begun to look to this committee, and administrative measures in general, as an effective complement to law enforcement action. In 2005, 18 Member States submitted names for the Committee's consideration, many for the first time.

The Terrorist Finance Tracking Program has been a key part of these overall efforts. I had no hand in initiating this program, so I can say without any conceit that Secretary Snow was right in saying that the Terrorist Finance Tracking Program exemplifies government at its best. The Society for Worldwide Interbank Financial Telecommunication (SWIFT) is the premier messaging service used by banks around the world to issue international transfers, which makes its data exceptionally valuable. I would note that SWIFT is predominantly used for overseas transfers. It does not contain information on most ordinary domestic transactions made by individuals in the United States, such as deposits, withdrawals, ATM use, checks, or electronic bill payments. The SWIFT data consists of records of completed financial transactions; it does not provide access to individual bank account information. This program is consistent with privacy laws as well as Treasury's longstanding commitment to protect sensitive financial data.

In response to a subpoena, SWIFT makes available to us a subset of its records that it maintains in the United States in the normal course of its business. The legal basis for this subpoena is the International Emergency Economic Powers Act (IEEPA), a statute passed in 1977, which allows the government to compel the production of information pursuant to Presidential declarations of national emergency. We issue such administrative subpoenas regularly, and our authority to do so is clear. In this case, our subpoena is issued pursuant to President Bush's declaration of an emergency with respect to terrorism after September 11th in Executive Order 13224. That declaration has been renewed yearly in light of the continuing threat posed by al Qaida and other deadly terrorist groups.

The SWIFT subpoena is powerful but narrow. We cannot simply browse through the records that SWIFT turns over – we are only able to see that information which is responsive to targeted searches in the context of a specific terrorism investigation. The data cannot be searched unless the analyst first articulates the specific link between the target of the search and a terrorism investigation. I want to emphasize that we cannot search this data for evidence of non-terrorist-related crime, such as tax evasion, economic espionage, money laundering, or other criminal activity. As a result, we have accessed only a minute fraction of the data that SWIFT has provided.

The program contains multiple, overlapping layers of governmental and independent controls to assure that the data is only searched for terrorism purposes and that all data is properly handled. Pursuant to an agreement that we reached with the company, SWIFT representatives are able to monitor these searches in real time and stop any one of them if they have any concerns about the link to terrorism. In addition, a record is kept of every search that is done. These records are reviewed both by SWIFT's representatives and an outside independent auditor.

Members of the Congressional intelligence committees were briefed about this program, and our colleagues in the central banks of the G-10 countries were likewise informed.

The benefits of the Terrorist Finance Tracking Program have been incalculable. This program provides a unique and powerful tool that has enhanced our efforts to track terrorist networks and disrupt them. That is the opinion of experts familiar with this program, both in and out of the government, irrespective of political orientation. It is also the view of those closest to the data, who are in the best position to know. I have on my staff a group of intelligence analysts who

spend their days in a secure room poring over information to unmask the key funders and facilitators of terrorist groups. If you spoke with them, they would point to this program as one of the most important and powerful tools they have to follow the money.

They value this program because it leads to results. The details remain classified, but the program has been instrumental in identifying and capturing terrorists and financiers and in rolling up a terrorist-supporting charity. The program played an important role in the investigation that eventually culminated in the capture of Hambali, Jemaah Islamiyya's Operations Chief, who masterminded the 2002 Bali bombings. The program supplied a key piece of evidence that confirmed the identity of a major Iraqi terrorist facilitator and financier. Because we were able to make this data available to an ally, this facilitator remains in custody. But the program has also proven its worth in many less dramatic, but equally significant ways. Anyone who has tried to piece together a complex terrorism investigation over months or years of sweat and dead-ends knows how important it can be to uncover a previously unknown link or fact. This program generates just such connections and leads nearly every day, which are then disseminated to counter-terrorism experts in intelligence and law enforcement agencies.

In short, the Terrorist Finance Tracking Program has been powerful and successful, grounded in law and bounded by safeguards. It represents exactly what I believe our citizens expect and hope we are doing to prosecute the war on terror.

Much has been said and written about the newspapers' decision to publish information about this program. As a government official, I must first point out that the newspapers almost certainly would not have known about this program if someone had not violated his or her duty to protect this secret.

At the same time, I do very much regret the newspapers' decision to publish what they knew. Secretary Snow and I, as well as others both inside and outside the government, made repeated, painstaking efforts to convince them otherwise. We urged that the story be held for one reason only: revealing it would undermine one of our most valuable tools for tracking terrorists' money trails. We were authorized to set these arguments out for the relevant reporters and editors in an effort to convince them not to publish. In a series of sober and detailed meetings over several weeks, we carefully explained the program's importance as well as its legal basis and controls. We strongly urged them not to reveal the source of our information and explained that disclosure would unavoidably compromise this vital program.

These were not attempts to keep an embarrassing secret from emerging. As should be clear from my testimony above, I am extremely proud of this program. I am proud of the officials and lawyers in our government whose labors ensured that the program was constructed and maintained in the most careful way possible. And I am proud of the intelligence analysts across our government who have used this information responsibly to advance investigations of terrorist groups and to make our country safer. I asked the press to withhold the story because I believed – and continue to believe – that the public interest would have been best served had this program remained secret and therefore effective.

Some observers have argued that the disclosure of the program did little damage because terrorist facilitators are smart and already knew to avoid the banking system. They correctly point out that there has been an overall trend among terrorists towards cash couriers and other informal mechanisms of money transfer – a trend that I have testified about. They also hold up as public warnings the repeated assertions by government officials that we are actively following the terrorists' money.

What we had not spoken about publicly, however, is this particular source. And, unfortunately, this revelation *is* very damaging. Since being asked to oversee this program by then-Secretary Snow and then-Deputy Secretary Bodman almost two years ago, I have received the written output from this program as part of my daily intelligence briefing. For two years, I have been reviewing that output every morning. I cannot remember a day when that briefing did not include at least one terrorism lead from this program. Despite attempts at secrecy, terrorist facilitators have continued to use the international banking system to send money to one another, even after September 11th. This disclosure compromised one of our most valuable programs and will only make our efforts to track terrorist financing – and to prevent terrorist attacks – harder. Tracking terrorist money trails is difficult enough without having our sources and methods reported on the front page of newspapers.

I can assure you, however, that our efforts will not wane. With our interagency colleagues and our partners abroad, we will continue to draw on every resource at our disposal to uncover and disrupt these terrorist networks.

Thank you.

-30-

Rep. Carolyn Maloney
OM hearing July 11, 2006

July 7, 2006

Compilation of publicly available statements regarding the monitoring of wire transfers by the U.S. government

I. It was public knowledge that wire transfers including SWIFT, CHIPS and Fedwire transactions were being monitored by the United States Government

A. Multiple newspaper articles and testimonies revealed the existence of government searches for terrorist activity in SWIFT and similar wire transfer databases long before the New York Times article

"Funding on that scale would not necessarily have required large international bank transfers of the kind often seen in cases involving drug cartels or corrupt regimes. That could limit the ability of the National Security Agency to follow the money through its electronic intercepts of such transactions, which are carried out by the Society for Worldwide Interbank Financial Telecommunications (SWIFT), headquartered in Belgium."

The Baltimore Sun, September 21, 2001

"Jimmy Gurule, the US Treasury's undersecretary of enforcement, said the FATF would consider urging member countries to adopt a range of measures to end terrorist financing within their borders by better tracking cross-border payments and remittances.

The measures include:

* Proposals requiring financial institutions to file suspicious activity reports on funds they believe are being held for terrorist groups.

* Registering informal money exchange agents and requiring them to record the names and addresses of those making payments.

* Reporting detailed information on international wire transfers."

Financial Times, London Edition, October 23, 2001

"Finally, I can report that starting on September the 17th last year, the New York Reserve Bank, at the request of law enforcement and pursuant to subpoenas began searching the records of FedWire (ph) the Federal Reserve's large dollar electronic payment system for information related to the terrorist acts.

Search results have been provided to various law enforcement agencies, which have reported to us that the information we provided, has been useful to their law enforcement and ongoing investigations."

Richard Spillenkothen, Director, Banking Supervision and Regulation Division, Federal Reserve System
Senate Hearing of the Housing and Urban Affairs Committee, January 29, 2002

"I think we already have at the credit union level a lot of policies and security procedures that are in place to track suspicious movements -- for -- I'll give you an example. Wire transfers, which is one of the most popular services we provide in my credit union. Every time we do a wire transfer overseas we match that name against the list of OFAC."

John Herrera, Vice President, Lation-Hispanic Affairs, Self Help Credit Union,
Representative, Credit Union National Association and World Council of Credit Unions
Hearing of the Oversight and Investigation Subcommittee of the House Financial Services Committee,
February 12, 2002

"To date, over 1000 search warrants have been executed and numerous subpoenas have been served seeking information on over 10,500 persons or accounts. Over 321,000 documents have been processed and over 2,450 accounts have been examined, including more than 90 foreign bank accounts. In addition, analysts have reviewed over 940 credit card accounts and scrutinized more than 13,000 domestic and foreign wire transfers. While the analysis continues, through financial information, we have established how the hijackers received their money, how and where they were trained to fly, where they lived and - perhaps most significantly - the names and whereabouts of persons with whom they worked and came into contact."

Mary Lee Warren, Deputy Assistant Attorney General, February 12, 2002

"Dennis Lormel, head of the FBI's financial crimes section, said agents have reviewed and documented more than 66,000 financial transactions and 4,300 foreign wire transfers conducted by suspected terrorists in the U.S. and around the world."

The Toronto Sun, February 22, 2002

"OFAC has widely disseminated the names of new designated terrorists to the business and financial communities through websites, Fedwire Alerts, CHIPS system notices, communications to Federal and State regulators, and electronic broadcasts to 175 key industry groups. Information on terrorist designations is also distributed to the public by way of Customs, the Government Printing Office, and other agency networks."

-Jimmy Gurule, Under Secretary for Enforcement of U.S. Department of the Treasury,
House Hearing of the Appropriations Committee, February 27, 2002

"Messages are scanned field by field and OFAC-Agent determines if there is any such element (referenced by its name/address, or its SWIFT code, or any keyword) which generates a "hit" against watch lists. OFAC-Agent has been designed to be able to use any number of lists (international, national, tailored in the bank) and takes into account new versions of the lists without extra tuning.

STB-Detector is the first to anti-money laundering application to combine several key controls in one package, specifically: applying very detailed account opening controls, secondly tracking and profiling of all account activity - not just wire transfers, and thirdly managing review and

follow-up workflows of suspicious or poorly documented transactions."
M2 Presswire, July 9, 2002

"Bottomline Technologies has released WebSeries OFAC (Office of Foreign Asset Control), a new application module of its Web-based Universal Payment Engine that can spare organizations up to $ 1 million in fines and jail time by helping them comply with the Patriot Act, new legislation that bars organizations from conducting transactions with known terrorists.

WebSeries OFAC automatically tracks all types of transactions at the enterprise level -- including Fedwire, SWIFT, ACH (automated clearing house) and check payments -- against the OFAC list. Most banks only match their Fedwire and SWIFT payments."

-The Financial Executive, September 1, 2002

"Statistics compiled by the government establish an unprecedented level of investigative activity relating to the tracing of terrorist assets and related money laundering activity. In light of the breadth of these governmental inquiries, it is clear that law-abiding companies are being called upon to supply records and information about customers, clients, and transactions like never before. Since September 11, over 1,000 search warrants have been served, and records relating to over 10,500 persons and accounts have been subpoenaed. More than 2,450 accounts have been reviewed, including more than 90 accounts that related to foreign banks. More than 13,000 domestic and foreign wire transfers have been reviewed."

EIU ViewsWire, September 27, 2002

"As touched upon earlier, a significant focus of the TFOS' efforts is prediction and prevention. In this regard, it has developed numerous data mining projects to provide further predictive abilities and maximize the use of both public and private database information. These efforts are complemented by the centralized terrorist financial database which the TFOS developed in connection with its coordination of financial investigation of individuals and groups who are suspects of FBI terrorism investigations. The TFOS has cataloged and reviewed financial documents obtained as a result of numerous financial subpoenas pertaining to individuals and accounts. These documents have been verified as being of investigatory interest and have been entered into the terrorist financial database for linkage analysis. The TFOS has obtained financial information from FBI Field Divisions and Legal Attache Offices, and has reviewed and documented financial transactions. These records include foreign bank accounts and foreign wire transfers. The information contained within the aforementioned database is being used to identify terrorist cells operating in the United States and abroad to prevent further terrorist acts. The TFOS meets regularly with representatives from the banking community and the financial services industry to share information and to refine methods to detect and identify potential terrorists around the world."

Dennis Lormel, Financial Crimes Section Federal Bureau of Investigation,
Senate Hearing of the Judiciary Committee, October 9, 2002

"Banks are in a quandary over the USA PATRIOT Act's tough deadlines for compliance with information requests from law enforcement agencies under the Bank Secrecy Act.The USA

PATRIOT Act places a 120-hour time limit on a bank's response to such requests.

The deadline is especially troublesome for smaller banks which, typically lacking an automated solution,must instead plow through paper records for occurrences of a suspects name.

"To record [a wire transfer] is one thing, but to retrieve it is another," said Dave Kvederis, president and CEO of Bankserv, a San Francisco-based software firm."You can record it on hunks of paper and put it in file cabinets, but if you need to find history on two years [of transactions] that can be more problematic.""

Bank Systems & Technology, November 1, 2002

"We complement such direct law enforcement action with law enforcement support. Through FinCEN, Treasury serves as a repository and analytical hub for Bank Secrecy Act information, which aids investigators across the interagency community in finding financial links to criminal enterprises and terrorist networks. Since February 2003. we have also used Section 314(a) of the Patriot Act to enable law enforcement, through FinCEN "Blastfaxes" to more than 31,800 financial institutions as of April 27, 2004, to locate quickly the accounts and transactions of those suspected of money laundering or the financing of terrorism. Since Section 314(a)'s creation, the system has been used to send the names of 1,712 persons suspected of terrorism financing or money laundering to financial institutions, and has resulted in 12,280 matches that were passed on to law enforcement. We understand the sensitivity of the use of this system, and will continue to ensure through vigorous review that this system is used only in cases where terrorist financing is suspected, or in the most egregious money laundering cases."

Dennis Glaser, Director of Executive Office for Financing and Financial Crime, Hearing of the House Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources, May 11, 2004

"Obeying a mandate from the intelligence reform bill passed by Congress in December, the U.S. Treasury has begun pushing for access to millions of foreign banking and banking transfer records in an effort to track down terrorist financing. The agency has identified wire transfers in particular as the medium of most of these transactions and wants direct insight into the vast volumes of data flowing daily through services like SWIFT and Western Union."

Securities Industry News, May 9, 2005

"An agreement announced today between Information Technology, Inc. (ITI), a subsidiary of Fiserv, Inc. (Nasdaq:FISV), and GlobalVision Systems, Inc., will provide bankers with an advanced solution to help them comply with federal requirements outlined in the USA PATRIOT Act and Bank Secrecy Act (BSA).

In addition to automating the detection, investigation, monitoring and filing of Suspicious Activity Reports, Premier Patriot Officer also helps identify high-risk customers through multidimensional risk scoring. "All wire transfers are confirmed and SWIFT transactions are evaluated against the list published by the U.S. government," said Deterding."

Business Wire, May 23, 2005

"Australia is planning to address FATF's findings through two pieces of legislation, the Criminal Code Act of 1995 and the Transaction Reports Act. The proposed reforms will make it unnecessary for precursor events, such as an investigation by the Australian Crime Commission, for filing a Suspicious Transaction Report--the equivalent of an SAR in the U.S.--to trigger an investigation. More customer detail will also be required in international funds transfers, or wire transfers, submitted into and out of Australia, applying to all remittance services. A spokesperson for the Australian Transaction Reports & Analysis Center, the country's AML regulator, said, "While these cash dealers should not materially affect those cash dealers using Swift payments, it may impact non-Swift remitters.""

Securities Industry News, March 15, 2006

B. Other nations were open about their monitoring of wire transfers

"The Financial Transactions Reports Analysis Centre (FinTrac), the Canadian government agency that combats money laundering and terrorist finance says that it has gotten well beyond the simple matching of names in analyzing wire transfer data to identify patterns suggestive of criminal activity.

"We're not simply running watch lists against that data," says Peter Lamey, a FinTrac spokesperson in Ottawa. "The Swift messages can be parsed, they do contain fields, they can be formatted in a way that makes them useful for analysis. We're combining that data with other forms of transaction reports but also with other intelligence we get from law enforcement's financial intelligence units." Lamey says FinTrac also tries to identify anomalies within the transactions, and expects that it will get better at it as it collects more data for analysis.

Take the data fields in the MT-100 message format, which, according to Lamey, is primarily used for wire transfers. "It's not all open text," he says. "There are actually numeric tags with two digits so you can identify the sender, the bank identifier codes--and we're able to handle that through the fields in the Swift messages. Each of the different tags highlights a four-, two- or one-line field, and the fields have a set length of 35-40 characters. But they are alphanumeric."

The yield of such analysis can be triangulated with other intelligence, Lamey says. "We're running that data and combining it with other information that we have--other forms of transaction reports but also other intelligence we get from law enforcement or other financial intelligence units."

Lamey concedes that the loose handling of wire transfers does not help matters. "Even in wires with unintelligible alphanumeric data, there's enough information in there to get the money overseas," he notes. "You have to know the beneficiary, and although it's left blank sometimes, you have to know the sender. You have two parties to a transaction, you have a value and you have accounts. If there's other activity going on in the account at the other side, or if it links up to an account that has some other investigation or analysis, the matches can be made that way."

Such data might not actually be collected in the U.S. for several years. Meanwhile, "the Australians are further along than we Canadians," Lamey says. A spokesperson for AusTrac, the Australian money-laundering agency, could not be reached for comment.

Canada made it obligatory to report the movement of currency across its border two years ago. Says Lamey: "The reporting of wire transfers is all about money crossing the border, the use of MT-100 Swift messages is all about money crossing the border. Whether it crosses in a suitcase or a wire transfer, there's an obligation to report it.""

Securities Industry News, May 9, 2005

"Organisations meeting in Singapore to coordinate the fight against money laundering and the financing of terrorism yesterday went public with their strategy.

Their first aim is to ensure total openness about exactly who is sending and receiving money...

Mr McDonell said previous international wire transfers through the Swift system did not require the sender or recipient to be identified.

He said many APG countries have agreed to comply with the revised recommendation on providing the identities of the sender and recipient but would need 12 months to implement the measure because it requires new laws."

The Business Times Singapore, June 11, 2005

""There is a strong commitment by FATF and the international community (to) ensure that these new international standards are adhered to," he said. The US passed tough legislation last week to curb terrorist financing and has stepped up pressure on other countries to follow that lead. That would include making the financing of terrorist activity a criminal offence, co-operating in law-enforcement efforts and strengthening customer identification for wire transfers."

Financial Times, London Edition, November 1, 2001

II. The Bush Administration has repeatedly acknowledged that it has relied on international cooperation and cooperation with the financial sector to monitor international wire transfers.

On October 22, 2001, Jimmy Gurule, Undersecretary of the Treasury for Enforcement, in a speech at the Crystal Gateway Marriott, put forward the proposals to be discussed by the Financial Action Task Force plenary meeting: "7. International Wire Transfers– Countries should take measures to require financial institutions and money remitters to include orignator information...on funds transfers and related messages..."

On October 31, 2001, Mr. Gurule stated: "FATF [the Financial Action Task Force] adopted eight special recommendations which specifically target the ability of terrorists to generate income for their organizations, thus isolating the terrorists financially...[The

recommendations] chart new territory by requiring countries to crack down on alternative remittal systems such as hawalas, customer identification measures for wire transfers, and insuring that charities are not misused to finance terrorism."

On November 7, 2001, Treasury Secretary Paul O'Neill stated in a White House briefing, "[The terrorists] know that we are watching, and for that reason, they try to funnel their money through undocumented, unregulated financial networks constructed to bypass the civilized world's detection. But their system is imperfect. Somewhere, it must always interface with modern banking and finance. When that connection is made, we have the wherewithal to intervene, and thanks to the cooperation of allies and coalition partners...we have begun to act."

On December 31, 2001, Mr. Gurule, in an article in *Hispanic* entitled "An Unconventional Strategy for an Unconventional War," wrote, e "FTAT [the Foreign Terrorist Asset Tracking Center] is dedicated to identifying the financial infrastructure of terrorist organizations worldwide and curtailing their ability to move money through the international banking system."

On February 12, 2002, Juan C. Zarate, Deputy Assistant Secretary, Terrorism and Violent Crime, U.S. Department of Treasury, testified to the House Financial Services Committee: "Terrorist groups, including al-Qaeda, use different means of moving money to support their respective organizations. This money movement around the world, which largely still relies on traditional wire transfers, provides the footprints to where sleeper cells lie and allows us to attempt to disrupt those fund flows... The Treasury Department continues to monitor the use of shell bank, shell companies, and correspondent accounts to move illicit funds directed for terrorist financing purposes... Some U.S. banks have voluntarily closed correspondent accounts with foreign-based banks when there have been suspicious wire transfers..."

On July 31, 2003, FBI Acting Assistant Director for Counterterrorism John Pistole testified before the Senate Governmental Affairs Committee, "What TFOS [the Terrorist Financing Operation Section] has been doing is trying to follow the money, to identify those individuals who may be involved in terrorist financing and then to trace that money with law enforcement intelligence aspects...One of the key areas has been our outreach with, and cooperation from, the private sector. In that area, for example, we have developed the ability to conduct real-time monitoring, and specifically identified financial activity, which has been invaluable not only to investigations here in the US, but to some of our foreign partners, who have relied on that information, tracking money going from the US overseas that may be used in terrorist activity, or vice versa.... At the request of a foreign liaison service, TFOS traced financial transactions in a near realtime manner which led to the location of a terrorist cell and prevention of a terrorist attack."

On September 29, 2004, John E. Lewis, Deputy Assistant Director, FBI Counterterrorism Division, testified to the Senate Banking, Housing, and Urban Affairs Committee, "Efforts to counter the use of the informal banking system include...requiring money transmitting businesses, which include any person who engages as a business in the transmission of money, to register

with the Financial Crimes Enforcement Network (FinCEN).

The Bush Administration has also corroborated that, as Ron Suskind reports in *The One Percent Doctrine*, terrorists have become aware that wire transfers are being monitored and are changing how they move money internationally.

On April 4, 2006, Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne testified to the Senate Banking, Housing, and Urban Affairs Committee: "One anecdotal measure of the success of our present coalition buildings is the increasing use by terrorist financiers of riskier, more difficult and expensive means in preference to the more horrible international financial system. Abuses of charities, of not-for profit organizations, of cash couriers, of wire transfers and other alternative remittance systems have become an increasing focus of our discussions and our cooperation with our international partners"

III. Congress has given the President the authority to monitor the international electronic transfer of funds to gain intelligence on terrorists, and Treasury has been openly working on regulations to do so.

Immediately following the Sept. 11 Attacks in 2001, Congress publicly declared its intention to provide the US government with legislative tools to monitor the international flow of terrorist money.

In House Financial Services Committee Hearing on October 3, 2001, Chairman Michael Oxley stated, "Members of this committee will introduce comprehensive anti-terrorism and money laundering legislation that focuses on three major goals:

- bolster law enforcement's ability to find and destroy the financing of terrorist organizations, whether in banks or underground 'hawala' systems;

-establish a government-industry partnership to stop terrorist funding in real-time; and

-*track any terrorist money kept in secret offshore havens and increase foreign cooperation with U.S. efforts*."

Congress openly deliberated in 2004 whether authorizing the Treasury department to monitor international wire transfers would be useful.

From a Hearing of the House Financial Services Committee on August 23, 2004:

REP SUE KELLY (NY): "The committee is familiar with the ability of CENTRAC, the Canadian financial intelligence unit, and AUSTRAC, the Australian FIU, to receive international wire-transfer data electronically. Wouldn't this be helpful for our FIU in Treasury, the FinCEN, to be able to have that authority?..."

STUART LEVEY, TREASURY UNDERSECRETARY FOR TERRORISM AND FINANCIAL INTELLIGENCE:" I do think this is something that I know [FinCEN Director] Bill Fox is looking

at very carefully. It does, frankly, appear to me to be something that would be useful. I'm a little hesitant to jump in without knowing the details. It does seem to me there may be a scalability problem...given the volume that we have to deal with..."

REP KELLY (NY): "If you need more money to get the job done electronically, I think we must address that her in Congress, and we need to do it rapidly."

From a Hearing of the House Financial Services Committee on September 22, 2004:

REP SUE KELLY (NY): "We're here because of our shared commitment to strengthening our ability to track and take out the financial support systems of the terrorists...In the coming days, this committee should also focus on our ability to collect and analyze information regarding cross-border fund transfers. As members of this committee recall, the 9/11 commission clearly articulated the direct relevance of international wire transfers to terror finance. We need to do more to ensure that our wire transfer systems are not being used for illicit purposes."

* * *

REP SUE KELLY (NY): "As you know, the United States lags behind other countries in our ability to deter and detect the misuse of these international funds transfer systems for illicit purposes...In fact, some U.S. authorities have suggested that a well-structured reporting requirement for international wire transfers would do more to address terrorist financing than any other change to the Bank Secrecy Act. Since money laundering and terror finance are inherently international, and law enforcement's ability to trace funds is curtailed to find from where the funds originate or transit to other countries, my question is, what impact would having this authority have on our government's ability to fight terrorist financing?..."

STUART LEVEY, TREASURY UNDERSECRETARY FOR TERRORISM AND FINANCIAL INTELLIGENCE: "I'd like to say two things in response to that. One is that it may well be that that authority is one that would be beneficial to us with respect to combating terrorist financing, money laundering, and particularly helping us with ongoing investigations...The authority may well be useful. And the reason I can't be stronger is I just need to make sure that what we do is something that we're capable of taking in. In other words, I don't want to require the reporting of a lot of information that we don't have the capacity to use and analyze at this point..."

REP KELLY: "Mr. Levey, we stand ready and willing to work with you to see if there isn't something more we can do to identify these cross- border transmittals and get them into some kind of position where they are going to work as flags to help us regarding terror."

At the end of 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act (S.2845, P.L. 108-458), which authorized the Treasury Department to develop regulations requiring financial institutions to give the government information on cross-border electronic money transfers. This legislation provided the framework within which the

administration was supposed to conduct its monitoring of this financial information.

Title VI, Subtitle D, Sec. 6302:
Paragraph 1: "IN GENERAL: The Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing."

Paragraph 4: "FEASABILITY REPORT . A. Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the National Intelligence Reform Act of 2004, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that –

i) identifies the information in cross-border electronic transmittals of funds that may be found ...to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing...

ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals fo funds to law enforcement and other entities...

iv)discusses the information security protections required by the exercise of the Secretary's authority under this section.

Following the enactment of this law, the Treasury Department publicly sought to engage in the monitoring of international wire transfers, along with the feasibility study mandated by Congress.

On April 6, 2006, Stuart Levey, Treasury Under Secretary for Terrorism and Financial Intelligence, testified to Congress about the need for "Development funding for FinCEN's Cross-Border Wire Transfer System Initiative. The authorizing language (Section 6302 of the Intelligence Reform Act of 2004 (S.2845 P.L. 108-458)) presents the Bureau with two tasks (1) a feasibility study to be completed as soon as practicable; and (2) the implementation of enabling regulations and a technological system for receiving, storing, analyzing, and disseminating the reports..."

This testimony clearly establishes the existence of Treasury plans to monitor cross-border wire transfers. Meanwhile, it was widely reported in the press that the Treasury Department was discussing the feasibility of the new monitoring of wire transfers with financial institutions and regulators.

On April 11, 2005, Eric Lichtblau of the New York Times reported, "The Bush administration is developing a plan to give the government access to possibly hundreds of millions of international banking records in an effort to trace and deter terrorist financing, even as many bankers say they already feel besieged by government antiterrorism rules...

"The initiative, as conceived by a working group within the Treasury Department, would vastly expand the government's database of financial transactions by gaining access to logs of international wire transfers in and out of U.S. banks....

"Government officials said that *the effort, which grew out of a brief, little-noticed provision in the intelligence reform bill [S.284 IRTP Act above] passed by Congress in December,* would give them the tools to track leads on specific suspects and, more broadly, to analyze patterns in terrorist financing and other financial crimes...

"The provision authorized the Treasury Department to pursue regulations requiring financial institutions to turn over 'certain cross-border transmittals of funds' that might be needed in combating money laundering and terrorist financing.

"The plan for tracking overseas wire transfers is likely to intensify pressure on banks and other financial institutions to comply with the expanding base of provisions to fight money laundering, industry and government officials agreed."

On March 10, 2006, Jeannine Aversa of the AP Financial Wire wrote: "The Bush administration is exploring the idea of requiring financial institutions to provide information on electronic transfers of money in and out of the United States, saying it might help catch terrorist financiers and money launderers.

"The Treasury Department's Financial Crimes Enforcement Network said Friday it is seeking input on the matter from the banking and financial services industry.

"'If we can identify data in cross-border wire transfer records that helps protect economic and national security and find a workable way to efficiently collect the data...it will enormously strengthen our efforts,' said Robert Werner, director of FinCen....

...the agency also is issuing a survey to industry grous to get feedback on these and other issues."

Both financial institutions and their regulators in the government offered resistance to the Treasury Department's proposals.

On April 11, 2005 the Eric Lichtblau of the New York Times reported: "The aggressive tactics...have already caused something of a backlash among banking compliance officers and even some federal officials, who say the effort has gone too far in penalizing the financial sector for lapses and has effectively criminalized what were once seen as technical violations."

On **June 21**, 2006, Stacy Kaper of American Banker reported: "Requiring banks to report all international wire transfers to the government could hinder innovation in the U.S. payments system, significantly increase regulatory burden, and raise privacy concerns, regulators told the Financial Crimes Enforcement Network last week.

"Since last year FinCen has been studying whether to recommend that banks comply with

such a requirement, and during the past two months it sought input from federal regulators...

"They also asked FinCen to conduct a more thorough review of law enforcement officials' ability to use the data to crack down money laundering and terrorist financing.

"FinCen has said that such data also could be useful to regulators, but the agencies seemed skeptical. They noted that bank examiners already have access to cross-border wire transfer date during examinations, sources said...

"Industry representatives continue to oppose any such reporting requirement and hope the regulators' concerns will resonate with Fincen. *But many industry sources said FinCen appears to be marching forward regardless*."

Thus, it was well known that Treasury intended larger-scale monitoring of wire transfers.

IV. Ron Suskind, in *The One Percent Doctrine,* published by Simon and Schuster on June 20 (two days before the Times allegedly revealed the information) explained at length that the Bush administration was tracking wire transfers, and Western Union in particular, since 2001 as part of the "financial war" on terror.

November 2001: "[Treasury Department General Counsel David] Aufhauser, and his fellows, were trying to cut off to cut off the flow of funds to terrorists, carrying forward the President's "financial war" pledge. [Section Chief of FBI Terrorist Financing Operations Section, Counterterrorism Division Dennis] Lormel was trying to use money as intelligence to find and stop terrorist operations."

–Ron Suskind, *The One Percent Doctrine*, p. 142

"The most effective coordination of resources, manpower, and ingenuity in the U.S. government had been in the financial realm... Western Union had been the most efficient part of that effort....Requests for Western Union assistance started to come to FBI from 'down the river' at CIA. Western Union was asked for historical data on clients in more and more areas of interest."

–Ron Suskind, *The One Percent Doctrine*, p. 208-9

"For [financial intelligence], the administration relied heavily on First Data. Covenants with other credit card processors in the United States and abroad meant that–much like large telecom switches–everything could be invisibly blended... Western Union had similar sharing arrangements for wire transfers...to clear or trace transactions, large companies generally have access to one another's back office processing units....You just need a universal passport–like the one Western Union possesses...In the first few weeks after the [9/11] attacks, thousands of financial searches were conducted based on initial communications leads form NSA."

–Ron Suskind, *The One Percent Doctrine*, p. 38

It was further reported that the goal of tracking the wire transfers is not necessarily to freeze terrorist assets, but to gather information on the location and infrastructure of

terrorist organizations.

"Initiatives launched by Treasury and CIA were getting much better at tracking money as it passed through accounts across the world... Money, they now all understood was for the most part a form of intelligence...The money trail..could identify the players, the place, and, possibly, the intent."
–Ron Suskind, *The One Percent Doctrine*, p. 143

"Day by day, U.S. officials grew to appreciate that they *wanted* cash to flow–manageably, modestly flow–so they'd have something to follow. On an intelligence-scarce landscape, *money was intelligence*."
–Ron Suskind, *The One Percent Doctrine*, p. 208

In some cases, Suskind reported very specifically on operational details of the use of Western Union information.

"Lormel and his partners at FBI pushed deeper. What about real-time information–transactions as they occur? And photos? Western Union had pinpoint cameras in some of its offices. Just as someone making an ATM transaction is photographed, so, often, is the sender of a wire transfer, and the recipient, though they often don't know it."
–Ron Suskind, *The One Percent Doctrine*, p. 209
Suskind then describes, on pages 230-33, a specific use of this power against Palestinian Islamic Jihad terrorists:
"[Israel Intelligence Service Shin Bet Director Avi] Dichter gave the United States a piece of intelligence to begin the process: the name of a supporter of Palestinian Islamic Jihand who was expected to wire money from Lebanon to a point somewhere in Israel. Early in April, Western Union's Offices in Lebanon received the expected order....In an arrangement with the U.S. Federal Court for the Eastern District of Virginia...[the Terrorism Section of the Department of Justice] issued an instantaneous subpoena. It allowed Western Union...to notify FBI and CIA about which location the money was being wired to, and who was picking it u. All of it occurred in minutes. Israeli intelligence officers were hailed. They raced, silently, to the right Western Union office in Hebron, and then followed the PIJ courier to his safe house in the West Bank. From there, electronic surveillance equipment swiftly tracked communications to other cells in the Palestinian territories.
"Two further wire transfers were targeted in early May. And, each time, the golden disclosure has handed by the U.S. government to Israeli forces..."

Terrorists have learned about this in 2003, and have since started moving their money in other ways.

"In the closing months of 2003, we started to go blind. The U.S. government, that is. The carefully constructed global network of sigint [signals intelligence] and what can be called finint, or financial intelligence, started to go quiet. In short, al Qaeda...stopped leaving electronic footprints...They were going underground."

–Ron Suskind, *The One Percent Doctrine*, p. 277

"Eventually, and not surprisingly, our opponents figured it out... 'We were surprised it took them so long,' said one senior intelligence official... The al Qaeda playbook, employed by what was left of the network, its affiliates and imitators, started to stress the necessity of using couriers to carry cash and hand-delivered letters."
–Ron Suskind, *The One Percent Doctrine*, p. 278

"The FBI ran a few more wire transfer traps through Western Union for [Israel Intelligence Service Shin Bet Director] Avi Dichter– one in August, another in October–but it seemed like the prey among the Palestinian leadership was finally getting wise."
–Ron Suskind, *The One Percent Doctrine*, p. 281

Monitoring wire transfers was made illegal by FISA in 1978.

"During World War II, all U.S. telegraph companies forwarded copies of international cables to the federal government. The program, "Operation Shamrock," continued after the war and was unknown to Congress and top intelligence officials...This collection of foreign intelligence also involved U.S. citizens and was blocked when it was uncovered, along with other intelligence abuses, during post-Watergate congressional investigations of CIA in the mid-seventies. Shamrock, and similar abuses in the wiretapping of U.S. citizens...was the impetus for the passage of the Federal Intelligence Surveillance Act in 1978, and the creation of the so-called "FISA Court."
–Ron Suskind, *The One Percent Doctrine*, p. 35-6

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Treasury's Terrorist Finance Program's Access to Information Held by the Society for Worldwide Interbank Financial Telecommunication (SWIFT)

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Summary

Recent press reports have raised questions about the Department of the Treasury's Terrorist Finance Tracking Program's access to information on international financial transactions held by the Society for Worldwide Interbank Financial Telecommunication (SWIFT), a Brussels-based organization owned by banks in many countries, which serves as a hub for international funds transfers. Its records contain names, addresses, and account numbers of senders and receivers of international wire transfers between banks and between securities firms, thus providing a useful source for federal officials responsible for following money trails across international borders. On June 29, 2006, the House of Representatives passed H.Res. 895 voicing support for the Treasury program as fully compliant with all applicable laws; condemning the unauthorized disclosure of classified information; and calling upon news media organizations not to disclose classified intelligence programs. H.Res. 904 was introduced to discourage government censorship of the press. This report addresses these issues and will be updated as legislative events merit.

Background. News stories appearing in the New York *Times*, the *Wall Street Journal*, and the Los Angeles *Times*[1] in June, 2006, described efforts by the Department of the Treasury to trace international banking system transfers of funds to and from terrorists by accessing information held by the Society for Worldwide Interbank Financial Telecommunication (SWIFT), a Brussels-based entity owned by financial organizations world-wide that serves as a major hub for international communications among banks and other financial institutions. It has at least one office in the United States.

[1] See Eric Lichtblau and James Risen, "Bank Data Sifted in Secret by U.S. to Block Terror," New York *Times* A-1 (June 23, 2006); Barton Gellman, et al., "Bank Records Secretly Tapped," *Washington Post*, A-1 (June 23, 2006); Josh Meyer and Greg Miller, "U.S. Secretly Tracks Global Bank Data," Los Angeles *Times*, A-1 (June 23, 2006); and Glenn R. Simpson, "Treasury Tracks Financial Data in Secret Program," *Wall Street Journal* A-1 (June 23, 2006).

What is Treasury's authority for access to SWIFT information? Treasury[2] cites Executive Order 13224,[3] "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," as authority for the SWIFT program as a component of its "Terrorist Financing Tracking Program." E.O. 13224 was issued by President Bush on September 23, 2001, pursuant to the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-1706. IEEPA permits the President to exercise broad powers over property or financial transactions, including transfers of credit or payments through banking institutions and securities or other obligations, that involve any interest of a foreign country or a national of that country. To invoke its authorities, the President must declare a national emergency based on the existence of an unusual or extraordinary threat to U.S. national security, foreign policy, or economy having its source, in whole or substantial part, outside the United States.

Finding that foreign terrorist acts, including those of September 11, and threats of future terrorism constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, President Bush issued E.O. 13224. It delegates to the Secretary of the Treasury all necessary authority under IEEPA to block the assets within U.S. jurisdiction of named individuals and entities who are determined by the Secretary of State and the Secretary of the Treasury, in consultation with each other and with the Attorney General, to pose a significant risk of terrorism or to be assisting, sponsoring, or providing financial, material, or technological support for terrorist acts or designated persons.[4] It requires agencies to coordinate with other countries through bilateral and multilateral agreements and other arrangements to prevent and suppress terrorist acts, deny financial services to terrorists, and share financial intelligence. Treasury's Office of Foreign Assets Control (OFAC) administers the terrorists sanctions programs and has issued four separate sets of terrorist sanctions regulations, 31 C.F.R., Parts 594 to 597.[5] The Global Terrorism Sanctions Regulation, 31 C.F.R., Part 94, blocks "property and interests in property ... that are in the United States, that hereafter come within the United States, or that hereafter come within the control of U.S. persons, including their overseas branches" of persons listed on the Annex to E.O. 13244[6] and a list of other categories of foreign terrorists. It defines "United States person" to include, among other things, "any person in the United States," and "person" to include an "entity," which means "a partnership, association, corporation, or other organization, group, or subgroup."[7] It declares that the blocked property or interests therein "may not be transferred, paid, exported, withdrawn or otherwise dealt in," and makes void any

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[2] See "Terrorist Financing Tracking Program: Fact Sheet" (JS-4340, June 23, 2006); "Statement of Under Secretary Stuart Levey on the Terrorist Finance Tracking Program" (JS4334 June 23, 2006), *available at* [http://www.treas.gov/press/international.html](visited June 28, 2006); see also "Letter to the Editors of *The New York Times* by Treasury Secretary Snow," (June 26, 2006).

[3] 66 Fed. Reg. 49079 (Sept. 25, 2001).

[4] E.O. 13224, § 1.

[5] Text and summaries of the various blocking regulations, Executive Orders, and statutes are found on the OFAC website at [http://www.treas.gov/offices/enforcement/ofac/].

[6] See 31 C.F.R. Ch. 5, App. A (list of all blocked persons, including Specially Designated Global Terrorists); Office of Foreign Assets Control, "Terrorism: What You Need to Know About U.S. Sanctions," 2-99, *available at* [http://www.treas.gov/offices/enforcement/ofac/].

[7] 31 C.F.R. §§ 594.315, 594.308, and 594.303.

transfer in violation of the regulation.[8] By incorporating by reference[9] the general recordkeeping and reporting requirements of 31 C.F.R., Part 501, the regulation includes OFAC's authority to require reports of transactions and to "subpoena ... the production of all books, papers, and documents relating to any matter under investigation regardless of whether any report has been required or filed in connection therewith."

What privacy protections apply to records of financial transactions? The United States has no general law of financial privacy. The Constitution provides no protection against governmental access to financial information turned over to third parties. *United States v. Miller*, 425 U.S. 435 (1976). Although the Fourth Amendment to the United States Constitution requires a search warrant for a law enforcement agent to obtain a person's own copies of financial records, it does not protect the same records when they are held by financial institutions. The Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422, sets procedures for federal government access to customer financial records held by financial institutions. It generally requires customer notice when federal authorities seek access to bank information on individuals or partnerships of five or fewer individuals. The law requires that federal agencies seeking disclosure of customer financial records use one of several procedures, among which are administrative subpoenas or summons and formal written requests.[10] This law, however, applies generally only to depository institutions.[11] Among the various exceptions to the customer notice requirements are disclosures to a federal agency "seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the Untied States under .... [IEEPA]."[12] A federal agency that obtains records under this law may transfer them to another agency by certifying "in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency."[13]

What other federal laws apply to tracking terrorist finances? Other federal laws may be implicated in federal efforts to detect terrorist financing, including substantive criminal law and procedural statutes defining terrorism and support for terrorism and money laundering and specifying procedures for seizing terrorist assets. The following concentrate on financial institution recordkeeping and reporting.

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[8] 31 C.F.R. §§ 594.201 and 594.202(a).

[9] 31 C.F.R. § 594.601.

[10] 12 U.S.C. §§ 3405 and 3408.

[11] 12 U.S.C. § 3401(1).

[12] 12 U.S.C. § 3413(g).

[13] 12 U.S.C. § 3412.

1. *The Bank Secrecy Act of 1970* (BSA)[14] and its major component, the Currency and Foreign Transactions Reporting Act (CFTRA),[15] require reports and records of cash, negotiable instrument, and foreign transactions. They authorize the Secretary of the Treasury to prescribe regulations to insure that adequate records are maintained of transactions that have a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."[16] CFTRA contains significant requirements related to foreign-based monetary transactions. Citizens are required to keep records and file reports regarding transactions with foreign financial agencies, pursuant to rules promulgated by the Treasury Secretary.[17] Monetary instruments of more than $10,000 that are exported from or imported into the United States must also be reported.[18]

2. *Title III of the USA PATRIOT Act*[19] is devoted to combating terrorist financing. It makes providing material support to a foreign terrorist organization a predicate offense for money laundering prosecution under section 1956 of Title 18 of the U.S. Code.[20] It authorizes the Treasury Secretary to require domestic financial institutions to undertake certain "special measures," from increased recordkeeping to forbidding transactions with respect to specific regions, financial institutions, or transactions outside of the United States determined to be of primary money laundering concern.[21] The USA PATRIOT Act also permits forfeiture of accounts held in a foreign bank if that bank has an interbank account in a U.S. financial institution; in essence, law enforcement officials are authorized to substitute funds in the interbank account for those in the targeted foreign account.[22] Forfeiture is also authorized for currency reporting violations and violations of BSA prohibitions against evasive structuring of transactions.[23]

3. *The Suppression of the Financing of Terrorism Convention Implementation Act* implements the International Convention for the Suppression of the Financing of Terrorism by making it a crime to collect or provide funds to support terrorist activities (or to conceal such fund-raising efforts), regardless of whether the offense was committed in the United States or the accused was a United States citizen.[24]

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[14] P.L. 91-508, codified at 12 U.S.C. §§ 1829b, 1951-1959; 31 U.S.C. §§ 5311 *et seq.*

[15] 31 U.S.C. §§ 5311-5322.

[16] 12 U.S.C. § 1829b.

[17] 31 U.S.C. § 5314.

[18] 31 U.S.C. § 5316.

[19] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists (USA PATRIOT Act), P.L. 107-56, Title III "The International Money Laundering Abatement and Anti-Terrorist Financing Act." For a more detailed discussion of Title III and its implementation, see CRS Report RL33020, *Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination*, coordinated by Martin A. Weiss.

[20] 18 U.S.C. § 2339B.

[21] 31 U.S.C. § 5318A(a).

[22] 18 U.S.C. § 981(k).

[23] 31 U.S.C. § 5317(c).

[24] Title II of P.L. 107-197 (codified at 18 U.S.C. § 2339C).

4. *The Intelligence Reform and Terrorism Prevention Act of 2004* requires the Treasury Secretary to issue regulations mandating the reporting of cross-border transmittals by certain financial institutions,[25] and to submit a report to Congress on the Treasury Department's efforts to combat money laundering and terrorist financing.[26]

Is the publication of classified information a criminal act? Whether the publication of information related to the Treasury's monitoring program is illegal depends on whether it falls within the definition of one of the categories of information protected by statute and is committed with the requisite intent.[27] The most pertinent of these statutes would seem to be the Espionage Act of 1917,[28] which protects "information related to the national defense " by prohibiting the gathering as well as the willful communication, delivery, or transmission of such information to any person not entitled to receive it, with the intent or reason to believe the information will be used against the United States or to the benefit of a foreign nation.[29] The courts give deference to the executive determination of what constitutes "defense information,"[30] but the text of the statute seems to indicate that information related to the military establishment was the primary object of the law. Information that is made available by the government to the public is not covered under the prohibition, in any event, because public availability of such information negates the bad-faith intent requirement.[31] On the other hand, the Constitution protects the public right to access government information and to express opinions regarding the functioning of the government. The First Amendment to the U.S. Constitution provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."[32] Although the Supreme Court has held that "[t]he Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest . . .,"[33] it has been reluctant to enjoin the press from publishing information, especially that relating to news and commentary on current events.[34]

What international law may be implicated by the program? The United Nations Participation Act (UNPA),[35] which authorizes the President to implement measures ordered by the United Nations Security Council, may provide some authority

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[25] *Id.* at § 6302.

[26] *Id.* at § 6303(a).

[27] For an overview of the legal framework for the protection of classified information, see CRS Report RL33502, *Protection of National Security Information*, by Jennifer K. Elsea.

[28] Act of June 15, 1917, ch. 30, title I, 40 Stat. 217, codified at 18 U.S.C. §§ 793 *et seq.*

[29] 18 U.S.C. § 793.

[30] See United States v. Morison, 844 F.2d 1057 (4th Cir.), *cert. denied,* 488 U.S. (1988).

[31] Gorin v. United States, 312 U.S. 9, 27-28 (1941).

[32] For an analysis of exceptions to the First Amendment, see CRS Report 95-815, *Freedom of Speech and Press: Exceptions to the First Amendment*, by Henry Cohen.

[33] Sable Communications of California v. Federal Communications Commission, 492 U.S. 115, 126 (1989); see also New York Times Co. v. United States, 403 U.S. 713 (1971).

[34] Nebraska Press Association v. Stuart, 427 U.S. 539, 559 (1976).

[35] 59 Stat. 620 (1945), codified as amended at 22 U.S.C. §§ 287 *et seq.*

for the activity.[36] The U.N. Security Council, which plays a lead role in determining threats to the international peace and security, has declared that international terrorism is such a threat and has called upon member states to "cooperate with each other . . . to prevent and suppress terrorist acts, . . .[to] prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism;. . . [and to] exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts."[37] Following the September 11, 2001 terrorist attacks on the United States, the U.N. Security Council reiterated its earlier pronouncements, calling upon the member states to cooperate in the fight against terrorism, in particular by adopting measures to suppress the funding of terrorism and adhering to international agreements pertaining to the same.[38] Among such agreements is the International Convention for the Suppression of Financing Terrorism, adopted by the United Nations General Assembly in 1999, which obligates states party to take measures to identify, discover, freeze, or seize the moneys used or intended for use to finance terrorist attacks of an international character.[39] The obligations of state parties extend to activities of their own citizens related to international terrorism, and to terrorist acts that may take place outside of their own territory. The UNPA therefore appears to cover the type of monitoring at issue, at least so long as the measures are calibrated to monitor only transactions that are reasonably related to an investigation of possible terrorist financing and are otherwise constitutional.

Has Congress responded? On June 29, 2006, the House of Representative passed H.Res. 895, voicing support for the Treasury Terrorist Finance Tracking Program as lawful; condemning the unauthorized disclosure of classified information; and calling upon news media organizations not to disclose classified intelligence programs. Another resolution was introduced, H.Res. 904, commending the American press for its service in keeping the public informed of government activity.

On July 11, 2006, the House Financial Services Committee's Oversight and Investigations Subcommittee will hold a hearing on the Terrorist Finance Tracking Program.

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[36] Section 5 of the UNPA, 22 U.S.C. § 287c provides in pertinent part that

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

[37] S/RES/1269 (Oct. 19, 1999).

[38] S/RES/1373 (Sep. 28, 2001)(calling on UN member states to work together to suppress terrorist financing, share intelligence on terrorism, and "implement...the relevant international conventions and protocols to combat terrorism").

[39] G.A. Res. 109, U.N. GAOR, 54th Sess., Supp. No. 49, at 408, U.N. Doc. A/54/49 (1999).

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